 Procedure No.: PS/00492/2020

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on

to the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 07/20/2020 filed

claim before the Spanish Data Protection Agency. The claim is

directs against the CITY COUNCIL OF GUMIEL DE MERCADO with NIF P0915500C (in

later, the claimed one). The grounds on which the claim is based are, in short, that

On 06/30/2020, a notification from the

City Hall of Gumiel de Mercado open, in which your data is recorded

identifiers next to your bank account number. Provided a photograph of

requirement deposited in the place indicated in the claim and the complaint filed

before the town hall; It also states that the notifications of the City Council are

delivered irregularly without guaranteeing the security of personal data.

SECOND: Upon receipt of the claim, the Subdirectorate General for

Data Inspection proceeded to carry out the following actions:

On 09/25/2020, the claim submitted was transferred to the defendant for analysis

and communication to the claimant of the decision adopted in this regard. Likewise, it

required so that within a month it would send to the Agency determined

information:

- Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that

the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the

claim.

- Report on the measures adopted to prevent the occurrence of

similar incidents.

- Any other that you consider relevant.

On 12/04/2020, the respondent responded to the request made, stating that

it had been decided to answer the claimant, providing a copy of the document

forwarded; that the causes that have motivated the incidence are diverse: there had been

produced an oversight of the Intervening Secretary then enabled when delivering the

request for payment addressed to the claimant without placing it in a sealed envelope, if

either the claimant had rejected a first demand for payment by refusing to

pick it up; that with the incorporation of the new Secretary the notifications to the

neighbors is sent without documentation, summoning them to go to the offices

municipal offices for collection, unless e-mail is used.

THIRD: On 12/09/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed by the claimant against the respondent.

FOURTH: On 01/25/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

infringement of article 32.1 of the RGPD, sanctioned in accordance with the provisions of the

article 83.4.a) of the aforementioned RGPD.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: The claimant, on 07/20/2020, filed a claim with the Agency

Spanish Data Protection Agency, stating that on 06/30/2020 the

entry of your address an open notification of the claimed, in which your

identification data as well as bank details.

SECOND: There is a photograph of the request deposited in place

indicated in the claim and the complaint filed with the respondent for what is

considered irregular behavior.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate

and to solve this procedure.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of

the Public Administrations, in its article 64 "Agreement of initiation in the

procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with

transfer of how many actions exist in this regard, and the interested parties will be notified,

understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the regulatory norms

of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

b) The facts that motivate the initiation of the procedure, its possible

rating and sanctions that may apply, without prejudice to what

result of the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with

express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that

attribute such competence, indicating the possibility that the presumed

responsible can voluntarily acknowledge their responsibility, with the

effects provided for in article 85.

e) Provisional measures that have been agreed by the body

competent to initiate the sanctioning procedure, without prejudice to those that

may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the

procedure and the deadlines for its exercise, as well as an indication that, in

If you do not make allegations within the stipulated period on the content of the

initiation agreement, this may be considered a resolution proposal

when it contains a precise statement about the responsibility

imputed.

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase

later by drawing up a List of Charges, which must be notified to

the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

III

The facts claimed and revealed in the claim that have

given rise to this procedure are specified in the existence of an incident of

security in the claimed systems by enabling the notification of the

request for payment of the claimed was deposited at the entrance of the domicile of the

claimant allowing access to identification data as well as their number of

bank account, violating the pertinent technical and organizational measures.

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers

corrections listed below:

(…)

b) sanction any person responsible or in charge of the treatment with

warning when the treatment operations have infringed the

provided in this Regulation;

(…)”

The RGPD establishes in article 5 of the principles that must govern the

treatment of personal data and mentions among them that of "integrity and

confidentiality”.

The article notes that:

"1. The personal data will be:

(…)

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized processing or

against its loss, destruction or accidental damage, through the application

of appropriate technical or organizational measures ("integrity and

confidentiality”)”.

(…)”

The security of personal data is regulated in articles 32, 33 and

34 of the GDPR.

Article 32 of the RGPD "Security of treatment", establishes that:

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore availability and access to data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the

treatment.

2. When evaluating the adequacy of the security level, particular consideration shall be given to

taking into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a

certification mechanism approved under article 42 may serve as an element

to demonstrate compliance with the requirements established in section 1 of the

present article.

4. The person in charge and the person in charge of the treatment will take measures to

guarantee that any person acting under the authority of the controller or the

manager and has access to personal data can only process said data

following the instructions of the person in charge, unless it is obliged to do so by virtue of the

Law of the Union or of the Member States".

The violation of article 32 of the RGPD is typified in the article

83.4.a) of the aforementioned RGPD in the following terms:

IV

"4. Violations of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43.

(…)"

For its part, the LOPDGDD in its article 71, Violations, states that:

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

And in its article 73, for the purposes of prescription, it qualifies as "Infringements

considered serious":

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679

are considered serious and will prescribe after two years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the

following:

(…)

g) The violation, as a consequence of the lack of due diligence,

of the technical and organizational measures that have been implemented in accordance with

required by article 32.1 of Regulation (EU) 2016/679".

(…)

The GDPR defines personal data security breaches as

"all those violations of security that cause the destruction, loss or

accidental or unlawful alteration of personal data transmitted, stored or processed

otherwise, or unauthorized communication or access to such data".

v

From the documentation in the file, there are clear indications of

that the claimed party has violated article 32 of the RGPD, when there was a breach of

security in their systems allowing access to data related to the

census.

It should be noted that the RGPD in the aforementioned provision does not establish a list of

the security measures that are applicable according to the data that is

object of treatment, but it establishes that the person in charge and the person in charge of the

treatment will apply technical and organizational measures that are appropriate to the risk

that the treatment entails, taking into account the state of the art, the costs of

application, the nature, scope, context and purposes of the treatment, the risks of

probability and seriousness for the rights and freedoms of the persons concerned.

Likewise, the security measures must be adequate and

proportionate to the detected risk, pointing out that the determination of the measures

technical and organizational information must be carried out taking into account: pseudonymization and

encryption, the ability to ensure the confidentiality, integrity, availability and

resiliency, the ability to restore availability and access to data after a

incident, verification process (not audit), evaluation and assessment of the

effectiveness of the measures.

In any case, when evaluating the adequacy of the level of security,

particularly taking into account the risks presented by the processing of data, such as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data and that could cause damages

physical, material or immaterial.

In this same sense, recital 83 of the RGPD states that:

“(83) In order to maintain security and prevent the treatment from violating the

provided in this Regulation, the person in charge or the person in charge must evaluate

the risks inherent to the treatment and apply measures to mitigate them, such as

encryption. These measures must guarantee an adequate level of security, including

confidentiality, taking into account the state of the art and the cost of its application

regarding the risks and the nature of the personal data that must be

protect yourself. When assessing the risk in relation to data security,

take into account the risks arising from the processing of personal data,

such as the accidental or unlawful destruction, loss or alteration of personal data

transmitted, stored or otherwise processed, or the communication or access is not

authorized to said data, susceptible in particular to cause damages

physical, material or immaterial.

In the present case, as evidenced by the facts and within the framework of the

investigation file E/07580/2020 the AEPD, on 09/25/2020, transferred the

claim to the respondent requesting the provision of information related to the

incident claimed, the entity having acknowledged in its response that it had

an oversight occurred when delivering the request for payment to the claimant

without introducing it in a sealed envelope and being deposited at the entrance of your home, although

states that it has adopted measures to avoid these situations.

The responsibility of the claimed party is determined by the bankruptcy of

security revealed by the claimed, since it is responsible for taking

decisions aimed at effectively implementing technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk

to ensure the confidentiality of the data and, among them, those aimed at restoring the

availability and access to data quickly in the event of a physical incident or

technical.

However, also the LOPDGDD in its article 77, Regime applicable to

certain categories of controllers or processors, establishes the

Next:

SAW

"1. The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

a) The constitutional bodies or those with constitutional relevance and the

institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General Administration of the State, the Administrations of the

autonomous communities and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or

dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment

related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous Legislative, as well as the political groups of the Corporations

Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

body on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

3. Without prejudice to what is established in the previous section, the

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

Likewise, when the infractions are attributable to authorities and managers,

and the existence of technical reports or recommendations for treatment is proven

that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or Autonomous Gazette that

correspond.

4. The data protection authority must be informed of the

resolutions that fall in relation to the measures and actions referred to

the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions

analogous of the autonomous communities the actions carried out and the

resolutions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of

Data, it will publish on its website with due separation the resolutions

referred to the entities of section 1 of this article, with express indication of the

identity of the person in charge or in charge of the treatment that would have committed the

infringement.

When the competence corresponds to a regional protection authority

of data will be, in terms of the publicity of these resolutions, to what is available

its specific regulations.

According to the available evidence, the conduct of the

claimed constitutes a violation of the provisions of article 32.1 of the RGPD.

It should be noted that the RGPD, without prejudice to the provisions of article 83,

contemplates in its article 77 the possibility of resorting to the sanction of warning

to correct the processing of personal data that is not in accordance with your

forecasts, when those responsible or in charge listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law.

Likewise, it is contemplated that the resolution may establish the measures

that it is appropriate to adopt so that the conduct ceases, the effects of the infraction are corrected

that had been committed, the adequacy of the processing of personal data

personal to the requirements contemplated in article 32 of the RGPD, as well as the

provision of means accrediting compliance with the requirements.

However, the respondent in his response to the request of this center

director indicated that the incidence had occurred an oversight when delivering the

request for payment addressed to the claimant without placing it in a sealed envelope, if

whether adequate measures have been adopted so that such events do not recur.

occur.

In light of the foregoing, it is not appropriate to urge the adoption of measures

additional, having been accredited, that the respondent has adopted the measures

reasonable, in accordance with the regulations on data protection,

main purpose of the procedures with respect to those entities related

in article 77 of the LOPDGDD.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE MARKET CITY COUNCIL OF GUMIEL, with NIF

P0915500C, for an infringement of article 32.1 of the RGPD, typified in article

83.4.a) of the RGPD, a penalty of warning in accordance with what is indicated in

Article 77.2 of the LOPDGDD.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF GUMIEL DE

MARKET, with NIF P0915500C.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency