

□ Procedure No.: PS/00201/2021

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and with

based on the following

BACKGROUND

FIRST: Dated 12/04/2020, it is registered with the Spanish Protection Agency

of Data (AEPD) a claim from Ms. A.A.A., with NIF ***NIF.1 (hereinafter, the

claimant), against the GENERAL DIRECTORATE OF THE CIVIL GUARD, with NIF

S2816003D (hereinafter, the claimed one).

The reasons on which you base your claim are, on the one hand, that the claim form

complaints from the "Citizen Service Book" used by the respondent mentions the

Article 5 of the Organic Law 15/1999, of December 13, on Data Protection of

Personal Character, when "Said law, which heads the sheet of my complaint in the Book of

Citizen Service, is repealed, so I do not know if my claim is accepted

law and is valid".

On the other hand, it states that their personal data -name, surnames and NIF- have been

used by the claimed party for a purpose other than the processing of the complaint

interposed; specifically to initiate disciplinary proceedings against a member of the

body which has nothing to do with the complaint made. consider that the latter

conduct is contrary to articles "5.1.f," of Regulation (EU) 2016/679, of

protection of natural persons with regard to data processing

data and the free movement of these data and by which the Directive is repealed

95/46/CE (RGPD) and "5.1." of Organic Law 3/2018, of December 5, on the protection

of personal data and guarantees of digital rights (LOPDGDD)

Provide these documents:

- The duly completed complaint form that you submitted on 08/30/2020.

The heading of the document states: "Ministry of the Interior", "Book nº XXXXX of

complaint and suggestion forms" and "Form No. XX". about box

destined to the personal data of the person who presents the complaint or suggestion is included

this legend:

"In accordance with the provisions of art. 5 of the Organic Law 15/1999, of 13

December, Protection of Personal Data, the data provided will enter

to form part of the file that, for this purpose, is approved by the

Order INT/1202/2011, of May 4 (BOE nº 114, of May 13) and will be used at

the effects of processing your complaint or suggestion. You can exercise the rights of

access, rectification, cancellation and opposition before the Administrative Unit

responsible for the treatment of the file.

-An Official Letter dated 09/05/2020, addressed to the head of the Operations Command (Service of

Disciplinary Regime), signed by the chief captain of the company, whose subject is

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/9

"Disciplinary report giving an account of the serious offense committed by a civil guard". In the

headed the document bears the indications "Ministry of the Interior" and "Guard

Civil. General Directorate". The body of the document, which includes the description of the

events that could determine the commission of a disciplinary infraction

by an agent, include in the background information the name, surnames and

NIF of the claimant.

-An Official Letter dated 09/04/2020 regarding the "Alleged serious fault of the civil guard

xxxxx". The header of the document and the addressee are identical to that of the letter of date 09/05/2020. Through him, the undersigned - the Deputy Security Officer Citizen of the Command of ***LOCALIDAD.1- raises a disciplinary report for the conduct of the agent including in the statement of the facts the name, two surnames and the NIF of the claimant.

SECOND: The AEPD, in view of the claim, in accordance with the provisions of article 65.4 of the LOPDGDD transfers it to the claimant so that within a month provide an explanation of the facts denounced, detail the measures adopted to prevent similar situations from occurring in the future and proceed to Communicate your decision to the claimant. The writing is notified to the claimed 02/15/2021.

On 03/03/2021, this Agency received the response from the Protection Delegate of Data (hereinafter, DPD) of the claimed in which it says about the alleged improper use of the personal data of the claimant that article 40.2 of the Law Organic 12/2007 enables the processing of the personal data of the witnesses of a event that gives rise to a disciplinary report, without it being necessary in such a case to obtain its consent.

It adds that the claimant sent her claim to the suggestions email account of the claimed on 11/14/2020 from where it was sent to the DPD, proceeding then to respond to the claimant in writing dated 01/25/2021 by mail certificate that was received by her on 02/08/2021. What days after having issued response, on 01/31/2021, the claimant addressed the DPD directly through an e-mail raising the same question. Therefore, it was reported to via email that was close to receiving the response that had been sent by certified mail. Attach a copy of the email to your letter sent to the claimant dated 02/01/2021 informing her that it has been sent with

dated 01/25/201 the response by certified mail, as well as a copy of this written.

THIRD: On 04/29/2021 the Director of the AEPD issues a resolution admitting processing the claim. The agreement for admission to processing was notified electronically to the claimant on 04/30/2021.

FOURTH: On 05/14/2021 a new letter of the claimant in which he acknowledges receipt of the admission for processing of his claim and, therefore, If they are useful, attach the following documents:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/9

The letter received from the DPD, dated 01/25/2021, in which it responds to your query about 11/14/2020 regarding a possible irregular use of your data as a result of having included them in a disciplinary procedure without their consent.

The letter dated 09/20/2020, sent by the Head of the Command, Command of Operations of the General Management, in which it provides you with information on matters of protection of personal data and the rights that assist you in accordance with the GDPR. The writing includes a legend that informs what the purpose of the document is. treatment of the data collected through the complaint forms and suggestions used by the General Directorate; where you can exercise your rights that it has recognized by the RGPD; that your data will not be transferred or international transfers and the term of conservation of the data. Also, includes a link to a website of that Directorate General where you can consult detailed information on data protection.

FIFTH: On 06/18/2021 the Director of the Spanish Agency for the Protection of Data agrees to initiate a sanctioning procedure against the person claimed for the alleged infringement of article 13 of the RGPD, typified in article 83.5.b) of the RGPD.

SIXTH: Allegations of the respondent to the agreement to initiate the procedure

On 06/23/2021, the AEPD received the allegations of the defendant to the agreement to open the sanctioning file.

The respondent acknowledges that he has a form that refers to the Organic Law 15/1999, on the Protection of Personal Data (LOPD) but states that "has such a form" "only (...) as a user".

It states that "The responsibility of said form and the treatment that it may carry rigged corresponds to the General Directorate of Coordination and Studies (Ministry of the Interior) by virtue of article 5.bis.2.5 of Royal Decree 146/2021 of March 9 which modifies Royal Decree 139/2020, of 01/28, which established the basic organic structure of the ministerial departments and the Royal Decree 734/2020, of August 4, which develops the basic organic structure of the Ministry of Interior."

SEVENTH: Practice tests

On 09/29/2021, the instructor of the file agrees to practice the following test steps:

1. Consider the following documents as reproduced for evidence purposes:

The claim presented by the claimant and its attached documentation, as well as the documents generated and obtained by the Subdirector General for Inspection with occasion of the request for information addressed to the respondent prior to admission to claim processing. The document sent to this Agency by the claimant in dated 05/14/2021 and its attached documents. The brief of allegations to the agreement of initiation of procedure PS/00201/2021 filed by the respondent on the date

06/23/2021.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/9

2. Incorporate into the procedure by diligence the document related to the Registry of

Processing Activities of the Ministry of the Interior that is published in the

Ministry website dated 09/15/2021.

3. Request the respondent to send to the AEPD the information and documentation that is

detail:

2.1. As stated in the Registry of Treatment Activities (RAT) that the

Ministry of the Interior has published on its website dated 09/15/2021, the

Citizen Attention Unit of this General Directorate of the Civil Guard is

responsible for data processing concerning the "Management of queries,

suggestions, complaints, congratulations, collaborations and any other action by the

that a citizen addresses the Civil Guard, through any of the authorized channels

to the effect".

With regard to the aforementioned treatment operations, you are requested to inform if

the Citizen Attention Unit was also responsible for it as of 08/30/2020.

In the event that it is not, you are requested to report the name of the Unit that

As of 08/30/2020, he was responsible for the treatment described above and for the organ

superior on which the Unit depended. The information you provide must go

accompanied, necessarily, by the official documentation that corroborates it.

On 10/07/2021, the AEPD received the response from the defendant to the evidence

requested in which it states the following:

Clarifies that the Head of the Office of Citizen Services of the General Directorate

Claimed is since April 2019 responsible for the "Treatment Attention to the

Citizen" but "although it attends to complaints, claims and suggestions, it does not do so in

based on that form, but the presentation is made freely by the

citizen."

Reiterates that the complaint form related to this procedure is

managed by the General Directorate of Coordination and Studies of the Ministry of

Security State, in accordance with article 5.bis.2.5 of Royal Decree 146/2021

of March 9, which modifies Royal Decree 139/2020, of 01/28, which

established the basic organizational structure of the ministerial departments and the Royal

Decree 734/2020, of August 4, which develops the organic structure

basic of the Ministry of the Interior.

It states that the "Book containing the forms object of this procedure is

an official book, which, as happens with the complaint books put by the

establishments available to their customers has a specific procedure assigned to the

aforementioned body, constituting the only obligation for the Civil Guard, to send

to the same without delay the sheets containing the claims and providing the

clarifications that may be required.

(emphasis ours)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/9

Provide a copy of the Registry of Processing Activities of the Ministry of the Interior to

date 09/06/2021.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

1. The respondent has stated in her claim that the complaint form of the "Citizen Service Book" that they have provided in the center's dependencies manager claimed still mentions the Organic Law 15/1999, of December 13, of Protection of Personal Data despite being repealed, so you do not know if your claim is legal and valid.
2. Works in the file the document corresponding to the complaint form that the claimant filed on 08/30/2020, duly completed.

The heading of the document contains the indication "Ministry of the Interior", "Book no. XXXXX of complaint and suggestion forms" and "Form No. XX".

About the box of the form that is intended to collect the personal data of who presents the complaint or suggestion, this legend is included:

"In accordance with the provisions of art. 5 of the Organic Law 15/1999, of 13 December, Protection of Personal Data, the data provided will enter to form part of the file that, for this purpose, is approved by the Order INT/1202/2011, of May 4 (BOE nº 114, of May 13) and will be used at the effects of processing your complaint or suggestion. You can exercise the rights of access, rectification, cancellation and opposition before the Administrative Unit responsible for the treatment of the file.

3. On the date on which the claimant is given the form for her completion, on 08/30/2020, more than two years had elapsed since the date of effective application of the RGPD, on 05/25/2018.
4. The informative clause of the form does not have the mandatory content according to article 13 of the RGPD: it does not say anything about the contact details of the DPO;

on the legal basis of the treatment; on whether it will transfer the data or there will be international data transfers; of the term of conservation of the data or the criteria to determine it and the right to make a claim before the supervisory authority. On the other hand, the information provided on the rights that the interested party can exercise does not conform to the current regulations.

5. On the date the events occurred, 08/30/2020, it corresponded to the Inspection of Personnel and Security Services, with the rank of deputy directorate general, of the Secretary of State for Security, "Carry out, within the scope of its functions, the monitoring of the quality programs established in the Royal Decree 951/2005, of July 29, which establishes the general framework for the improvement of quality in the General Administration of the State, and especially that of complaints and

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/9

suggestions formulated by the citizens, in the field of the Forces and Bodies of State Security." (Article 2.3. 5 of Royal Decree 734/2020, of August 4)

6. Since the entry into force of Royal Decree 146/2021, it corresponds to the Inspection Personnel and Security Services, which comes under the General Directorate of Coordination and Studies, "Carry out, within the scope of its functions, the monitoring of the quality programs established in Royal Decree 951/2005, of July 29, which establishes the general framework for the improvement of quality in the General Administration of the State, and especially that of complaints and suggestions formulated by the citizens, in the field of the Forces and Bodies of State Security." (Article 5.bis, 2, section 5 of Royal Decree 146/2021)

FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of article 58.2 of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to the treatment of your personal data and the free circulation of these data and by which it is repealed Directive 95/46/CE, (RGPD) and as established in articles 47 and 48 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantees of digital rights (LOPDGDD)

Article 63.2 of the LOPDGDD provides that "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

The agreement to open this sanctioning procedure attributed the defendant a alleged infringement of article 13 of the RGPD, typified in article 83.5.b), that the LOPDGDD qualifies in article 72.1.h), for prescription purposes, as a very serious and for which it establishes a limitation period of three years.

The infringement attributed to the respondent was based on the fact that the claim form that the claimant completed on 08/30/2020 at the claimed premises, form that was part of one of the Complaints and Suggestions Books used by that management center, in addition to still mentioning the LOPD despite the fact that from the 05/25/2018 the RGPD is applicable, it did not provide the information that according to the article 13 of the RGPD is obliged to provide the person from whom they are collected

your personal information.

The board of directors complained against alleged against the opening agreement that it is not responsible for the forms of the complaint and suggestion books or the treatment of data that may be associated with its use; who has the forms

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/9

exclusively as a user and that the responsibility in the matter corresponds to the General Directorate of Coordination and Studies by virtue of article 5.bis.2.5 of Royal Decree 146/2021, of March 9, which modifies the Royal Decree 139/2020, of January 28, which established the basic organic structure of the ministerial departments and Royal Decree 734/2020, of August 4, which establishes develops the basic organic structure of the Ministry of the Interior.

In response to the tests performed, the respondent reiterates what was initially alleged and indicates that the only obligation for that management center is to send to the Directorate Office of Coordination and Studies without delay the sheets containing the claims and provide any clarifications that may be required.

Royal Decree 734/2020, of August 4, which develops the structure basic organic of the Ministry of the Interior, in its article 2. 3 established, depending of the head of the Secretary of State for Security, among other bodies with organic sub-directorate general, Inspection of Personnel and Security Services, responsible for the inspection, verification and evaluation of the development of services, centers and units, central and peripheral, of the General Directorates of the Police and the Civil Guard, as well as the actions carried out by the members of the

respective bodies in the performance of their powers. between functions

entrusted, section 5 of article 2.3. of the aforementioned Royal Decree mentioned

“Carry out, within the scope of its functions, the follow-up of the

quality established in Royal Decree 951/2005, of July 29, by which

establishes the general framework for improving quality in the General Administration

of the State, and especially that of the complaints and suggestions formulated by the

citizens, within the scope of the State Security Forces and Bodies.”

Royal Decree 139/2020, of January 28, was modified by Royal Decree

146/2021 that creates, depending on the Secretary of State for Security, the

General Directorate for Coordination and Studies, to which the

Inspection of Personnel and Security Services. Article 5.bis of the Royal Decree

139/2020, "General Directorate for Coordination", says in point 2:

"two. The Inspection of

Personnel and Security Services, with an organic level of general deputy directorate,

responsible for the inspection, verification and evaluation of the development of services,

centers and units, central and peripheral, of the General Directorates of the Police

and the Civil Guard, as well as the actions carried out by the members of the

respective Bodies in the fulfillment of their competences.

In this area, in particular, the following functions correspond to it:

(...)

5. Carry out, within the scope of its functions, the monitoring of the programs of

quality established in Royal Decree 951/2005, of July 29, by which

establishes the general framework for improving quality in the General Administration

of the State, and especially that of the complaints and suggestions formulated by the

citizens, within the scope of the State Security Forces and Bodies.” (The

underlining is ours)

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/9

It follows from the foregoing that the managerial center claimed in the procedure does not have conferred any function that allows attributing any responsibility for the conduct contrary to article 13 of the RGPD that is the subject of the claim.

Thus, since the defendant is exempt from liability in the facts that are object of this sanctioning file, it is appropriate to agree to file it.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: AGREE to FILE the sanctioning procedure PS/00201/2021

open to the GENERAL DIRECTORATE OF THE CIVIL GUARD, with CIF S2816003D, by lack of responsibility.

SECOND: NOTIFY this resolution to the GENERAL DIRECTORATE OF THE CIVIL GUARD.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

FOURTH: 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 article 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 month from

counting 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, may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

C/ Jorge Juan, 6

28001 – Madrid

938-131120

www.aepd.es

sedeagpd.gob.es

Director of the AEPD

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es