

Procedure No.: PS/00422/2018

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938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 08/03/2018, a complaint was received by the Authority

Catalan Data Protection Agency from the City Council of Sant Miquel d' Olèrdo-

the, by estimating this AEPD is competent. It is indicated "On date 07/27/2018 had entry

in the electronic headquarters of this Authority a complaint from the City Council of Olèrdola

against "SHANA REVOLUTION SHOPS", due to an alleged breach of the

data protection legislation.

The matter refers to actions by the Local Police on 06/12/2018 on the  
discovery on public roads of documents containing personal data.

Accompany:

Visual inspection report, number \*\*\*NUMBER.1 of 06/12/2018, at 9:40, in

1)

Olèrdola, Pol. El Clot de la Mojá, Carrer Ull de Llebre/ Carrer Cabernet by the

Local Police, which indicates that the patrol observes that there are, among other things, dumped boxes of  
office supplies and resumes.

Photographs of the enclave in which they were found are provided, seeing that, when

Next to some containers, various objects are found scattered on the floor.

Police inspection record of the same day, number \*\*\*NUMBER.2 hour 10, in which

two)

the agents go to c/ Cabernet 22 in Olèrdola, company CLUSTER SL observing that there is a variety of material, such as that found abandoned on Carrer Ull de Llebre and interview with the one who manifests is the Administrator of the company that declares in the minutes of demonstrations of 06/12/2018, number \*\*\*NUMBER.3, that "sometimes they dismantle shops and remove the old furniture" , "they take this furniture to their dependencies" "that deposit it in the selective container domiciled in Ull de Llebre" "according to the instructions of the collection staff". The Administrator also acknowledges "carry out controlled dumping of hangers, cardboard, labels, documents, invoices, tickets of cash, office material, curriculum vitae, etc.", and that all provisions are made by "with order and all products in boxes". In the signature of the minutes of demonstrations it appears the CLUSTER seal "project-design-manufacturing-limited company".

Copy of document from the Olèrdola City Council, "Municipal Agents"

3)

called "public road incident", abocament (discharge) which is a summary, end time 10:25, with NEWS and CHRONOLOGY in which it appears that "doing the patrol observe a spill next to the containers-hangers, resumes, office supplies, bag of papers in an ocular inspection record" and that "the agents guard two boxes full of resumes with personal data" pending his count, he

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estimated at about 300

." "Apparently they are from a store called "SHANA REVOLUTIONS

SHOPS". The agents patrol on foot in the vicinity and at number 22 c Cabernet

they see material like the one found in the container and fill out a diligence certificate

police, enter the ship and "In the first instance a worker comes out in a loquacious attitude

who claims to be a responsible shift worker, and the patrol interviews him,

making the act" \*\*\*NUMBER.4, which "recognizes that the boxes dumped are property

of your company" "and the Agent requires the administrator of the activity, presenting a

man who claims to be "the owner of the activity" interviewing the patrol with the

making record \*\*\*NUMBER.3 "That the record recognizes the facts" "It will be extended

Penalty procedure for discharges of industrial objects in containers not

authorized, dangerous objects that can affect road safety."

SECOND: In view of the facts in the claim and the documents provided, it is

requests the following information:

Copy of the communications, of the decision adopted that has sent the claim

1.

regarding the transfer of this claim, and proof that the claimant

has received notice of that decision.

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

two.

cry.

Report on the measures adopted to prevent the occurrence of incidents si-

3.

thousands.

Four.

Any other that you consider relevant.

moves to:

-B66490624 SHANA RETAIL S.L., corporate purpose according to the Mercantile Registry "la

marketing, manufacturing, import, export and wholesale and retail of raw materials, textiles, intermediate products, textile products in general, and especially clothing, etc.” The first shipment, sent by the electronic system with expired result, by not opening the mailbox within ten days from its sending. The second, delivered on 10/30/2018 and again shipped and delivered on 11/7/2018. I don't know responds to the request for information.

-B66390105 PROYECTO DISEÑO Y FABRICACION CLUSTER SL corporate purpose according to the Mercantile registry “carrying out, on its own account or on behalf of others, of all kinds of design of interiors and works for the installation of commercial premises and homes, including the execution of masonry, carpentry, etc.”, registered office c Cabernet 20, was returned on the two occasions it was sent, the first by the electronic system of notification, the second, 10/30/2018 by unknown.

THIRD: GOOGLE is accessed on 06/4/2019 and consulted by searching for

SHANA RETAIL, reading on some page that is in ordinary contest of

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creditors, so you access the bankruptcy public registry page, obtaining and incorporating:

-Writ of declaration of insolvency proceeding 804/2017 of 10/20/2017, in which appoints as sole insolvency administrator the professional company "FOREST PARTNERS, ES-TRADA Y ASOCIADOS, S.L.P.", which must designate the natural person who will represent them

FOURTH: On 06/7/2019, it is agreed by the Director of the AEPD:

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-  
Start sanctioning procedure against SHANA RETAIL S.L. for alleged infringement

tion of article 5.1 f) of the RGPD, in accordance with article 83.5.a) of the RGPD

Start sanctioning procedure for DESIGN AND MANUFACTURING PROJECT

CLUSTER SL. for alleged infringement of article 5.1 f) of the RGPD, in accordance with  
do with article 83.5.a) of the RGPD.

- A penalty of 15,000 euros was proposed to each entity, without prejudice to what  
arising from the processing of the procedure, considering:

“In the present case, although the entities involved do not have the treatment  
of data as a regular task in the performance of their duties, it is about resumes  
for personnel selection with identification data that can add aspects  
academic and/or professional, and some three hundred have been recovered.

The result of documents being found next to common containers  
located on public roads means that there are no established measures aimed at  
destruction of media containing personal data, in addition to lack of diligence  
in the handling and custody of documents.

FIFTH: In the notification of the initiation agreement to the insolvency administrator of SHANA  
RETAIL, figure made by the Notification Service Support service

Electronic and Electronic Address Enabled, which certifies that on 06/21/2019 "the

notification: Date made available: 06/10/2019 09:26:10, Rejection date

automatic: 06/21/2019 00:00:00", and that the automatic rejection occurs,

general, after ten calendar days have elapsed since it was made available for

your access according to paragraph 2, article 43, of law 39/2015, of 1/10, of the Procedure

Common Administrative of Public Administrations. And in a particular way, overcome

the term established by the acting Administration in accordance with the legal regulations

specific that is applicable.", producing the effect of having been notified in

by virtue of the fact that these entities are obliged to do so, according to the LPCAP, article 14. 2. a).

SIXTH: In the notification of the initiation agreement to the insolvency administrator of

PROYECTO DISEÑO Y FABRICACION CLUSTER SL -, the same

circumstance, since it is made by the Support Service of the Service of

Electronic Notifications and Authorized Electronic Address, which certifies that

On 06/21/2019, the notification was sent with:

Availability date: 06/10/2019 09:26:18

Automatic rejection date: 06/21/2019 00:00:00"

SEVENTH: No arguments were received regarding the initial agreement.

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On 12/19/2019 the test practice period begins, giving

incorporated those from the complaint.

In addition, it is decided to request the Olèrdola Local Police to report or provide:

1)

Provide a copy of 10 or 15 curriculum vitae (CV), not similar or as different as possible

possible of those found lying on public roads carried out by police officers

Local.

A written response of 01/20/2020 is recorded and the CVs are provided. It is appreciated that in

none contains company stamp or other element that allows any relationship of the entity

ity that I could pick them up.

They contain as data, photography, address and telephone, academic studies

and work experience. Regarding the dating of the CVs, some dates can be seen in

the wording, for example 01/12/1989, but most of them do not have a date, referring to some studies or professional experiences the years like 2011, 2015, October-November 2015, and one from 2016 as chronological points closest to the present that can be approximately affect their delivery dates.

two)

In relation to these CVs, why in the summary section, or NEWS-CHRONOLOGIA indicate that "According to the indications, it seems to be a store called SHANA REVOLUTIONS SHOP"?, when in none of the previous acts do they mention said state-establishment, and what would those signs be? Also, the relationship that may exist between the inspected ship in which the conversation with its Administrator took place (CLUSTER SL at C/ Cabernet 22) and said store, and if they know the physical location of said cha store and who owns it.

This question is not specifically answered.

3)

If any/some resumes found were shown to the Administrator of the CLUSTER company and if it recognized or stated something about them or in relation to tion with them.

This question is not specifically answered.

4)

Submit inspection report number \*\*\*NUMBER.4/2018 stating corroborate a conversation with an employee of CLUSTER SL.

A copy of the minutes of 06/12/2018 at 9:55 a.m. is provided, in which the name and data of the person, being their reason for affiliation, "abocament", place of identification c Cabernet 22, without explanatory literal content.

-In addition, they send some documentation that was already involved in the procedure, and that was not has requested, namely:

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a) record of 06/12/2018 at 10, in c Cabernet number \*\*\*NUMBER.3, contains

aforementioned manifestations.

b) Sheet called SERVICE of 06/12/2018, arrival 9.40 and consisting of the story

chronological of the incident “Abocament” (spill) in which its content has already been explained.

Dyed; “That s’observ caixes de cartró, amb penja robes, unarmed robbery alarms

des, office material, bosses de papel, invoices i tancament de caixes, cartells publici-

taris and curriculum vitae.”

c) Record \*\*\*NUMBER.2 of 06/12/2018, of visual inspection in the CLUSTER company

SL, c Cabernet 22. Color photos are provided showing pieces of destroyed paper,

chopped.

#### PROVEN FACTS

1)

Agents of the Local Police of the City Council of Sant Miquel d' Olèrdola,

carried out actions on 06/12/2018 consisting of the discovery on public roads of

documents containing personal data. Document the inspection report

eyepiece, number \*\*\*NUMBER.1 of 06/12/2018, at 9:40, in Olèrdola, Pol. El Clot de la

Mojá, carrer Ull de llebre/carrer Cabernet stating that boxes of

office supplies, curriculum vitae, providing photographs of the enclave in which

found, seeing that, next to some containers, there are various objects

scattered on the ground.

two)



In the police inspection record of the same day, number \*\*\*NUMBER.2

hour 10, the agents went to the c/ Cabernet 22 of Olèrdola, company CLUSTER SL

noting that there was a variety of material such as that found abandoned on Carrer Ull de

Fill it out, and fill out a police diligence report. Agents state that they

they found a responsible employee on duty, and the patrol interviews him,

making the minutes" \*\*\*NUMBER.4, stating the agents that "they recognize that the

boxes dumped are the property of your company", although the cited record sent in evidence

does not contain that literal. The Agents met with the administrator, declaring

in the minutes of demonstrations of 06/12/2018, number \*\*\*NUMBER.3, which usually

"they remove old furniture from stores and leave it in the selective container of the c Ull de

Llebre, "according to the instructions of the collection staff", and acknowledges "carrying out discharges

controlled hangers, cartons, labels, documents, invoices, cash receipts,

office supplies, and curriculum vitae etc.", and that all provisions are made by

"with order and all products in boxes". At the signing of the act of demonstration

The CLUSTER stamp "project-design-manufacturing-limited company" appears. CVs were

found, according to the record, in cardboard boxes.

3)

In the document of the Olèrdola City Council, called "incidence

public road",

abocament (dumping) summary, end time 10:25, with NEWS and

CHRONOLOGY indicates that "doing the patrol, a spill is observed next to the

containers-hangers, resumes, office supplies, bag of papers in a certificate of

visual inspection" and that "the agents guard two boxes full of curricula with data

personal

."Affirm that

"Apparently they are from a store called "SHANA REVOLUTIONS SHOPS", although in

The tests did not clarify the indication that the CVs belong to this entity, since they did not

" pending their count, they are estimated at about 300

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it is proven that they asked or showed any CV to the Administrator, nor did they ask for explanation of why an entity that is not SHANA has said documents.

4)

The CVs provided by the claimant entity contain personal data, ignoring the entity that could have collected them. These CVs could have been collected in different chronological periods, including some references to "work experience or studies" from October to November 2015, one without specifying the month, to 2016.

5)

It is not proven that the claimant entity asked during the investigation and interview with the Administrator of CLUSTER SL on 06/12/2018, if the CVs found had been deposited at the point where they were found by said entity nor is there evidence that they were shown to him.

6)

The entity that collected the CVs, their purpose, and destruction policy relating to such material.

FOUNDATIONS OF LAW

Yo

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

of control, and according to what is established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

Article 5.1 f) of the GDPR establishes “1. The personal data will be: f) “processed in such a way as to ensure adequate security of personal data, including protection against unauthorized or unlawful processing and against loss, accidental destruction or damage, through the application of technical measures or appropriate organizational structures (“integrity and confidentiality”).”

The GDPR is defined as personal data; according to the article 4.1) “all information about an identified or identifiable natural person”. In this case, the data is on paper, (not automated) and is susceptible in principle to be treated manually (considering 15 of the RGPD), considering article 2 of the RGPD that “The present Regulation applies to the total or partial treatment automated processing of personal data, as well as the non-automated processing of data personal content or intended to be included in a file.

A basic principle of the GDPR is that personal data is treated in a way insurance with means and technical and organizational measures planned in advance based on of the data to be processed and the risks they face. This includes taking action and protocols so that the information recorded in tangible formats, such as the paper of CVs, when discarded, are done so by means that ensure the confidentiality of the data.

These obligations are attributable to the person responsible for the file or the treatment, that usually coincide in the same entity.

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The RGPD defines in its article 4:

2) treatment»: any operation or set of operations carried out on

personal data or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use, communication

by transmission, broadcast or any other form of authorization of access, collation or

interconnection, limitation, suppression or destruction

6) «file»: any structured set of personal data, accessible with

according to certain criteria, whether centralized, decentralized or distributed

functional or geographical form;

7) “responsible for the treatment” or “responsible”: the natural or legal person,

public authority, service or other body which, alone or jointly with others, determines the

purposes and means of treatment; whether the law of the Union or of the Member States

determines the purposes and means of the treatment, the person in charge of the treatment or the criteria

specific for their appointment may be established by the Law of the Union or of the

Member states;

8) “processor” or “processor”: the natural or legal person,

public authority, service or other body that processes personal data on behalf of the

data controller;

12) “personal data security breach”: any breach of the

security that causes 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;

The person responsible for the file is the one who decides the creation of the file and its application, and also its purpose, content and use, that is, who has the capacity to decide on the all the data recorded in said file. The data controller, without

However, it is the subject to which the decisions on the specific activities can be imputed.

of a certain data treatment, that is, on a specific application. I know

would deal with all those cases in which the power of decision must be differentiated

of the material performance of the activity that integrates the treatment. The entity

responsible for the file or the treatment, must, when a medium is going to be

discarded, take the necessary measures to prevent any recovery

back of the stored information. You can do this yourself, or hire a

third party as treatment manager, who would be the one in charge of the task of

removal of documents. If you use this last modality, you must sign a

contract of order of treatment.

Security measures must be implemented effectively,

verifying the correspondence between the documents that are destroyed and the

verification that they have been.

The principle of responsibility supposes the enforceability of the conduct to the person

or entity that by applicable regulations is the author of the facts. In this case the

responsible for the infringement would be the entity that collected the CV data, or could,

subsidiarily, if it is not the same, the one that kept them and decided the purpose and

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application of them. Usually it can be the same entity that collects the

data and uses it for a purpose. But in addition to that responsibility, this could fall on a treatment manager, if you choose to entrust said function to a third party. In this case, the practical execution of the data elimination is carried out by said entity with the provisions that appear in a contract executed for that purpose. In the present case, the same infraction has been imputed to two entities to the start of the procedure.

The imputation of an infraction must be supported by evidence that incriminates the action of its author. The statement contained in the police document of “It seems are from a store called “SHANA REVOLUTIONS SHOPS” lacks evidentiary support physical, as there is no evidence to that effect.

In the same sense, it has not been possible to ascertain the legal position of CLUSTER SL on CVs. It was not credited that those who appeared in the boxes next to the containers had been deposited there by said entity, nor in its case the legal title in to participate if that were the case. The circumstance must be reckoned with that although outside and prove that said entity deposited the boxes with the resumes, not for This is responsible for the purposes of data protection regulations, because in the first place it would be necessary to contemplate what legal title these documents have, if there were any type of contract, and it would also be necessary to find out who originally collected said CVs (responsible for the file-treatment).

The fact that an entity throws or deposits documents on public roads containing personal data does not make it responsible for them in terms of your safety.

In accordance with the foregoing, it is only appropriate to file the proceeding for ignorance of the perpetrator of the facts.

Therefore, according to the law,  
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the FILE of the infringement of article 5.1.f) of the RGPD against PROYECTO, DISEÑO Y FABRICACION CLUSTER SL, considering that no accredited their responsibility for the infringement, in accordance with article 90.1 of the Law 39/2015, of 1/10, of the Common Administrative Procedure of the Administrations Public (LPACAP).

SECOND: DECLARE the FILE of the infringement of article 5.1.f) of the RGPD against SHANA RETAIL S.L., considering that its responsibility for the infraction, in accordance with article 90.1 of the LPACAP.

THIRD: NOTIFY this resolution to PROJECT, DESIGN AND MANUFACTURING CLUSTER SL and FOREST PARTNERS, ESTRADA Y ASOCIADOS, S.L.P. representative DE SHANA RETAIL S.L.

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FOURTH

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

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

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 one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the additional provision

fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

of this act, as provided for 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

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

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 the

Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to

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 that

proves the effective filing of the contentious-administrative appeal. If the agency does not

was aware of the filing of the contentious-administrative appeal in the

period of two months from the day following the notification of this resolution,

would terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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