

□ File No.: PS/00241/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The Superior Police Headquarters of Catalonia, dated February 4,
2021, sent the Notification Act of an alleged violation of the regulations of
data protection to the Spanish Data Protection Agency.

The following is indicated in the letter of remission of the Minutes, in relation to the matter of
Data Protection:

“Organic Law 2/1986, of March 13, on Security Forces and Bodies, in its
Article 11.1.a) requires the agents of the authority to "ensure compliance with the
Laws and general provisions, executing the orders received from the Authorities.
des, within the scope of their respective competences”

Within the framework of the functions related to documentation of foreigners, as well as
that for the issuance of the national identity document, and as it happens in di-
various areas of public administration, it is necessary to request a
appointment for the materialization of the different procedures, which is obtained free of charge
through the website <https://sede.administracionespublicas.gob.es/>.

On this website you can get an appointment, anywhere in the national territory,
for the issuance/renewal of documents, collection of identity cards from ex-
foreigners (TIE), asylum applications, invitation letters, fingerprinting for the experience
issuance of cards, certificates of registration of citizens of the European Union, as well as
for another series of administrative procedures.

The fact of the suspension of administrative deadlines due to the declaration of the

state of alarm throughout the national territory derived from the pandemic caused by Covid-19 added to the fact that, during the current year 2020, they have been responsible for renewal of their documents to foreign citizens who availed themselves of the process of regularization of their administrative situation that was implemented in the year 2015, has resulted in a situation of congestion in police services related to the materialization of different procedures and files in matters of immigration, which have overwhelmed the capacity of the immigration offices of the Police. National Society in the province of Barcelona which have had to be reinforced, in As far as personal and technical means are concerned, in order to respond to the strong commands experienced in such a short space of time.

In this context, the Unit against Immigration Networks and Falsehoods attached to the Provincial Immigration and Borders Brigade of Barcelona of the Superior Headquarters Police of Catalonia has detected, as a result of receiving multiple claims

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complaints and complaints from users as well as agencies and law firms related to ned with the documentary procedures of foreigners, that this saturation, in addition to for the reasons stated, is also motivated by the practices that are carried out responsible for various establishments open to the public, mainly booths, and/or individuals who advertise themselves to obtain appointments prior to exchange of different economic amounts and that, to achieve greater profit, saturate the computing platform in a way that causes users to have very difficult to obtain a free appointment with the administration and they are forced

to require their services.

By going to these places, users have been forced to provide their personal data.

documents, both in writing and by providing a copy of their identification documentation.

goes, to the employees or people who offer this service so that, with said data,

can reserve an appointment with the administration, since said appointments are nominated.

and it is not possible to appear at the police documentation offices with justification.

appointments that do not correspond to the person who is going to carry out the requested procedure.

do.

This transfer of your personal data is made without any guarantee or identification

of the person in charge of the treatment of the same, as well as without informing or obtaining the

consent of the users in accordance with the provisions of Organic Law 3/2018,

Protection of Personal Data and Guarantee of Digital Rights, and the Rule-

(EU) 2016/679, on your rights of access to your personal data, rectification

suppression, deletion or limitation of its treatment incurring for it, in the opinion of this Unit

police authority, in a minor infringement of article 74.a of the aforementioned L.O. 3/2018, without prejudice

that with these behaviors they may also be infringing some other of the

precepts of the L.O. 3/2018.

Based on all of the above, on 01/14/2021, by police officers

assigned to this Unit, an administrative inspection was carried out in the call center called

mine "A.A.A.", located at ***ADDRESS.1 (Barcelona), in which the existence of

possession of numerous client files (handwritten papers, copies of documents,

tion, NIE prior appointment receipts), which were stored in said establishment

with the supposed purpose of obtaining prior appointments to carry out different

procedures, extending in the place the mandatory inspection certificate, a copy of which

attached to this letter.

Inside the establishment, a precautionary intervention was carried out on 6 documents

original documents (DNI, Identity Card and TIE) belonging to third parties, with the purpose of carrying out the corresponding police procedures with the holders of that documentation.

Once the corresponding procedures had been carried out, the citation and post-taking statements from various people whose data appears in the documentation intervened, which have expressed that they were not informed or provided con-express or implied sentiment regarding the provisions of article 6.1.a of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27 2016, by providing your personal data to those in charge of the establishment for the obtaining an appointment.

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Based on the foregoing, in the opinion of the interveners, the owner of the establishment, both personally or through your employees, you would be infringing one or more rio precepts of the Organic Law 3/2018, of December 5, on Data Protection Personal and Guarantee of Digital Rights, as well as 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 processing of personal data Therefore, on 02/03/2021, previously mentioned, he appeared in these offices. dences, the owner of the establishment called B.B.B. with NIE ***NIE.1.”

SECOND: Prior to the acceptance of this claim for processing, it is transferred claimed, in accordance with the provisions of article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the rights

digital data (hereinafter, LOPDGDD). The request for information on the many statements were received, on March 15, 2021, as recorded in the Notice of Receipt issued by the Post Office, without any reply having been received. na.

THIRD: The Director of the Spanish Data Protection Agency agreed to administer the claim filed by the Superior Police Headquarters of Catalonia on 05/17/2021.

FOURTH: On 06/17/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: Notified of the agreement to initiate this sanctioning procedure, the claimed, by means of a letter dated 09/07/2021, made allegations to the initiation file, the content of which was already indicated in the draft resolution proposal.

SIXTH: On 09/22/2021, a resolution proposal was formulated in which proposed to direct a warning to the defendant, for the violation of article 13 of the RGPD, since it collects data from natural persons who come to its booths to request appointments for administrative procedures, without providing the information required by the aforementioned precept.

In addition, in accordance with article 58.2 of the RGPD, the claimed party was ordered to adopt the necessary measures to make their clients aware of the matters that are listed in the aforementioned article 13 of the GDPR.

SEVENTH: On 10/26/2021, allegations were submitted by the respondent to the resolution proposal, providing a document of "Contractual clauses for deals with data" that it will provide to its clients so that they can sign it and thus grant their consent to the processing of your personal data. However, it does not cover all the issues required by article 13 of the RGPD, since it only refers to the

object of the treatment, the duration and the obligations of the person in charge of the treatment. In

Specifically, it indicates the following:

"1. PURPOSE OF THE DATA PROCESSOR

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Through these clauses, B.B.B. with ***NIE.1, in charge of

treatment, to treat on behalf of with document number of

identity....., data controller, personal data

necessary to provide the service of requesting previous appointments for procedures of

.....

Documentation presented by the data controller.

- NIE

- PASSPORT

-

- OTHER IDENTITY DOCUMENTS

TAR

2. DURATION

This agreement has a maximum duration of 2 weeks. Once the

this contract, the person in charge of the treatment must delete/return the data

and delete any copy in your possession.

3. OBLIGATIONS OF THE DATA PROCESSOR

The person in charge of the treatment and all its personnel are obliged to:

-

- Use the personal data object of treatment, which is collected for its inclusion, only for the purpose of this assignment. In no case can use the data for their own purposes.

Process the data in accordance with the instructions of the data controller. treatment. If the person in charge of the treatment considers that any of the instructions violates the RGPD or any other provision regarding data protection of the Union or of the Member States, the person in charge immediately inform the person in charge.

- Do not communicate the data to personal third parties, unless you have the express authorization of the data controller, in the cases legally admissible.

- Outsourcing. Do not subcontract any of the services that form part of the object of this contract that involves the processing of data personal, except for ancillary and public services necessary for the normal performance of custom services.

- Maintain the duty of secrecy regarding personal data to loa that you have had access by virtue of this assignment, even after to finish your object.

- Assist the data controller in responding to the exercise of the rights of: access, rectification, deletion and opposition; limitation of treatment. The data processor must resolve, on behalf of the responsible, and within the established period, the requests to exercise rights mentioned above.

- Right to information: The data processor, at the time of the data collection, you must provide information regarding the processing of data to be made. The wording and the format in which the

information must be agreed with the person in charge before the start of the

data Collect.

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- Make available to the person in charge all the information necessary to demonstrate compliance with their obligations, as well as to carry out audits or inspections.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The respondent collects data from the natural persons who come to his booth to request an appointment for administrative procedures, without providing the precise information to interested parties in accordance with current regulations on the protection of personal information.

SECOND: It is manifested by the claimed that the clients have granted the consent to the processing of your personal data, as it is necessary to You can make an appointment on your behalf.

THIRD: Despite the allegations of the respondent in response to the initiation agreement, it is verified that it does not provide evidence proving that prior to the treatment informs the natural persons who come to its call center of all the matters listed in article 13 of the RGPD.

FOURTH: The respondent in response to the proposed resolution has provided a document entitled "Contractual clauses for data processing" with the purpose of

that the client can grant his consent for the treatment of his data

personal data, but without fully complying with the current regulations on
of data protection.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of
control, and as 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.

Article 63.2 of the LOPDGDD determines 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

Article 4 of the GDPR, under the heading "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

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1) "personal data": any information about an identified natural person or
identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person
whose identity can be determined, directly or indirectly, in particular by
an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": 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 enabling of

access, collation or interconnection, limitation, suppression or destruction;"

Therefore, in accordance with these definitions, the collection of personal data

personal on the occasion of the request for an appointment to carry out procedures

administrative constitutes a treatment of data, for which the person in charge

of the treatment must comply with the provisions of article 13 of the RGD,

providing the interested parties with all the information indicated in said precept.

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of duty

to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and,

in case of carrying out low-risk data processing, the free tool

Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGD, a precept that determines the information that must be

provided to the interested party at the time of collecting their data, indicates that:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative.

tant;

- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in their case;
- f) where appropriate, the intention of the controller to transfer personal data to a third party

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country or international organization and the existence or absence of a decision of adequacy Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, reference to the adequate guarantees adequate or appropriate and the means to obtain a copy of them or the fact of that have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, them, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on consent.

lien prior to withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a re-necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing
tar such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the applied logic, as well as the importance and the foreseen consequences of said treatment for the interested party.

3. When the data controller plans the further processing of personal data personal data for a purpose other than that for which they were collected, will provide the received, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent measure in which the interested party already has the information.”

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the data controller ment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to which refers to the following section and indicating an electronic address or other means

that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at

less:

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a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected person were to be processed for the elaboration of them, the basic information will also include this circumstance. In this case, the concerned shall be informed of their right to oppose the adoption of decisions automated individuals that produce legal effects on him or affect him significantly. similarly, when this right concurs in accordance with the pre-
seen in article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of
corrective powers in the event of an infraction of the precepts of the
GDPR.

Article 58.2 of the RGPD provides the following:

"two. Each supervisory authority will have all of the following corrective powers
listed below:

a) (...)

b) send a warning to any person responsible or in charge of treatment when the treatment operations have violated the provisions of this Regulation;

c) (...)

d) order the person responsible or in charge of treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period;

(...)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular".

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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b) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"They are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this organic law.”

v

In this case, it is taken into account that the respondent collects personal data from the

individuals who come to your call center to request an appointment for administrative procedures,

without providing them, prior to their collection, all the information regarding

of data protection provided for in article 13 of the RGPD.

This Agency has verified that the respondent has proceeded to provide a document

of "Contractual clauses for data processing". However, the provided template

it is incomplete since it does not include all the issues indicated in article 13

of the RGPD, indicated in the legal basis III. Specifically, the defendant, in his

condition of data controller, is also required to report the

identity and contact details of the person in charge and, where appropriate, of his representative, of

the legal basis of the treatment. Nor does it inform about the right to portability of data.

data, nor how the interested party can materially exercise the rights that are

listed in the document; or the right to file a claim with the

controlling authority.

Thus, in accordance with the facts exposed, we are faced with a

infringement of the provisions of article 13 of the RGPD, by the claimed party.

SAW

In accordance with article 58.2 d), for the commission of this infraction it is appropriate

address a warning when collecting personal data from customers and

consider that the administrative fine that could be levied in accordance with the provisions of

Article 83.5 b) of the RGPD would constitute a disproportionate burden for the claimed, since there is no record of the commission of any previous infringement in terms of Data Protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, in the resolution is required to the claimed, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from the themselves to the requirements contemplated in article 13 of the RGPD, as well as the provision of supporting evidence of compliance with the requirements.

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Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS B.B.B., with NIF ***NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUIRE B.B.B., with NIF ***NIF.1, under the provisions of the article 58.2 d) of the RGPD, so that within ten business days from this act of notification accredits before this body the adoption of measures to facilitate all the information to the people whose personal data it collects, in accordance with the provisions of Article 13 of the GDPR.

THIRD: NOTIFY this resolution to B.B.B..

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

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