 File No.: PS/00423/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On March 17, 2021, D. A.A.A. (hereinafter the part claimant) filed a claim with the Spanish Data Protection Agency.

The claim is directed against IDCQ HOSPITALES Y SANIDAD, S.L.U., with NIF B87324844 (hereinafter the claimed part). The grounds on which the claim is based are the following:

The claimant, who provides his services as a physician at the Hospital General University of *** COMMUNITY.1 (hereinafter, HUGC), states that the HUGC Occupational Health Service, communicated to his head of service, the result obtained in the RT-PCR test that was performed for the detection of the SARS-CoV-2 (COVID-19).

In order to accredit it, it provides a copy of a screen print of some messages of WhatsApp that the complaining party and his boss would have sent, after the PCR, in which you can see, among others, that your boss would have communicated that he had tested positive in the second PCR, and that the complaining party replied that he had not been informed of the result. It also indicates that the Service of Occupational Health mentioned, had not yet contacted him, to notify you of the test result.

SECOND : In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and Guarantee of Digital Rights

(hereinafter LOPDGDD), said claim was transferred to the claimed party,

to proceed with its analysis and inform this Agency within a month,

of the actions carried out to adapt to the requirements set forth in the

data protection regulations.

There is no record in this Agency of a reply to the transfer of the claim.

THIRD: On August 11, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

claimant.

FOURTH: On January 27, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of the Public Administrations (in

hereinafter, LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, typified

in article 83.5 of the RGPD.

The initiation agreement was sent, in accordance with the regulations established in the Law

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

Public Administrations (hereinafter, LPACAP), by electronic notification,

being received on February 2, 2022, as stated in the certificate that works

on the record.

FIFTH: Having been notified of the aforementioned initiation agreement, the party complained against submitted a written

allegations in which, in summary, it stated that at no time did the Hospital

breached the confidentiality of the claimant's health data, since once

Once the result of the RT-PCR test was known, the Emergency Department tried to

contacted the claimant several times, but could not be reached, and

Since he was an employee of the Hospital, they had to follow the measures established in the

COVID action protocol. In this sense, the result was communicated to the

Occupational Risk Prevention Service of the Hospital and its head of Service as

responsible for his department to carry out the study of contacts and thus avoid the

spread of the virus in the health center, considering that not only could

affected the same employees but also patients of the Hospital. Likewise

adds that the communication of health data of the claimant by the Service of

Emergencies to the Occupational Risk Prevention Service and the Superior Head of the

claimant, does not imply a violation of the confidentiality of personal data,

provided that "in application of the provisions of the health, labor and, in

particular, of prevention of labor risks, the employers will be able to treat, of

In accordance with said regulations and with the guarantees that they establish, the data of the

personnel necessary to guarantee their health and adopt the necessary measures by the

competent authorities, which also includes ensuring the right to

protection of the health of the rest of the staff and avoid contagion within the

company and/or work centers that can spread the disease to the whole of the

population", as indicated in the FAQs on the coronavirus published by the

AEPD.

SIXTH: On March 25, 2022, the instructor of the procedure agreed

carry out the following tests, in the following terms:

"It is AGREED to carry out the following tests:

1. The claim filed by

A.A.A. and its documentation, the documents obtained and generated during the

of admission to processing of the claim, and the report of previous actions of

investigation that are part of procedure E/04164/2021.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement

initiation of the referenced sanctioning procedure, presented by IDCQ

HOSPITALES Y SANIDAD, S.L.U., and the accompanying documentation.

3. It is agreed to require the entity IDCQ HOSPITALES Y SANIDAD, S.L.U. what for

Provide the following information and/or documentation:

- COVID action protocol that contemplates the protection measures of

organizational nature, as well as collective and personal protection measures necessary

for the detection, notification, study and management of cases and contacts

in the work environment.

- Accreditation of the attempts to contact the claimant to communicate the

result of the tests, after which they communicated it to the head of the Service (re-

call log, screenshots, or even personal affidavit.

person who made the attempts).”

SEVENTH: On April 8, 2022, the respondent party provided the documents requested

cited, that is, the COVID Action Protocol of the Hospital and affidavit of

the person who made the telephone attempts to contact the claimant, in order to

to send you the results of your second RT-PCR test.

EIGHTH: On June 3, 2022, a resolution proposal was formulated,

proposing:

<< That the Director of the Spanish Agency for Data Protection agrees

proceed to file these proceedings.>>

The aforementioned motion for a resolution was sent, in accordance with the rules established in

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

Public Administrations (hereinafter, LPACAP), by electronic notification,

being received on June 6, 2022, as stated in the certificate that is in

The file.

NINTH: The respondent party has not submitted arguments to the Proposal for

Resolution.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: It is recorded that on March 17, 2021, the complaining party filed

claim before the Spanish Agency for Data Protection, whenever the party

complained communicated to his head of service, the result obtained in the RT-PCR test

that was performed for the detection of the SARS-CoV-2 virus (COVID-19).

SECOND: The respondent states that at no time did he violate the

confidentiality of the claimant's health data, since once known

the result of the RT-PCR test performed, the Emergency Department tried to contact

with him several times, not being possible and since he was an employee of the Hospital, they had to

Follow the measures established in the COVID action protocol. consists

incorporated into the file COVID Action Protocol of the Hospital and declaration

affidavit of the person who made the telephone attempts to contact the

claimant, in order to transfer the results of his second RT-PCR test, not

communication with the claimant being possible.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679
(General Data Protection Regulation, hereinafter RGPD), grants each
control authority and as established in articles 47 and 48.1 of the Law
Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve
this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures
processed by the Spanish Agency for Data Protection will be governed by the provisions
in 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

Examined the documentation presented, in relation to data processing
resulting from the current situation derived from the spread of the COVID-19 virus, in

In the first place, in general, it should be clarified that the regulations for the protection of
personal data, insofar as, aimed at safeguarding a fundamental right, it is
applies in its entirety to the current situation, since there is no reason
determine the suspension of fundamental rights, nor has said measure been
adopted.

Notwithstanding the foregoing, the personal data protection regulations,

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 personal data and the free circulation of these data (General Regulation of
data protection, RGPD) contains the necessary safeguards and rules to
legitimately allow the processing of personal data in situations, such as the
present, in which there is a health emergency of general scope.
Therefore, when applying these precepts provided for these cases in the RGPD, in
in accordance with the applicable sectoral regulations in the field of public health,
considerations related to data protection - within the limits
provided by law - should not be used to hinder or limit the effectiveness
of the measures adopted by the authorities, especially the health authorities, in the fight
against the epidemic, since the personal data protection regulations
contains a regulation for such cases that reconciles and weighs the interests and
rights at stake for the common good.
Recital (46) of the RGPD already recognizes that, in exceptional situations, such as
an epidemic, the legal basis for treatments can be multiple, based both on
the public interest, such as in the vital interest of the interested party or another natural person.
(46) The processing of personal data should also be considered lawful when it is
necessary to protect an interest essential to the life of the data subject or that of another
Physical person. In principle, personal data should only be processed on the basis of the
basis of the vital interest of another natural person when the treatment cannot be based

manifestly on a different legal basis. Certain types of treatment can

respond both to important reasons of public interest and to the vital interests

of the interested party, such as when the treatment is necessary for purposes

humanitarian, including the control of epidemics and their spread, or in situations of

humanitarian emergency, especially in the event of natural disasters or

human.

Consequently, in a health emergency situation such as the one referred to in

specific case under examination, it is necessary to take into account that, in the exclusive scope

of the personal data protection regulations, the application of the regulations of

protection of personal data would allow the data controller to adopt

those decisions that are necessary to safeguard the vital interests of the

natural persons, the fulfillment of legal obligations or the safeguarding of

essential interests in the field of public health, within the provisions of the

Applicable material regulations.

What these decisions are, (from the point of view of the protection regulations

of personal data, it is reiterated) will be those that those responsible for the

data processing must adopt according to the situation in which they find themselves,

always aimed at safeguarding the essential interests already so reiterated. But the

data controllers, as they are acting to safeguard said interests,

must act in accordance with what the authorities established in the regulations of the

corresponding Member State, in this case Spain, establish.

In the same way, and in application of what is established in the regulations for the prevention of

occupational risks, and occupational medicine, employers may treat, in accordance

with said regulations and with the guarantees that these regulations establish, the data of

its employees necessary to ensure the health of all its employees, which

It also includes the rest of the employees other than the interested party, to ensure their

right to health protection and avoid contagion within the company and/or

work centers.

However, the processing of personal data in these emergency situations

health, as mentioned at the beginning, continue to be treated in accordance

with the personal data protection regulations (RGPD and Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

digital, LOPDGDD), so all its principles are applied, contained in the

article 5 RGPD, and among them the treatment of personal data with legality,

loyalty and transparency, purpose limitation (in this case, safeguarding the

vital/essential interests of natural persons), principle of accuracy, and therefore

Of course, and special emphasis must be placed on it, the principle of minimization of

data.

Regarding this last aspect, express reference must be made to the fact that the data processed

shall be exclusively those limited to those necessary for the purpose

intended, without this treatment being able to be extended to any other data

personal data not strictly necessary for said purpose, without being able to

confuse convenience with necessity, because the fundamental right to

data protection continues to be applied normally, notwithstanding that, as

has said, the personal data protection regulations themselves establish that in

emergency situations, for the protection of essential public health interests

and/or vital information of natural persons, the health data necessary to

prevent the spread of the disease that has caused the health emergency.

Regarding the principle of limitation of the purpose in relation to cases of

processing of health data for reasons of public interest, Recital (54)

RGPD is clear, when it establishes that:

“The treatment of special categories of personal data, without the consent

of the interested party, it may be necessary for reasons of public interest in the field of

public health. This treatment must be subject to appropriate and specific measures to

in order to protect the rights and freedoms of natural persons. […] This treatment

data relating to health for reasons of public interest should not lead to

third parties, such as employers, insurance companies or banks, treat the

personal data for other purposes.”

From the examination of the documentation provided, it is interesting to note that it is a

absolutely exceptional situation such as the current situation derived from the

spread of the COVID-19 virus (pandemic situation, impossibility of contact,

risk of contagion…) and that the lack of communication of the results of the second

RT-PCR test, could have been life-threatening for colleagues and patients.

In this regard, taking into account that the communication to the claimant's superior is

carried out due to the impossibility of communicating to the interested party the results of his

second RT-PCR test, (there is an affidavit from the official who tried it), had

the purpose of monitoring the occupational risk policy, since it had to be prevented

colleagues and patients who had been close contact and only communicated to the

strictly essential person, to the head of the claimant's department, it is not

rational indications of infringement of data protection regulations

personal.

In accordance with the evidence indicated, it is considered that the facts exposed

do not breach the provisions of article 5.1 f) of the RGPD, proceeding the file of the

present sanctioning procedure.

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

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to IDCQ HOSPITALS AND HEALTH,

S.L.U.

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

Director of the Spanish Data Protection Agency

938-050522

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es