

□ Procedure No.: PS/00340/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

RIMERO: The Spanish Agency for Data Protection proceeded to open the guardianship of law, TD/00091/2020, having knowledge of the following facts:

On December 2, 2019, D. A.A.A. (hereinafter, the claimant) filed a claim with the Spanish Data Protection Agency. The claim is directed against the City Council of Yecla with NIF P3004300D (in later, the claimed one).

The claimant states that the Local Government Board is publishing the complete agreements, including personal data, breaching the precepts applicable laws on the treatment and custody of personal data in different files.

You exercised your right to oppose the publication of your personal data on the Local Government Board website.

On May 14 of this year, the claimant expands his claim, stating that in the Local Government Board of April 28, 2020, part of a medical report of the claimant with his personal data, on the bulletin board of the website of the City Council and on the transparency portal.

SECOND: The Director of the Spanish Agency for Data Protection, issued on 10 of July 2020, resolution of legal guardianship TD/00091/2020, proceeding to “ESTIMATE the claim made by D. A.A.A. and urge the CITY COUNCIL OF YECLA with NIF P3004300D, so that, within the following ten business days

to the notification of this resolution, send to the complaining party a certification in the one that states that it has attended the right of suppression exercised by it or is deny reasoned indicating the reasons why the deletion is not appropriate requested. The actions carried out as a result of this Resolution must be communicated to this Agency within the same period. The breach of this resolution could entail the commission of the offense typified in article 72.1.m) of the LOPDGDD, which will be sanctioned, in accordance with art. 58.2 of the RGPD”.

Being notified to the City Council on July 16 of this year.

THIRD: On September 1, 2020, the City Council of Yecla, states:

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“The resolution of the Spanish Data Protection Agency was fulfilled by agreement of the Local Government Board in session of July 21, 2020, agreement that was executed on July 29, 2020.

- In the municipal file corresponding to the reference procedure

There is evidence that the aforementioned agreement was notified to the Agency Spanish Data Protection, being reflected in the appropriate acknowledgment of receipt that although it had an entry record in that body on the 7th of August 2020 at 12:08:25, receipt of the document was signed by an employee of that institution on August 12, 2020.

Likewise, it is stated in the municipal file that the claimant received

electronic notification of the certification of the aforementioned agreement on the 1st of August 2020, at 11:11 a.m.

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FOURTH: On August 30 and September 5, 2020, it was received at this Agency two separate writings of the claimant in which he states that the notification of this Agency of July 13, 2020, and your requirement has been omitted by the City Hall of Yecla.

The claimant reaffirms what has already been stated and presents numerous documentation regarding different publications of other cases, expanding the claim for the unauthorized publication of your medical data.

The claimant providing various links, where their personal data, their condition of agent of the Local Police and the content of medical reports the document sent by the respondent, dated December 19, 2019, which reiterates the data that was previously notified, which gave rise to the guardianship resolution of law TD/00091/2020.

FIFTH: On November 27, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 17 of the RGPD, typified in Article 83.5 of the GDPR.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that: "as can be verified in the municipal website, www.yecla.es, since July 29, 2020, the data personal D.A.A.A. no longer appear in any of the minutes of the Board of Government published in the municipal transparency portal, and not only that, but

from July 21, 2020, in accordance with the doctrine of that Agency, all the minutes of the Local Government Board are previously published anonymously”

SEVENTH: On December 14, 2020, the instructor of the procedure agreed the opening of a period of practice of tests, considering incorporated the previous investigation actions, TD/00091/2020, as well as the documents provided by the claimant.

EIGHTH: On January 18, 2021, a resolution proposal was formulated, proposing that it be imposed on the City Council of Yecla with NIF P3004300D, for a C/ Jorge Juan, 6

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infringement of article 17 of the RGPD, typified in article 83.5 b) of the RGPD, a sanction of warning, and a copy of the file was sent.

NINTH: On February 3, 2021, the respondent states that: "the

The City Council responded to the request of the AEPD, and the only thing that has happened (as we already ventured in our brief of allegations to the resolution of the beginning of the sanctioning procedure), is that some errors were made in the erasure of links, remaining active those that had been archived in the server of the municipal website, www.yecla.es, something that was not known until Mr. Instructor of the sanctioning procedure has sent the file to the City Council, and it has been possible to know the links that the interested party cited in his writings of August 30 and September 5, 2020.

In order to correct such errors and others that may exist, and despite the fact that as has been exposed, the data of the claimant has already been anonymized, the

following new actions: on the one hand they have been temporarily removed from the transparency portal of the municipal website (www.yecla.es) all the minutes of the Local Government Board published in the years 2017 to 2020, to return them publish again (with the data of the interested party anonymised, of course) with less margin of error, and on the other, we have proceeded to eliminate the links that by mistake remained active and were communicated by the interested party to the AEPD (not to the City Council) in their aforementioned writings of August 30 and September 5, 2020.

Both extremes can be verified by the instruction of the file”.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

PROVEN FACTS

FIRST: The Yecla City Council Local Government Board is publishing the complete agreements, including personal data, breaching the precepts applicable laws on the treatment and custody of personal data in different files.

SECOND: The claimant exercised his right to oppose the publication of his personal data on the website of the Local Government Board.

THIRD: On April 28, 2020, the Local Government Board published part of a medical report of the claimant with his personal data, on the bulletin board of the website of the City Council and on the transparency portal.

FOURTH: The Director of the Spanish Agency for Data Protection, issued on the 10th of July 2020, legal guardianship resolution TD/00091/2020, estimating the claimant's claim.

The City Council of Yecla on September 1, 2020, states that the previous resolution was fulfilled.

FIFTH: On August 30 and September 5, 2020, the claimant states that

the requirement of this Agency has not been met, providing various

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documentation regarding different publications of other cases, expanding the claim for the unauthorized publication of your medical data.

The claimant providing various links, where their personal data, their condition of agent of the Local Police and the content of medical reports, and the document sent by the respondent dated December 19, 2019 that reiterates the data that was previously notified, which gave rise to the resolution of guardianship of right TD/00091/2020.

SIXTH: The respondent states that since July 29, 2020, the data personal data of the claimant no longer appear in any of the minutes of the Board of Government published in the municipal transparency portal, and not only that, but from July 21, 2020, in accordance with the doctrine of that Agency, all the minutes of the Local Government Board are previously published anonymously.

SEVENTH: It is accredited by the respondent in his letter of February 3, 2021, the messages that are read on the screen, after trying to activate in Google the links that were reflected by the claimant in his aforementioned briefs of August 30 and 5 September 2020 (invalid key, page cannot be found, 404. that's an error, the requested URL/SEARCH was not found on this server. That's all What do we know).

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

Article 83.7 of the RGPD indicates:

II

Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.

Article 58.2 of the RGPD provides: "Each control authority will have all of the following corrective powers indicated below:

- b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;
- d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period.

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In this sense, article 77.1 c) and 2, 4 and 5 of the LOPGD, establishes:

1. The regime established in this article will be applicable to the treatments of which they are responsible or entrusted:

c) The General Administration of the State, the Administrations of the Autonomous communities and the entities that make up the Local Administration.

2 "When those responsible or in charge listed in section 1 committed any of the offenses referred to in articles 72 to 74 of this organic law, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body on which it reports hierarchically, where appropriate, and those affected who have the condition of interested party, if any."

4. The resolutions must be communicated to the data protection authority that fall in relation to the measures and actions referred to in the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article."

III

In the case analyzed here, the complaining party exercised its right to deletion and your request did not obtain the legally required response.

Likewise, after the evidence obtained, there is no evidence that the defendant adopted the corrective measures requested by the Director of the Protection Agency of Data, in the approving resolution of the legal guardianship, TD/00091/2020, consisting of sending the claimant a certification stating that he has attended the right of deletion exercised by it, or is denied reasoned indicating the reasons why the requested deletion does not proceed.

The respondent states that since July 29, 2020, the data personal data of the claimant no longer appear in any of the minutes of the Board of Government published in the municipal transparency portal, and not only that, but from July 21, 2020, in accordance with the doctrine of that Agency, all the minutes of the Local Government Board are previously published anonymously.

Well, on August 30 and September 5, 2020, it was received in this Agency two separate writings of the claimant in which he states that the notification of this Agency on July 13, 2020, and your requirement has been omitted by the City Hall of Yecla.

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claimant reaffirms what has already been stated and presents numerous documentation regarding different publications of other cases, expanding the claim for the unauthorized publication of your medical data.

The claimant providing various links, where their personal data appears, his status as a Local Police agent and the content of medical reports on document sent by the respondent, dated December 19, 2019, which reiterates the data that was previously notified, which gave rise to the guardianship resolution of law TD/00091/2020.

Taking into account that as specified in the Additional Provision seventh of Organic Law 3/2018, of December 5, on Data Protection Personal Rights and Guarantee of Digital Rights (LOPDG), “when it is necessary to

publication of an administrative act that contained personal data of the affected party, will identify it by its name and surnames, adding four figures random numerical numbers of the national identity document, identity number of foreigner, passport or equivalent document", specifying further that "in no case should the name and surnames be published together with the number complete ..."

Publish with names and surnames certain personal situations such as high or low medical, the courses that are requested and denied or the requests for possible transfers, they are not relevant to be published in digital media identifying the interested parties, but they do violate the privacy of the individual in question, therefore, the data of the interested parties will have to be anonymized so that it is protected privacy and does not conflict with the Transparency Law.

Therefore, the respondent must take the necessary measures to protect the Sensitive, medical, professional or identity data of what is published on the page Web.

In this sense, the respondent has communicated the possible measures that he will apply so that situations such as the one denounced are not repeated. those measures, In addition, they should be incorporated in a documented way into their protocol of action, in order to prove compliance with the GDPR in the future.

Therefore, according to the evidence available in the

At this time, the facts set forth could constitute, on the part of the respondent, infringement of the provisions of article 17 of the RGPD.

However, it has been accredited by virtue of the documents provided with the arguments presented to the initial agreement and to the resolution proposal by the claimed, that it has adopted a series of appropriate measures, in the sense that the data of the claimant were anonymized and the following new

performances: on the one hand, they have been momentarily removed from the transparency of the municipal website (www.yecla.es) all the minutes of the Board of Local Government published in the years 2017 to 2020, to republish them new (with the data of the interested party anonymized) with less margin of error, and therefore another, we have proceeded to eliminate the links that were left active by mistake and that were communicated by the interested party to the AEPD in their aforementioned writings of 30 August and September 5, 2020.

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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: IMPOSE YECLA CITY COUNCIL, with NIF P3004300D, for a infringement of Article 17 of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to the YECLA CITY COUNCIL.

THIRD

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

: COMMUNICATE this resolution to the Ombudsman,

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.

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Director of the Spanish Data Protection Agency

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