

□ File No.: PS/00458/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 03/21/2020 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against the GALICIAN COUNCIL OF VETERINARY COLLECTIONS with NIF  
V27263185 (hereinafter the claimed one). The grounds on which the claim is based are  
that the claimant manages the Galician Registry of Identification of Companion Animals  
company (REGIAC) by virtue of the Agreement signed with the Department of the Environment  
of the Xunta de Galicia. The Registry contains data on companion animals, associations  
idols with those of their owners, appearing both in paper files and in "file  
telematic". In paper format he has them stored in his office in Lugo, and those of the  
potentially dangerous dogs in its Orense office.

Manifests:

- "the claimed party does not have a Data Protection Delegate (DPD)", and  
neither does it exist in the headquarters of the Official Colleges of Veterinarians of Orense,  
Pontevedra and La Coruna.
- "Since December, you have distributed part of the paper documentation you have.  
in their office in Lugo for the Official Colleges of Veterinarians of Orense,  
Pontevedra and La Coruña, without taking any type of measure or registering the documentation.  
detailed information that went to each College, resulting in "today it is not known in  
where you can find the documentation of each identified animal,  
as well as the data of its owner".

SECOND: In view of the facts denounced in the claim), and in accordance with accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of 5/12, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD) dated 06/05/2020 is transferred claim electronically, resulting in "automatic rejection" for not accessing the same.

THIRD: On 09/17/2020 the claim was admitted for processing.

On the same date, the claim is transferred again to the respondent, with the result

Automatic rejection date: 09/28/2020.

"Automatic rejection generally occurs after ten days have elapsed.

natural from its availability for access according to paragraph 2, article

43, of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Admi-

Public Administrations (LPCAP) and in a particular way, after the term established by

the Administration acting in accordance with the regulations. It is reiterated by postal mail on 28

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of the same month.

FOURTH: On 11/17/2020, a response was received from the respondent stating:

-The Galician Council of Veterinary Associations of Galicia is a Corporation of-

public law regulated by decree 172/2000 of 06/22. Reports the charges of responsibility

responsibilities that the claimant has held, forming part, among other related bodies,

tioned with the profession, of the \*\*\*BODY.1, from \*\*\*DATE.1, for being \*\*\*WELL-

TO.1 of a College, or \*\*\* POSITION.2 of the Council. "At the time of submitting the

complaint, March 2020, held a public right position in the entity now denounce-gives".

-On the object of the complaint (REGIAC management), dated 04/02/2002 (DOGA 63)

Decree 90/2002 was published, which regulates the possession of potential animals.

dangerous in the Autonomous Community of Galicia and the Galician registries

Identification of Companion and Potentially Dangerous Animals and

Canine trainers. It details how the official registration of identification of

data of the animal and its owner, with the participation of a veterinarian from one

of the four Official Colleges of Veterinarians of Galicia and mediating the Ministry

Environment.

Details the animal identification procedure established in article 10 of the

decree 90/2002, through the implantation of a chip, which begins with the appointment

of a veterinarian by the Ministry, which must be registered in one of the four Colleges

official services, among other requirements, and it is also indicated that the veterinarian will fill out a

official identification form in triplicate, provided by the General Management

General Conservation of the Ministry, which contained information on the animal and its

its owner.

“For the management of this database, the Council signs collaboration agreements

five-yearly whose purpose is to establish the management conditions of the REGIAC,

authority of the Ministry of the Environment” and “aspects related to the operation of the

system”. They assume among other functions:

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“supervision, verification and management of requests for registration, modification or cancellation

performed by veterinarians in the registry.

custody and presentation of forms sent by veterinarians as well as all

the documentation sent to the registry.

treatment and advice on the management of incidents that occurred in the

I am of record.

communication and distribution to the owners of the animals of the documentation

certification that proves the identification and registration, as well as the credentials of

access to the computer application where you can exercise your query or modification of

personal information

It states that the last Agreement signed is from 01/11/2016, published in the

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DOGA of 05/20/2016.

-States that the Council has contracted personnel in the provinces of Orense and Lugo-

do to carry out functions derived from the Convention and at the same time, the Law of

11/2001 of Professional Associations of the Autonomous Community of Galicia establishes

as personal means of the Council, those that are provided by the Associations, according to

article 32.

In the month of May 2019, it was found that the registration checks that de-

Council staff should do were around 10 months late in

regarding data recording, so it was agreed that according to article 32.1 of the

Law 11/2001, the staff of the Schools collaborate in tasks entrusted to the Con-

advice regarding the registration and verification of data dumped in the database of the

Record.

The access codes to the Registry are provided by the Department of the Environment.

you to the Provincial Colleges.

Once the keys were received in the Provincial Schools, they proceeded to deliver to these

All the documents sent by the veterinarians, those necessary for the registration of

the pet. The delivery was made by identifying the person who removed the document.

tation, and the documents that were delivered, recording the data and returning the

documentation. "There has been no incident with these recordings."

-Regarding the complaint for lack of security measures in the data, it lacks

foundation, with the purpose of "doing harm to the entity of which in its mode

ment was part of it."

-The Council was not aware of the events until 10/9/2020 with the transfer of

the complaint. The discharge from the DPD was communicated to the AEPD on 10/16/2020. The claimant does not

warned of the lack of the formal right of communication-registration to the protection authority

tion of data of the protection delegate, considering that, in addition, it was the responsibility

ble of data protection of the Council from 10/1 to 05/23/2018, without stating that

take the measures to adapt the entry of the RGPD into force in the Council. Add

that no harm has been caused by the non-communication of the DPO.

Provides:

-Copy of the minutes of 06/15/2019 on obtaining keys to proceed

by the Provincial Associations that voluntarily assume recording tasks of re-

animal identification record.

- Copy of emails sent to Schools, on 07/09/2019.

- Copy of "proof of withdrawal of registration documentation in REGISC", with

check-out 05/7/2020 in which a representative of the VOC Pontevedra withdraws documents

ment on the RECORD, with a record of recordings listed and by dates and

folders.

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-Annex 6, proof of registration of communication to the AEPD of the appointment of the DPD dated 10/16/2020.

FIFTH: On 03/10/2021, the Director of the AEPD agreed:

“INITIATE A SANCTIONING PROCEDURE FOR A WARNING

GALICIAN COUNCIL OF VETERINARY COLLECTIONS, with NIF V27263185, by the alleged infringement of article 37 of the RGPD, in relation to article 34.1 and 3 of the LOPDGDD, in accordance with article 83.4.a) of the RGPD.”

SIXTH: Dated 09/08/2021, reiterating in writing dated 09/28/2021 sent by mail postal service, a period of evidence was initiated, requesting the respondent to prove since date they had implanted and began to exercise their functions the DPD, date of appointment and appointment. He was also warned that he is obliged to receive the notifications electronic nes.

On 10/20/2021, the response is received stating that they count from October 2020 with an entity that advises them on Data Protection and that on 10/16/2020 the DPO was appointed, indicating the person representative of said entity.

The registration of the DPD in the AEPD was on 10/16/2020.

Provides:

1- Copy of a service provision contract dated 10/1/2020. The object of the contract is the provision to the Council of an adaptation and maintenance service to the RGPD,

“Developing each and every one of the necessary points according to the regulations in force at all times”. In the third clause, the services offered are indicated by the company, including legal and technical advice, or evaluation of impact, also appearing as a service, the appointment and registration of the delegate of Data Protection. The contract does not contemplate or designate or deduct the appointment of the aforementioned figure.

2-Provide a copy of the letter from the AEPD, dated 10/16/2020, addressed to the claimed party, communicating the inclusion of the person designated as DPD, which is included in “the list provided for in article 34.4 of the LOPDGDD” in the claimed entity.

SEVENTH: The proposed resolution is issued on 10/22/2021 with the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with warning to the GALICIAN COUNCIL OF VETERINARY COLLECTIONS, with NIF V27263185, for an infringement of the article infringement of article 37 of the RGPD, in relation to article 34.1 and 3 of the LOPDGDD, in accordance with article 83.4.a) of the GDPR. And 73.v) of the LOPDGDD."

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The electronic submission of the proposal appears as expired due to not accessing its contents. No claims are received.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: A claim is filed on 03/21/2020 (suspension of deadlines) against the

claimed GALICIAN COUNCIL OF VETERINARY COLLEGE. the claim

It indicated, among other things, that the defendant lacked the figure of the DPD.

SECOND: The respondent provides evidence, a copy of the document communicated by the

AEPD, dated 10/16/2020, on the inclusion of the person designated as DPD,

which is included in "the list provided for in article 34.4 of the LOPDGDD".

## FOUNDATIONS OF LAW

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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.

II

The General Councils of the Associations are Public Law Corporations, with

own legal personality and full capacity that are constituted in the cases in which

that there are several Associations of the same profession of less than national scope. What

such, they can act as personal data controllers

and, on some occasions, they exercise functions of treatment managers, for which

It is up to them, following the principle of proactive responsibility, to meet the obligations

tions that the RGPD details, among which is included, the obligation to appoint a

data protection delegate and communicate it to this AEPD, which is imposed by

Article 37 of the RGPD, which indicates:

"1. The person in charge and the person in charge of the treatment will designate a protection delegate.

tion of data provided that:

a) the treatment is carried out by a public authority or body, except for the courts.

law enforcement officers acting in the exercise of their judicial function;

Article 37.3 and 4 of the RGPD indicates about the designation of the DPD "When the



The person responsible or the person in charge of the treatment is a public authority or body, may designate a single data protection delegate for several of these authorities.

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entities or bodies, taking into account their organizational structure and size.

4. In cases other than those referred to in section 1, the person in charge or the charged with treatment or associations and other bodies that represent categories of managers or managers may designate a delegate for the protection of data or must designate it if required by the Law of the Union or of the States members. The data protection delegate may act on behalf of these associations. associations and other bodies that represent those responsible or in charge.”

The LOPDGDD determines in its article 34.1 and 3: “Appointment of a project delegate data tection:

”1. Those responsible and in charge of the treatment must designate a delegate data protection in the cases provided for in article 37.1 of the Regulations to (EU) 2016/679 and, in any case, in the case of the following entities:

a) The professional associations and their general councils.”

3. Those responsible and in charge of the treatment will communicate within a period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional authorities for data protection, appointments, appointments and dismissals of the data protection delegates both in the cases in which they are obliged to their designation as in the case in which it is voluntary.”

If the DPO does not exist, a series of derived obligations are not fulfilled either.

that are contained in different articles for example in 13.1.b) and 14.1 of the RGPD that oblige when data is obtained to provide: "the contact details of the delegate-Data Protection, where appropriate", means if there are or should be such delegates. Also to relate contact information in the record of activities of the treatment article 30.1 a) of the RGPD and in matters of content of the notification-report of security violation of personal data to the control authority, article 33 of the RPD.

The purpose of communicating contact details to supervisory authorities is to ensure that stakeholders (both inside and outside the organization) organization) and the supervisory authorities can be easily contacted, directly and confidentially with the DPO without having to contact another part of the organization. The contact details of the DPO must include information that allows interested parties to officials and supervisory authorities to communicate with the DPO in an easy way (one postal address, a specific telephone number and an email address specific). Where applicable, for purposes of communication with the public, they may arrange other means of communication, for example a dedicated hotline or a specific contact form addressed to the DPO on the organization's website.

### III

The infringement is considered as such in article 83.4.a) of the RGPD, which states: "4. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 10,000,000 or, treating-of a company, of an amount equivalent to a maximum of 2% of the volume of Total annual global business of the previous financial year, opting for the one with the highest

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amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43;"

It follows from this assumption that the DPD had neither been named, designated nor had their appointment has been communicated at the time the claim is registered engaging in the conduct described for prescription purposes in article 73.v) of the LOPDGDD, which states:

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679, it is considered that they are considered serious and the infractions that suppose a vulnerability will prescribe after two years. substantial portion of the items mentioned therein and, in particular, the following "v) Failure to comply with the obligation to appoint a data protection delegate when his appointment is required in accordance with article 37 of the Regulation (EU) 2016/679 and article 34 of this organic law."

Article 83.7 of the RGPD indicates:

IV

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.

In this sense, article 77.1 g) and 2, 4 and 5 of the LOPGDD, indicates:

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

g) Public law corporations when the purposes of the treatment related to the exercise of powers of public law.

2. When the persons in charge or persons in charge listed in section 1

had any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will issue resolutions

tion sanctioning them with a warning. The resolution will also establish

as the measures that should be adopted to stop the behavior or correct the effects

cough 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

gain of which it depends hierarchically, in his case, and to those affected who had 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 paragraphs

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previous two.

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

dictated under this article.”

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS the GALICIAN COUNCIL OF VETERINARY COLLEGE, with

NIF V27263185, for a violation of article 37 of the RGPD in relation to the article

34.1 and 3 of the LOPDGDD, in accordance with article 83.4.a) of the RGPD and the

Article 73.v) of the LOPDGDD, a sanction of warning.

SECOND: NOTIFY this resolution to the GALICIAN COUNCIL OF VETERINARY COLLEGE.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

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 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 13/07, 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-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registers provided for in art. 16.4 of the

cited LPACAP. 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.

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