

□ Procedure No.: PS/00230/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 02/7/2020

before the Spanish Agency for Data Protection. The claim is directed against the

CITY COUNCIL OF \*\*\*LOCALITY.1 (Zoonoses Service) with CIF P3003000A (in

later, the claimed one). The reasons on which the claim is based are that through Twitter

\*\*\*TWITTER.1, from the City Council of \*\*\*LOCALIDAD.1, has accessed your data without legal authorization, and then has provided information related to it.

The claimant states:

“On September 14, the Local Police of \*\*\*LOCALIDAD.1 posted on Twitter a photo of a dog lost in the floods that they had picked up and that was in the de-Zoonosis municipal brawls. Can you help us find its owner with a retweet?

That same day a citizen was interested in adopting the dog, I replied to said citizen's tweet. dadano telling him to ask about him because in zoonoses he was at risk of being euthanized.

The local police of \*\*\*LOCALIDAD.1 answered me saying that there was a Protection Law Animal that recognized the sacrifice 0, to which I responded by showing that said Law to date has no regulatory development.

At that moment the official page of Zoonosis appeared

of the townhall

(Department of Sports and Health) telling me that I was wrong, to which I replied disaying that he had requested the information from the city council itself through its Trans-appearance.

\*\*\*LOCATION.1

Two days later, the person who manages the Twitter of \*\*\*TWITTER.1, \*\*\*LOCALIDAD.1 co-began to make personal attacks on me, to the point of accessing my file as a citizen of \*\*\*LOCALIDAD.1 and adopter of a dog in said center, giving data about the adoption and saying that it had gotten into my registry and that the dog was not va-sister-in-law.

I warned him that these data were personal, that I did not give him permission to disseminate them and that They were also outdated since my dog is vaccinated but I did not go to the vet. zoonoses to vaccinate her, if not to a private veterinarian. - Even so, he kept insisting, putting back the data that had been improperly accessed. I requested name and ID to file a claim against him/her, but he/she refused”.

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Provides:

-Copy the screenshots, 15 PDF pages, of conversation through TWITTER, cons-with “\*\*\*TWITTER.1, \*\*\*LOCALIDAD.1” and a shield that would represent that of \*\*\*LOCALIDAD.DAD.1. The denomination of blues”, seeing below @A.A.A.. In one of the captures ras the date can be seen \*\*\*DATE.1 Twitter for Android”.

-The conversation begins as reported by the claimant, a conversation about the claim is maintained-in principle, the local police, because that is how it appears in the logo and the literal, pointing out that a dog was found on public roads and a photo of it. Before an interested person, the re-crying states that come soon because in zoonoses they sacrifice.

-Information and opinions are exchanged on cases and assumptions of dog sacrifices,

and from the tweet of \*\*\*TWITTER.1, \*\*\*LOCALIDAD.1 explains that they do not sacrifice themselves and in another it says than exceptionally for humanitarian reasons. Given what the claimant indicates "that she has animals at home and that getting them out of there cost me God and help. Healthy animals that were going to sacrifice"" indicates "if you want with my name you look for the files".

-In his answer, ZOONOSIS criticizes that he has to be adopted due to an imminent sacrifice for- that this makes people more sad and some opinions are exchanged before the information of the claimant that animals are slaughtered on that site.

-\*\*\*TWITTER.1, \*\*\*LOCALITY.1 responds to the claimed, \*\*\*LOCALITY.1 Police and another address: "He took his dog from our center in January 2016 at that time there was zero sacrifice by the way her dog has not been vaccinated since January 2017", requesting

the claimant later the data of the person who has given that information. Addition-

Finally ZOONOSIS indicates that "no veterinarian has discharged any of the that dog in SIAMU since January 2017, so for all intents and purposes you do not comply with the obligation to vaccinate your dog, you must update it. Ends indicating ZOONOSIS that the claimant cannot lie saying that they break the law, that if she is convinced This is not the place to report.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the General Subdirector for Data Inspection proceeded to transfer side of the claim on 03/10/2020 without receiving a response, issuing the admission sion to process the claim on 07/28/2020.

THIRD: Without prejudice to finding out the database(s) in which the information is reflected, training object of the claim, according to the information that appears in Google, \*\*\*URL.1, SIAMU (companion animal identification system of the \*\*\*LO- region) CALIDAD.1), is a database whose purpose is the identification of farm animals company as a tool to facilitate the recovery of lost or stolen animals,

avoid potential dropouts, encourage responsible ownership, and help achieve higher levels of health and well-being of both the animals and the people who interact with them with them.

As public access services of SIAMU, it appears:

“SEARCH FOR A LOST ANIMAL: SIAMU offers the possibility of checking me- by entering an animal's identification number (microchip or tattoo) if a

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animal is registered in its data files, giving in that case name and telephone number.

Phone number of the person listed as the owner and of the veterinarian who made the identification.

DATA VERIFICATION: It also allows an owner, who has identified any

animal in SIAMU check all the registered data of your animal in case they are incorrect.

correct, in that case it is necessary to have the identification number and the DNI of the person

na that was recorded as owner. In case of incorrectness, the owner must address

to the veterinarian who recorded the data or, failing that, to another SIAMU veterinarian,

since SIAMU lists exactly and exclusively those supplied by the veterinarian.

river.

GUIDE TO VETERINARY CENTERS: As a third option, a guide to Veterinary Centers is offered.

other Veterinarians that the veterinarians subscribed to SIAMU have registered in it.”

FOURTH: On 09/08/2020, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE

TOWN HALL OF

\*\*\*LOCALIDAD.1, with CIF P3003000A, for the alleged violation of article 5.1.f) of the RGPD

in relation to article 5 of the LOPDGDD, as determined in article 83.5 a) of the

GDPR.”

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Procedure

Common Administrative of the Public Administrations, the sanction that could correspond

It would be warning.”

FIFTH: The respondent provided in allegations on 12/17/2020 a report prepared for the

response to the transfer of the claim that was not sent due to circumstances of the declaration

of the pandemic situation.

The report indicates:

-With the affirmation of the claimant of "if you want with my name you look for the files"

authorized to consult the information, check the veracity and report it in the conversation.

-You have not been able to identify the interlocutor of Zoonosis \*\*\* LOCATION.1, considering that

gave any personal data of the interested party extracted from any database, affirming something

that was not true.

-They do not know the reason why the person who manages the TWITTER.1 account,

\*\*\*LOCATION.1 at that time indicates to the interested party that her dog is not vaccinated,

affirming that he did not consult any database, since consulted the same, it appears

vaccinated in 2019.

-The respondent states that upon receiving the transfer, access to the Twitter account was restricted.

ter, changing the passwords and creating an official account that they handled first

only the Superior Technicians, after which the account was deleted.

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-He points out that the conversation no longer appears and that the access codes have also been changed.

so to SIAMU on the Center's computers "in case there is a security breach".

SIXTH: The Instructor of the file formulated a proposal for the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with

warning to CITY COUNCIL OF \*\*\*LOCALITY.1, for an infraction of article 5.1.f)

of the RGPD, in accordance with article 83.5 a) of the RGPD"

No claims were received.

## PROVEN FACTS

1) The claimant provided a printed copy of conversation sheets on Twitter, initially

with the Twitter of the Local Police \*\*\*LOCALIDAD.1, on adoption of abandoned dogs and

sacrifices, and a person interested in adopting one. The claimant with the name "\*\*\*NOM-

BRE.1" assured that "in zoos they sacrifice", responding from \*\*\*TWITTER.1,\*\*\*LO-

QUALITY.1.

Continuing the conversation about animal sacrifice, the complainant indicates that "I have

animals at home that getting them out of there cost me God and help. Healthy animals that were going to

crify I do not speak of what I do not know, it is a habit that I have. If you want with my name-

you are looking for the files." adding the claimant that when she adopted her dog and told her

They said that there was no sacrifice, "there was a signed and sealed sheet on his table with the

list of animals slaughtered that day.

As a reply from \*\*\*TWITTER.1,\*\*\*LOCALITY.1 figure: \*\*\*DATE.1, 15:09"" @

A.A.A.": "he took his dog from our center in January 2016 at that time there was no

zero sacrifice... and by the way, her dog has not been vaccinated since January 2017", following

from \*\*\*TWITTER.1, \*\*\*LOCATION.1 "no veterinarian has discharged any vaccination

of that dog in SIAMU since January 2017, so for all intents and purposes you do not comply with

the obligation to vaccinate your dog, you must update it" All tweets from \*\*\*TWI-

ITTER.1, \*\*\*LOCALIDAD.1 that are exchanged with the claimant in both directions go

destined in addition to between the two parties, also to \*\*\*LOCATION.1 Police, and to the interested-do in adopting a dog.

A report of the impression of the tweet from \*\*\*TWITTER.1, \*\*\*LOCALIDAD.1 is added to the re-claimant that it carries in the shipments, date of 09/15/2019.

2) SIAMU (companion animal identification system of the \*\*\*LOCALIDAD.1), is a database that can be accessed according to the claim, staff of \*\*\*TWITTER.1, \*\*\*LOCATION.1.

3) On 03/10/2020, the claim was transferred to the respondent, having a full copy available. gr of the claim.

4) The respondent has not been able to identify the interlocutor of \*\*\*TWITTER.1, \*\*\*LOCALITY.1.

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5) The respondent stated that the person who tweeted the claimant did not consult any in a database, since "when consulted, it appears vaccinated in 2019".

6) The respondent states that upon receiving the transfer, access to the bank account was restricted. Twitter, changing the passwords and creating an official account that they managed first only the Superior Technicians, after which the account was deleted.

7) Point out that the conversation no longer appears and that the passwords have also been changed. access to the SIAMU registry on the Center's computers, arguing: "in case there is a bre-security cha".

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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Agency

Spanish Data Protection is competent to resolve this procedure.

Defines article 4.1 of the RGPD:

II

“personal data”: any information about an identified or identifiable natural person (“the interested”); an identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as example a name, an identification number, location data, an online identifier, line or one or more elements of the physical, physiological, genetic, psychic, economic, cultural or social of said person;”

The current regulations on the protection of personal data contained in the RGPD maintains the principle that all data processing needs to be supported by a database law that legitimizes it. In this case, there is authorization to process data from the claimed associated with the legal obligations that are imposed by the possession of animals of company

The claimed infringement of article 5.1 is imputed. f), which states:

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 or organizational measures appropriate (“integrity and confidentiality”).

This infraction is specified in article 5 of the LOPDGDD, which states:

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"1. Those responsible and in charge of data processing as well as all persons

that intervene in any phase of this will be subject to the duty of confidentiality to which

Article 5.1.f) of Regulation (EU) 2016/679 refers.

2. The general obligation indicated in the previous section will be complementary to the

duties of professional secrecy in accordance with its applicable regulations."

The claimant's statement on Twitter that "if I wanted it with my name, you look for the experiences

teeth" was associated with his previous statements that he had adopted a dog there, with the

background of animal sacrifices, without it being deduced that because it is consulted

eventually by the employee authorized to do so, the aforementioned data must be exposed.

Those statements, if any, would not allow the open use resulting from the query, de-

keeping the data in the strict scope in which they were collected for the purpose of the

file that stores them.

The data of the people included in databases on companion animals related to

their holder with the data of the animal, in this case, with no other apparent source for their con-

It turns out that the name and surname data of the claimant that appeared in her email address

Twitter, @A.A.A.. In the demonstrations that are poured into Twitter by the employee of

\*\*\*TWITTER.1, \*\*\*LOCATION.1, it could be deduced a use in personal data query mode

final, to later attribute the date on which a dog from municipal dependencies was taken along

to the statement that the animal was not vaccinated.

Notwithstanding, the respondent stated that there is evidence that the animal was vaccinated in

2019, denying the veracity of the information and that therefore some database had been consulted

of data with content of personal data, thus denying that its manifestation

contains strict references to information on personal data from

file or treatment carried out.

Regarding penalties, the Constitutional Court, in its Judgment 76/1990, of 26/04, has

established as one of the basic pillars for the interpretation of administrative law  
punisher that the basic principles and guarantees present in the field of criminal law  
are applicable, with certain nuances, in the exercise of any sanctioning power of the  
Public administration.

In any case, it corresponds to the AEPD that imputes the infraction, with the evidentiary means  
obtained during the procedure, through evidence that must be sufficient and with a value  
decisive in the case of tipping the balance beyond all reasonable doubt to prove that  
the actions and behaviors imputed in the defendant concur. In the present case without  
However, it is unknown if the staff who attended the social network at that time accessed  
databases and to which databases, as well as the data that the claimant could  
appear in it. The mere statement that he took a dog in 2016 that is not  
vaccinated, is not decisive to accredit access to the database, when in addition the  
claimed denies, stating that it was. There are doubts about the incrimination of the  
claimed in the effective use of the claimant's data because there is no direct evidence,  
the acquittal of the defendant proceeds based on the principle "in dubio pro-indicted" as it is not fulfilled in  
all the objective elements that make up the offending conduct.

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Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the FILE of the infraction imputed to the CITY COUNCIL OF

\*\*\*LOCALIDAD.1, with CIF P3003000A, for a violation of article 5.1.f) of the RGPD,

as stated in article 83.5 a) of the RGPD.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF \*\*\*LOCATION.1.

THIRD: 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 Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13/07,

regulation of the Contentious-administrative Jurisdiction, within a period of two months from

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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

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

remaining records provided for in art. 16.4 of the LPCAP. You must also transfer to the

Agency the documentation that proves 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 terminate the precautionary suspension.

Sea Spain Marti

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