

Procedure No.: PS/00024/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On September 12, 2018, Ms. A.A.A. (hereinafter, the
claimant) filed a claim with the Spanish Data Protection Agency
against the MILLADOIRO CHILD EDUCATION SCHOOL Educational Center
(AMES), (hereinafter, School Center or EEI), on the occasion of the exhibition of the
definitive list of students admitted for the 2018/2019 academic year, dated May 14
of 2018, on the main and glazed facade of the center, so that it is
accessible from the outside to any passer-by or neighbor. The complainant added that
This list is also published on the web page of the mentioned Center.

The outlined list, of which the claimant has provided a copy, contains
detail of the order number, names, surnames and punctuation of a total of 100
students admitted for said school year in the aforementioned Center, dependent on
the MINISTRY OF EDUCATION, UNIVERSITY AND VOCATIONAL TRAINING
OF THE JUNTA DE GALICIA, (hereinafter, the Ministry or the claimed party).

The complainant also states that the school delivered to all the
families of the class of her youngest daughter from a list with the identification data of the
students who are members of the group, a copy of which is attached.

SECOND: On October 11, 2018, in accordance with article 9.4 of the
Royal Decree-Law 5/2018, the claim filed by the
claimant to the aforementioned school so that within a month it proceeded to

inform this Agency about the causes that had motivated the exposed facts in the claim and report the measures adopted to prevent the occurrence of similar incidents.

In response to said request for information, dated November 28

of 2018, a written entry from the claimant is registered in this Agency, indicating in what

Regarding the exhibition of the list of admitted the following:

“That the process of admitting students to public schools is a process of competitive concurrence, in said competitive concurrence procedures absolute transparency must govern so that the student lists admitted are always made public.

It should also be noted that Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations provides in its

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article 45 to the possibility of substituting the individualized notification for the publication in certain procedures. Specifically, it includes in said provision the "acts members of a selective procedure or competitive concurrence of any Type. In this case, the call for the procedure must indicate the medium where the successive publications will be made, lacking validity those that are carried out in different places."

As it is therefore a competitive bidding procedure, there is a legal authorization to proceed with the publication of said lists of persons admitted, legal authorization that has been specified in the Order of March 12,

2013 which develops the procedure for the admission of students in teaching centers supported with public funds that teach 2nd grade cycle of early childhood education, primary education, secondary education Compulsory and high school regulated in Organic Law 2/2006, of May 3, of education (DOG 03/15/2013), recently modified by the Order of January 25 of 2017 by which the Order of March 12, 2013 is modified (...) (DOG 02/01/2017).

Article 30 of March 12, 2013 (...) establishes the following:

“Article 30. Publication of the provisional list of people admitted and not admitted and claims

1.

In view of the applications for admission submitted, and once determined the score resulting from applying the scale criteria, where appropriate, the The center will publish on its notice board and on its website the nominal list of all students admitted and not admitted by course, in order of the total score obtained.”

Likewise, its article 31 establishes that:

"two. The management of public centers and the ownership of private centers concerted will publish on their notice board and on their website, before the 15th of May of each year, the final lists of people admitted and not admitted (...)"

Therefore, as a first premise it should be noted that the publication both in the website of the center as well as on the bulletin board is expressly enabled by current regulations.

It should also be taken into account that the third additional provision of said Order of March 12, 2013, in its wording given by the Order of January 25, 2017, establishes the following:

<< In accordance with Organic Law 15/1999, of December 13, of protection of personal data, the personal data collected in the processing of this procedure whose treatment and publication authorize the Interested persons by submitting applications will be included in a file called <<“Administrative relations with citizens and entities”>> in order to manage this procedure, as well as to inform the interested persons about its processing. The body responsible for this file is the Ministry of Culture, Education and University Planning of the Xunta de Galicia. (...)>>

It is especially relevant that the regulatory order of the procedure states that the treatment and publication of personal data are

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authorized by the interested persons themselves through the presentation of the request.

We are therefore faced with an assumption of consent of those affected for the treatment and publication of said personal data, which is manifested with the presentation of the application, so the claimant, when signing and presenting her application, consented to such publication.

The complainant also expresses her disagreement with the fact that the publication on the board is made in the window of the educational center, at this

In this regard, it should be noted that after consulting the situation, the center does not have a bulletin board as such, but the windows of the school are used to

transmit information to the families in which the information of the center, of the ANPA (extracurricular activities, etc.) and educational and pedagogical activities of Ames City Council.

During the admission period, and since a lot of documentation (instructions from the department, center data, provisional lists, definitive lists, etc.) the window in front of the school is used, since it is broader and allows a correct viewing of all the documentation.

It should be noted that, as already indicated, the order that regulates the admission procedure provides for the publication not only on the bulletin board of the center, but also on its website, thus including a means of alternative publication that involves much more publicity than the bulletin board center ads.

Therefore, it cannot be argued by the claimant that she was unaware that the information that would be published would be accessible to people outside the school, since the call itself indicated that the lists would be published on the board of ads and on the website, a forecast that makes irrelevant the fact that the board of announcements is accessible from the street, since the website of the center is accessible by anyone from any computer in the world.

Thirdly, the claimant alleges that the center delivers a list with the members of the school group that corresponds to the minor to all the families of class.

With regard to this point, it should be noted that the delivery of said list responds as indicated by the educational center itself that during the period of adaptation (with a duration of 10 days) flexible groupings are made in such a way so that the students are combined in each session and the time of attendance.

(...)

Therefore, it wants to explain that the preparation of said lists and its delivery does not respond to an arbitrariness of the center, but to the will to provide a better service that facilitates the adaptation period for families. However, face to future beginnings of school years, from the Technical General Secretariat it has been communicated to the center that to continue using this system they must collect authorization of the legal representatives of the students for the distribution of the list to the other families in the classroom. If you do not have the appropriate authorization A different system should be implemented that does not entail such delivery.”

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THIRD: On December 2, 2018, the claimant submits an extension of the claim attaching the following documentation:

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Printing of a document, dated November 30, 2018, to the attention of the Technical Secretary General of the Ministry, in one of whose sections It is indicated that "Before the election of the members of the School Council, In the center school publish on the window and outside the list of parents who make up the educational community associating each name and surname with their ID whole without pixelating part of it." The claimant does not prove the origin, authorship or nature of said document.

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Partial capture of a sheet of the list "Census of Persons Responsible" of the EEI do Milladoiro, Academic Year 2018/2019, which contains the names, surnames and

DNI of those responsible detailed in numbers 288 to 311 of the Census. East

document does not prove, by itself, the exact place of placement of said list.

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Two photographs showing a window with documentation

exposed, but that do not allow knowing the content or nature of the documents

exposed in said window.

Regarding the lack of pixelation of the DNI contained in the "Census of

Responsible" allegedly spread in the aforementioned window, pointing out that in

the date of presentation of the extension of the claim, later necessarily

At the date of issuance of the aforementioned census, the Organic Law was not in force

3/2018, of December 5, on the Protection of Personal Data and guarantee of the

digital rights, and, therefore, the Additional Provision was not applicable

seventh contained in said norm, relative to the "Identification of the interested parties in

notifications through announcements and publications of administrative acts",

whose section 1 provides:

"1. When it is necessary to publish an administrative act that

contains personal data of the affected party, it will be identified by its

name and surnames, adding four random numerical figures of the document

national identity, foreigner identity number, passport or document

equivalent. When the publication refers to a plurality of affected parties, these

Random figures should alternate.

When it comes to notification through advertisements, particularly in

the assumptions referred to in article 44 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations, will be identified

to the affected party exclusively by means of the complete number of his national document

identity card, foreign identity number, passport or equivalent document.

When the affected party lacks any of the aforementioned documents in the two previous paragraphs, the affected party will be identified only by his Name and surname. In no case should the name and surnames be published in a together with the complete number of the national identity document, number of foreign identity, passport or equivalent document.

FOURTH: On May 10, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, in accordance with the provisions of article 58.2 of the RGPD, for the alleged infringement of the article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD.

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Said agreement stated "That, if the existence of the described infractions, for the purposes provided in article 58.2 of the RGPD the corrective measures that could be imposed on the MINISTRY OF EDUCATION, UNIVERSITY AND PROFESSIONAL TRAINING OF THE JUNTA DE GALICIA, in the resolution, would consist, in view of the elements of judgment available in this time, to ORDER the adoption of technical and organizational measures adequate to guarantee the principle of confidentiality in order to prevent Non-interested third parties access the personal information contained in referred administrative acts, both to those who participate in procedures selective or competitive competition that must be notified by posting on bulletin boards or web pages, such as data of a personal nature concerning the interested parties whose identification must appear

in administrative acts to be published in the manner indicated, avoiding, in any case, that these data are accessible indiscriminately from public roads or openly from the websites, in addition to the fact that the published data responds to the principle of minimization of data regarding the purposes for which they are processed.

Said measures would have to be adopted, where appropriate, within the period indicated.

computed from the date on which the sanctioning resolution is notified,

The means of proof accrediting its compliance must be provided.”

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it was ratified in the demonstrations made in the written response to the request for information made together with the claim transfer.

-Regarding the publication of the lists of admitted students on the page website of the School Center and on its glass facade, visible from the abroad, it is reiterated that the process of admission of students in public centers constitutes a competitive bidding procedure, governed by the principle of transparency, publishing said lists under the provisions of article 45 of the LPACAP and in accordance with the provisions of the Order of March 12, 2013.

He argues that said publication is based on two legitimating bases contemplated in the RGPD and the LOPDGDD.

The first legal basis responds to the provisions of article 6.1.e) of the RGPD, as there is a rule that expressly enables the administration to carry out said publication. In this regard, it is pointed out that the schooling process responds to the fulfillment of a mission of public interest attributed to the educational administration by Organic Law 2/2006, of May 3, on education.

With regard to the specific method of notification of the resolution of said process, article 45.1.b) of the LPACAP establishes the legal obligation for the

administration responsible for the treatment to replace the individualized notification of the resolution for the publication in the selective or concurrence procedures competitive. In addition, articles 30 and 31 of the Order of March 12, 2013, whose transcript appears in the preceding second antecedent, expressly enable the publication of the lists of people admitted and not admitted on the website of the center and on the bulletin board.

The second legitimizing basis responds to the provisions of article 6.1.a) of the RGPD, while in accordance with the provisions of the third additional provision of the www.aepd.es

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The aforementioned Order of March 12 would mediate the consent of the affected party for the treatment and publication of the personal data collected in the processing of this procedure having been authorized by “the interested persons through the submission of applications”. Therefore, when signing and submitting the applications for admission corresponding to her daughters, a copy of which is provided by the respondent, the claimant consented to such publication.

-Regarding the complainant's disagreement with the fact that the publication on the board is made in the window of the educational center, the Ministry reiterates what was expressed in relation to the fact that "the center does not have a bulletin board announcements as such, using the windows that are in front of the school to transmit diverse information to families" and publish the documentation referring to the admission period, given that due to its size it allows a correct viewing of all the documentation.

- The publication of the census lists is necessary for the procedure for holding elections to the School Council, establishing in article 44 of Decree 92/1988, which regulates the governing bodies of public educational centers, that "The electoral census must be exposed in the notice board of the center at least ten days before the date set for the electoral act, for verification and possible claim by the parents and legal guardians of the students.

It is pointed out that the objective of publishing the listings on the window in such a way that are accessible from the outside responds to an attempt to facilitate the consultation of the census to the parents, since in this way they can consult it even in times when the school is closed.

- They communicate the adoption of measures aimed at complying with what provided for in the seventh additional provision of the LOPDGDD and to publish the lists of the electoral in the internal board of the School Center.

SIXTH: On November 15, 2019, a resolution proposal was formulated, in the sense that by the Director of the Spanish Agency for Data Protection imposed on the defendant, in accordance with the provisions of article 58.2.b) of the RGPD, a sanction of a warning for an infringement of article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD.

Likewise, it was proposed that, if the correction of the irregular situation described prior to the issuance of the resolution that agreed, the Director of the Spanish Agency for Data Protection ordered the claimed party, in accordance with the provisions of article 58.2.d) of the GDPR, "the adoption of appropriate technical and organizational measures to guarantee the principle of confidentiality, that in what refers to the School Center studied will tend to prevent the publication of administrative acts that contain data

personal in the glazed facade, and towards the outside, of the School Center that we occupies. In general, said measures will be extended to prevent the information of personal character contained in this type of administrative acts object of publication in the media established for such purposes are not visible and/or accessible from outside the schools, and must also implement mechanisms that guarantee that access to the content of these administrative acts published on the website of the School Centers are restrict the persons interested in the proceedings (participants)." .

Likewise, it was indicated that such corrective measures would have to be adopted, in their www.aepd.es

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case, within a period of one month computed from the day following the date on which the the sanctioning resolution is notified, and the means of proof must be provided proof of compliance within the same period.

SEVENTH: Having been notified of the aforementioned resolution proposal, the respondent submitted a written of allegations expressing their disagreement with the violation that was charged, based on the following arguments:

- In accordance with what is maintained in the proposed resolution, any publication carried out by a public administration under the LPACAP or in accordance with provided for in article 20 of Law 38/2003, of November 17, General of Subsidies, "would be contrary to the principle of confidentiality, since it is being categorizing as "indiscriminate" exposure a publication that not only has a non-controversial legitimizing base, but also in its

formal elements is in accordance with the provisions of the LOPDGDD.” . It reiterates that the admission of students in public centers is a concurrence procedure competition in which it is obligatory to replace the individualized notification with the publication in application of a regulation with the force of law (article 45 of the LPACAP).

-Based on the fact that the seventh additional provision of the LOPDGDD includes the specific precautions that are applicable in the publications of the administrations, it is stated that “a sensu contrario” it can be understood that “in the other aspects related to the publication, no other type of caution is established legally necessary, such as avoiding open publication through access with key and password suggested by the AEPD, but, as has been indicated, the correct way to materialize the mandatory publication of the administrative act, which is respectful, at the same time, with the normative limits referred to the protection of personal information.”.

It adds that these precautions are conceived, among others, for cases in which that the publication must have notification effects, mainly through official bulletins that at the date of entry into force of the LOPDGDD had, in their majority, electronic character, thus enabling the maximum dissemination or Publicity among the citizens of the acts published through free access in Internet. In line with which, the respondent argues that "nothing prevents the conformity to law and the legal validity of the administrative acts that follow the guidelines defined in the seventh additional provision of the LOPDGDD and are published in electronic official bulletins are extended those whose publicity is carried out through of other electronic sites or websites that are enabled for this purpose through the respective calls. And if the publication in those terms is adjusted to right when it is done through electronic means of free access, with the same reason it will be when it is done in paper format.”

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Accessibility of information by an indeterminate number of people

physical is consubstantial to the publication of administrative acts required by the

Article 45 of the LPACAP.

- In the case analyzed, it is considered that the technical and organizational measures

adopted have been adequate, while the publication has affected the

minimum, essential and adequate identification data to achieve, through the

administrative procedure promoted, the purpose provided for in the regulations

educational. It indicates that there is no legal obligation to adopt measures

so that the provisional and definitive lists of students admitted and not

admitted are published only on the school's internal bulletin board.

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The Ministry considers that the public interest prevails in the effectiveness of the

notification through publication and in the guarantee of the exercise of the right of

defense of legitimate interests, directly or through protective associations

of collective interests that can appear a posteriori, against the rights of

the people involved, whose privacy is affected at minimum range levels.

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Non-existence of infraction on the part of the Ministry when the

publication in the legally established manner. He maintains that taking into account the

indications contained in the LOPDGDD regarding the way to publish acts

administrative, the indicated possibility of accessing with key and password constitutes

a mere suggestion of the AEPD, so its non-observance would not constitute a breach of any legal obligation applicable to the case analyzed.

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

FACTS

First: On September 12, 2018, the claimant filed a claim before the Spanish Data Protection Agency against the Educational Center MILLADOIRO INFANT EDUCATION SCHOOL (hereinafter, School Center or EEIM), on the occasion of the publication of the final lists of admitted students, for the 2018/2019 academic year, on the main and glazed facade of the School Center, in so that they were visible from outside the Center to anyone to pass through that place. The complainant added that the aforementioned lists were also published through the website of the School Center.

Second: It is stated that the definitive list of admitted students of the 4th year of Education children (continuous day), EEIM academic year 2018/2019, lists, in order of punctuation, the names and surnames of the 100 students admitted for that course in that School Center, dependent on the Ministry of Education, University and Professional Training of the Junta de Galicia, (hereinafter, the Ministry or the reclaimed).

Third: On September 12, 2018, the claimant extended her claim extending it to the publication on the main and glazed facade of the School Center, also outwards, from the census list necessary for the procedure of elections to the School Council.

Fourth: The "Census of Persons in Charge" of the "Academic Year: 2018/2019" published in the window of the façade of the EEIM contains the name, surnames and complete DNI of the parents and guardians of the students.

Fifth: The Ministry has recognized in the writings presented in this Agency the use of said windows to publish the provisional lists and definitive lists of admitted students in the following terms: "During the admission period, and since it must publish a lot of documentation (instruction of the Ministry, data of the center, provisional lists, definitive lists, etc.) the window is used that is in front of the school, because it is broader and allows a correct viewing of all the documentation".

Sixth: The Ministry has stated that the objective of publishing the census lists electoral "in the window so that they are accessible from the outside responds to a

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attempt to make it easier for parents to consult the census, since in this way they can consult it even at times when the school is closed."

FOUNDATIONS OF LAW

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By virtue of the powers that articles 55.1 and 2, 57.1 and 58.2 of the 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, (hereinafter RGPD), recognize each control authority, and as established in arts. 47 and 48.1, 77.1.c) and 2 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

Articles 1 and 2.1 of the RGD provide the following:

“Article 1. Object

1. This Regulation establishes the rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of such data.

2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to data protection personal.

3. The free movement of personal data in the Union may not be restricted or prohibited for reasons related to the protection of persons regarding the processing of personal data.

Article 2. Material scope of application

1. This Regulation applies to the treatment in whole or in part automated processing of personal data, as well as the non-automated processing of data personal content or intended to be included in a file.”

For these purposes, it is recalled that article 4 of the RGD, under the rubric

“Definitions”, provides that:

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

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 about personal data or sets of personal data, either 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

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

7) <<responsible for the treatment>>" or <<responsible>>": the natural person or legal entity, public authority, service or other body which, alone or jointly with others, determine the purposes and means of the treatment; if the law of the Union or of the Member States determines the purposes and means of processing, the data controller treatment or the specific criteria for their appointment may be established by the Law of the Union or of the member states;"

In accordance with the definitions contained in the aforementioned sections 1, 2 and 7) of article 4 of the RGD, the diffusion in the glazed façade, towards the outside, and on the website of the EEIM Educational Center of the identification data (name and surnames) contained in the provisional and final lists of admitted students and not admitted for the 2018/2019 school year, as well as the exhibition in the reviewed glass facade of the electoral census (census of responsible) of the year academic year 2018/2019 with identification data (name, surnames and DNI complete) of the parents and legal guardians of the students on the occasion of the election of the members of the School Council of the Center, constitutes data processing

personal by the claimed, in his capacity as responsible for said

treatment.

III

The defendant is imputed the commission of an infraction to the principle of confidentiality contained in article 5.1.f) of the RGPD, which under the heading "Principles relating to treatment", establishes that:

"1. The personal data will be:

(...)

"f) processed in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational (<<integrity and confidentiality>>)"

For its part, section 2 of the aforementioned article 5 of the RGPD establishes that: "2. The responsible for the treatment will be responsible for compliance with the provisions of the section 1 and capable of demonstrating it (<<proactive responsibility>>)", this precept which must be related to the provisions of article 32.2 of the same

Regulation, which in terms of "Security of treatment, establishes that: "When assessing the adequacy of the security level, particular account will be taken of the risks presented by the processing of data, in particular as a consequence of the accidental or unlawful destruction, loss or alteration of transmitted personal data, stored or otherwise processed, or unauthorized communication or access to said data".

In turn, article 5 of the LOPDGDD, regarding the "Principles of Data Protection", establishes:

"Article 5. Duty of confidentiality.

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

people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

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2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment.”

IV

In the present case, of the set of elements of judgment available in the procedure, in particular the documentation provided by the claimant and the statements made by the respondent in the pleadings submitted during the processing thereof, it is estimated that the exposure in the window of the exterior facade of the school, instead of on the bulletin board advertisements inside the school campus, of the identifying data contained not only in the provisional and final lists of admitted and non-admitted students for the course 2018/2019 (names and surnames), but also identification data (names, surnames and complete DNIs) of the parents and legal guardians of the students included in the electoral census of the academic year 2018/2019, as well as the dissemination in open, and without restrictions, on the website of the school of the information of personal nature included in the aforementioned provisional and definitive lists, constitutes a treatment of personal data by the claimed party, in

its condition as responsible for said treatment, which violates the principle of confidentiality provided for in article 5.1.f) of the aforementioned Regulation.

The respondent has justified his conduct by defending that the publication of the summarized definitive lists of admitted and non-admitted students find your legitimacy in compliance with a legal obligation applicable to the person responsible for the treatment (article 6.1.c RGPD) when dealing with concurrence procedures competitive, which is specified in the provisions of article 45.1.b) of the LPACAP and the Articles 30 and 31 of the Order of March 12, 2013, which develops the procedure for the admission of students in educational centers supported by public funds that provide teaching in the 2nd cycle of early childhood education, primary education, compulsory secondary education and high school regulated in Organic Law 2/2006, of May 3, on education, (hereinafter, Order of May 12) March 2013), in addition to the consent granted by the interested parties in the time of submitting applications for admission for treatment and publication of the personal data collected in the processing of this type of procedure to the purpose of managing the procedure and informing interested persons about their processing (article 6.1.a) of the RGPD).

The aforementioned article 45.1. of the LPACAP, under the heading "Publication", states:

"1. The administrative acts will be subject to publication when so establish the regulatory norms of each procedure or when they advise it reasons of public interest appreciated by the competent body.

In any case, the administrative acts will be published, supplying this the effects of the notification, in the following cases:

a) When the act is addressed to an indeterminate plurality of people or when the Administration considers that the notification made to a single interested party is insufficient to guarantee notification to all, being, in the latter

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case, in addition to the one carried out individually.

b) In the case of acts that are part of a selective procedure or

competitive competition of any kind. In this case, the call for

procedure must indicate the means where the successive

publications, lacking validity those carried out in different places.” (The

underlined is from the AEPD)

Articles 30.1 and 31.2 and 3 of the Order of March 12, 2013 establish what

following: “Article 30. Publication of the provisional list of people admitted and not

admitted and claims.

1. In view of the applications for admission submitted, and once it has been determined

the score resulting from applying the scale criteria, where appropriate, the center

will publish on its bulletin board and on its web page the nominal relationship of all the

students admitted and not admitted by course, in order of the total score obtained.”

The underlining is from the AEPD)

“Article 31. Publication of the definitive list of people admitted and not

admitted:

1.(...)

2. The management of public centers and the ownership of private centers

concerted will publish on their notice board and on their website, before the 15th of

May of each year, the definitive lists of people admitted and not admitted,

ordered according to the total score, expressly indicating the specific form for

its challenge, competent body and term, in accordance with the following article.

3. These definitive lists will remain exposed on the bulletin board and

on the school's website until the start of the new school year." (...) "The

underlined is from the AEPD)

However, at no time during the processing of the procedure

The conduct that is the object of the infringement has been associated with the violation of the principle of legality

of the treatment of the personal data used in the publication of the lists of

students or the electoral census, but since its inception it has been founded on the

violation of the principle of confidentiality of the treatment contained in the article

5.1.f) of the aforementioned RGPD, materialized in an indiscriminate exposure of the

published personal information (identifying data) to third parties not

interested.

It is not questioned that the lists of students studied should be subject to

publication in accordance with the provisions of article 45.1.b) of the LPACAP. What I know

imputed is that the respondent has published the personal information

contained in the lists studied and has exposed the identifying data contained

in the electoral census outlined without respecting the principle of confidentiality that results

applicable to the processing of that personal information.

Thus, it is proven in the procedure that the defendant has failed to comply with the

duty of confidentiality that is required by not having taken technical measures

or previous organizational tending to guarantee an adequate level of security that

prevent communication and/or indiscriminate access to such information of a

staff by third parties not interested in the competition procedure

competitive admission of students or in the process of electing representatives

of parents on the School Council.

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In this way, the exposure of the aforementioned documents to through the windows of the facade of the school placed so that the personal data contained therein could be viewed from abroad, contravenes the means of publication determined by article 31.2 and 3 of the Order of March 12, 2013 for the provisional and final lists of students admitted and not admitted, where the bulletin board of the center is posted as such school, which is the same medium that appears in article 41 of Decree 92/1988, of April 28, for the publication of the electoral census list.

The publication of said documents with identifying data of the interested in the windows of the facade of the school instead of in the bulletin board inside the school compound, where they should have been exposed in accordance with the provisions of article 45.1.b) of the LPACAP and the aforementioned precepts of the Order of March 12, 2013 and the Decree 92/1988, has led to the disclosure of this personal information to third parties unrelated to the processes in question, since it has allowed their visualization and indiscriminate access by non-interested third parties outside the procedures of admission of students or holding of elections to the school council. have

Keep in mind that the information of a personal nature collected in said lists It was accessible without any type of restriction to any person passing through through the area outside the school, which was overlooked by the glass facade.

For its part, the publication on the website of the school, openly and without any type of restriction, of the aforementioned provisional and definitive lists of

students has meant indiscriminate access to personal information contained in those documents, since their access to the documents had not been restricted. interested parties who requested to participate in the student admission procedures in question, who are the participants in the concurrence procedures competitive.

Therefore, the disclosure of personal data to third parties not interested in reason for the publication and/or dissemination of the content of the documents subject to study mentioned above indiscriminately, constitutes a non-compliance with the principle of confidentiality regarding the treatment, having, therefore, violated article 5.1.f) of the RGPD.

The respondent, in his capacity as responsible for said treatment, should have adopted and implemented, in a proactive manner, the technical and organizational structures that are appropriate to assess and guarantee a level of adequate to the probable risks of diverse nature and seriousness linked to the data processing carried out that could affect, among others, the principle of confidentiality, establishing for this the security measures that are necessary to prevent the dissemination of personal data to third parties not interested in the competitive bidding procedures and election of members of the School Council within the framework of which the facts subject to infringement.

For these purposes, it is recalled that article 24.2 of the RGPD, in line with what also provided in articles 5.2 and 32.2 transcribed in the Legal Basis above, establishes the following regarding the obligations to be fulfilled by the responsible for the treatment in relation to the "Data protection from the design and default":

"two. The data controller will apply the technical and organizational measures

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with a view to guaranteeing that, by default, they are only processed the personal data that is necessary for each of the specific purposes of the treatment. This obligation will apply to the amount of personal data collected, to the extension of its treatment, its conservation period and its accessibility. Such measures shall in particular ensure that, by default, personal data is not accessible, without the intervention of the person, to an indeterminate number of people physical.” (The underlining is from the AEPD)

Given the foregoing, the argument that the only caution that is applicable in relation to the publications carried out by the public administrations is the one provided for in the seventh additional provision of the LOPDGDD, since it is limited to determining the way in which it must occur the “Identification of the interested parties in the notifications through announcements and publications of administrative acts”, a matter that is not subject to analysis in this procedure as it has been justified in the Precedent of Fact Third of this resolution and that, in any case, would not be an obstacle to analyze the case that concerns us linked to the breach of the principle of confidentiality contained in article 5.1.f) RGPD and based on the facts that have been proven.

Regarding the allegation that in weighing the interests involved, the public interest would prevail in the effectiveness of the notification through the publication and in the guarantee of the exercise of the right to defend interests

legitimate, directly or through associations that protect collective interests that they can appear a posteriori, against the rights of the people involved, whose privacy is affected at minimum range levels, in addition to reiterating the arguments presented regarding the applicability to the case studied of the duty of confidentiality, in the case indicated by the respondent, said associations could exercise the right of access to that information justified their status as interested.

v

Sections b), d) and i) of article 58.2 of the RGD, "Powers", provide the

Next:

“2 Each supervisory authority shall have all of the following powers corrections listed 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 responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;”

“i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

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For the purposes of determining the sanction that could be associated with the mentioned infraction, the following precepts must be taken into account:

Article 83 of the RGPD, under the heading "General conditions for the imposition of administrative fines", establishes in section 5.a) that:

"5. Violations of the following provisions will be sanctioned, according to paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;"

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

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

In parallel, article 83.7 of the RGPD establishes that:

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, sections 1.c), 2, 4 and 5 of article 77 of the LOPDGDD, under the heading "Regime applicable to certain categories of responsible or data processors", establish the following:

"1. The regime established in this article will be applicable to 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 the managers or managers 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 data protection authority must be informed of the

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resolutions that fall in relation to the measures and actions to be refer to 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.”

In accordance with the foregoing, the defendant is responsible for the commission of an infringement of the provisions of article 5.1.f) of the RGPD, typified in article 83.5.a) of the aforementioned legal text and classified as very serious for the purposes of prescription in article 72.1.a) of the LOPDGDD, and may be sanctioned, in accordance with the provided in article 58.2.b) of the RGPD, with a warning.

In this case, the Ministry communicated in its brief of allegations to the initial agreement the adoption of the following measures: a) In future elections to the The School Council will adopt the criterion that the census listings will only be post on the center's internal bulletin board; b) The implementation of the measures pertinent so that every time it is necessary to make a publication with full names and DNI, the computer system itself generates the document respecting the provisions of the seventh additional provision of the LOPDGDD and, particularly, the guidelines issued by the AEPD regarding the digits of the DNI that should be removed from the posts. Later, in the letter of allegations to the proposed resolution indicated that the publications framed in the competitive bidding process will be carried out, as a proactive measure, in a part of the web page of the educational centers that does not allow indexing by part of automated search engines.

However, in none of the pleadings submitted said Ministry has made reference to the adoption of measures aimed at preventing the use of the glass facade of the school to advertise, so that they are visible from the outside of the center, the aforementioned provisional lists and definitive numbers of admitted and non-admitted students per course. On the contrary, in the

allegations to the proposed resolution, the respondent affirmed that "he does not identify legal obligation" so that these lists would have to be published on the internal board of the center as it is a competitive admission process, ignoring that the bulletin board in schools is one of the places established by articles 30.1 and 31.2 and 3 of the Order of March 12, 2013 to publish such listings.

Nor has it indicated the establishment of security mechanisms aimed at to avoid indiscriminate access by third parties not interested in the information of personal nature contained in the provisional and final lists of students published on the web pages of schools.

For which, the defendant should implement a system that ensures a access to that personal information published on the web pages limited and exclusive to people interested in these procedures. As a suggestion, could enable an access system with key and password that would allow only the participants interested in the selective or concurrence procedures competitive access to acts published by this means.

Based on the foregoing, it is considered convenient to apply the provisions of article 58.2.d) of the RGPD, ordering the claimed party to carry out a series of actions to adapt the operations of the type of treatment studied to the www.aepd.es

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provided in article 5.1.f) of the RGPD that has been violated, and must apply the necessary technical and organizational measures to guarantee the proper

adequacy between the principle of confidentiality in data processing

with the publicity of certain administrative acts that contain

Personal data.

Such measures must be adopted by the claimed party within ONE MONTH,

computed from the day following the notification of this resolution

penalty, and must be accredited by the claimed compliance in the same

deadline by providing documentation or any other means of proof

valid in law that allows verifying its adoption and implementation in a

reliable.

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

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE MINISTRY OF EDUCATION, UNIVERSITY AND

PROFESSIONAL TRAINING, with NIF S1511001H, in accordance with the provisions of

article 58.2.b) of the RGPD, a sanction of WARNING for an infringement of the

article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD.

SECOND: ORDER THE MINISTRY OF EDUCATION, UNIVERSITY AND

PROFESSIONAL TRAINING, with NIF S1511001H, in accordance with the provisions of

article 58.2.d) of the RGPD, the adoption of technical and organizational measures

adequate to guarantee the principle of confidentiality, that in what refers to the

School Center studied will focus on preventing the publication of acts

administrative documents containing personal data on the glass facade, and towards the

outside, of the school that concerns us, using the bulletin board

inside the center. In general, said measures will extend to preventing the

information of a personal nature contained in administrative acts subject to

publication in the media established by the regulations applicable to the assumption

are visible and/or accessible from outside the schools, and must
mechanisms must also be implemented to guarantee that access to the content of
Those administrative acts published on the website of the School Centers are
restrict the people interested in the selection procedures or public
attendance in question.

These measures must be adopted, where appropriate, within a period of one month.
computed from the day following the notification of this resolution,
The means of evidence accrediting its compliance must be provided in the same
term.

THIRD

UNIVERSITY AND PROFESSIONAL TRAINING, with NIF S1511001H

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

: NOTIFY this resolution to the MINISTRY OF EDUCATION,

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

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before the Director of the Spanish Agency for Data Protection within a period of
month 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the
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