

□ Procedure No.: PS/00241/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 01/08/2019 filed
claim before the Spanish Data Protection Agency. The claim is

CITY COUNCIL OF FUENTES DE VALDEPERO with NIF
directed against him

P3407700H (hereinafter the claimed one). The grounds on which the claim is based are:

“Due to my employment relationship with the Fuentes de Valdepero City Council,

I had certain "problems" in my gestation period due to the lack of evaluation of
occupational risks and a series of circumstances, due to which I had to present a
written in which not only my personal data such as name or ID, but also
also more sensitive data, such as medical and health data. It seems that

This issue was discussed in an ordinary session held by the Plenary of the City Council
of Fuentes de Valdepero on ***DATE.1, and the minutes of that session contain part of the
writing presented by me, in which you can see the personal data that previously-
mind commented. The reason for my complaint is that said record was posted on the
the town's bulletin board, and I don't know if there is any other publication of the same
mo. Therefore, I consider that my personal data has not been treated in a co-
right and there has been damage to my honor and my dignity.”

Provide a copy of the application explaining your employment and pregnancy status in
in relation to the request for job adaptation to occupational risks, which was

Diagnosed threatened abortion and extended medical leave. The letter is dated

***DATE.2

Photos of a bulletin board, glazed and closed, it seems that located in

the street, because it is on a rustic wall, and contains several sheets in which in

some figure the reference to the name of the claimant and at the end a seal and the signature of the

Mayor. The documents are numbered by subject from 1 to 7. In point 4,

reproduces the document that the claimant submits to the City Council on ***DATE.2

Printed copy of the minutes of the ordinary session held by the plenary session of the

Municipality of Fuentes de Valdepero of ***DATE.1 appearing on the agenda

in its point 4 a debate on the matter, and on the risk prevention service

employment, their separation, in relation to the claimant. Then it plays

the claimant's claim in its entirety with all its data and information. I know

appreciates that the minutes are signed and certified by the secretary on 08/21/2018.

SECOND: In view of the facts stated, the claim was transferred on 02/15/2019

notice to the person claimed, so that he informs:

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1. Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that the

claimant has received communication of that decision.

1.

two.

Report on the causes that have motivated the incidence that has originated the

claim.

Report on the measures adopted to prevent incidents from occurring

Similar.

4. Any other that you consider relevant.”

Sending through the electronic platform notifies resulted in

Availability date: 02/15/2019 11:19:40

Automatic rejection date: 02/26/2019 00:00:00

The automatic rejection occurs, in general, after having elapsed

ten calendar days 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

Public administrations. And in particular, after the term established by the

Administration acting in accordance with the specific legal regulations applicable to

app.

The transfer is reiterated by the certified ordinary modality, resulting in

su delivered 3/1/2019. Despite this, the respondent did not respond to the request for information.

on the matter, nor the measures taken.

THIRD: The claim was admitted for processing by the director of the AEPD on

06/19/2019.

FOURTH: On 11/14/2019, the director of the AEPD agreed:

FIRST: START A SANCTIONING PROCEDURE

to the CITY COUNCIL OF FUENTES DE VALDEPERO, with NIF P3407700H, for the

alleged infringement of article 5.1 c) of the RGPD in accordance with the provisions of art. 83.5

of the aforementioned RGPD.

FIFTH: Against the initiation agreement, the one claimed on 11/22/2019 indicates:

-We request that entry registration No. 018231/2019 be related to the procedure

PS/00241/2019, since on 01/16/2019 “we received a notification about a claim

tion before the AEPD against the city council. of Sources of Valdepero.

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“Dated 4/5/2019, this city hall. carries out a generic entry procedure through of the electronic headquarters of the AEPD with registration 018231/2019 with report of causes that gave rise to the incidence and reports on the measures adopted.”

In the document dated 04/05/2019, the respondent indicates:

1)

“Since the beginning of the legislature, a councilor from the City Council has challenged all the minutes of the plenary, and attached a document that collects what according to his cri- The matter has not been correctly reflected in the drafting of the minutes”. Indicates that “In the July 2019 session, said document included “the data that collected in your claim” (specify that it is from 2018, 2019). The include di- many data in the minutes was a serious error by not realizing them and not having canceled it or at least having published them simply with acronyms which from the City Council is recognized without further ado and they apologize to the aggrieved.

two)

The data was exposed to the public only on the bulletin board. City Hall services for a week, the usual time that is maintained in the minutes of the plenary sessions.

3) Courses and actions will be carried out to comply with the data protection motive. This document is also notified to the

clamant.

4) Copy of another document signed by the secretary on 04/05/2019 indicating

the causes that have motivated the incidence of the claim that on 19

July 2018, a plenary session was held at the City Hall and in the elaboration

In the minutes, a matter dealt with on the claim is literally transcribed.

collecting personal data and health data referring to the

article 229 of the ROF and based on an information practice, the

complete minutes on the notice board of the Town Hall for a period of

7 days.

5) A copy of another letter signed on 04/05/2019 report on measures is provided

taken to prevent similar incidents from occurring, acknowledging

the error committed based on the principle of publicity, and for not having used

Appropriate measures have been taken to anonymize personal data of category

special

6) They are immersed in the implementation of the regulation and in training

staff to prevent similar incidents from occurring again

SIXTH: Proposed resolution of literal is issued:

“IMPOSE TO THE CITY COUNCIL OF SOURCES OF VALDEPERO, with NIF

P3407700H, for a violation of Article 5.1.c) of the RGPD, in accordance with the

article 83.5 of the RGPD, a sanction of warning.”

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PROVEN FACTS

1) The city council claimed publicly exposed the data of the claimant

on a brief that it presented on ***DATE.2

2) The brief of ***DATE.2 contains the data of the claimant in relation to the

request you make for an assessment of occupational risks given your situation of

pregnancy, circumstances of the position that she performs and that she is on leave due to

threat of abortion making requests and consultations on prevention of

occupational hazards.

3) On a glazed and closed board located on a public road, they appear according to

photographs provided by the claimant the copy of the ordinary SESSION MINUTES

held by the plenary session of the town council on ***DATE.1. on the agenda

the plaintiff's brief that has been exposed can be read in its entirety.

4) The respondent states that the record was removed from said space, ignoring the

time it has been exposed, since the photos provided by the claimant of the

board do not specify the date of completion, although the minutes bear the date of signature of

08/21/2018, the claimant claims on 01/08/2019.

FOUNDATIONS OF LAW

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 Spanish Data Protection Agency is competent to resolve

this procedure.

Yo

From the point of view of data protection, the publication of the minutes

of the local Plenaries is a data treatment that we can consider as a

communication, transfer, externalization of data that in this case in an integral way com-

The claimant's request for health data contained in the record was attached.

Article 9.1 of the RGPD indicates:

“ The processing of personal data that reveals the origin racial or ethnic origin, political opinions, religious or philosophical convictions, or union affiliation, and the processing of genetic data, biometric data aimed at uniquely identify a natural person, data related to health or data relating to the sexual life or sexual orientation of a natural person.”

The Law of bases of the local regime, within its Title V "community provisions" to local entities" dedicates Chapter IV to "citizen information and participation". dadanas", article 70.2 being able to stand out within it, when it provides:

“a) The agreements adopted by the local corporations are published or notified in the manner provided by law.”

The regulation referred to in the Law of Bases of the Local Regime can be found contradict in its development regulation, the Royal Decree 2568/1986, of 28/11, by which

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approves the Regulations for the Organization, Functioning and Legal Regime of the Local Entities.

"Article 229.2

1. The calls and agendas of the plenary sessions will be transmitted to the local social communication media and will be made public on the Board of Entity announcements.
2. Without prejudice to the provisions of article 70.2 of Law 7/1985, of 2/04, the Corporation will give summarized publicity of the content of the plenary sessions and of all the

agreements of the Plenary and the Government Commission, as well as the resolutions of the Alcalde and those dictated by his delegation by the Delegates.”

Therefore, there is sufficient legal authorization in local regulations for the publication of the minutes of the sessions. However, another of the basic principles of de-

The fundamental right of data protection is that of data minimization, to which

Refers to article 5.1 c) of the RGPD, which indicates:

"1. The personal data will be:

“c) adequate, pertinent and limited to what is necessary in relation to the purposes for those who are treated;”

The fact that the sessions are public, in terms of attendance, does not mean means, not at least necessarily, that all agreements and resolutions of the same should also be made public in their entirety.

Not specifying what should be the summary that can be published of the sessions plenary sessions, there is no legal mandate that said summary must offer the same content had that article 109 prevents the minutes, and therefore, the provision part of the agreements that are adopted, and on the other, the essential core of the right to information of the neighbors remains intact as long as they are always and independently publication of said summary, they can directly exercise the right of access at the information.

The "summary" referred to in said precept recommends eliminating from the same those personal data that are not adequate, pertinent and are excessive tives with the purpose of offering “generic” information to the neighbors, and much less must contain personal data of special categories such as those of the article 9.1 of the GDPR.

III

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles

costs for treatment, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article. Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 maximum. mo or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the of greater amount.”

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However, article 83.7 of the RGPD indicates:

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

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

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation. glament;

The Spanish legal system has chosen not to sanction with a fine those public entities, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDG: “1. The regime established in this article will be applicable to treatments for which they are responsible or in charge:

c) The General Administration of the State, the Administrations of the communities

autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

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

organic, the data protection authority that is competent will issue a resolution

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

measures to be taken to stop the conduct or correct the effects of the

offense that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the

that depends hierarchically, where appropriate, and to those affected who had the condition

interested party, if any.

4. The data protection authority must be notified of the resolutions that

fall in relation to the measures and actions referred to in the sections

previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions

of the autonomous communities the actions carried out and the resolutions issued

under this article.

6. When the competent authority is the Spanish Data Protection Agency,

this will publish on its website with due separation the resolutions referring to

the entities of section 1 of this article, with express indication of the identity of the

responsible or in charge of the treatment that had committed the infraction.”

Article 72 of the LOPDDGG indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

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following:

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

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each control authority may “order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”.

It is manifested by the claimed one who removed the document and is taking measures on data protection, for which no additional measure will be required to be implemented.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE TO THE CITY COUNCIL OF FUENTES DE VALDEPERO, with NIF P3407700H, for a violation of Article 5.1.c) of the RGPD, in accordance with the article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF SOURCES OF VALDEPERO.

THIRD

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

: COMMUNICATE this resolution to the OMBUDSMAN, of

THIRD: 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 period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and paragraph 5 of the additional provision fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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-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 of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation 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

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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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