

□ Procedure No.: PS/00427/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 06/17/2020 filed
claim before the Spanish Data Protection Agency. The claim is
directed against GIJÓN CITY COUNCIL, with NIF P3302400A (hereinafter, the
reclaimed). The grounds on which the claim is based are, in short: that the
02/14/2020 sent an email to the DPD of the claimed person to check where
can access the record of treatment activities and if the activities of
treatment of the Municipal Sports Board of the aforementioned City Council (which does not have
declared DPD) depend on the same DPD (that of the City Council), and where you can
access them. There is no response from the DPD.

SECOND: On 08/14/2020, the claim was transferred to the respondent,
in accordance with the provisions of article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter, LOPDGDD), in order for it to proceed with its analysis, notify the
claimant of the decision adopted and provide this Agency with information in this regard.
On 09/22/2020, the respondent sent a response in which he sets out the functions of the DPD,
response times for the actions that are incumbent on it, how to contact them. I know
It follows from this response that the City Council has not established a registry of
treatment activities.

On the other hand, it indicates that the query addressed by the complainant to the DPD was not
produced by the means established by the local entity (municipal website or offices of

citizen attention, as explained in the link "contact with the Delegate of Data Protection"), so it cannot be understood that there was a lack of response. Y Nor was there a breach of the deadline, provided solely for the purposes of answer claims ex art.37 LOPDGDD; when the affected person addresses the DPD in claim, the response period will be two months or one month, depending on Present directly or received through the AEPD; and for what they are not claims (queries, resolution of doubts, etc.), it is a procedure without term established by what will govern article 21.3 Law 39/2015.

It adds that it is the data controller who must provide the interested party with the access to the record of treatment activities and that said record is in validation and publication process; that to date the work related to the register of treatment activities have not yet reached the publication phase, due to the delays arising from the start of a new mandate of the corporation and its consequent readjustments of competences, together with the difficulties of the current

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/11

socio-health crisis.

THIRD: On 11/16/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim.

FOURTH: On 01/25/2021 the Director of the Spanish Data Protection Agency agreed to initiate a sanctioning procedure against the person claimed for the presumed infraction of the article 30 of the RGPD, typified in article 83.4.a) of the aforementioned RGPD.

FIFTH: Once the initiation agreement was notified, dated 02/10/2021, the respondent presented brief of allegations indicating, in summary, the following:

. The GIJÓN CITY COUNCIL points out that on 03/15/2019 the Roadmap was approved for adaptation to the new LOPDGDD, among whose measures was the preparation of the RAT, and attaches an email about the preparatory work carried out finished. On this issue, it expressly states that “work has begun even when you are not in a position to do so (the activity log of treatment) accessible to the public through its publication.”;

. That the configuration of the municipal government team in mid-2019 led to a series of changes in the municipal internal organization. Thus, by agreement of the Local Government Board of 07/28/2020, the list of jobs was approved, suppressing the Planning and Modernization Service and creating the Service of Strategy and Coordination of Resources, who is attributed the assistance, support technical and material to the Data Protection Delegate;

. That the respondent has had a limited increase in staff in recent years and difficulties in the optimal performance of services, to which has been added the current socio-sanitary crisis derived from COVI-19, which has caused delays in some processes based on more peremptory and urgent needs;

. That, however, it has decided to promote and implement the policies of security and data protection by bidding for a contract, currently in process, to perimeter security management solutions, event correlation of security, training in security measures, adaptation to the National Scheme of Security (ENS) and the General Data Protection Regulation (RGPD);

. That the immaturity of the RAT, which prevents its publication, contrasts with the commitment of the claimed with the protection of the rights of minors, having adopted measures aimed at proactively ensuring the protection of minors in

their relationship with the entity.

SIXTH: On 03/02/2021 a period of practice tests began,

remembering the following

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services that are part of file E/06737/2020.
- Consider reproduced for evidentiary purposes, the allegations to the initial agreement

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/11

presented by the claimed party and the accompanying documentation.

SEVENTH: On 06/03/2021, a resolution proposal was formulated in the sense of that the Director of the Spanish Agency for Data Protection directs a warning to the entity CITY COUNCIL OF GIJÓN, for an infraction of the articles 30 of the RGPD and 31 of the LOPDGDD, typified in Article 83.4.a) of the GDPR.

Likewise, it was proposed that the Director of the Spanish Agency for the Protection of Data is required from the GIJÓN CITY COUNCIL so that, within the period determine, adopt the necessary measures to adapt its actions to the regulations of protection of personal data, with the scope expressed in the Foundations of Rights of the aforementioned motion for a resolution.

EIGHTH: The entity CITY COUNCIL OF GIJÓN was notified of the proposed resolution, dated 06/17/2021, this Agency received a letter of allegations in which requests that the obligations regarding the registration of

treatment activities and the file of the actions is agreed based on the

following considerations:

. It questions what is expressed in the Second Proven Fact, since it understands that it does not include the circumstances expressed in the allegations made to the agreement to start the process. Considers that the process of adaptation to the GDPR.

. In accordance with Recital 82 of the RGD, the registration of activities of treatment is an instrument to prove that the action of the person in charge complies with the regulations, so that the mere absence of publicity of this inventory of activities does not imply a breach. The opposite would be a kind of strict liability.

. In the same way, the criteria for the imposition of a fine established in the article 83 of the RGD are also revealers of the non-existence of conduct punishable, including the means and measures implemented, as well as the practices of treatment of the Municipal Sports Board that were provided as examples, in accordance with the RGD and with the principle of proactive responsibility.

. In any case, on 06/04/2021, by Resolution of the Mayor's Office, the "Instruction 2/2021, of the Registry of personal data processing activities", according to which the Inventory of treatment activities will be proposed by the General Directorate of Services for final approval by Resolution of Mayor and publication. The Inventory will be accessible by electronic means in various official media and channels (Official Gazette of the Principality of Asturias, municipal website of transparency and on the municipal intranet); and will be kept updated.

And on 06/16/2021, said "Inventory of the registration of personal data processing activities" by Resolution of the Mayor, and published in writing and in electronic format, as can be verified through the

website “gijon.es” (url

“https://www.gijon.es/es/publicaciones/inventario-del-registro-de-personal-data-processing-activities”).

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/11

According to the respondent, this Inventory, which is subject to a process of adaptation and continuous improvement, groups the treatments by common and specific subjects of areas, services or administrative units, amounting to a total of forty-five categories, which also includes those that keep relation to the claim and initiation of this sanctioning procedure, regarding to the Municipal Sports Board.

The pleadings brief includes a link to the aforementioned “Inventory”, in its initial edition, which is accessible through the aforementioned url. It is verified that for each treatment activity details its purpose, legal basis, data category personal, category of interested parties, recipients of communications, international transfers, retention periods and technical measures and organizational. The identity of the data controller is also detailed.

(GIJÓN CITY COUNCIL) and the contact details of the Protection Delegate of data.

Of the actions carried out in this proceeding, there have been accredited the following:

PROVEN FACTS

FIRST: On 06/17/2020 you have entry in the Spanish Agency for the Protection of

Written data of the claimant stating that on 02-14-2020 he sent mail email to the DPD of the claimed person to see where the Registry can be accessed of the Processing Activities of the entity.

SECOND: To date, the Gijón City Council does not have the Registry of Treatment Activities. The claimed entity itself, in the writings it has addressed to the Spanish Agency for Data Protection on the occasion of the claim outlined in the First Proven Fact, has recognized that the Registry of Activities of Treatment is in the validation process and that the related works with said Registry have not reached the publication phase.

FOUNDATIONS OF LAW

Yo

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

II

The facts claimed materialize in the absence of the Registry of Activities of Treatment by the claimant.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/11

Article 30, "Record of treatment activities", of the RGPD establishes that:

"1. Each person in charge and, where appropriate, their representative will keep a record of the activities of Treatment carried out under your responsibility. This record must contain all

information listed below:

a) the name and contact details of the person in charge and, where appropriate, of the co-controller, of the representative of the person in charge, and of the data protection delegate;

b) the purposes of the treatment;

c) a description of the categories of data subjects and the categories of personal data;

d) the categories of recipients to whom the data was or will be disclosed

personal, including recipients in third countries or international organizations;

e) where appropriate, transfers of personal data to a third country or organization

including identification of such third country or international organization and, where

In the case of the transfers indicated in article 49, section 1, second paragraph, the

adequate collateral documentation;

f) when possible, the periods foreseen for the suppression of the different categories of

data;

g) where possible, a general description of the technical and organizational measures of

security referred to in article 32, paragraph 1.

2. Each manager and, where appropriate, the manager's representative, will keep a record of all

the categories of processing activities carried out on behalf of a controller that

contain:

a) the name and contact details of the person in charge or persons in charge and of each person responsible for

account of which the person in charge acts, and, where appropriate, of the representative of the person in charge or of the manager, and the data protection delegate;

b) the categories of processing carried out on behalf of each controller;

c) where appropriate, transfers of personal data to a third country or organization

including identification of such third country or international organization and, where

In the case of the transfers indicated in article 49, section 1, second paragraph, the

adequate collateral documentation;

d) where possible, a general description of the technical and organizational measures of security referred to in article 30, paragraph 1.

3. The records referred to in sections 1 and 2 shall be in writing, including in electronic.

4. The person in charge or the person in charge of the treatment and, where appropriate, the representative of the
The person in charge or the person in charge will make the record available to the control authority that
I requested.

5. The obligations indicated in sections 1 and 2 will not apply to any company or organization that employs less than 250 people, unless the treatment it performs may entail a risk to the rights and freedoms of the interested parties, is not occasional, or includes special categories of personal data indicated in article 9, paragraph 1, or personal data related to criminal convictions and offenses referred to in article 10”.

On the other hand, article 31 of the LOPDGDD establishes the following:

"1. Those responsible and in charge of the treatment or, where appropriate, their representatives must maintain the record of treatment activities referred to in article 30 of the Regulation (EU) 2016/679, unless the exception provided for in its section is applicable

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

6/11

5.

The registry, which may be organized around structured sets of data, should specify, according to their purposes, the treatment activities carried out and the other circumstances established in the aforementioned regulation.

When the person in charge or the person in charge of the treatment has designated a delegate of

data protection must inform you of any addition, modification or exclusion in the record content.

2. The subjects listed in article 77.1 of this organic law will make public an inventory of its treatment activities accessible by electronic means, which will include the information established in article 30 of Regulation (EU) 2016/679 and its legal basis”.

III

The aforementioned regulations establish the obligation of those responsible and in charge of processing of personal data to keep a record of the activities of the treatment. In addition, in the case of the subjects listed in article 77.1 of the LOPDGDD, including the entities that make up the Administration Local, as the claimed party, is also obliged to make said record public and accessible by electronic means.

In this case, the documentation in the file proves that the person claimed violated article 30 of the RGPD, “Registration of treatment activities”, by not having prepared and published this record until June 2021. As stated in the written statement of allegations to the proposal and in the attached documentation, the “Inventory of the record of personal data processing activities” of the GIJÓN CITY COUNCIL was approved by Resolution of the Mayor's Office and 06/16/2021.

The defendant himself, prior to the aforementioned hearing process, had recognized that it is the responsibility of the data controller to provide the interested party with access to the RAT; and that, where appropriate, said record was in the process of being validated, without, at the same time, date in which it formulates its allegations at the opening of the procedure, the works related to said record had reached the publication stage. and raised these initial allegations to the opening agree with this fact, noting that This was due to delays arising from the start of a new mandate of the

municipal corporation in mid-2019, of its consequent readjustments

competencies and the difficulties caused by the current social and health crisis.

According to the entity claimed, the configuration of the Municipal Government team

mid-2019, motivated by local elections, brought about a series of changes

in the municipal internal organization. Through the Governing Board Agreement

Local, on 07/28/2020, the current job list was approved,

suppressing the Planning and Modernization Service and creating the Service of

Strategy and Coordination of Resources, who is credited with, among others, the

assistance, technical and material support to the Data Protection Delegate for the

performance of their duties.

On the other hand, the complainant pointed out that he has seen how in recent years by

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

7/11

certain circumstances have imposed a series of limitations and difficulties

in the optimal performance of services, to which the current crisis has come to join

socio-sanitary derived from COVI-19, which has caused delays in some processes

under way, based on more peremptory and urgent needs.

The respondent explained that on 03/15/2019 he approved the "Road Map" for adaptation to

the new LOPDGDD, among whose measures was the elaboration of the register of

treatment activities, and expressly stated that he was not in

conditions of making it accessible to citizens through its publication.

It also reported that the security and data protection policies were being

promoted through the bidding of a contract to try to provide solutions of

management derived from perimeter security, correlation of security events, training in security measures, adaptation to the National Security Scheme (ENS) and the RGPD, currently in process. Finally, I point out that the "immaturity" of the register of treatment activities prevented its publication.

In short, the respondent, in his responses to this body, attached evidence that would show the existence of the preparatory work for the elaboration of the indicated record, although such work had not been completed at the time the this procedure, so that said Registry had not been prepared at that time. date, nor at the moment in which the arguments are presented at the opening.

It was expressly admitted that it was not in a position to make the registration of treatment activities to citizens through its publication.

These circumstances are referred to in the Second Proven Fact, which is of the information provided by the claimed entity itself. They are not understood, consequently, that the allegations to the proposed resolution question what expressed in this proven fact.

As for the circumstances alleged to justify this delay in adapting to the RGPD, the proposed resolution warned the respondent that said Regulation is It is in force since 05/24/2016 and fully applicable since 05/25/2018.

Therefore, the obligation to prepare the register of treatment activities is very prior to the constitution of the new municipal corporation and the outbreak of the pandemic. If the aforementioned City Council claimed, to save the alleged limitations, recently began the procedures for the bidding of a contract whose purpose is the development of the necessary tasks to comply with that adaptation to the RGPD, either he could have formalized said contract years before.

On the other hand, in its brief of allegations to the proposed resolution, the entity Respondent considers that the lack of publicity of the register of activities of

treatment does not imply a breach, taking into account that this record is

configured in Recital 82 of the RGPD only as an instrument "(82)

To demonstrate compliance with this Regulation, the person in charge or the

The person in charge of the treatment must keep records of the treatment activities

under its responsibility".

This instrumental nature of the record of treatment activities is true, but

so is the obligation to maintain it. Failure to comply with this obligation is

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/11

constituting an infringement, as set forth in the following Legal Basis.

Therefore, in the present case, the non-compliance with the established

in articles 30 of the RGPD and 31 of the LOPDGDD.

IV

Article 83.4 a) of the RGPD, considers that the infringement of "the obligations of the

responsible and of the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43" is

punishable in accordance with section 4 of the aforementioned article 83 of the aforementioned

RGPD, "with administrative fines of a maximum of €10,000,000 or, in the case of

a company, of an amount equivalent to a maximum of 2% of the turnover

global annual total of the previous financial year, opting for the highest amount.

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute

infractions the acts and behaviors referred to in sections 4, 5 and 6 of the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law".

For the purposes of the limitation period, article 73 of the LOPDGDD indicates:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, they are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

n) Not having the record of treatment activities established in article 30 of the Regulation (EU) 2016/679.

(...)”.

v

The LOPDGDD in its article 77, “Regime applicable to certain categories of responsible or in charge of the treatment”, establishes the following:

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

a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

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

d) Public bodies and public law entities linked to or dependent on the Public administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

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

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 commit any of the the infractions referred to in articles 72 to 74 of this organic law, the authority of www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

9/11

protection of data that is competent will issue a resolution sanctioning them with warning. The resolution will also establish the measures to be adopted so that stop the behavior or correct 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 of which depends hierarchically, where appropriate, and those affected who had the status of interested, if any.

3. Without prejudice to what is established in the previous section, the data protection authority

It will also propose the initiation of disciplinary actions when there are indications enough for it. In this case, the procedure and the sanctions to be applied will be the established in the legislation on the disciplinary or sanctioning regime resulting from app.

Likewise, when the infractions are attributable to authorities and directors, and the existence of technical reports or recommendations for treatment that had not been duly attended to, the resolution in which the sanction is imposed will include a reprimand with the name of the responsible position and the publication will be ordered in the Official Gazette of the corresponding State or Autonomous Community.

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

in relation to the measures and actions referred to in the preceding sections.

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

6. When the competent authority is the Spanish Agency for Data Protection, 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 person in charge or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority,

It will be, in terms of the publicity of these resolutions, to what its regulations have specific”.

In the case at hand, it is found that the defendant, as he has

confirmed in its response to the information requirement of this AEPD, has failed to comply the obligation to have the RAT established, as well as to make it public by means electronics.

Said conduct constitutes, on the part of the defendant, an infraction of the provided in articles 30 of the RGPD and 31 of the LOPDGDD.

It should be noted that the RGPD, without prejudice to the provisions of article 83, contemplates in its article 77 the possibility of directing a warning to correct the non-compliance with the provisions contemplated in said Regulation and in the aforementioned Organic Law by those responsible or in charge listed in section 1.

This being the case, it is not possible to apply in this case the circumstances established to graduate the administrative fines, to which the CITY COUNCIL OF GIJÓN in his brief of arguments to the proposed resolution.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/11

On the other hand, it is contemplated that the resolution issued may establish the measures to be taken to stop the behavior, correct the effects of the infraction that had been committed and the necessary adaptation is carried out, in this case, to the requirements contemplated in article 30 of the RGPD, as well as the provision of means accrediting compliance with the requirements.

Thus, in accordance with the provisions of the aforementioned article 77 of the LOPD, by the instructor of the procedure, a proposal for a resolution was formulated so that the Director of the AEPD agreed to require the responsible entity to adapt its actions to the personal data protection regulations, proceeding to prepare the registration of treatment activities and arranging what is necessary to make it accessible by electronic media.

However, on the occasion of the hearing procedure for the proposed resolution, the claimed has proven to have fulfilled these obligations. It is proven that, by Resolution of the Mayor's Office dated 06/16/2021, said

“Inventory of the record of personal data processing activities” and published through the web “gijon.es” (url “<https://www.gijon.es/es/publicaciones/inventario-del-record-of-activities-of-treatment-of-personal-data>”).

The pleadings brief included a link to the aforementioned “Inventory”, in its initial edition.

It is verified that the treatments are grouped by common subjects and specific to areas, services or administrative units; and that for each treatment activity details its purpose, legal basis, category of personal data, category of interested parties, recipients of communications, international transfers,

retention periods and technical and organizational measures. It also details the identity of the data controller (GIJÓN CITY COUNCIL) and the data of Contact of the Data Protection Delegate.

This “Inventory”, due to its content and structure, conforms to the regulated provisions of articles 30 of the RGPD and 31 of the LOPD. Therefore, to date, it is understood fulfilled the obligation to keep a record of treatment activities carried out under the responsibility of the CITY COUNCIL OF GIJÓN, not resulting from the imposition of additional measures.

This statement does not imply any pronouncement on the regularity or legality of the treatment activities described in the record provided by the claimed party, nor on its purpose or legal basis, as they are aspects that exceed the object of the present procedure.

Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SEND A WARNING to the entity CITY COUNCIL OF GIJÓN,
with NIF P3302400A, for an infringement of articles 30 of the RGPD and 31 of the LOPDGDD, typified in Article 83.4.a) of the RGPD.

SECOND: NOTIFY this resolution to the entity CITY COUNCIL OF
GIJON.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/11

THIRD

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

: COMMUNICATE this resolution to the Ombudsman,

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

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

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

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

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es