

□ File No.: EXP202208256

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 06/30/2022, this Agency received a document submitted
by A.A.A. (hereinafter, the claiming party), through which the claim is made
against SAN ANDRÉS DEL RABANEDO CITY COUNCIL with NIF P2414500E (in
hereinafter, the CITY COUNCIL), for a possible breach of the provisions of the
personal data protection regulations.

The reasons on which the claim is based are the following:

“On ***DATE.1, the San Andrés del Rabanedo city council published a bulletin
written by Mr. B.B.B., in which he publishes the email without prior
authorization. Said email is ***EMAIL.1. Which in internet search engines gives
direct link to the official bulletin indicated above to the exact address to said
bulletin. The data is found on page XX of the Bocyl. He went to the town hall
for the elimination of said data and after a month it is still not eliminated (...).”

Attach the following documentation:

- Copy of the Official Gazette of Castilla y León (hereinafter, BOCYL) of
***DATE.1 on which the personal email information of the company is published
complaining party.

- Copy of the document presented to the CITY COUNCIL on 06/01/2022,
requesting the withdrawal of said data, and with the following text:

“[...]

By the Local Government Board of this Town Hall held last

***DATE.2 the final approval agreement of (...) was adopted.

Said agreement was sent by the city council to the BOCYL for its publication, which has taken place in the past ***DATE.1. As can be seen in the document number 1 attached, the City Council sent the BOCYL a text of the agreement that includes, without necessity and without my consent, my email address personal and private, with the serious addition that from the website of the official newspaper regional my email address appears conspicuously prominent and By clicking on it, anyone can send emails to the exhibitor.

In other words, an email address has been made public

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/10

completely private and has been made accessible to anyone, even if you don't know your headline.

The damage has already occurred to those who expose with a practice prohibited both by the national legislation (...) as well as by the legislation of the European Community (...), which disavow the use and public dissemination that has been given to my personal and private account of e-mail.

[...]"

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), on 07/27/2022 the claim was transferred to the TOWN HALL, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements

provided for in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on 08/01/2022 as stated in the acknowledgment of receipt that works in the file; without having been received by the Agency response to it.

THIRD: On 09/30/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

FOURTH: On 11/25/2022, the Director of the Spanish Protection Agency de Datos agreed to initiate a sanctioning procedure against the CITY COUNCIL, in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of the Article 5.1.c) of the GDPR, typified in Article 83.5.a) of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to Data Processing Personal Information and the Free Circulation of these Data (hereinafter, GDPR).

FIFTH: On 11/28/2022, the CITY COUNCIL was notified of the aforementioned start in accordance with the rules established in the LPACAP and, on 12/12/2022, submitted a pleadings brief in which, in summary, it stated the following:

“[...]

In response to the request to exercise the right of deletion by Ms. A.A.A., (...), the following measures were taken:

a) The incident was notified to the Official Gazette of Castilla y León, on the date

*** DATE.3, requesting the deletion of the personal email of the affected party, in response to the request that came to this City Council. in bliss notification was reported so that they were fully aware of the incident and to provide the relevant support. (...). No response was received for

written.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/10

a) The Technician responsible for the Urban Planning service maintained communications telephone calls with those responsible for BOCYL, in which, upon request rectification, you were informed that official gazettes are not subject to modification once published, being only possible an announcement of rectification in a later bulletin, an announcement that would be absurd in a case like this, since the claimant's email would once again be advertising object.

Notwithstanding the foregoing, and following the recommendation of the Protection delegate of Data of the City Council of San Andrés del Rabanado, has been sent to the BOCYL new written request to comply with the right to suppress the claimant. (...). Any response or subsequent action will be communicated to the AEPD.

[...]"

Along with the letter, submit the following documentation:

- Copy of the "Request for deletion of personal data in the Bulletin announcement number XX/XXXX" sent by the CITY COUNCIL to the BOCYL, on date 05/25/2022 at 13:28. The content is as follows:

"Subject: Request for deletion of personal data in Bulletin announcement number 94/2022.

Having seen the announcement published in the Bulletin number XX, dated ***DATE.1, in

the one that by mistake has been maintained in the agreement object of the publication the personal email address on page XXXX (appears as a link highlighted in blue), according to (...), it is requested that with the maximum urgency said data is eliminated for which purpose a new announcement is sent in replacement of rectified (...).

- Copy of the "Request to exercise the right to delete data referred to in Bulletin No. XX/XXXX, ***DATE.1" sent by TOWN HALL to BOCYL, on 12/12/2022 at 10:39. Its content is the next:

"[...]

On May 26, 2022, we send your office a request to exercise of the right to delete personal data, referring to the publication of the personal email address on page XXXX (where it appears as a link highlighted in blue), where we requested the deletion of said personal data (...).

We reiterate our request as we have not received a written response from our communication dated May 26, 2022.

[...]

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/10

That under the protection of the exercise of the right of the affected person who has sent us his request, Ms. A.A.A., we forward the request so that it can proceed to agree the deletion of personal data on which the right is exercised

(...).

Namely: that the deletion of the data in the case at hand materializes

in the deindexation of the links that are offered in the search engines of

internet by entering the personal email of the affected person. (...)"

SIXTH: On 01/24/2023, the investigating body of the procedure agreed to consider

reproduced for evidentiary purposes the claim filed by the claimant

and its documentation, the documents obtained and generated during the phase of

admission to processing of the claim; as well as the allegations to the initiation agreement

of the referenced sanctioning procedure, presented by the CITY COUNCIL, and the

accompanying documentation.

SEVENTH: On 02/09/2023, the instructing body of the disciplinary procedure

formulated a resolution proposal, in which it proposes that the Director of this

Agency imposes a warning sanction on the CITY COUNCIL OF SAN

ANDRÉS DEL RABANEDO, with NIF P2414500E, for a violation of article 5.1.c)

of the GDPR, typified in article 83.5.a) of the GDPR.

This proposed resolution, which was notified to the CITY COUNCIL in accordance with the

standards established in the LPACAP, was collected on 02/15/2023, as stated

in the acknowledgment of receipt in the file.

EIGHTH: On 02/27/2023, this Agency receives, in due time and form,

letter from the CITY COUNCIL in which, in summary, it stated the following:

"[...]

We record that under Article 17.2 of the General Regulation of

Data protection and in our condition, the city council of San Andrés del

Rabanedo, responsible for data processing (...), adopted as measures

reasonable to transfer to those who are processing the personal data (in this case the

Official Gazette of Castilla y León) referring to the request of the interested party, 2

communications requesting the deletion of the personal data reason for the claim by the affected party, indicating that said data be deleted. (...). Without get any answer.

After what happened and with the pretense that the situation that happened does not happen again produce, the municipality of San Andrés del Rabanedo has taken the following measures:

1) It has been made available to all labor personnel, officials, etc., the Safety Manual of the San Andrés del Rabanedo City Hall.

2) The administrative file is being processed for legal approval form of the Safety Manual.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/10

3) As a consequence of the events that occurred, and in order to create a culture of data protection, training has been carried out for the entire staff of the San Andrés de Rabanedo City Council. (...)

4) Moreover, with the idea that its diffusion is general, and with the intention that the workers themselves of the City Council can have always said formation, we have proceeded to the recording of said formation of 2 hours referred to the General Data Protection Regulation (general provisions, object, scope of material application, scope territory, principles, rights of the interested party, responsible and in charge of treatment, the figure of the data protection delegate, security of the data, responsibilities and sanctions, control authorities, the importance of

the Spanish Data Protection Agency, among some issues that are picked up in formation).

5) The clauses of the documents of the City hall.

6) A corporate email has been created for the DPD of the City Council of the San Andrés del Rabanedo so that the workers can maintain contact the delegate to receive advice, when doubts arise or issues related to the transfer of data or data collection or any Consultation regarding data protection.

7) A document manager tool has been contracted for the use and management of the clauses in the documentation with which the City Council works. (Lefebvre).

Attached to the letter is the following documentation:

- Copy of the "Request for deletion of personal data in the Bulletin announcement number XX/XXXX" sent by the CITY COUNCIL to the BOCYL, on date 05/25/2022 at 13:28. The content is indicated in the fifth point, of the "Background" section of this resolution.

- Copy of the "Request to exercise the right to delete data referred to in Bulletin No. XX/XXXX, ***DATE.1" sent by the TOWN HALL to BOCYL, on 12/12/2022 at 10:39. The content is the one indicated in the fifth point, of the "Background" section, of this resolution.

- Copy of the email, dated 02/05/2023, sent from the email address ***EMAIL.1, which convenes a training session on the protection of data to all employees of the City of San Andrés del Rabanedo.

The content is as follows:

"Good morning,

Next Monday, February 13, 2023, from 10:00 a.m. to 12:00 p.m. they will give us a telematic talk on Data Protection through the TEAMS application.

In this talk, the person responsible for data protection will give us a introduction on the matter and will remain at your disposal to ask the doubts you have. From what they tell us, this talk will be recorded for its subsequent viewing by the employees of your Departments, or if it consider it necessary for a member of your Department to attend, for its special use of data. There will be a computer connected to the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/10

big screen in the plenary hall for those who want to attend

face-to-face For those who prefer to connect online,

Being through teams, all I need is for you to let me know your email address to send you the link.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On ***DATE.1 the Agreement of ***DATE.2 of the

Local Government Board regarding the final approval of (...), which included

the personal email information of the complaining party (***EMAIL.1).

SECOND: On 05/26/2022 the CITY COUNCIL sends a request to the BOCYL in the requesting the deletion of the party's personal email address

claimant appearing in the agreement published in Bulletin No. XX/XXXX, of

***DATE.1.

THIRD: On 06/01/2022 the claimant requests the CITY COUNCIL to withdraw of the personal data of your email in the BOCYL of *** DATE.1, whose content is indicated in the "Background" section, fifth point, of this resolution.

FOURTH: On 12/12/2022 the CITY COUNCIL reiterates its request for elimination to the BOCYL, whose content is indicated in the "Background" section, fifth point, of this resolution.

FIFTH: As a result of the knowledge of this claim, the TOWN HALL has adopted measures regarding the facts that are the object of the claim, as well as to avoid repeat a similar situation.

FUNDAMENTALS OF LAW

Competition and applicable regulations

Yo

In accordance with the powers that article 58.2 of the RGPD grants to each authority of control and as established in articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD,

The Director of the Agency is competent to initiate and resolve this procedure Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

C / Jorge Juan, 6

28001 – Madrid

II

www.aepd.es

sedeagpd.gob.es

7/10

previous questions

In the present case, in accordance with the provisions of article 4.1 of the GDPR, there is the processing of personal data, whenever the CITY COUNCIL carries out, among other treatments, the collection, conservation, use, communication, publication and access of the personal email address email from the complaining party.

The CITY COUNCIL carries out this activity in its capacity as responsible for the treatment, since it is who determines the purposes and means of such activity, by virtue of of article 4.7 of the GDPR.

II

Allegations adduced

In relation to the allegations adduced to the agreement to initiate this disciplinary procedure, the following was answered.

The CITY COUNCIL acknowledges that, indeed, the personal address of email address of the complaining party (**EMAIL.1) in BOCYL No. XX/XXXX of ***DATE.1. However, as soon as the error was detected, a message was sent to BOCYL request requesting its deletion.

It alleges that, in the absence of a written response and in attention to the right to erasure exercised by the claimant, reiterated its request on 12/12/2022 in order to delete and proceed to the deindexation of the links that are offered in the Internet search engines when entering the personal data in question. In case of response or action by the BOCYL, the claimed party undertakes to notify this Agency.

In this regard, this Agency wishes to point out that it positively values the measures adopted by the claimed party to proceed to correct the error that gave rise to the claim filed by the claiming party.

However, as already indicated in the opening agreement, the categories of data selected for treatment must be strictly necessary to achieve stated purpose and the data controller must strictly limit the data collection to that information that is directly related to the purpose what you are trying to achieve. Thus, it is undeniable that the publication of the personal email data of the complaining party in the Agreement of ***DATE.2 of (...), gives rise to excessive and unnecessary processing for the purpose persecuted by the aforementioned agreement.

In relation to the allegations made in the proposed resolution of this disciplinary procedure, we proceed to respond to them.

The CITY COUNCIL highlights the lack of response from the BOCYL to the two requests for deletion of the personal data object of the claim. and what has taken a series of measures as a consequence of the facts denounced as,

For example, the delivery of a training session on data protection of

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/10

personal nature to all employees of the City of San Andrés del Rabanedo.

In this regard, it should be noted that, as regards the measures that it claims to have adopted by the CITY COUNCIL, although this reflects positive conduct, it does not

distort the facts verified and that constitute the infringement charged

of article 5.1.c) of the GDPR, since its violation has already been revealed.

Classification of the infringement of article 5.1.c) of the GDPR

IV.

The aforementioned infringement of article 5.1.c) of the GDPR supposes the commission of the infringement typified in article 83.5.a) of the GDPR that under the heading "General conditions

for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of 20,000,000 EUR or,

in the case of a company, an amount equivalent to 4% of the turnover

global annual total 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 this regard, the LOPDGDD, in its article 71 "Infractions" establishes that

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law".

For the purposes of the limitation period, article 72 Offenses considered very

serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

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

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

following:

a) The processing of personal data in violation of the principles and guarantees

established in article 5 of Regulation (EU) 2016/679; (...)"

Penalty for violation of article 5.1.c) of the GDPR

V

Article 83 "General conditions for the imposition of administrative fines" of the GDPR in its section 7 establishes:

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/10

Likewise, article 77 "Regime applicable to certain categories of responsible or in charge of the treatment" of the LOPDGDD provides the following:

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

(...)

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

(...)

2. When the managers or managers listed in section 1 commit

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

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

likewise, the measures that should be adopted to cease the conduct or to correct it.

the effects of the offense 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, if any.

3. Without prejudice to what is established in the previous section, the data protection authority data will also propose the initiation of disciplinary actions when there are enough evidence for it. In this case, the procedure and the sanctions to be applied will be those established in the legislation on the disciplinary or sanctioning regime that be applicable.

Likewise, when the infractions are attributable to authorities and executives, and accredit the existence of technical reports or recommendations for the treatment that had not been duly attended to, in the resolution in which the sanction will include a reprimand with the name of the responsible position and will order the publication in the Official State or regional Gazette that corresponds.

4. The data protection authority must be informed 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.”

Therefore, once the aforementioned infringement of article 5.1.c) of the GDPR has been confirmed, it corresponds sanction the CITY COUNCIL with a warning.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/10

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF SAN ANDRÉS DEL RABANEDO, with NIF P2414500E, for a violation of article 5.1.c) of the GDPR, typified in the Article 83.5.a) of the GDPR, a warning sanction.

SECOND: NOTIFY this resolution to SAN ANDRÉS CITY COUNCIL OF THE RABANEDO.

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

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es