

□ Procedure No.: PS/00123/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 08/22/2019

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

TOBAR CITY COUNCIL with NIF P0939400H (hereinafter, the claimed one). The motives

on which the claim is based are that on the City Council bulletin board "there is the

census list from several years ago with all the personal data of the neighbors

(some dead already)", and has requested its withdrawal, although it continues.

The claimant states that "I attach photographs from the beginning of the month (08-05-2019)

where you can still see the list with all the personal data. Also from

month of 06/12/2019 where it is seen more clearly."

Provides four image files with photographs.

A first DSC 53 is contained in which only a glazed plank is visible, in

a wall, without references to any nearby object, and outside, which could be the public road.

public. Enlarging the image, it can be seen that it has a lock with a key, and contains eight sheets inside.

folio size DIN A4 in vertical position, four at the top, four at the bottom,

plus two other sheets, one on the left, half folio type, and another sheet on the bottom.

upper left, in landscape, which is the one that contains an alphabetically ordered list,

first surname, middle name and name, date of birth and full ID. In the upper part

higher Organic Law of the court of the jury ready for exhibition the city council and cites an article

what does not look good, TOBAR municipality, in the lower part of the list the data of

the claimant, last name ***LETTER.1 starting the page with the last name of the letter XX. I don't know

you see the date of the listing, only different documents next to it, with dates of 2017.

In a second DSC 55 photograph, the same enlarged photo can be seen, showing less better the literals appearing list for exhibition the city council article 13.2, and in the upper part top left Electoral Census Office, Burgos province.

The other two photos do not add to what has already been stated.

The list is undated, showing some documents displayed next to the which is reported to have signature dates of August 2017.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to transfer of the claim, and on 11/7/2019, a document was delivered to the respondent in which, in addition, more, you are asked:

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“Within a maximum period of one month, from the receipt of this letter, you must analyze the claim and send this Agency the following information:

- The decision adopted regarding this claim.
 - Report on the causes that have motivated the incidence that has originated the claim.
 - Report on the measures adopted to prevent similar incidents from occurring.
- lares, dates of implementation and controls carried out to verify its effectiveness.
- Any other that you consider relevant.”

The request was not answered.

THIRD: On 03/31/2020 the claim was admitted for processing.

FOURTH: On 06/16/2020, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure against the defendant, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of 1/10, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged violation of Article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, as indicated in article 83.5 a) of the GDPR.

The electronic delivery resulted in "expired" by not accessing the claim.

FIFTH: On 10/30/2020, a resolution proposal was issued with the following literal:

That by the Director of the Spanish Data Protection Agency:

TOBAR CITY COUNCIL is sanctioned with a warning, with NIF

a)
P0939400H, due to an infringement of article 5.1.f) of the RGPD, as indicated in article 83.5 of the GDPR.

b)
REQUEST TOBAR CITY COUNCIL, to remove the list, and report the document that includes the principles and bases that govern the protocol of the exhibition of the announcements on the bulletin board when they contain personal data.”

The respondent made no allegations

PROVEN FACTS

1)
The Jury Court is an institution for the participation of citizens in the Administration of Justice, regulated by Organic Law 5/1995, of 05/22, of the Court of Jury. The regulation assigns powers to the Electoral Census Office in the formation of the list of candidates for juries. It is indicated in its article 13 that for constitute the biennial list of candidates for juries, who will be chosen by lottery, will be drawn from the list of the current electoral census ordered by municipalities alphabetically and numbered

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Said list will be sent for advance exposure for 7 days to the respective

town halls “

two)

The defendant had posted on a closed notice board outside, via

public, a sheet type list, containing according to the two photographs provided in the

claim:

In the upper left part it reads "Electoral census office, Burgos province".

in the center “Organic Law 1/1995 of the jury court” “ready for exhibition on

town hall, article 13.2”, “TOBAR municipality”, with data on people, ordered

alphabetically, first surname, middle name and name, date of birth and full ID.

At the bottom of the list are the details of the claimant, surname ***LETTER.1

starting the sheet with the last name of the letter XX. The date of the listing is not visible, only

different documents to the side, with dates of 2017.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

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

Spanish Agency for Data Protection is competent to resolve this procedure.

II

The Jury Court is an institution for the participation of citizens in the

Justice administration. Organic Law 5/1995, of 05/22, of the Jury Court assigns

to the Electoral Census Office the following competencies in the formation of the list of

jury candidates.

Each Provincial Delegation of the Electoral Census Office carries out a draw within of the last fifteen days of the month of September of even-numbered years to obtain the list province of jury candidates based on the electoral census in force on the day of the draw.

To this end, the list of the current electoral census is previously sent to the Town Halls for public exposure for seven days. The draw is held in previously announced public session.

Once the draw has been made, the provisional lists of candidates for jurors that are exhibited in the Town Halls and published in the Official Gazette of each Province during the last fifteen days of the month of October, being able to present claims during the first fifteen days of the month of November.

With the claims that are estimated, the Provincial Delegations of the The Electoral Census Office obtain the final lists of candidates for juries, which are sent to the Presidents of the respective Provincial Courts.

Article 13.2 of said law indicates:

“The candidates for jurors to be obtained by lottery will be drawn from the census list election in force at the date of the draw, ordered by municipalities, related, within these, alphabetically and numbered consecutively within the province as a whole.

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Said list will be sent for advance exposure for seven days to the respective Town halls. The draw, which will be held in a previously announced public session in a local authorized for this purpose by the corresponding Provincial Court, will be held in the

manner determined by regulation."

III

The defendant has posted the list on a notice board located on the road

public, outside municipal facilities, space not suitable for exhibition

of documents with personal data, pointing out article 5.1.f) of the

GDPR:

"Personal data will be:

"processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational structures ("integrity and confidentiality")."

The LOPDGDD states in its article 5:

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

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",

In addition, the listing could have been exposed for more than the time outlined in the

Enabling norm being exposed the data beyond the time dictated in the

applicable rule of seven days.

Notification for legal purposes by completing the explicit procedure

in the Law must be carried out, and although its purpose is that those affected can

consult said data not in a place where any person can circulate, since the

Data must be kept in the dependencies of the person in charge in a specific place.

There are no details to prove that the listing has been over time

established, although it is stated by the claimant and the dates of signing other documents and

the date on which the claimant files the complaint, as well as the dates on which

undertake the tasks of selecting candidates, even years, seems to indicate that the

listing has also been non-diligently exposed much longer than expected

the applicable regulations.

IV

Article 83.5 a of the RGPD indicates:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total turnover

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annual global 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; “

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 processing operations have violated the provisions of this Regulation-ment;”

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time.

“i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;”

In this sense, in the proposed resolution, the CITY COUNCIL OF TOBAR, to withdraw "the list, and report on the document that includes the principles and bases that govern the protocol for displaying advertisements on the bulletin board when contain personal data.", without having received a response. Since it is a precise and concrete instruction, and as the claimed one does not state anything, it can be understood that has proceeded to withdraw the document, and can prove said withdrawal. In this regard, You must be reminded, and you are warned, that if the infraction persists, it is typical behavior liable to be sanctioned, in accordance with article 83.5 e) of the RGPD:

e) Failure to comply with a resolution or a temporary or definitive limitation of the treatment or suspension of data flows by the control authority with under Article 58(2) or failing to provide access in breach of Article 58, Paragraph 1."

The respondent could also specify if it has removed the list and the principles that govern the protocol of the announcements on the bulletin board in terms of data of personal character.

The Spanish legal system has chosen not to sanction with a fine those public entities, as indicated in article 77.1. c) and 2. 3. 4. 5. and 6. of the LOPDDG: "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 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 organic law, the competent data protection authority will issue a resolution sanctioning the same with warning. The resolution will also establish the measures that appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

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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 data 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 managers, and proves the existence of technical reports or recommendations for treatment that are not had been duly attended to, in the resolution in which the sanction is imposed, will include a reprimand with the name of the responsible position and order the publication in the corresponding Official State or Autonomous Gazette.

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 the analogous institutions of the autonomous communities the actions carried out and the resolutions issued to the protection of 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 responsible or in charge of the treatment that had committed the infraction.”

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency,

RESOLVES:

FIRST: IMPOSE the TOBAR CITY COUNCIL, with NIF P0939400H, a sanction of warning, for an infringement of article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, in accordance with article 83.5. a) of the RGPD.

SECOND: NOTIFY this resolution to the TOBAR CITY COUNCIL.

THIRD

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

: COMMUNICATE this resolution to the OMBUDSMAN, of

FOURTH: 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.

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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, with

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 two months from the day following the notification of this act, according to the provisions of 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 interested party states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the remaining records 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 filing effectiveness 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 suspension precautionary

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