

Procedure No.: PS/00406/2018

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) CNP official rendering his services
at the Police Station of ***LOCALIDAD.1, filed a claim on 08/22/2018 with the
Spanish Agency for Data Protection directed against the GENERAL DIRECTORATE OF THE
POLICE hereinafter DGP, for having made on 07/12/2017 the attempt to notify a
citation for a medical examination leaving the citation sheet with your data in the
landing of your home, exposing your data and making it available to anyone.

The fact of finding the citation on the landing of his home on 07/12/2017 when returning to his
address at 11:00 p.m. was reported to the Police Station and they have been instructed
criminal proceedings.

The claimant submits an appeal of 07/31/2018 against the order of
07/24/2018 (partial copy of this, missing pages) that agreed to the provisional dismissal and
file for the crime of disclosure of secrecy, unknown if there is a ruling on it.

Previously, there were other appeals for the same matter as it was provisionally archived. In

These antecedents of the writings of the matter, can be extracted for being of interest:

The claimant indicates that the summons could have been issued by members of his

a)

work center from the medical service.

The claimant was on medical leave due to a traffic accident suffered in the

b)

service.

The claimant mentions that on the same day of the 12th at two in the afternoon he received the call

c)

on his mobile "from the San Sebastián Health Unit" health service "for which

was reliably notified of the citation"

Official letter of the Chief Commissioner of the CNP Commissioner of ***LOCATION.1 of

d)

04/10/2018 in which he states to the Court that they received on 07/12/2017 from the

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Health Service of the Provincial Police Station of San Sebastián by mail

electronic summons for the defendant, and two police officers assigned to his

Police station to go to your address in ***LOCALIDAD.1 to deliver the citation. Them and

carried out after not having answered the telephone calls made throughout

all morning to his mobile, both by the secretary of the Commissioner and the service

mentioned toilet. He adds that "due to the urgency of the matter, which was for the following day,

tried on two other occasions on the same day, at 14.15 and 16.30" being unsuccessful.

He identifies a Chief Inspector of his Police Station, who managed to gain access at the last minute, and by not

appear in mailboxes identifying data, went up to the house, and calling without getting

response, "deposited the citation on the door."

SECOND: In view of the facts and the documents provided by the claimant, the

Subdirector General for Data Inspection proceeded by transferring the 10/15/2018 of the

claim so that the respondent could analyze it and communicate to the claimant the decision that

adopt in this regard.

Likewise, it was requested that within a month from the receipt of this

in writing, send to the Agency:

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

1.

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

claimant has received communication of that decision.

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

two.

claim.

Report on the measures adopted to prevent incidents from occurring

3.

Similar."

On 12/3/2018, a response was received from the Secretary General of the Division of

Personnel of the General Directorate of the Police who indicate that the Technical Office of the

The National Police received the letter from the AEPD so that they could respond.

Manifests:

1) Although the data protection delegate is organically and

functionally to the aforementioned Cabinet, "the claim has its origin in the transfer of the

citation made by the health service", for which the Technical Office considers that the

procedure is linked to the SIGESPOL file for which the Division of

Staff. He adds that the health area falls under the Personnel Division, of whom

functionally depends on the health services of the different police regions.

two)

They indicate that "a report was obtained from the Sanitary Area of the Personnel Division", for

the functional dependency, which is not organic, that all the regional units have

regarding this, means first of all that health professionals assigned to the different territorial health structures carry out inspection work corresponding to its staff, being applicable the resolution of 23/07 of the DGP that establishes standards for monitoring and evaluation of absenteeism due to treatment and processing of disability proposals in the field of the DGP.

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It adds that when it is mandatory, they summon officials and recognition or delivery of documents, medical reports or explorations, which work in power of the same, under article 91 of Royal Decree 375/2003 of 28/03 by the that the General Regulation of the administrative mutualism is approved. "In this process of citation, the Regional Unit decides the citation, prepares the appropriate citations, and transferred to the competent personnel body for its execution, if possible", "organs totally outside the structure of the health services, and of this Division of personnel, so that he informs the official, by telephone or in writing." "The competent personnel body in which the official whose monitoring being carried out by the health services is responsible for executing the summons, in the manner and in the manner that it determines opportune, without the services doctors are given instructions on it or there is a specific protocol stipulated."

From the health service of San Sebastián, it was sent to the Provincial Police Station of San Sebastián the citation sheet whose copy they provide. In the model they provide in the logo, It can be seen that it includes the Sanitary Service, Provincial Commissioner of San Sebastián, Ministry of Inside. In the literal figure: "Medical examination citation" with a box to make

include the name and surnames, follows "provincial police station of san Sebastián" and is cited in the premises of the health service of the police station, the time and day. The foot of the writing bears a confidentiality notice. It is not clear from the model that data is contained sensitive about the health of the person cited.

He continues by indicating that he does not know the details of what happened in the materialization of the citation by officials outside the health structure and the owner of the file SIGESPOL. Considers that the Secretary General of the Personnel Division does not have powers to supervise or audit compliance with current protection regulations data of officials outside the staff of the Division or the authority holding the file and without the power to assess compliance with current regulations for the protection of data. It adds that a copy of this response has been given to the Technical Office of the CNP.

THIRD: On 05/7/2019, the director of the Spanish Agency for the Protection of

Data agreed:

“INITIATE PUNISHMENT PROCEDURE to the GENERAL DIRECTORATE OF THE POLICE, (MINISTRY OF THE INTERIOR), for the alleged infringement of article 5 1.f) of the RGPD, typified in article 83.5 of the same.”

FOURTH: On 06/12/2019, at the request of the instructor of the procedure, the claimant states that there is no longer any legal claim in force.

FIFTH: The SIGESPOL File governed by Order INT/1202/2011, of 4/05, by which regulate the personal data files of the Ministry of the Interior, states:

33. FILE: SIGESPOL.

a) Identification of the file or treatment, indicating its name, as well as the description of its purpose and intended uses:

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a.1) File identification: SIGESPOL.

a.2) Purpose: Management of matters related to the human resources of the Directorate

General of the Police and the Civil Guard, scope of the National Police Corps, including

those related to pension plans, and Police decorations. Management

Compensation for service reason; academic and teaching trajectory of students and

professors from the Promotion Center; management of subscriptions, collaborations, shipments and

collections from police magazines; and management of staff uniform garments.

a.3) Intended uses: Administrative.

b) Origin of the data, indicating the group of people about whom it is intended

obtain personal data or that are obliged to supply them, the

Data collection procedure and its origin:

b.1) Collective: All human resources assigned to the General Directorate of the

Police and the Civil Guard, within the scope of the National Police Corps, people outside the

who are granted admission to the Order of Police Merit and their beneficiaries.

b.2) Origin and collection procedure: Voluntary contribution and obtaining ex officio

of other bodies and units of other public administrations, whose assignment must

be done in accordance with the law.

c) Basic structure of the file through the detailed description of the data

identification, and where appropriate, of the specially protected data, as well as the

remaining categories of personal data included in it and the system of

treatment used in your organization:

c.1) Description of the data:

Personal data: name and surnames, national identity document, place and date of

birth, sex, marital status, address, personal registration number, affiliation number to

Social Security and mutual societies, image (photo), electronic certificates and account stream.

Professional data: Economic remuneration, templates, destinations, categories, congratulations and rewards, jobs, category, three-year periods, courses, qualifications and diplomas, disciplinary and criminal sanctions, weapons that they possess and licenses, badges, grants, driver's license, academic history, subscriptions and collaborations to magazines
Police and anthropometric size for uniforms.

Specially protected data: Union affiliation, health, labor absenteeism.

c.2) Treatment system: Automated.

d) Planned data communications, indicating where appropriate, the recipients or recipient categories:

To the Central Registry of Personnel in compliance with the provisions of article 13 of the Law 30/1984, of August 2, on Measures for the Reform of the Public Function.

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To the State Tax Administration Agency, by virtue of Law 40/1998, of 9 december.

To the General Treasury of the Social Security, by virtue of the Royal Legislative Decree 1/1994, of June 20.

To the General Mutual Society of Civil Servants of the State, by virtue of the Law 29/1975, of 07/27.

To the General Directorate of Personnel Costs and Public Pensions, by virtue of Royal Legislative Decree 670/1987, of 04/30, and upon request of officials to entities

financing for the payment of salaries, unions, mutual societies, schools for orphans and other entities for the payment of fees.

To the management and depository entities and to the Pension Plan Control Commission of the General State Administration, in accordance with article 19 of the Law 61/2003, of December 30, of General State Budgets for the year 2004, and the Consolidated text of the Law for the Regulation of Pension Plans and Funds, approved by Royal Legislative Decree 1/2002, of 11/29.

To the General Comptroller of the State Administration, the Court of Accounts and the financial entities in which the payment of salaries is made.

a)

Planned international data transfers to third countries, indicating, where appropriate, of the countries of destination of the data: It is not planned to carry out international data transfers.

b)

Body responsible for the file: Personnel Division, Avenida Pío XII, 50, Madrid.

g) Service or Unit before which access rights could be exercised, rectification, cancellation and opposition: General Secretariat of the Personnel Division, Pío XII Avenue, 50, Madrid.

h) Basic, medium or high level of security that is required: High.

SIXTH: On 11/25/2019, a resolution proposal is issued, of the literal:

“-That the Director of the Spanish Agency for Data Protection sanction with WARNING to the GENERAL DIRECTORATE OF THE POLICE, with NIF S2816015H, for an infringement of Article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, of in accordance with Article 83.5 and 58.2.b) of the RGPD.

-Dictate the measures that you are going to implement so that facts such as those object of claim.

-Determine the measures adopted in terms of personnel and protocols adopted.

Faced with the proposal, allegations are received on 12/17/2019, which indicate

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In relation to the procedure, for having left the citation sheet on the landing of the claimant's residence:

1st. The matter has been the subject of a judicial pronouncement (Auto nº XX/XXXX of the Guipúzcoa Provincial Court of ***MONTH 29, 2019) in which the judicial body stated: "...the summons that was left on the door of Mr. A.A.A. did not contain any information that we could qualify as secret because it directly affects your privacy, given that if we examine the same (page 16 of the report) in the same only contains <citation medical examination>, the name of the appellant, the place where appear, the body from which the citation emanates, place and time and medical practitioner who agrees, that is, no information is provided regarding the person of Mr. A.A.A. on the sidelines your name or any medical data that should not be known by third parties, and Even when it is indicated that the place where the medical examination must be carried out is the provincial police station of San Sebastián, no additional information or element is provided from which to infer the profession of the addressee."

2nd. The Data Protection Delegate of the National Police has already transferred to the responsible for the SIGESPOL treatment so that a clear instruction is drawn up that collects a procedure for notifications derived from the aforementioned treatment, detailing in that protocol as many elements are considered appropriate to include to configure a secure notification system.

PROVEN FACTS

1)

The claimant, the National Police on medical leave, claims against the one claimed by having left a medical citation document at the door of his home, in view of Anyone. He states that when he returned home, on the fifth floor of his home, at 11 p.m. he found the document on the door, visible to any. It consists of a citation sheet completed and prepared by the Service Toilet of the Provincial Police Station of San Sebastián, which arrives at the Provincial Police Station of ***LOCATION.1, destination of the claimant.

two)

The document, object of the claim, according to the information provided by the Personnel Division, providing a citation model, contains and discloses: the name and surnames of the claimant, who has a summons for medical examination with the address expressly, the work address or destination center of the patient, and in its lower part it is indicated that the document is confidential.

The Chief Commissioner of the CNP Commissioner of ***LOCALIDAD.1, in a letter of

3)

04/10/2018 in which he states to the Court that they received on 07/12/2017 from the Health Service of the Provincial Police Station of San Sebastián by mail electronic summons for the defendant, and two police officers assigned to his Police station to go to your address in ***LOCALIDAD.1 to deliver the citation. Them and carried out, after not having answered the telephone calls made throughout all morning to his mobile, both by the secretary of the Commissioner and the service mentioned toilet. He adds that "due to the urgency of the matter, which was for the following day, tried on two other occasions on the same day, at 14.15 and 16.30" being unsuccessful.

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He identifies a Chief Inspector of his Police Station, who at the last minute managed to gain access to the domicile, and as no identifying data appeared in mailboxes, he went up to the house, and calling without get a response, "deposited the summons at the door."

The Court finally archived the proceedings, in accordance with what was stated by the claimant.

4)

Summons for sick leave control are carried out by the Unit regional health department, which is functionally ascribed to the level of all units regional health authorities to the STAFF DIVISION of the GENERAL DIRECTORATE OF THE POLICEMAN. In the present case, the Sanitary Unit of the Provincial Police Station of San Sebastián, in medical inspection functions, decided to summon the claimant on 07/13/2018.

The Health Unit that decides the citation, prepares it, but its delivery is not carried out by them, but outside bodies, but also belonging to the Police. In this case, the Police Station of ***LOCALIDAD.1 where the claimant provided services was in charge of the notification.

5)

There is no protocol or order that regulates this procedure, minimum times for summons, or legal articulation to carry out the same. It is usually tried and it is usual that in telephone contact with the official is attempted in the first place for this purpose. not known containing information that the use of said telephone number that can be collected can be used as personal data for medical appointments or any other form contact. The Medical Service lacks a protocol that indicates the procedures related to the

subsequent delivery of the summons for a medical examination, which in this case was carried out carried out by components of the Police Station of *** LOCATION.1 in which the claimant provided services.

The ***LOCALIDAD.1 Sheriff's Unit that attempted delivery of the citation

6)

at the claimant's address, in ***LOCALIDAD.1, left the document of citation.

7)

The claimant states that on the same day the 12th at two in the afternoon he received the call on his mobile "from the San Sebastián Health Unit" health service "for which was reliably notified of the summons", although it can be deduced from what was stated by the DIVISION OF PERSONNEL, that the health service does not "execute the citations" and in any case it seems that there could be no coordination with the summons.

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 Organic Law 3/2018, of 5/12, Protection of Personal Data and guarantee of digital rights (hereinafter

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LOPDGDD), the director of the Spanish Data Protection Agency is competent to start and to resolve this procedure.

The LOPGDD in its article 5.1 indicates: "Duty of confidentiality":

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 the same Law, article 72.1.a) considers it: “Infringements considered very serious

“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 following:

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

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for treatment, including the conditions for consent under articles

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

Article 83.7 of the RGPD indicates:

“Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether it can, and To what extent, impose administrative fines on authorities and public bodies 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;

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.

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In this sense, article 77.1 c) and 2, 4 and 5 of the LOPGDD, indicates:

The regime established in this article will be applicable to the treatment of

1.

who 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 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

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 those affected who had the status of interested, 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 to the under this article."

The GENERAL DIRECTORATE OF THE POLICE is accused of committing a infringement of article 5.1. f) of the RGPD "1. The personal data will be: f) "treated in such a way manner that ensures adequate security of personal data, including the protection against unauthorized or unlawful processing and against loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")."

For the adjustment of the management of medical appointments, it would be convenient to know if there is and how it is articulated, the type of action protocol for the medical citation delivered by the members of the Commissioner themselves to the officials who provide services in it, if it is necessary for these personnel to carry it out and rule or instruction that attributes their possibility, modalities, regulations, how it is carried out, and the coordination and rules that the health service has to impart on the citation data itself of which it is responsible for their proper use and compliance with the purpose for which they are intended. Likewise if the citation health unit itself also makes appointments by telephone as manifests the claimant, there must be a coordination so that the citation does not occur by the police station if the first is carried out, and naturally not having a deadline for the citation as short as 24 hours is appreciated in this case.

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On the allegation that the Court has already assessed that secrecy is not violated does not affect privacy, it should be noted that this occurred by applying the rules penalties of the procedure, without the assessment of the administrative regulations for the protection of data discussed here. In addition, the statement that the Court indicated in your case that does not affect privacy, in no way undermines the appreciation of the violation of your data personal, since they have been visible in an official medical citation document, which by the way and manner of carrying out their delivery, shows that they could be visible, and that undoubtedly can affect to a greater or lesser extent the privacy of the claimant when seeing your data by third parties, for no reason.

The data of name and surnames and that has to be presented to an acknowledgment doctor in Police facilities, are basic data, which for the average citizen or They do not even allow to associate that the owner of the data must be an Agent of the CNP, being able to be habitual that the neighbors know or not that said person belongs to said Body, but these data are guarded by the DGP and it does not carry out the citation correctly, leaving them out of the ordinary system of management of the same, establishing in this case the possibility that they may be accessible to third parties.

In the present case, it is not logical that when going to make a summons, the document with the data at the door, given the ineffectiveness of the action. In allegations to proposal, it was indicated that a protocol for citations has been drafted, so it is not specific actions to be taken are imposed on the claimed party, and those must be included as technical and organizational measures when carrying out data processing, consigned in the articles of the RGDP (recital 78, articles 24.1, 25.2, 32.1.).

Therefore, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the GENERAL DIRECTORATE OF THE POLICE, with NIF S2816015H, for an infringement of article 5.1.f) of the RGPD in relation to article 5 of the LOPDGDD.

a sanction of WARNING, as determined in articles 83.5.a) and 58.2.b) of the

cited RGPD, and 77. 2 of the LOPGDD.

SECOND: NOTIFY this resolution to the GENERAL DIRECTORATE OF THE
POLICEMAN.

THIRD

with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, in accordance

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.

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

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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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