

□ File No.: PS/00031/2022

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On April 5, 2021, the Subdirector General for Inspection of
Data received for its assessment a security breach notification letter from
the personal data sent by the DEPARTMENT OF HEALTH of the GOVERNMENT
DE ARAGÓN with NIF S5011001D (hereinafter, SANIDAD DE ARAGÓN), received in
dated March 30 of that same year, in which it informs the Spanish Agency of
Data Protection who have received a phone call in which a person
states that, on February 15, 2021, they granted him access to a file
sanctioning party and provided him with a list containing (...).

SECOND: D.A.A.A. (hereinafter, the CLAIMANT party) dated March 31
2021 filed a claim with the AEPD. The claim is directed against
HEALTH OF ARAGON.

The grounds on which the claim is based are as follows:

When requesting access to the file of a sanctioning procedure, the Service
Provincial Health of Huesca attached a list to the file (...).

Together with the claim, it provides a copy of an official letter from the Provincial Police Station of Huesca,
of the National Police Corps, dated December 18, 2020 and matter "Rdo.

Complaints for infractions collected in (...) to the Provincial Health Service". Y

A list of "Records-Complaints" appears (...). From the rest of the list, you can see (...),
that the claimant indicates that they are the data of other people, that he has hidden and that
will send if required.

THIRD: On April 21, 2021, and within the framework of the actions practiced by the Subdirector General for Data Inspection in order to clarify the terms of the personal data breach notification submitted on March 30, 2021 before the Spanish Agency for Data Protection, and in use of the powers conferred by article 57.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of individuals with regard to the processing of personal data and the free circulation of these data (hereinafter, RGPD), and Art. 67 of the Organic Law www.aepd.es

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3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD), information is requested from SANIDAD DE ARAGÓN, related to the notification of the security breach.

FOURTH: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the claim was transferred to SANIDAD DE ARAGÓN filed by the CLAIMING party, so that it proceeded to its analysis and inform to this Agency within a month, of the actions carried out to adapt to the requirements set forth in the data protection regulations.

The transfer was sent on April 23, 2021 through the Service of Electronic Notifications and Electronic Address Enabled being rejected the notification; reiterating the transfer by certified mail and notifying on the 17th of May of that same year.

On June 16, 2021, this Agency received a response letter indicating that they were aware of the existence of the security breach through telephone communication, proceeding to inform the Spanish Protection Agency of data; although, no communication was made to those affected at that time because there was no evidence (only the anonymous call, no evidence was provided) document) of whether there was a leak and if it was true, to which citizens affected.

Along with the answer is provided:

- Proof of presentation of the notification of the breach before the AEPD on 30 March 2021.
- Report of the Provincial Health Service of Huesca, with the date of signature of the June 2, 2021, responding to the information requested by the AEPD regarding the reasons that caused the incident, the measures adopted, the response to the complainant and the communication made to the affected by the breach.
- Indication that this breach has occurred due to a punctual error, and provides a copy of the circular dated June 10, 2021 sent to the Resources and Claims Unit, which is indicated as the one that manages the disciplinary proceedings procedure. In this circular a reminder of the obligations regarding data protection personal data treated by the unit, especially at the time of access to the files by the interested parties so that only data is provided personal information relating to him or his representatives.

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- Copy of the letter sent to the claimant, dated June 10,

2021, indicating the resolution of this breach and the notification to the AEPD.

- Indication that this breach has been communicated to those affected, and that

copies of various letters, dated June 14, 2021,

intended for those affected by this breach in which they are informed of this

gap in the following terms: "Specifically, I inform you that, by mistake, a

listed (...) for alleged breaches (...), was referred to one of the

people who appeared on that list. and contact information is provided

for more information about the incident.

FIFTH: On June 31, 2021, in accordance with article 65.5 of the

LOPDGDD, the claim presented by the party was admitted for processing.

CLAIMANT.

SIXTH: The General Subdirectorate for Data Inspection proceeded to carry out

preliminary investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the

following ends:

Regarding the chronology of the events and actions taken in order to minimize

adverse effects and measures adopted for their final resolution.

(...).

(...).

(...).

(...).

(...).

Regarding the causes that made the gap possible.

(...).

(...).

(...).

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Regarding the affected data.

(...).

Regarding the security measures implemented.

(...):

- (...).

- (...).

Technical and organizational measures adopted to avoid, as far as possible, incidents such as the happened.

- (...).

- (...).

- (...).

Regarding notification after 72 hours.

(...).

(...).

Information on the recurrence of these events and the number of similar events

events in time.

(...).

SEVENTH: On February 10, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the GDPR.

EIGHTH: Notification of the aforementioned start-up agreement in accordance with the established rules in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), the respondent filed a written of allegations in which, in summary, it stated that it is considered that the exponential growth of the workload experienced by the Unit of Resources and Claims and the officials who work in it influenced decisively in the error committed; although, in an absolutely punctual and isolated way, despite the exponential increase in procedures.

For all these reasons, it was understood that the existing measures for the protection of Data works, in general, in an adequate manner and in accordance with current regulations.

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However, this body rejected the arguments presented for understanding that; in no case, the workload justifies unauthorized access (...).

NINTH: On May 30, 2022, a resolution proposal was formulated, proposing to be imposed on DEPARTMENT OF HEALTH of the DEW GOVERNMENT ARAGÓN, with NIF S5011001D, for an infringement of article 5.1.f) of the RGPD,

typified in article 83.5 of the RGPD a sanction of warning.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: It is accredited that, D. A.A.A. when requesting access to the file of a sanctioning procedure, the Provincial Health Service of Huesca attached to said file a list (...).

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

Article 5.1.f) of the RGPD

Article 5.1.f) "Principles related to treatment" of the RGPD establishes:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the personal data.

personal data, including protection against unauthorized or unlawful processing and against

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accidental loss, destruction or damage, through the application of technical measures or appropriate organizational structures (“integrity and confidentiality”).”

In the present case, it is clear that SANIDAD DE ARAGÓN, by granting the RE-CLAIMANT the right to access a sanctioning file, provided together with the copy of the same one (...); although, it is not stated whether or not the subsequent use has occurred, for part of third parties, of the personal information of the CLAIMING party.

Classification of the infringement of article 5.1.f) of the RGPD

III

The aforementioned infringement of article 5.1.f) of the RGPD could lead to the commission of the infractions typified in article 83.5 of the RGPD that under the heading "Conditions rules for the imposition of administrative fines" provides:

“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, treating- of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the consent lien pursuant to articles 5, 6, 7 and 9; (...)”

In this regard, the LOPDGDD, in its article 71 "Infringements" 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 are contrary to
ries to this organic law”.

For the purposes of the limitation period, article 72 “Infringements considered very serious”
you see” of the LOPDGDD indicates:

“1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,
considered very serious and will prescribe after three years the infractions that suppose
a substantial violation of the articles mentioned therein and, in particular, the
following:

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

IV

Article 83 “General conditions for the imposition of administrative fines” of the
RGPD section 7 establishes:

“Without prejudice to the corrective powers of the control authorities by virtue of art.

Article 58(2), each Member State may lay down rules on whether

of, and to what extent, impose administrative fines on authorities and public bodies
public authorities established in that Member State.”

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Likewise, article 77 “Regime applicable to certain categories of liability”

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 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

nica, the competent data protection authority will issue a resolution

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

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

offense that had been committed.

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 in-

Enough words for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on disciplinary or sanctioning regime that

result of application.

Likewise, when the infractions are attributable to authorities and managers, and

proves the existence of technical reports or recommendations for the treatment that

had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the

publication in the corresponding Official State or Autonomous Gazette.

(...)

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, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the DEPARTMENT OF HEALTH and the GOVERNMENT OF ARAGON,
with NIF S5011001D, for an infringement of Article 5.1.f) of the RGD, typified in the
Article 83.5 of the RGD, a sanction of warning.

SECOND: NOTIFY this resolution to the DEPARTMENT OF HEALTH and
ARAGON GOVERNMENT.

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

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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->

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.

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