

□ Procedure No.: PS/00314/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 04/11/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directs against MINISTRY OF EDUCATION, YOUTH AND SPORTS OF THE

AUTONOMOUS COMMUNITY OF THE REGION OF MURCIA with NIF S3011001I (in

later, the claimed one). The reasons on which the claim is based are: That the

04/10/2019 received email from School \*\*\*COLEGIO.1 of \*\*\*LOCALIDAD.1,

school where your daughter is enrolled in 3rd grade. In that email with

subject INDIVIDUALIZED TESTS 3rd it is indicated that the form must be filled out and delivered

form that is attached by the parents and that it is anonymous.

That her daughter receives the brochure and questionnaire at school on the same day that she must

filled out by the parents and must be delivered before 04/12/2019.

This questionnaire is part of a general campaign of the Ministry (of which

information leaflet is attached), that your daughter has been given this questionnaire, as well

like all the children in the class and probably more school children in the Region

of Murcia.

The email provides a link to the Department of Education of the Region of

Murcia, so the questionnaire comes through the mediation of the School \*\*\*COLEGIO.1

of the aforementioned Ministry.

On the first page of the questionnaire, in its header, are shown, among others, the

identification data of the student, as well as an alphanumeric code that identifies each

questionnaire sheet. In the instructions of the header it is indicated that this is

will separate and cut along the dotted line, keeping the parents the header.

Subsequently, the questionnaire will be delivered at the educational center.

Observing the identification code, it can be verified that the questionnaire is not

anonymous and that the identification code appears on all the sheets and is fixed at the origin;

there is an initial relationship between the student and the questionnaire code already marked

beforehand. Therefore, the person who performs the subsequent data processing has the

complete traceability of who is filling out that survey, since they already know

in advance that said code corresponds to the student and his/her family.

It should also be noted that there is a BIDI code on all the sheets that

suspect automatic subsequent treatment.

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

On 05/17/2019, the claim submitted was transferred to the claimant for analysis

and communication to the claimant of the decision adopted in this regard. Likewise, it

required so that within a month it would send to the Agency determined

information:

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

claim.

- Report on the measures adopted to prevent the occurrence of similar incidents.

- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

On 07/17/2019, the respondent sent a letter in which he stated, in summary:

that the L.O. 8/2013, for the improvement of educational quality mentions in in relation to the external end-of-stage evaluations that they constitute a

of the measures called to improve more directly the quality of the system

education and in accordance with the provisions of articles 145.1 and 147.2, it is mandatory

the use of context questionnaires to be able to carry out an analysis of the

results of the corresponding evaluation tests applied in the third year are

Primary Education in the educational centers of the Region of Murcia.

That the Indian LOMCE that the transfer of data, including those of a reserved, will be subject to data protection regulations.

That during the 1918/19 academic year it was decided for the third year of primary school to use

the context questionnaires defined in the Resolution of 03/30/2016 of the

Secretary of State for Education, Vocational Training and Universities and,

according to the requests received from different areas of the community

education, that said questionnaires were anonymous, ensuring such possibility for

families through the internet and, in the case of not having an internet connection, the

possibility of completing the questionnaire on paper without the identification of the student.

The possibility that the center could access the data was also eliminated.

contained in the questionnaires completed through the application.

However, in order to be able to affect the results obtained by each

student with the socioeconomic and cultural context data included in the questionnaires, these context questionnaires are linked to each pupil. The centers do not have access to this connection since it is only accessible to the unit in charge of preparing the calculations and analyzes necessary for the preparation center reports, and in this case it is the Evaluation and Quality Service Educational.

Likewise, it is indicated that in the questionnaires to be used in the next editions, the corresponding information regarding the protection of data as indicated in the current standard.

THIRD: On 01/08/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

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FOURTH: On 04/01/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infringement of article 13 of the RGPD contemplated in article 83.5.b) of the aforementioned Regulation.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on 11/18/2019 stating, in summary: that through the aforementioned questionnaires do not collect information about the students that could be considered as personal data; that the personal data of the students of centers public schools are already included in the database of the Plumier computer application

XXI; that the QR code had the function of linking to an explanatory video with the purpose to inform families about the destination and use that the information obtained would have and highlight its anonymous nature and that in the next questionnaires it be incorporated into Despite the fact that no data was collected, the corresponding information regarding Data Protection.

SIXTH: On 08/17/2020 a period of practice tests began, remembering the realization of 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/05060/2019.
- Likewise, it is considered reproduced for evidentiary purposes, the allegations to the initiation agreement PS/00314/2019 filed by the respondent and the accompanying documentation.

SEVENTH: As no violation of the regulations on the subject of data protection and in accordance with the provisions of article 89 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, which in section 1.a) proceeds to issue a Resolution.

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

PROVEN FACTS

FIRST: The claimant on 04/11/2019 submitted a written claim to the AEPD,

addressing the defendant, stating that on 04/10/2019 he received an email e-mail from the School \*\*\*COLEGIO.1 of \*\*\*LOCALIDAD.1 in which your daughter is enrolled in 3rd year of Primary, indicating that he should fill out and submit the form that was attached and that it is anonymous; his daughter that same day receives in the school brochure and questionnaire to be filled out by parents and delivered before on 04/12/2019; that the aforementioned questionnaire is part of a general campaign of the Ministry of Education.

SECOND. The claimant has provided email received on 04/10/2019, with its corresponding heading, whose subject is Individualized Tests and in which indicates:

“We inform you that your children take a questionnaire about the socio, economic and culture, which they must fill out to carry out an external Evaluation test Individualized that the Autonomous Community of the Region of Murcia makes to the 3rd grade students. This questionnaire is anonymous and must be submitted before the Friday April 12. It is also accompanied by an informative brochure on these tests.

Next, we also provide you with a link with an explanatory video.”

THIRD. An informative brochure of the aforementioned tests has been provided, as well as the Context questionnaire, which can be completed electronically or delivering it on paper to the educational center for which the header must be removed where the identification data of the student, as well as an alphanumeric code, center and answer the social, economic and cultural questionnaire.

#### FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

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Article 89, Proposal for a resolution in procedures of a nature  
sanctioning, of Law 39/2015, of October 1, of the Administrative Procedure  
Common of Public Administrations, establishes that:

II

"1. The investigating body will resolve the completion of the procedure, with file  
of the actions, without it being necessary to formulate the proposal for  
resolution, when in the instruction procedure it is made clear that  
any of the following circumstances occur:

a) The non-existence of the facts that could constitute the infraction.

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b) When the facts are not proven.

c) When the proven facts do not constitute, in a manifest way, an infringement  
administrative.

d) When it does not exist or it has not been possible to identify the person or persons  
liable or appear exempt from liability.

e) When it is concluded, at any time, that the infraction has prescribed.

2. In the case of procedures of a sanctioning nature, once the  
instruction of the procedure, the investigating body will formulate a proposal for  
resolution that must be notified to the interested parties. The motion for a resolution  
must indicate the manifestation of the procedure and the term to formulate

allegations and present the documents and information deemed pertinent.

3. In the proposal for a resolution, the facts that

are considered proven and their exact legal qualification, the infraction will be determined

that, where appropriate, they constitute the responsible person or persons and the

sanction that is proposed, the evaluation of the tests carried out, especially

those that constitute the basic foundations of the decision, as well as the

provisional measures that, if applicable, have been adopted. When the instruction

concludes the non-existence of infringement or responsibility and no use is made of the

faculty provided for in the first section, the proposal will declare that circumstance”.

III

Article 13 of the RGPD determines the information that must be provided to the

interested at the time of collecting your data, establishing the following:

“Article 13. Information that must be provided when personal data is

obtain from the interested party.

1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the basis

legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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d) when the treatment is based on article 6, paragraph 1, letter f), the

legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data,



in your case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers

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indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.

It should be noted that the questionnaire provided by the claimant does not contain any reference to compliance with the provisions of article 13 of the RGPD previously mentioned, in the sense of determining the identity of the person in charge, the purposes for which the data will be used and the rights that the interested party can exercise before the person in charge, etc.

As stated in the agreement to initiate this procedure, it is true that in the mentioned questionnaire incorporates a QR code that links to an explanatory video that informs about the purpose and importance of said questionnaires as well as their destination, use and anonymous character; however, despite having had the will to inform through such means, the method used may not be the most appropriate, correct and usual, since the possibility of

interact via mobile, so it would have been much more appropriate to include the

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information in writing, acknowledging the defendant in his brief of allegations that

In the future questionnaires to be used, the corresponding information will be included in matter of data protection as indicated in current regulations.

Both the Ministry and the Educational Evaluation and Quality Service

Through their Report they insist on pointing out that the aforementioned questionnaires do not collect information about students that could be considered personal data and

that the QR code had the function of linking to an explanatory video in order to

inform families about the destination and use that the information obtained would have and

highlight its anonymous nature, since through these questionnaires it is not

collects no personal data and that nevertheless, "in the context questionnaires to

use in the next editions of the evaluation tests and since the

spirit of the Ministry of Education and Culture has always been to comply with the

obligation to inform the school community about the importance and purpose of the

destination and use of the information collected in them, will be incorporated despite not

collect any data, the corresponding information on data protection

data indicated in the current regulations, in a way more appropriate to the one used".

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE to the MINISTRY OF EDUCATION, YOUTH AND SPORTS

OF THE AUTONOMOUS COMMUNITY OF THE REGION OF MURCIA, with NIF S30110011,

for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the GDPR.

SECOND: NOTIFY this resolution to the MINISTRY OF EDUCATION, YOUTH AND SPORTS OF THE AUTONOMOUS COMMUNITY OF THE REGION OF MURCIA.

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

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

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

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made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

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

precautionary suspension.

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