

□ Procedure No.: PS/00381/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 03/13/2019 filed  
claim before the Spanish Data Protection Agency. The claim is  
directs against CITY COUNCIL OF CONGOSTO DE VALDAVIA with NIF P3406300H  
(hereinafter the claimed or TOWN HALL). The reasons on which the  
claim are based on the fact that the claimant has published on the bulletin board of the  
consistory and on its web page the census of communal agricultural uses; in  
The aforementioned document contains the name, surnames and DNI of the applicants.

SECOND: Upon receipt of the claim, the Subdirector General for  
Data Inspection proceeded to carry out the following actions:

On 05/14/2019, reiterated on 05/27/2019, the document was transferred to the defendant  
filed for analysis and communication to the complainant of the decision adopted  
about. Likewise, it was required that within a month he send to the  
Agency certain information:

- 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.

There is no evidence that the respondent has responded to the request made by the Spanish Data Protection Agency.

THIRD: On 10/22/2019, 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.

FOURTH: On 12/18/2019, 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 5.1.f) of the RGPD, contemplated in article 83.5.a) of the aforementioned Regulation.

FIFTH: Once the initiation agreement was notified, the respondent submitted a written statement of allegations stating, in short: that the current mayor's office had not been informed with

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prior to the claim filed neither by the outgoing corporation nor by the secretary who held the position in the City Council at that time; that until the On 10/29/2019, the City Council has not had a secretary taking possession of the seat the current secretary on that date. It was then, when the mayor was informed of the existence of the documents of the AEPD; that compliance has been the request for information by the Spanish Agency for Data Protection and The complainant has been given a response based on a report prepared by the Data Protection Delegate appointed by this City Council, of the decisions that have been taken in this regard in relation to the claim, noting that:

a) In its day it has been removed from the council notice boards and web page

immediately, the copy of the census of agricultural use

communal.

b) That the claimant was not demanding any right, she only denounces a

fact, although you are informed that you can exercise your rights to access, rectify and

delete the data, as well as other rights, indicated in the additional information, which

You can exercise by contacting the City Council of Congosto de Valdavia and you can

check on their website

c) Regarding the measures adopted for their claim, they admit the error

committed, based on the principle of publicity. Error due to not using the

necessary measures for the anonymization of personal data.

d) Currently in said City Council they are immersed in the implementation of the

RGPD and in the training of City Council staff to prevent the occurrence of

incidents similar to this claim and comply with the provisions of Law 3/2018 of the

December 5, which should have been done earlier, but like other

So many things hadn't been done.

SIXTH: On 06/02/2020, a Resolution Proposal was issued in the sense of

that the defendant be sanctioned with a warning for violation of article 5.1.f)

of the RGPD, typified in article 83.5.a) of the aforementioned Regulation and sanctioned

in accordance with the provisions of article 77.2 of the LOPDGDD.

After the period established for this purpose, the respondent has not submitted a written

allegations at the time of issuing this resolution.

SEVENTH: Of the actions carried out in this proceeding,

the following have been accredited:

PROVEN FACTS

FIRST. On 03/13/2019 there is a written entry from the claimant stating that the

City Council of Congosto de Valdavia, has published on the bulletin board of the locality, edict by which the term is opened for the update of the census of the applicants taking advantage of for the award of the same during the period 2019-2024 and giving a deadline for submitting applications; dated 01/31/2019, is published by the claimed party, both on the bulletin board and on the website of the same, the update of the census of communal agricultural uses, which consists of a list of applicants with their name, surname and ID number complete; considering that this publication of personal data breaches the principle of confidentiality.

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SECOND. The Agricultural Use Census Update has been provided Communal for the period 2019 to 2024, approved by Plenary Agreement dated 28 of January 2019, where the names and surnames and complete numbers of the DNIs of the petitioners, among which is that of the claimant.

THIRD. It is provided by the claimant image of the Board of Edicts and of the Electronic Headquarters of the Corporation where the aforementioned Census of Uses including names, surnames and DNIs.

FOURTH. The Council of Congosto de Valdavia states that it has withdrawn from the council bulletin boards and the municipal website so immediately, the copy of the census of communal agricultural use and informed to the claimant.

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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II

The facts denounced are specified in the publication on the board of announcements of the City Council and on its website of personal data (name and surnames and complete ID number of the applicants) that can be known by third parties, contained in the census of agricultural uses communal, violating the duty of confidentiality.

Article 5, Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational ("integrity and confidentiality").

(...)"

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

"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.

2. The general obligation indicated in the previous section will be complementary

of the duties of professional secrecy in accordance with its applicable regulations.

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3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment”.

III

The documentation in the file offers evidence that the claimed violated article 5 of the RGPD, principles related to treatment, in relation to article 5 of the LOPGDD, duty of confidentiality, when publishing the personal data that may be known by third parties, contained in the census of communal agricultural uses.

This duty of confidentiality, previously the duty of secrecy, must understood that its purpose is to prevent leaks of data not consented to by their owners.

Therefore, this duty of confidentiality is an obligation that falls not only to the person in charge and in charge of the treatment but to everyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

The claimant has provided images of the Bulletin Board and the website of the City Council in which the Update of the Census of Communal Agricultural Uses for the period 2019 to 2024, which was approved by Plenary Agreement dated 01/28/2019, which includes the list containing the names, surnames and complete numbers of the DNIs of the

petitioners, including the claimant.

The person claimed in writing has stated that he had proceeded to the withdrawal of the council bulletin boards and municipal website in a immediately the copy of the census of communal agricultural use and that they had proceeded to adopt the appropriate technical and organizational measures so that incidents such as the one claimed do not occur again in the future, acknowledging the mistake made; that are immersed in the implementation of the RGPD as well as the training of City Council staff in data protection matters to avoid events such as those claimed occur and comply with the provisions of both the RGPD as in the LOPDGDD, claims that should have been made with before but like so many other things had not been carried out when the Mayor's Office and Secretary of the City Council in process of change.

However, the proven facts show that the actions of the claimed constitutes an infringement of article 5.1.f)

IV

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000 maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates:

“Infringements considered very serious:

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1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

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

(...)"

However, the LOPDGDD in its article 77,

Regime applicable to

certain categories of controllers or processors, establishes the

Next:

"1. The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

a) The constitutional bodies or those with constitutional relevance and the

institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General Administration of the State, the Administrations of the

autonomous communities and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or

dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment



related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous Legislative, as well as the political groups of the Corporations

Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

body on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

3. Without prejudice to what is established in the previous section, the

data protection will also propose the initiation of disciplinary actions

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when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

Likewise, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for treatment is proven 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 Official State or Autonomous Gazette that correspond.

4. The data protection authority must be informed of the resolutions that fall in relation to the measures and actions referred to the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that would have committed the infringement.

When the competence corresponds to a regional protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

In accordance with the available evidence and said conduct is constituting the infringement of the provisions of article 5.1.f) of the RGPD.

It should be noted that the LOPDGDD, without prejudice to the provisions of article 83 of the RGPD, contemplates in its article 77 the possibility of resorting to the sanction of warning to correct the processing of personal data that is not appropriate to its forecasts, when those responsible or in charge listed in the section

1 committed any of the offenses referred to in articles 72 to 74 of

this organic law.

In the present case, taking into account the nature of the infraction and having

account that the respondent in writing dated 03/13/2019 has informed this Agency

the specific and specific circumstances in which the incident occurred

led to the claim as well as the measures taken to prevent such facts from

occur again and that once the current team of

government and the inauguration of the new Secretary has been taking place

immediate compliance with both the request for information by the Agency

Spanish Data Protection Agency, as well as the same claimant based on a report

prepared by the Data Protection Delegate appointed by the City Council,

about the decisions that have been gradually adopted in relation to the

claim filed and indicating: that it had been removed from the bulletin boards

town halls and the municipal website a copy of the use census

communal farming; that although the claimant was not demanding any rights and the

complaint of a fact, he was informed about the possibility of exercising the rights of

access, rectification, rectification and deletion of personal data as well

as well as other rights indicated in the additional information provided, which could

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exercise by contacting the CITY COUNCIL and which could be consulted on its website; that

recognize the mistake made by not having used the necessary measures for the

anonymization of personal data and that are currently immersed in the

implementation of the measures established in the RGPD and in the training of staff of the City Council to avoid incidents similar to those that have favored the filed claim and comply with the provisions of the regulations on Data Protection.

Therefore, it is considered that the respondent's response has been reasonably diligent, acknowledging the facts and remedying immediately the errors made, not having proof of other claims for part of the people affected and taking appropriate measures to avoid any anomaly or future incident that may occur.

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 CITY COUNCIL OF CONGOSTO DE VALDAVIA, with NIF P3406300H, for an infringement of article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning in accordance with what is indicated in the Article 77.2 of the LOPDGDD.

SECOND: NOTIFY this resolution to the CONGOSTO CITY COUNCIL DE VALDAVIA, with NIF P3406300H.

THIRD

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

: COMMUNICATE this resolution to the Ombudsman,

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 made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

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[<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.

Sea Spain Marti

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