

□ File No.: PS/00481/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated 12/28/2020

filed a claim with the Spanish Data Protection Agency. The

claim is directed against MINISTRY OF EDUCATION, UNIVERSITIES,

CIENCIA Y PORTAVOCÍA with NIF S7800001E (hereinafter, the claimed party). The

The reasons on which the claim is based are the following: the claimant states that the

claimed has consulted the data of your income statement without your authorization

during the last five years for the reduction of the price of the school menu in

educational centers applicable to his minor daughter who is in the custody of the mother of

who was divorced in 2013, and contributes:

- Copy of the supplementary annex of the previous request with the detail of the

Consultations allegedly made without your consent and image copy

of presumed electronic headquarters of the claimed one in which the list of

allegedly illegitimate access.

- Copy of the respondent's response to your request, signed on the date

05/29/2020, in which it is stated that the accesses occurred to determine

compliance with the requirements established in the annual calls for

Reduced price of school canteen. Attached is a copy of the

application for the reduction for the 2019-2020 academic year, in which the mother of the

minor requests the granting of the aforementioned reduction not opposing the

corresponding queries about your personal income situation.

SECOND: 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), on 02/12/2021 said claim was transferred to the party claimed so that it proceeded to its analysis and inform this Agency within the period of one month of the actions carried out to adapt to the foreseen requirements in data protection regulations. No response has been received to this letter.

THIRD: On 04/19/2021 the Director of the Spanish Protection Agency Data agreed to admit the claim filed by the claimant for processing.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 58.1 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:

The claimed:

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☐ It does not adhere to strictly responding to the sections of the request sent

within the framework of the present investigation actions.

☐ Recounts a series of Orders and an Administrative Resolution as normative applicable detailing the protocol that caused the incident.

☐ States that the procedure for applying the reduction in the price of the

The school menu corresponds in management to the educational centers, from which

In addition, families are informed about the possibility of benefiting from these reduced prices.

☐ States that the file of the family unit appeared in its database

with the details of the mother and father of the minor for whom the reduction.

☐ Alleges not having received information about the change from the educational center of the composition of the family unit, despite acknowledging

that, in the application, the mother of the minor stated that she was a single-parent family.

However, the respondent states that in the price reduction request

of dining room there was no supporting documentation of being a family single parent

Reports that, not having received the corresponding information from the

educational center, consulted the claimant's income data for the concession to his daughter of the reduction in question as a requirement established in each announcement.

☐ Describes having required the school involved to request the family

of the minor the supporting documentation of being a single-parent family to proceed to update your file in the corresponding database.

☐ Points out that for the 2020/2021 academic year, the income data of the claimant since the mother of the minor presented her own and remained indicated as a single-parent family, although he did not prove it either.

☐

☐ Take the following actions based on this incidence:

o Request the 1,600 educational centers to review the procedure for

data recording, expressing that of the more than 108,000 requests

submitted already had 10,000 applications reviewed on 06/03/2020.

o Study an improvement of the aid for the reduction of the price of the school menu in educational centers in a global approach to guarantee the legal certainty of the applicants and the improvement of management as a whole.

FIFTH: On 01/12/2022, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 6.1.a) of the RGPD, typified in article 83.5.a) of the RGPD, a warning sanction.

SIXTH: The initiation agreement was notified on 01/14/2022, a written document was received from the respondent noting that the request for information sent by the AEPD was entered in the Counseling on 04/29/2021, transferring to the person in charge on 05/05/2021, indicating that the deadline to answer the AEPD ended on 05/14/2021.

The person in charge sent a letter on 06/07/2021, indicating that if the Agency considered that the extemporaneous filing of the response to the request

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had the consequence that the response of the person in charge would not be taken into account for this reason should have indicated it in his letter of initiation of the procedure sanctioning party, instead of reporting that no response has been received.

However, on 01/28/2022 the respondent submitted a brief of allegations to the agreement in which, in summary, it stated the following: that the General Subdirectorate

Scholarships and Grants (hereinafter SGBA) has already responded to the request of the

AEPD about the actions carried out to adapt to the requirements in matter of data protection and stated the procedure for the application of a reduced price of school canteen to the claimant's daughter, based on the composition of the family unit that was recorded in the SGBA database; what to

As a result of the complaint, the SGBA required the center to provide documentation of the requests presented and could only provide those of the 2019-2020 academic year, since the previous ones they were destroyed by the center; that since together with the application the situation of single parenthood, nor did the center inform the SGBA of the change of situation of this family unit, the data of both parents were consulted; that the SGBA already indicated that for the preparation of the requested report, in the request corresponding to the 2020-2021 academic year, the father was still not listed, and the supporting documentation of single parenthood, without in this case consult the data when the mother presents the supporting documentation of the income; that at the time the claim was made, immediately took the appropriate measures, updating the composition of the family unit, without that it has returned to perform any query of data of the claimant; that the purpose of these consultations of data was intended to enable a reduced dining price for the daughter of the claimant and that in the response sent by the SGBA, the adoption of measures to prevent a case like this from happening again.

SEVENTH: On 02/15/2022, the opening of a practice period of tests, remembering the following:

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated that are part of the procedure E/04761/2021.
- Consider reproduced for evidentiary purposes, the allegations to the agreement of

start of the referenced sanctioning procedure, presented by the

reclaimed.

EIGHTH: On 03/16/2022, a Resolution Proposal was issued in the sense that by the Director of the AEPD will sanction the person claimed for infraction of article 6.1.a) of the RGPD, typified in article 83.5.a) of the RGPD, with a warning.

The respondent in writing of 03/31/2022 made allegations to the Proposal ratifying and reiterating what was stated previously throughout the procedure and requesting procedure file.

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NINTH: Of the actions carried out, the following have been accredited

PROVEN FACTS

FIRST. On 12/28/2020 it has entry in the Spanish Agency for the Protection of Written data from the claimant stating that the claimant had consulted without his authorization data from your tax return for the last five years to the reduction in the price of the school menu in educational centers applicable to his daughter minor, who is in the custody of the mother whom he divorced in 2013.

SECOND. There is evidence provided by the claimant document of the consultations carried out to the claimant's income data between 11/11/2015 and 11/11/2020. The entrances have been confirmed by the claimant.

THIRD. On 04/17/2020, the claimant sent the respondent a written request information on the actions carried out in relation to access to the data from your income tax returns.

FOURTH. The respondent responded to the previous letter, dated 05/29/2020, reporting that the accesses occurred to determine compliance with the requirements of the annual reduced-price calls for school canteens. Together A copy of the request for the reduction for the 2019-2020 academic year is provided to the letter, in the that the mother of the minor requests the granting of the aforementioned reduction, not opposing to the corresponding queries about their personal income situation.

FIFTH. The respondent has provided a Report dated 06/07/2021 in which they indicate the measures that were being adopted as a result of the complaint of the claimant.

SIXTH. The respondent in writing of allegations dated 01/28/2022 has stated that "...as a result of the complaint filed by the claimant, the SGBA required the center to documentation of the requests presented in the reference courses, of the which could only provide the corresponding to the 2019-2020 academic year, since the previous ones were destroyed by the center, given the elapsed time.

Given that together with the application the situation of single parenthood was not accredited, ..., consultations of economic data of both parents were made, as they did not expressly oppose the consultation of data with the State Agency for Tax administration.

(...)

It must be valued that at the time the respondent made a claim to this SGBA in the month of April 2020 in relation to the queries made, with The appropriate measures were taken immediately, requiring the center to supporting documentation of the situation of single parenthood and updating the composition of the family unit based on the documentation provided, without has therefore returned to carry out any query of data of the claimed.

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(...)"

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.

Yo

II

The facts denounced consist, according to the statement of the claimant, in the treatment of your personal data by the claimed party without your consent; Specifically, the respondent consulted without the claimant's authorization the data from your income tax return for the last five years for the reduction of price of her daughter's school menu, which could imply the violation of the regulations on data protection.

Article 6, Legality of the treatment, of the RGPD establishes that:

"1. The treatment will only be lawful if at least one of the following is met conditions:

- a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers vested in the controller of the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that over said interests do not prevail the interests or the rights and freedoms fundamental data of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to treatment carried out by public authorities in the exercise of their functions.

(...)"

Article 4 of the GDPR, Definitions, in section 11, states that:

"11) «consent of the interested party»: any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that concern him".

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Also article 6, Treatment based on the consent of the affected party,

of the new Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD), indicates that:

"1. In accordance with the provisions of article 4.11 of the Regulation (EU)

2016/679, consent of the affected party is understood to be any manifestation of will free, specific, informed and unequivocal by which he accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.

2. When the data processing is intended to be based on consent

of the affected party for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.

3. The execution of the contract may not be subject to the affected party consenting to the processing of personal data for purposes unrelated to the maintenance, development or control of the contractual relationship".

III

From the documentation in the file, it is evident that the person claimed violated article 6.1.a) of the RGPD, since the aforementioned entity treated the data claims of the claimant without proving their consent, for access to the consultation of your rental data for the purpose of the possibility of reducing the price of the menu her youngest daughter's school.

It should be noted that respect for the principle of legality of the data requires that accredited evidence that the owner of the data consented to the processing of the data of personal character and display a reasonable diligence essential to prove that end. Failure to act in this way would result in emptying the content of the principle of legality.

The defendant himself has confirmed the accesses by pointing out that as

As a result of the claimant's complaint, the SGBA required the center to provide documentation regarding the requests of the courses in which the accesses had been made, providing only that corresponding to the 2019-2020 academic year, since due to the elapsed time they had been destroyed.

And since with the request the situation of single parenthood, consultations of the economic data of both parents, although, as a result of the incident, the composition was updated of the family unit based on the documentation provided, without check the claimant's data again.

IV

In response to the Resolution Proposal issued, the respondent has alleged that the data queries to the AEAT were aimed at the possibility of applying a reduced price of dining room to the claimant's daughter and that the legitimizing basis of the treatment of the data, as it appears in the Registry of Activities of the Treatment (RAT), would not be found in article 6.1.a), but in article 6.1.e) of the RGPD, which establishes that "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the data controller".

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However, such an allegation cannot be admitted, since there is a rule specifically considers the consent of the claimant to be necessary, in his/her condition of taxpayer, to access the data that have said particularity or

condition.

Article 95, Reserved nature of data with tax significance, of

the General Tax Law establishes that:

"1. The data, reports or information obtained by the Administration

Tax authorities in the performance of their duties are reserved and may only be

be used for the effective application of taxes or resources whose management has

entrusted and for the imposition of the appropriate sanctions, without being able to

be transferred or communicated to third parties, unless the purpose of the transfer is:

(...)

k) Collaboration with public administrations for the development of their

functions, prior authorization of the taxpayers to which the data refer

supplied"

(...) .

v

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 Regulation, "with administrative fines of

€20,000,000 maximum or, in the case of a company, an equivalent amount

at a maximum of 4% of the total global annual turnover of the financial year

above, opting for the highest amount.

On the other hand, the LOPDGDD in its article 72 indicates: "Infringements

considered very serious:

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:

(...)

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.

(...)”

However, article 77 of the LOPDGDD, Regime applicable to certain categories of controllers or processors, provides the following:

SAW

"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.

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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 purposes of the treatment are 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

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

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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 the present case, it was agreed to open the sanctioning procedure in based on the presumption that the defendant, as stated in the facts, has violated the regulations on the protection of personal data, principle of legality of the data.

According to the available evidence, said conduct constitutes, on the part of the defendant, the infringement of the provisions of article 6.1.a) of the

GDPR.

It should be noted that the LOPDGDD contemplates in its article 77 the sanction of warning in relation to the processing of personal data that is not match your forecasts. In this regard, article 83.7 of the RGPD contemplates that “Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.

Likewise, it is contemplated that the resolution issued may establish measures to be taken to stop the behavior, correct the effects of the infraction that had been committed and its adequacy to the requirements contemplated in article 6.1.a) of the RGPD, as well as the provision of supporting means of the compliance with what is required.

The respondent has acknowledged that the data was consulted although for the purpose of granting a reduced price in the school canteen to the minor without the teaching center had access to the income information of the family unit, since that you are only informed whether or not the family meets the requirements for the application of the reduced price of school cafeteria, but not the economic data and that in the same moment of knowing that the claimant made the claim in relation to the consultations carried out, the appropriate measures were taken immediately, requiring the Center the supporting documentation of the situation of single parenthood and updating the composition of the family unit, without having done it again no consultation of the claimant's data.

Finally, the respondent insists that in his responses dated 06/07/2021 and 03/31/2022 in the adoption of different measures to avoid incidents such as the one that has given rise to the claim:

- Request the school and the more than 1,600 who participate in these aids, to make revisions of the data recording procedure so that it is avoid recording errors and the members are perfectly identified who sign the applications, families that are single parents and the other situations relatives, with the aim that the database is correctly updated each course.

- That a review had been made, from the General Subdirectorate of Scholarships and Grants, of almost 10,000 applications each course of the more than 100,000 submitted www.aepd.es

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each school year, to ensure that errors did not occur. Furthermore, from the start-up of these scholarships, in the 2012/2013 academic year, none have been received another complaint or claim for the treatment of data, being a help that you receive more than 100,000 applications each course and has an approximately equal number of beneficiaries.

- That the application form is going to be improved in order to clarify that for considered a single-parent family, or another type of situation, and specifically in the case of divorce, you must provide supporting documentation of the situation.

-That the Data Protection Delegation is going to carry out a small training to officials in the area to remember the bases of legitimacy of the data processing and the basic principles of data protection.

Therefore, in light of the foregoing, it is considered that the response of the claimed has been reasonable, correcting the incidence not proceeding to urge the

adoption of additional measures, having adopted measures of a technical and organizations in accordance with the regulations on data protection for prevent situations such as the one that gave rise to this from happening again claim, which is the main purpose of the procedures with respect to those entities listed in article 77 of the LOPDGDD.

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 on the MINISTRY OF EDUCATION, UNIVERSITIES, SCIENCE AND SPOKESPERSON of the CAM, with NIF S7800001E, for an infraction of the article 6.1.a) of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the MINISTRY OF EDUCATION, UNIVERSITIES, SCIENCE AND SPOKESPERSON of the CAM.

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

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through the

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

[<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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