

□ File No.: EXP202104470

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), on September 17,
2021, filed a claim with the Spanish Data Protection Agency.

The claimant states that they have delivered a receipt issued by Cemeteries of
Barcelona, S.A. (hereinafter CBSA) absence from work, due to the
death of his father, to a third party (his brother-in-law).

Work in the file Resolution dated 09/13/2021, of the Director of the Authority
Catalan Data Protection, by which the transfer of the actions is agreed
prior to the AEPD. As can be deduced from the actions of information
prior, the entity that would have delivered the aforementioned work receipt to the brother-in-law of the
complainant could be one of the two funeral service companies that
managed the funeral service: Servicios Funerarios de Barcelona, S.A. (company to
who CBSA delivered the supporting document) or Altima Servicios Funerarios, S.L. (company that
managed the funeral service of the deceased, at the request of the relatives, substituting
SFBSA).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and Guarantee of Digital Rights
(hereinafter LOPDGDD), said claim was transferred to Funeral Services
of Barcelona, S.A. and Altima Servicios Funerarios, S.L., to proceed with their
analysis and inform this Agency, within a month, of the actions carried out
carried out to adapt to the requirements set forth in the regulations for the protection of

data.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations (hereinafter, LPACAP), by electronic notification, was received in both cases, on November 22, 2021, as stated in the acknowledgments of receipt that work in the file.

On the part of Servicios Funerarios de Barcelona, S.A., no response has been received to this letter of transfer.

On behalf of Altima Servicios Funerarios, S.L., on December 16, 2021, it was received in this Agency a letter of response, in which it is shown that it does not may be responsible for having erroneously delivered the proof of absence from work since he was never in possession of it.

THIRD: On December 17, 2021, in accordance with article 65 of the LOPDGDD, it is communicated that the claim has been admitted for processing, having Three months have elapsed since it entered the AEPD.

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2/5

FOURTH: On March 11, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for alleged violations of articles 5.1.f) of the RGPD and 32 of the RGPD, typified in articles 83.5 and 83.4 of the RGPD, respectively.

The initiation agreement was sent, in accordance with the regulations established in the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), by electronic notification, being received on March 16, 2022, as stated in the certificate that works on the record.

FIFTH: Notification of the aforementioned initial agreement, Funeral Services of Barcelona, S.A submitted a pleadings brief in which, in summary, it stated that it could not having committed the act because he had no intervention in the organization of the burial of the deceased and, consequently, could not have access to the data of any family, among them, those of the claimant, for which he requests that the termination of the sanctioning procedure and filing of the proceedings.

To this end, I attach a certificate issued by the Corporate Director of Systems of the Information from Grupo Mémora (in which SFBSA is located), indicating that in the computer systems of the group of companies does not show any trace of data referring to this man and certificate from the Director of Operations of SFBSA, stating that the funeral was not organized and, therefore, there was no access to the data of the complaining party.

SIXTH: On April 26, 2022, a resolution proposal was formulated, proposing:

<< That the Director of the Spanish Agency for Data Protection agrees proceed to file these proceedings.>>

The aforementioned motion for a resolution was sent, in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), by electronic notification, being received on May 4, 2022, as stated in the certificate that works on the record.

SEVENTH: The respondent party has not submitted arguments to the Proposal for Resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: It is stated that, as of September 17, 2021, the part

The claimant filed a claim with the Spanish Data Protection Agency,
due to a security breach of personal data.

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3/5

SECOND: From the prior information actions it is clear that the entity

that he would have delivered the aforementioned work receipt to the complainant's brother-in-law could
be one of the two funeral service companies that managed the service

funeral: Funeral Services of Barcelona, S.A. (company to whom CBSA delivered the
supporting document) or Altima Servicios Funerarios, S.L. (company that managed the service
funeral of the deceased, at the request of the relatives, substituting SFBSA).

Altima Servicios Funerarios, S.L., on December 16, 2021, declares

I manifest that he cannot be responsible for having delivered the wrongly
proof of absence from work since he was never in possession of it.

THIRD: Funeral Services of Barcelona, S.A. states that there could not be
committed the act because he had no intervention in the organization of the funeral
of the deceased and, consequently, could not have access to the data of any relative,
including those of the claimant. The documentation provided is incorporated

to the file.

FOUNDATIONS OF LAW

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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

To the Sanctioning Administrative Law, due to its specialty, they are applicable, with

some qualification, but without exceptions, the inspiring principles of the penal order,

being clear the full virtuality of the principle of presumption of innocence.

As the Constitutional Court has repeatedly affirmed, 'the presumption of innocence

ence governs without exceptions in the sanctioning system and must be respected in

the imposition of any sanctions, whether criminal or administrative, since the

exercise of ius puniendi in its various manifestations is conditioned by art.

24.2 of the Constitution to the game of evidence and a contradictory procedure in the

that they can defend their own positions." (Judgment no. 74/2004, of 22

April, of the Second Chamber of the Constitutional Court).

In this sense, the Constitutional Court, in Judgment 76/1990, considers that the right

right to the presumption of innocence entails “that the sanction is based on acts or

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4/5

evidence of charge or incriminating of the reproached conduct; that the load of the evidence corresponds to the person who accuses, without anyone being obliged to prove their pious innocence; and that any insufficiency in the results of the tests carried out, freely assessed by the sanctioning body, it must be translated into a pronouncement of acquittal”.

In accordance with this approach, article 28.1 of Law 40/2015, of October 1, of the Legal Regime of the Public Sector establishes as one of the principles of the sanctioning power, that of "Responsibility", determining in this regard that:

“Only those that constitute an administrative infraction may be sanctioned natural and legal persons, as well as, when a Law recognizes their capacity to act, the affected groups, the unions and entities without legal personality and the independent or autonomous estates, which are responsible for them title of fraud or guilt”.

Likewise, what is established in article 53.2 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations case, states that:

“In addition to the rights provided for in the previous section, in the case of procedures administrative acts of a punitive nature, the alleged perpetrators will have the following rights: (...)

b) To the presumption of non-existence of administrative responsibility while

the contrary is not proven”.

In short, the application of the principle of presumption of innocence prevents imputing a administrative infraction when the existence of supporting evidence of the facts that motivate this imputation.

In the case at hand, based on the actions carried out, it has not been possible to determine the identity of the subject to whom the responsibility for the facts denounced, therefore, in accordance with the provisions of the precepts mentioned above, the filing of these proceedings proceeds.

According to the background information in the file, Funeral Services of Barcelona

Lona S.A would have been, according to what he affirms, the company to which CBSA delivered the supporting document. tea.

For its part, it is known that the company ALTIMA SERVICIOS FUNERARIOS S.L would have was the organizer of the funeral. However, he states that he was never in possession of the receipt.

Finally, Servicios Funerarios de Barcelona, S.A., insists that it was not she who arranged the funeral. With this, it denies having had access to any certificate with data of the complainant, nor having committed the act that would give rise to this procedure.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

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5/5

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to SERVEIS FUNERARIS DE

BARCELONA, S.A.

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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.

Sea Spain Marti

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