

□ File No.: PS/00266/2022

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 03/19/2021 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against entities DEPARTMENT OF UNIVERSAL HEALTH AND HEALTH  
PUBLIC of the Generalitat Valenciana, with NIF S4611001A (hereinafter, the part  
claimed or CONSELLERÍA DE SANIDAD), and Sistemas Genómicos, S.L. (in  
successive (Genomic Systems). The reasons on which the claim is based are the following:  
following:

The claim is formulated in relation to the protocol provided by the  
DEPARTMENT OF HEALTH to carry out PCR tests on students, which are carried out  
carried out by external companies contracted by that entity. In this regard, the part  
The claimant points out that due to a positive for Covid-19 detected in the class of  
their daughter, they were told that to carry out the test they had to go to the headquarters of Sistemas  
Genomicos, in which they were asked for their name and SIP card number without providing  
No information on the protection of personal data.

The complaining party warns that special categories of data have been processed and that  
that information is transferred to a genome sequencing company.

It also indicates that the information on the test result is provided to the  
parents of the students through a document in pdf format. which includes a  
link to the result, sent by unencrypted email.

Requests that the information be removed and the protocol corrected "so that no

laboratory can cross the DNA with data of the owner without consent

express and informed.

With your claim, you provide a copy of the response that was sent to you by the

CONSELLERÍA DE SANIDAD to an email from the complaining party.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

forward LOPDGDD), said claim was transferred to the entities

DEPARTMENT OF HEALTH and Genomic Systems, so that they proceed to their

analysis and inform this Agency within a month of the actions carried out

carried out to adapt to the requirements established in the data protection regulations.

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

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Public (hereinafter, LPACAP), was collected on 04/19/2021 by the

DEPARTMENT OF HEALTH and on 04/21/2021 by the entity Sistemas

Genómicos, S.L., as stated in the acknowledgment of receipt in the file.

1. On 06/02/2021, a response was received from the aforementioned Ministry in which states the following:

. The CONSELLERÍA DE SANIDAD contracted the services of Sistemas Genómicos to carrying out 10,000 PCR tests in the study of contacts of the cases of

COVID-19 in the school environment. The contract was made through an emergency procedure

motivated by the pandemic situation. For the selection of companies, we took into account

has criteria of capacity and technical solvency with full submission to the legislation regulating public sector contracting.

Between the Conselleria d'Educació, Cultura y Esport and the CONSELLERÍA DE SANIDAD, has drawn up an action protocol in relation to data processing personnel to monitor the cases affected by Covid-19 in the centers educational.

Regarding the concerns that are the object of the claim, it is established that once finished the processing of the biological sample (nasopharyngeal exudate, for the case of the RT-PCR test), the extracted material is stored for a month, to prevent situations such as obtaining inconclusive results, which require repeat the test with the same sample.

The conservation during this period is carried out under conditions of anonymization, strictly controlled temperature and access, which guarantee the quality of the excess sample, protection of personal privacy, confidential treatment of personal data, as well as any other personal information that could be derived from existing biological material. Once this time has elapsed, biological substances with the extracted material are destroyed by companies authorized to manage this type of waste.

2. On 06/02/2021, a response was received from Sistemas Genómicos in which states the following:

Sistemas Genómicos was contracted by the CONSELLERÍA DE SANIDAD through emergency processing, in accordance with the provisions of Law 9/2017, of 8 November of Public Sector Contracts, for the performance of 10,000 tests PCR in the study of SARS-COVID contacts in the school environment (accompanies resolution on this contract), according to the protocol established by the authority sanitary.

With regard to the processing of personal data of minors, it refers to the established in Recital 46 of the GDPR, which, according to the aforementioned entity, establishes the legality of data processing in order to protect an essential interest for people's lives, such as the control of epidemics and their spread. own Agency, in its report 17/2020, which refers to Organic Law 3/1986, of Special measures in the field of Public Health, or Law 33/2011, General Health Public, recognizes the processing of data without the consent of those affected by the

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situation derived from the spread of the Covid-19 virus.

Sistemas Genómicos received from the CONSELLERÍA DE SANIDAD the indications with respect to the educational center or centers that were urged to carry out tests and the different places outdoors where they were going to set up points of sample extraction, including the Sistemas Genómicos parking lot, in addition to full names (ID if you have it), SIP and email address

to be able to contact the interested party and deliver the results. systems

Genomicos is limited to verifying the identity, verifying the data that they had previously been provided.

School minors went accompanied by their parents to the place where indicated to them and, without leaving their own vehicle, the extraction of the sample, nasopharyngeal exudate that is not an invasive test nor does it pose risks with negative repercussion on the health of the patient, so it was not necessary to obtain informed consent provided for in Law 41/2002, of November 14, on

Patient autonomy.

The results were sent to the e-mail address referred to by the author himself.

interested according to the established protocol, sending a first email with the password to know the report and the second with the encrypted file.

It concludes that the entity, as data processor, executed the contract under the Consellería guidelines, the object of the contracted service being the detection of SARS-CoV-2 virus, so the samples obtained are treated only and exclusively for that purpose, never to extract the DNA from the samples, which are temporarily retained as a precaution against possible undesirable results. conclusive and subsequently destroyed by companies authorized to manage of this type of waste, complying with the current provisions that apply to it. application.

In the responses to the transfer of the claim, the aforementioned entities did not provide any accreditation on the information on protection provided to the interested parties and their legal representatives when carrying out the tests PCR.

THIRD: On 08/11/2021, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: On 07/20/2022, the Director of the Spanish Protection Agency of Data agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of the Article 13 of the GDPR, typified in Article 83.5.b) of the aforementioned Regulation; and classified as very serious for the purposes of prescription in article 72.1.h) of the LOPDGDD.

In the opening agreement it was determined that the sanction that could correspond, of

If the infraction is confirmed, it would be a warning; and it was warned that the infringement

accused may lead to the imposition of measures, according to the aforementioned article 58.2 d) of the

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GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in the LPACAP, a written statement was received from the claimed party, prepared by the Delegation of Data Protection of the Generalitat Valenciana, in which it formulates the following considerations:

1. In the treatment object of the procedure, the company (manager) requests the name and SIP of the students who attend the PCR, and do so to verify said data on the list that has been provided by the Ministry (responsible), of so that data is not being obtained at that time.

Yes, the collection of personal data will be considered the sample that is collected for carry out the test. This obtaining and subsequent proof will have the quality of processing of personal data.

On the other hand, article 13 of the GDPR, which establishes the obligation to inform the interested party regarding the conditions in which their data will be processed, rules that provisions 1, 2 and 3 of said article will not be applicable in the to the extent that the data subject already has the information.

2.- In relation to the question raised, the CONSELLERÍA DE SANIDAD details the mechanisms through which information has been offered to interested parties regarding the processing of personal data carried out:

. Basic information on data protection on the Ministry's website.

. Data protection information on the "CORONAVIRUS" portal of the Ministry.

. RAT of the activities "Maintenance and updating of the Information System

(SIP)", "Health Care" and "Health Promotion, Prevention of

Illness and Occupational Health".

. Information provided by the Ministry of Education, Culture and Sports regarding your

"COVID-19 protocol in GVA public educational centers".

Regarding the non-delivery of said information at the same time it was

Once the sample has been taken, the aforementioned DEPARTMENT OF HEALTH states the following:

"In this case, it is understood that it would be disproportionate to have to provide information in

each of the actions that have been carried out within the framework of promotional activities

of health, disease prevention and occupational health to face the health crisis that has

of course the SARS-CoV-2 pandemic. Similarly, it is not considered necessary

provide information regarding the duty to inform in each of the contacts that users

have with the health system (medical visits, performance of diagnostic tests of

laboratory or image etc.) since it is considered that the information has been provided to

through the channels mentioned in the previous sections of this writing".

It provides an Annex with the links to the information referred to by the CONSELLERÍA DE

HEALTH. Among others, the following:

. URL: <https://coronavirus.san.gva.es/es/web/sanidad/proteccion-de-datos>

This internet address provides information on the web portals and mobile application

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developed to keep the population informed about the pandemic, signaling to

the aforementioned Ministry as responsible for the processing of personal data. HE informs about the purpose of contacting the patient to provide assistance health and the issuance of Covid certificates for mobility between EU countries, as well as on the possibility of exercising rights; and includes links to obtain more information through the website of the CONSELLERÍA DE SANIDAD and the "Record of Treatment Activities: Healthcare".

. URL: <https://www.san.gva.es/web/app-gva-mes-salut/proteccion-de-datos>

The information contained in this URL corresponds to the application for devices Mobile phones arranged by the Generalitat Valenciana for public health users. HE informs about the personal data processed and its origin, its purpose and legal basis, identity of the person in charge, rights of the interested party, possibility of opposing the use of telematic means, contact details of the DPD and possibility of claiming before the AEPD.

URL:

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Data Protection

<https://www.san.gva.es/es/web/conselleria-sanitat-universal-i-salut-publica/>

This address leads to the information inserted in the web portal of the DEPARTMENT OF HEALTH. It only includes information about the identity of the responsible, contact details of the DPD, exercise of rights and possibility of claim before the AEPD. It also includes a link to the "Record of Activities of Treatment: Health Care".

In this Registry (URL: <https://www.san.gva.es/documents/157385/7741448/RAT-ASISTENCIA+SANITARIA.pdf>) lists the legitimizing bases, purposes of the treatment, groups of interested parties, categories of personal data, categories of recipients, international transfers, conservation period, security measures



security, responsible entity and DPD contact.

URL:

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HEALTH+PROMOTION%2C

%20 PREVENTION+OF+DISE+AND+WORK+HEALTH.pdf

<https://www.san.gva.es/documents/157385/7741448/RAT->

The information accessed corresponds to the content of the "Register of Activities of

Treatment: health promotion, disease prevention and occupational health".

It has the same structure as the RAT indicated in the previous paragraph.

Report:

<https://ceice.gva.es/es/web/educacion/proteccio-de-dades-en-centres->

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URL: [https://ceice.gva.es/es/web/educacion/proteccio-de-dades-en-centres-educatius-](https://ceice.gva.es/es/web/educacion/proteccio-de-dades-en-centres-educatius-publics-gva)

publics-gva

This address leads to information on the protection of personal data

in educational centers of the Generalitat Valenciana. like information

inserted in the web portal of the CONSELLERÍA DE SANIDAD, this other portal

It only includes information on the identity of the person in charge, contact information

of the DPD, exercise of rights and possibility of claiming before the AEPD. Includes,

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in addition, links to the "Register of Treatment Activities" of the Ministry

d'Educació, Culture and Esport.

. Report: Covid-19 Protocol for GVA Public Educational Centers and Management of vaccination of center staff

URL: <https://ceice.gva.es/documents/161634256/172300185/RAT+Protocolo+COVID-19+for+the+Educational+Centers+P%C3%BAblicos+and+Management%C3%B3n+of+the+vaccination%C3%B3n+of+personal+in+the+centres.pdf/4a6abe1a-a5cb-43f7-aa1d-071f68ef4313?t=1614774587076>

You try to access this information through the indicated link and you do not get it result.

SIXTH: On 09/16/2022, a resolution proposal was formulated in the sense of that by the Director of the Spanish Data Protection Agency is sanctioned with warning to the entity CONSELLERÍA DE SANIDAD, for the infringement of article 13 of the GDPR, typified in article 83.5.b) of the same Regulation, and qualified as very serious for the purposes of prescription in article 72.1.h) of the LOPDGDD.

SEVENTH: Once the requested entity has been notified of the aforementioned resolution proposal, receives a letter from the Data Protection Delegation of the Generalitat Valenciana, that accompanies the response prepared by the CONSELLERÍA DE SANIDAD, based on which they consider that the assumptions that determine the infringement do not concur accused.

He bases his conclusion on the following considerations:

1. The actions were carried out in compliance with the protocol agreed between the two Ministries with competences in education and health and public health, respectively,  
link

<https://ceice.gva.es/documents/161634256/356417399/Actualizaci%C3%B3n+del+protocol/33b7d01c-9ed2-3628-cbec-a17a3833dc40?>

t=1649054495985), as well as the contract between the latter and the company Sistemas Genómicos S.L., which was contracted, on 01/29/2021, to carry out 10,000 PRC tests for the diagnosis of COVID-19 in schools.

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2. The people affected, school minors accompanied by a family member adult, they went to the agreed places for the taking of samples by indication of the COVID person in charge of your school, who belongs to the staff of the center and It is in charge of ensuring compliance with the established norms regarding COVID-19, coordinates and communicates with the health center and the families of the students before the appearance of symptoms.

3. Samples were taken at different locations, including the car park of the company Sistemas Genómicos S.L. The staff of this company verifies the basic data of the interested parties to verify their identity contrasting it with that provided by the Ministry and, provided that the circumstances health authorities allowed it, they were given an information sheet that contains a section

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regarding the protection of personal data.

Provide a copy of this information sheet, which corresponds to a "Document of information and informed consent" prepared by the entity "Grupo Ascires", of the that the entity Sistemas Genómicos S.L. was part of at that time, as indicated by

the claimed part. This document includes information about the test that is intended to carry out and a section on protection of personal data, in addition to the form to provide consent for the test. The

Information on data protection is offered by the entity "Ascires Grupo Biomedical" as the entity responsible for the treatment.

In connection with the use of this fact sheet, the respondent entity represents that the doubts expressed by the interested parties in this regard were addressed by the company personnel, "referring when necessary to the information communicated in schools or to that provided by the Department of Health and the company itself through the communication channels enabled for this purpose, among them their web portals".

4. With the same informative purpose, the Ministry of Education, Culture and Sport prepared a series of documents for families and related to the management of the health crisis in educational centers. This documentation consists of:

- . Collaboration commitment Guide-COVID-19 Protocol (responsible statement):

Document to be completed by families that includes information on Data Protection.

- . Detailed information personal data Guide-COVID-19 Protocol in Centers

Public Educational: Information clause related to the treatment of data derived from the Protocol for the Management of Covid-19 cases in the centers non-university educational programs of the Valencian Community during the academic year 2020-2021 in compliance with articles 13 and 14 of the GDPR.

- . RAT COVID-19 Protocol for Public Educational Centers and Management of the

vaccination of personnel in centers This information is public and may be consulted in section C accessible through the following url: <https://ceice.gva.es/en/registre-of-tractament-de-dades>

5. The extraordinary circumstances that occurred in those days can be considered within the cases provided for in article 14.5.b of the GDPR, in relation to with the successive regulations aimed at managing the health crisis situation caused by COVID-19 and approved by both the State Government and by those of the Autonomous Communities. On the other hand, from the health centers informs, through different means and, especially, at the time of registration in the population information system, of the data processing that is carried out as consequence of the care activity in compliance with articles 13 and 14 of the GDPR, since interested persons already receive information about the treatment of your data including those related to diagnostic tests.

Of the actions carried out in this procedure and of the documentation in the file, the following have been accredited:

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## PROVEN FACTS

1. Due to a positive for Covid-19 detected in the class of the daughter of the party complainant, the CONSELLERÍA DE SANIDAD carried out a PCR test the students, including the daughter of the claimant.

For this reason, the personal data of the daughter of the claimant were collected.

relative to full name, ID and an email address, in addition to the test result. The email address was used for the referral of the test result.

2. The claimant has stated that the PCR test performed on his daughter was carried out

carried out without offering you any information on data protection

personal.

3. The CONSELLERÍA DE SANIDAD has stated that the information regarding Protection of personal data is offered through the documents inserted in the web portals and applications for mobile devices, accessible through URLs detailed in the Fifth Antecedent, which are declared reproduced for the purposes evidence.

## FUNDAMENTALS 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 GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures".

II

Article 4 of the GDPR, under the heading "Definitions", provides the following:

"2) "processing": any operation or set of operations performed on data personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, comparison or interconnection, limitation, deletion or destruction".

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In accordance with these definitions, the collection of personal data that involves carrying out the PRC tests by the CONSELLERÍA DE SANIDAD constitutes data processing, with respect to which said entity, as responsible for the treatment, must comply with the principle of transparency, established in article 5.1 of the GDPR, according to which personal data will be "treated in a lawful, loyal and transparent manner in relation to the interested party (lawfulness, loyalty and transparency)"; and developed in Chapter III, Section 1, of the same Regulation (articles 12 and following).

Article 12.1 of the GDPR establishes the obligation of the data controller take the appropriate measures to "provide the interested party with all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 regarding the treatment, in a concise, transparent, intelligible and easy way. access, in clear and simple language, in particular any information addressed to child".

When personal data is collected directly from the interested party, the information

It must be provided at the same time that data collection takes place. He

Article 13 of the GDPR details this information in the following terms:

"1. When personal data relating to him or her is obtained from an interested party, the person responsible for the

treatment, at the time these are obtained, will provide you with all the information indicated

next:

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

b) the contact details of the data protection officer, if applicable;

c) the purposes of the treatment for which the personal data are intended and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the responsible or of a third party;

e) the recipients or categories of recipients of personal data, if applicable;

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 decision adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate guarantees and means to obtain a copy of these or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:

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

b) the existence of the right to request access to the data from the data controller personal information relating 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 article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without this affecting the legality of the treatment based on the consent prior to its withdrawal;

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



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

f) the existence of automated decisions, including profiling, referred to in the

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Article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested.

3. When the controller plans the subsequent processing of personal data for a purpose other than that for which they were collected, will provide the interested party, with prior to said further processing, information about that other purpose and any information relevant additional pursuant to paragraph 2.

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

In accordance with these regulations, the duty to inform corresponds to the person responsible for the processing of personal data.

In this case, the entity CONSELLERÍA DE SANIDAD has not accredited having complied with this obligation to inform on the protection of personal data to the claimed party for the performance of a PCR test on his daughter under the age of age.

On this matter, the CONSELLERÍA DE SANIDAD, in its allegations to the motion for a resolution has indicated that, when circumstances allowed

provided interested parties with the "information sheet" that it accompanies, which includes information on data protection. However, it does not say that said "sheet informative information was provided to the complaining party and, furthermore, it would not serve to understand fulfilled the obligation to inform by the aforementioned Ministry to the be a document prepared by the entity contracted to carry out evidence, Sistemas Genómicos, S.L., which intervenes in the facts as manager of the treatment (in that "information sheet it is indicated that "Ascires Grupo Biomédico", at which belonged to Sistemas Genómicos, S.L. is the data controller).

For these purposes, it is not considered sufficient to understand the obligation to inform with the information contained in the documents inserted in the portals website to which the CONSELLERÍA DE SANIDAD refers in its allegations to the opening. Even less with the information inserted in the application for devices enabled by said entity, whose download may not have been made by the complaining party.

The same can be said in relation to the documents prepared by the Ministry of Education, Culture and Sport (Guide-COVID-19 Protocol in Educational Centers Public and RAT COVID-19 Protocol for Public Educational Centers and Management of the vaccination of personnel in the centers), to which the entity refers claimed in its allegations to the resolution proposal

Said documents, and the possibility of accessing them through the Internet, do not excludes the need to provide data subjects with first-hand basic information layer at the time of data collection, in this case, at the time of the performing the PCR test. In this basic information it is possible to refer to the additional information contained in those web portals, at the indicated URLs by the party claimed, whose existence may not be known by the interested parties.

And neither can it be accepted that these details about the way and place to locate the information is indicated verbally by the staff of Sistemas Genómicos, S.L. to people who expressed doubts about it. This circumstance has been expressed by the CONSELLERÍA DE SANIDAD in its allegations to the proposal resolution, but without providing any evidence. It should be noted that, according to established in article 12 of the GDPR, "The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by the interested party, the information may be provided orally as long as the identity of the interested party by other means".

In this sense, the first layer must refer, at least, to the existence of the treatment, the identity of the person in charge, the possibility of exercising the rights provided for in articles 15 to 22 of the GDPR and where to obtain more information about the processing of personal data.

The information of the second layer must be available to the interested party, admitting that this obligation is fulfilled by indicating an electronic address or other medium that allows "simple" and "immediate" access to the remaining information, which must refer to the other elements of article 13 of the GDPR.

In this regard, article 11 of the LOPDGDD establishes the following:

"Article 11. Transparency and information to the affected party.

1. When the personal data is obtained from the data subject, the data controller may comply with the duty of information established in article 13 of the Regulation (EU) 2016/679 providing the affected party with the basic information referred to in section

following and indicating an electronic address or other means that allows access in a simple and immediate to the rest of the information.

2. The basic information referred to in the previous section must contain, at least: a)

The identity of the data controller and his representative, if applicable. b) The purpose of the treatment. c) The possibility of exercising the rights established in articles 15 to 22 of Regulation (EU) 2016/679.

(...)”.

Lastly, it should be noted, also in response to what was stated by the

CONSELLERÍA DE SANIDAD in its allegations to the proposed resolution, that the

Article 14 of the GDPR is not applicable to the present case, as it refers to

situations in which personal data is not collected directly from the

interested. With this allegation, said entity sought to justify the exception that

supposes regarding the obligation to report the impossibility or effort

disproportionate to carry it out (article 14.5.b) of the GDPR).

Therefore, the facts verified fail to comply with the principle of transparency established

in article 13 of the GDPR, and constitute an infringement classified in the

Article 83.5.b) of the GDPR, which under the heading "General conditions for the

imposition of administrative fines" provides the following:

Violations of the following provisions will be penalized, in accordance with section

2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company,

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of an amount equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, opting for the highest amount:

b) the rights of the interested parties in accordance with articles 12 to 22;(...)".

For the purposes of the limitation period, article 72.1.h) of the LOPDGDD indicates:

"Article 72. Offenses considered very serious.

1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, they are considered very serious and will prescribe after three years the infractions that suppose a violation

substance of the articles mentioned therein and, in particular, the following:

h) The omission of the duty to inform the affected party about the processing of their personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Organic Law".

V

Article 83 "General conditions for the imposition of administrative fines" of the

GDPR in its section 7 establishes:

"Without prejudice to the corrective powers of the control authorities under article 58, paragraph 2, each Member State may lay down rules on whether and to what extent measure, impose administrative fines on authorities and public bodies established in that Member State".

Likewise, article 77 "Regime applicable to certain categories of

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 treatments of which are responsible or in charge:

(...)

c) The General State Administration, the Administrations of the autonomous communities and the entities that make up the Local Administration.

(...)

2. When the managers or managers listed in section 1 commit any of

the infractions referred to in articles 72 to 74 of this organic law, the authority of data protection that is competent will issue a resolution sanctioning them with warning. The resolution will also establish the measures that should be adopted so that cease the conduct or correct 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 of which depends hierarchically, where appropriate, and to those affected who had the status of interested, if any.

3. Without prejudice to the provisions of the previous section, the data protection authority

It will also propose the initiation of disciplinary actions when there are indications enough for it. In this case, the procedure and the sanctions to be applied will be the established in the legislation on the disciplinary or sanctioning regime that results from

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application.

Likewise, when the infractions are attributable to authorities and executives, and the existence of technical reports or recommendations for treatment that had not been properly attended, the resolution in which the sanction is imposed will include a reprimand with the name of the responsible position and the publication will be ordered in the Official State or regional Gazette that corresponds.

(...)

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

(...)"

In the case at hand, the aforementioned article 77 of the LOPDGDD contemplates the possibility of resorting to the sanction of warning to correct the treatments of personal data that do not conform to their forecasts, when those responsible or managers listed in section 1 committed any of the offenses to the referred to in articles 72 to 74 of this Organic Law.

Likewise, it is also contemplated that the resolution issued may establish the measures that should be adopted to cease the conduct, correct the effects of the infraction that had been committed and the necessary adaptation is carried out, in this case, to the requirements contemplated in the aforementioned article 13 of the GDPR, as well as the Contribution of means accrediting compliance with the requirements.

Thus, in accordance with the provisions of the aforementioned article 77 of the LOPD, it may be required to the responsible entity so that, within the period to be determined, it adapts its action to the personal data protection regulations, with the scope expressed in the above Fundamentals of Law.

However, in this case, considering the current situation of the pandemic caused due to the Covid-19 virus, it is not considered necessary to impose on the CONSELLERÍA DE SANIDAD the adoption of measures to comply with the principle of transparency when carrying out PCR tests, unless the evolution of said pandemic requires the new in practice the realization of the same.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE DEPARTMENT OF UNIVERSAL HEALTH AND HEALTH

PUBLIC of the Generalitat Valenciana, with NIF S4611001A, for an infringement of the article 13 of the RGD, classified in article 83.5.b) of the same Regulation, and

classified as very serious for the purposes of prescription in article 72.1.h) of the LOPDGDD typified in Article 83.5 of the GDPR, a warning sanction.

SECOND: NOTIFY this resolution to the CONSELLERIA DE SANIDAD

UNIVERSAL AND PUBLIC HEALTH of the Generalitat Valenciana.

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THIRD: COMMUNICATE this resolution to the Ombudsman, in

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

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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