

Procedure No.: PS/00113/2019

□

938-090320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST:

claim before the Spanish Data Protection Agency.

(hereinafter, the claimant) on 10/19/2018 filed

A.A.A.

The reasons on which the claim is based are that B.B.B., ***CARGO.1 of ***LOCA-
LIDAD.1, published and

I 10/11/2018 at 12:01 "from your personal FACEBOOK account and on
a public group" "called SOMOS DE ***LOCALIDAD.1", "which at the date of the presentation
written text has 2,179 followers" (**URL.1) in his private profile (**URL.2) an instant
administrative claim that the claimant had filed with the City Council on 01/17/2018

“. "In that writing (on a request for action on a road next to his home) there is

All my personal data is perfectly identified (name and surnames, address
complete, etc.), and the claims pursued. Airing through social networks, for
***POSITION.1 itself, when its knowledge and resolution should have been closed.

gives to the people involved in an administrative file of that nature"

It states that:

- "...all the members of that public group of that social network had access to
my personal data and the content of the document that I had presented in the offices

nas of the City Council of ***LOCALIDAD.1”

-“At 2:49 p.m. that day, Mr. B.B.B., knowing perfectly well that there was committed that irregularity, erased that first document and replaced it with a partial copy. of the same, where these personal data are no longer distinguished. I want to state ex- noting that I have in no way authorized that second publication either, and that that writing was made by me to make a request to the City Council and in no case for Mr. B.B.B. make private and political use of it, on a private basis in a public and open network.

Clear specification of the causes that have motivated the incidence that has given rise to

SECOND: In view of the facts stated, the claim was transferred to the claimant- do, B.B.B., City Council of ***LOCALIDAD.1, to inform:

1.

gar to the claim.

two.

to avoid the occurrence of new incidents such as the one exposed.

3.

informed about the course and outcome of this claim.

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Detail of the measures adopted by the person in charge to solve the incident and

Documentation proving that the claimant's right to be

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2/8

Answered on 02/15/2019, the data protection delegate of the City Council, ma-

stating that the exhibition of the document with the data was made on behalf of the natural person

ca de B.B.B., and that the City Council or the position has no responsibility or significance

some not representing the local entity, considering that they did it as a neighbor.

On the measures to be taken is:

-Suggest that the respondent cease their activity on the social network or do so on a personal basis-

without publishing documents that may mislead the information about its nature.

leza or provenance.

-That the claimed party send a letter of apology to the claimant indicating the nature-

leza of your publications.

-Training in relation to the new special data protection regulations-

specifically for people who have to disseminate information on networks and other dissemination channels.

Zion.

As to whether the claimant has been informed of the resolution adopted, they provide

copy of the letter sent to him by the town hall, specifying that it does not have

responsibility in the case.

THIRD: On 02/26/2019, the Director of the AEPD agrees to the admission for processing

of the claim.

FOURTH: On 11/28/2019, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure of AWARD to B.B.B., for the

alleged infringement of Article 5.1.f) of the RGPD, in relation to article 5 of the

LOPDGDD, as indicated in article 83.5 a) of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

pleadings in which, in summary, it states:

Days before, on 10/9/2018, the PP political group of ***LOCALIDAD.1 on said network

1)

The installation of a mirror on the regional highway in front of the bowling alley was attributed to the social

*** LOCALITY.2, as a request from the councilors themselves made on 03/1/2018.

Attached impression of that manifestation, which is not visible. It indicates that "to clarify that untrue statement, the data of the claimant was exposed."

"The exhibition is considered legitimate because the road safety action, of interest two)

public, had its origin in the instance of the claimant", who is also the owner of the aforementioned bowling alley and a bar open to the public. "The data of the claimant is public data, notorious, and correspond to a hotel facility open to the public. The performance of said installation was a matter of public interest."

The page "*** PAGE.1" on FACEBOOK "of my personal profile" is a "vehicle of 3)

transparency in my management as ***POSITION.1 at the head of the City Council of ***LOCALIDAD.1", "because of its nature as a public group in which I try to give response to issues of public interest raised by the residents of Penagos, and be

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3/8

a forum for debate and exhibition of ideas around the needs of the population of the municipality and information that may be of public interest around the municipality.

SIXTH: On 03/05/2020, a resolution proposal was formulated, proposing "That by the Director of the Spanish Agency for Data Protection is sanctioned with

WARNING to B.B.B., for an infringement of article 5.1.a) of the RGPD, in accordance with points out article 83.5 a) and 58.2.a) of the RGPD."

No claims were received within the given period.

PROVEN FACTS

The claimant filed an instance in the claimed City Council on 01/17/2018

1)
on request for action in a road next to his home.
In the private and personal FACEBOOK account of the person claimed, in a group
two)
public" "named SOMOS DE***LOCALIDAD.1", (**URL.1) in your private profile
(**URL.2) the respondent exhibited on 10/11/2018 from 12:01 p.m. to 2:49 p.m. openly,
the request of the claimant of 01/17/2018 containing name and surnames, address
complete, and the request for the installation of some road element.

The defendant justifies the treatment that said FACEBOOK page serves as a forum

3)
discussion and response to issues of public interest raised by the residents of
***LOCALIDAD.1, forum for debate and exhibition of ideas around the needs of the
population of the municipality, with information that may be of public interest around the
municipality.

4)
Add the claimant who posted on FACEBOOK the full petition of the claimant
with their data to counteract the demonstrations of the PP political group that
attributed the initiative of having requested the installation of a mirror in a vial, in March
2018 when he was the claimant in a previous petition filed at City Hall on
that started it. The respondent estimates that full knowledge of the claimant's data
contained in that your request of 01/17/2018 was necessary because it was considered of interest
public and that the data was known because he is the owner of a hotel establishment.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, 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 resolve this process.

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4/8

The RGPD defines in its article 4:

II

1) "personal data": any information about an identified or identifiable natural person

("the interested"); An identifiable natural person shall be deemed to be any person whose identity

can be determined, directly or indirectly, in particular by means of an identifier, such as

for example a name, an identification number, location data, an identifier

online or one or more elements of the physical, physiological, genetic,

psychic, economic, cultural or social of said person;"

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, collation or interconnection, limitation, suppression or

destruction;

4) "file": any structured set of personal data, accessible in accordance with

determined criteria, whether centralized, decentralized or functionally distributed

or geographic;

7) "data controller" or "controller": the natural or legal person, authority,

service or other body which, alone or jointly with others, determines the ends and means of the treatment; if the law of the Union or of the Member States determines the purposes and means of treatment, the person responsible for treatment or the specific criteria for its appointment may be established by the Law of the Union or of the Member States;

10) "third party": natural or legal person, authority, service or body other than the interested party, the person in charge of the treatment, the person in charge of the treatment and the people authorized to process personal data under the direct authority of the controller or the duty manager;"

The fundamental right to data protection seeks to guarantee its owner a power of control over your personal data, over its use and destination, for the purpose of prevent their illicit and harmful traffic to the dignity and rights of the affected party.

The document presented by the claimant at the Town Hall contains data whose responsible for management and custody is the City Council, its character and destiny are not the dissemination for the knowledge of third parties, in a particular FACEBOOK account, but the attention of the City Council, competent for the management of the matter that the claimant urged.

As ***POSITION.1, in his position, this person, who is also the claimed person, may have access to said document, but it is proven that it makes a merely private use for reply to a statement from another political group on your private FACEBOOK account, without any reference to the City Council or political group.

Transparency issues, if they relate to active advertising that has to be exposed, they have to be through the instruments specifically determined in the regulations, with the corresponding requirements, not being foreseen in In any case, this official disclosure within FACEBOOK.

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In addition, the presentation of an instance by an individual so that they undertake specific actions does not fall within the matters that must be fully exposed as active transparency, including the personal data of the petitioner, since it is not proportional to the purpose, adequate, nor pertinent, even if it has a bar or regent a business open to the public, or known for it. In this case the data was linked to a instance that is registered in the City Council as it is a matter of competence of this, not for the use of the claim in a particular medium when it has deemed it convenient, for which It has no jurisdiction or powers.

If what the respondent wanted was to reply that the initiative on road action had belonged to an individual, it is not proportional or adequate, nor does it comply with regulations. treatment of your data on said platform, and may, for example, have crossed out data without any identifying element being visible.

The fact that the claimant has an establishment open to the public, or that it is known in the area, is indistinct for data protection purposes since the claimed provides your data for a purpose in a specific public matter. The fact is that These data are subject to the personal reserve conferred by the office of affairs administrative, not for dissemination and comments with other participants.

The particular use of the claimed party escapes the circle of responsibility of the City Hall as a public entity. It seems clear that the ***CARGO.1 cannot use the data from third parties to defend their performance or management in a social network at a particular level, that has nothing to do with said issue or with the official system of transparency by the that its activity must be manifested.

It follows that in accessing and disposing of the document obtained and disclosed, intervened the exclusive will of the claimed, which technically treats it through the

FACEBOOK platform, and thanks to this, a knowledge of third parties of their data that should not have been given, nor on the other hand was expected by the claimant.

The social network FACEBOOK is an automated data platform, being in the moment of the events, the defendant was the one who used it as a tool for disseminating information. The fact that you use the offered platform to enjoy the services associated with it does not exempt you from complying with data protection regulations such as responsible for the treatment that has been carried out.

It is concluded that the respondent carries out data processing with an instance that had input in the town hall on a matter of road safety, and without counting on the consent of the owner of the data, and with the consequent surprise, he saw exposed his data, out of any expectation.

In the present case, the defendant's freedom of expression, which additionally held the status of ***CARGO.1 at that time, it could have materialized also without disclosing the complete data of the claimant.

The use of the social platform for informational, political or social purposes does not apply the "domestic scope" exemption. In this case, the user, the claimed party, assumes full liability of a data controller that discloses personal data to

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6/8

another data controller (SOCIAL NETWORK SERVICE, SRS) and third parties (other SNS users or potentially even other data controllers) data that have access to them). In such circumstances, the user would need the consent of the aforementioned interested party, or other legitimate basis that appears in the

article 6.1 of the RGPD.

In the present case, the expressions in a private capacity of the respondent do not respond to an action subject to administrative law because it did not act displaying any competence that comes attributed to it by the norm in that aspect, but that it does so in an informal way, issuing opinions and judgments, accompanied by the instance presented in the past by the claimant, making use of it favorably to refute what manifested another political group. For responding to public interest the installation of the element road, the object, not for that reason they have to sacrifice and expose the data of the petitioner, claimant, not being able to prosper the reason for treatment of public interest.

The claimed party, acting in a private capacity, lacks a legitimate basis for the treatment that it has carried out, considering it illegal, for not being based on any legitimate basis that is contain in any of the points of article 6.1.a) to f) of the RGPD

In this sense, the proposal proceeded to vary the imputation to the defendant of the infringement of article 5.1.f) of the RGPD, for not acting the claimed in this case within the framework local institutional that is required to take security measures, and arise, not within the competences and organization of the city council, but in a private capacity in the network social FACEBOOK from your personal account, using your particular profile.

Not proving that the claimant has an enabling title for the treatment of data under any perspective of article 6.1 of the RGPD, nor specific reason for the treatment carried out, it is considered that the infringement falls under article 5.1.a) of the RGPD that indicates:

The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

It also contributes to this typification, that in addition, the data of fair manner when they are presented in a public registry and extracted, publishing them in a

private system such as FACEBOOK, for private uses exercised by the claimed party. The claimed should have thought about whether the use that was going to be given to said data confronts the loyalty in the use of the same insofar as they were given with a very specific purpose, without the invasion of the right of the claimant is justified. The letter presented by the claimant in January 2018 as a matter to be managed, is likely to identify his signatory through the data contained, whether on paper or in electronic format.

That document, after nine months, could be that with the matter already resolved or initiated, is uploaded to a platform such as FACEBOOK, voluntarily by the claimed, proceeding through it to make themselves known to third parties not interested in the procedure not only the matter but also the data of its presentation.

The respondent should not use management documents of a public nature to a particular page and through a platform that can be accessed by anyone know the data of the claimant.

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7/8

Regarding the proper use of FACEBOOK, the main rule of use, especially of a public office is, as a general rule, not to expose personal data on a social network of a personal nature of citizens referred to the presentation of their applications that identify identify or make them identifiable.

III

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for treatment, including the conditions for consent under articles

5, 6, 7 and 9” is punishable, with administrative fines of a maximum of €20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, opting for the highest amount."

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning when the processing operations have violated the provisions of this Regulation;

d) order the controller or processor that the processing operations comply with the provisions of this Regulation, where appropriate, of a determined manner and within a specified time;

Recital 148 of the RGPD indicates that in order to impose the corrective measure adequate, special attention should be paid to the nature, severity and duration of the infringement, or to any relevant prior infringement, and to any other circumstance aggravating or mitigating. For natural persons, instead of sanctioning by means of a fine, impose a warning. In this case, the disclosure of the data occurs during scarcely three hours, applying the warning measure.

Therefore, in accordance with the applicable legislation and proving the existence of the infringement,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., for an infringement of article 5.1.a) of the RGPD, in accordance with article 83.5a) of the RGPD, a sanction of WARNING, in accordance with the article 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to B.B.B.

THIRD: 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 one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with

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8/8

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 two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned Law.

Sea Spain Marti

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