

□ File No.: PS/00103/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on January 15, 2020 filed claim before the Spanish Data Protection Agency. The claim is directed against B.B.B., C.C.C. and D.D.D. and the FACEBOOK account (FB hereinafter) named: "****ACCOUNT.1" .

Provide a printed copy of the FB messages of the name account;" B.B.B.-with D.D.D. and C.C.C.", and the comment: "Negligence? Dolo? Prevarication??, printed has a date 01/14/2020, and then echoes with the impression of: "(...)", from a message from the day that indicates: "Today the ***CARGO.1 of Gomezserracin have requested the secretary and Mayor of this Town Hall the report on which the Mayor..." and the annex of a "request Documentation" which contains the request made by the three people referred to, that are identified as ***CARGO.1 in the aforementioned Town Hall. In the expository part, The only visible one is where it is indicated that they have been made aware of the approved resolution. Doing the labor contract of the claimed person, identifying her with her name and surnames. allude because "they have learned through the GESTIONA platform, which, as ***POSITION.1 of this City Council we have the right of access-."

SECOND: Dated 02/04/2020, FB is accessed by Inspection, title: "****ACCOUNT.1", (...), and in information it appears "we have created a space where we are going to try to give all available information and publish with total transparency on important topics and activities. carriers of our municipality. ***CHARGE.1 of the City Council of Gomezserracin"

On that page it is stated:

-The document called "request for information" with the data of those who request it.

so, the three ***CHARGE.1 and the direct documentation request document can be seen in its entirety. addressed to the City Council, signed on 01/13/2020. Access is requested to various points of the con- treatment.

On the other hand, there is also the note "(...) January 13" with: "today the ***CHARGO.1 of the Par- Popular Party of Gomezserracin we have asked the Secretary for an indefinite contract as ***POSITION.1 very necessary in your opinion.", alluding to the principles of merit, capacity and publicity and "Today the secretary has assured us... that there is no such information. economic legal me. We will move on."

The message appears "twice shared". In "people who have shared this" it says

on the same page of "***ACCOUNT.1": "B.B.B. with D.D.D. and C.C.C., the other two characters

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nas reviewed, with the addition Negligence? Dolo? Prevarication??, integrating the "request document tude "

THIRD The claim is transferred to the POPULAR MUNICIPAL GROUP IN THE

CITY COUNCIL OF GOMEZSERRACÍN on 02/20/2020, to the address of the City Council

On 05/18/2020, a letter was received from the GOMEZSERRACÍN City Council, stating partying:

-“Dated 03/06/2020, a document of

Ms. B.B.B., C.C.C. and D. D.D.D., ***POSITION.1 of the Popular Party of the City Council of

Gomezterración, on transfer of notification received from the Spanish Agency for Pro-

Data protection dated 02/24/2020, addressed to the "POPULAR MUNICIPAL GROUP IN

THE CITY COUNCIL OF GOMEZSERRACÍN”, “It is appreciated that the notification of the AEPD is received by Ms. B.B.B., at her private address, as ***POSITION.2 of the Grupo Municipal in the Gomezserracin Town Hall.”

-“The letter of the ***CARGO.1, sends to the City Council the request that the AEPD has sent to them as the main and only part of the investigation process that said Agency has in progress, with the intention that it be the City Council itself that justifies that or sends information to the AEPD, when this entity is not involved in said procedure. I am opened by the AEPD.”

-“The persons denounced in the document sent by the AEPD are the ***POSITION.1 in the opposition of the City Council of Gomezserracín, and on its behalf and to whom the registry, "POPULAR MUNICIPAL GROUP IN THE CITY COUNCIL OF GOMEZSERRACIN”.

“The Gomezserracín City Council is not a party, nor in the complaint filed with the AEPD by the claimant since he is not a party denounced, nor of the claim that this Agency makes in the file reference number E/01516/2020 and that it is directed given exclusively to the "POPULAR MUNICIPAL GROUP IN THE CITY COUNCIL OF GOMEZSERRACÍN”

Provides a letter called "notification transfer" in which on 03/06/2020, the three ***CARGO.1 in City Hall are directed to this. The letter indicates:

a)

The request for information was delivered from the City Council through the personal mail to the private address of the ***CARGO.2 of the political group, and that said notification is directed to the Popular Group of the City Council and, where appropriate, to the person in charge or City Council data protection officer

”They ask that “it be informed and managed by the Intervention Secretary of the Ayun-

b)

status as a Data Protection Delegate and send all the information requested to the agency "

FOURTH: On 06/03/2020, the claim was accepted for processing.

FIFTH: On 05/05/2021, the Director of the AEPD agreed:

"INITIATE A SANCTIONING PROCEDURE for a GROUP

POPULAR MUNICIPAL CITY HALL IN THE CITY COUNCIL OF GOMEZSERRACÍN, (SEGOVIA),

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for the alleged infringement of articles 32 and 5.1.f) of the RGPD, in accordance with the article 83.4.a) and 83.5. a) of the RGPD."

The agreement was delivered to the ***CARGO.2 of the PP, and no allegations are received.

SIXTH: On 12/21/2021, a resolution proposal is issued for the literal:

"FIRST: That by the Director of the Spanish Agency for Data Protection,

sanction POPULAR MUNICIPAL GROUP IN THE CITY COUNCIL OF

GOMEZSERRACÍN, with NIF G28570927, for violations of: - Article 32 of the RGPD,

in accordance with article 83.4.a) of the RGPD, and for prescription purposes in article

73. f) of the LOPDGDD, and - article 5.1.f) of the RGPD, in accordance with article

83.5.a) of the RGPD, and for prescription purposes in article 72.1.a) of the RGPD.

SECOND: That the Director of the Spanish Data Protection Agency

proceed to impose a POPULAR MUNICIPAL GROUP IN THE CITY COUNCIL OF

GOMEZSERRACÍN within the period determined, the adoption of the necessary measures

to adapt to the personal data protection regulations the operations of

treatment that it carries out, with the scope expressed in the Fundamentals of Rights of

this motion for a resolution

No claims were received.

SEVENTH: Of the actions carried out in this procedure and of the

documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claimant claims that in the FACEBOOK (FB) account of B.B.B.- with

DDD and C.C.C.", as of 01/14/2020, there are references to their data-name and surnames-, at

expose the comment of "(...)" that attaches a request for documentation to the City Council-

I lie, seeing the writing with your data.

SECOND: On 02/04/2020, FB was accessed by Inspection, title: "****ACCOUNT.1",

"(...)", and in information, it appears "we have created a space where we are going to try to give

all available information and publish with total transparency on topics and activities.

important des of our municipality. ***CHARGE.1 of the City Council of Gomezserra-

cin".

On that page it is stated:

-The document called "request for information" with the identification data of the

that request it, the three ***POSITION.1 (and the document request document is seen in its entirety)

notice addressed to the City Council, signed on 01/13/2020). I know in that writing access to

various aspects related to the hiring of a job of a nature

labor for the claimed

On the other hand, there is also the comment: "Today the ***CARGO.1 of the Popular Party of

Gomezserracin we have requested an indefinite contract from the Secretary as ***POSITION.1

very necessary in your opinion.", alluding to the principles of merit, ability and publicity.

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has reviewed, with the addition Negligence? Dolo? Prevarication??, integrating the "request

documentation tud ".

THIRD: It is unknown if the data identifying the

they qualify the claimant.

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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the

Spanish Agency for Data Protection is competent to resolve this

process.

II

The POPULAR MUNICIPAL GROUP in the Gomezserracín City Council is charged with a

violation of article 32 of the RGPD, which indicates:

"1. Taking into account the state of the art, the application costs, and the nature,

the scope, context and purposes of the treatment, as well as risks of probability and

variable seriousness for the rights and freedoms of natural persons, the person responsible

and the person in charge of the treatment will apply appropriate technical and organizational measures

to guarantee a level of security appropriate to the risk, which, where appropriate, includes, among

others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure confidentiality, integrity, availability and resilience

permanent treatment systems and services;

c) the ability to restore the availability and access to the personal data of

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of the

technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken

the risks presented by the data processing, in particular as a consequence of the

accidental or unlawful destruction, loss or alteration of transmitted personal data,

stored or otherwise processed, or unauthorized communication or access to

said data.

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4. The person in charge and the person in charge of the treatment will take measures to guarantee that

any person acting under the authority of the person in charge or the person in charge and

access to personal data can only process said data following instructions from the

responsible, unless it is obliged to do so by virtue of Union Law or the

Member states."

Recital 74 of the RGPD indicates: "The responsibility of the user must be established.

controller for any processing of personal data carried out by

himself or on his own. In particular, the person responsible must be obliged to apply

timely and effective measures and must be able to demonstrate compliance of activities

treatment with this Regulation, including the effectiveness of the measures. sayings

Measures should take into account the nature, scope, context and purposes of the treatment as well as the risk to the rights and freedoms of natural persons.”

The sending of the transfer of the claim that was made to the Municipal Group requested explanations to it, or to its DPD, so it is not appropriate to divert responsibility or the response to the City Council's DPD that has nothing to do with the exposure of details of the person of the claimant, as clearly deduced from the transfer of the same claim that was attached.

The claimed party should have security standards and data processing to that through the knowledge it has of them, by the exercise of its functions policies, do not expose them unnecessarily, disproportionately or inappropriately confidentiality, as has been the case in this case, and taking into account the right to protection of data owned by the claimant.

III

The POPULAR MUNICIPAL GROUP in the Gomezserracín City Council is accused of Violation of article 5.1.f) of the RGPD:

“Personal data will be:

“processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational structures (“integrity and confidentiality”).”

The LOPDGDD states in its article 5:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679”

In principle, the claimant has nothing to do with the decision of the City Council of approve the hiring. Some irregularity could possibly have been committed

in the file, but the open exposure of the claimant's data is not appropriate

in the request for documentation that is made. The same purposes of transparency could have been obtained by not exposing the data of the claimant, or crossing them out of the

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exposed document, considering that the accesses by Law of transparency to data

personal knowledge must be essential and of public interest.

person, elements that in this case do not concur. That is, it was not necessary

proportional expose that data

It is not proportional and the space of intimacy and reserve of disposition of

data of its owner, not being necessary for the purpose sought, questioning the form

to act of the town hall. The claimant does not have to suffer damages in the form of

see their data published in said document.

The Municipal Group in its political control activity accesses information from the

City Council, exposing the claimant's data openly on the social network,

administered, which supposes an interference in their right without necessity or

proportionality.

IV

Article 83.4 a) of the RGPD indicates: "Infringements of the following provisions are

will be sanctioned, in accordance with section 2, with administrative fines of 10,000,000

EUR maximum or, in the case of a company, an amount equivalent to 2%

as a maximum of the global total annual turnover of the previous financial year,

opting for the highest amount:

a) The obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 a 39, 42 and 43;”

The LOPDGDD establishes for prescription purposes in its article 73.f) of the RGPD:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

“f) Failure to adopt those technical and organizational measures that are appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679.”

While article 83.5 a) of the RGPD, indicates:

“5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of of a company, of an amount equivalent to a maximum of 4% of the volume of Total annual global business of the previous financial year, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the consent tion under articles 5, 6, 7 and 9;”

The LOPDGDD establishes a period of three years for prescription purposes and qualifies it as very serious, in its article 72.1.a) of the RGPD, indicating: “infractions that suppose a

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substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.”

v

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

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

“d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time;”

Article 83.7 of the RGPD indicates:

“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.

The Spanish legal system has chosen not to fine entities

public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: “1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue a resolution sanctioning them with a warning. The resolution will also establish the

measures to be taken to stop the conduct or correct the effects of the offense that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the that depends hierarchically, where appropriate, and those affected who had the status of interested, if any.

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

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

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protection of this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction.”

In accordance with article 58.2 d) of the RGPD, in combination with article 77.2 of the LOPDGDD, which indicates the adoption in the resolution of "the measures that should be adopted to stop the behavior or correct the effects of the infraction that had occurred.

committed" outlines on the one hand a first reference, which would mean an accommodation of the treatment operations for the purpose established with the establishment of a protocol that does not give rise to the open exposure of data of neighbors and citizens in

the questioning of the actions of the counterpart, without legal basis for their treatment, while in the second aspect, it would focus on the prompt regularization or correction of the effects of the infraction that would happen through the deletion of the data from the claimant. It is unknown if either has been fulfilled.

In any case, non-compliance with the resolutions of the supervisory authority in accordance with the article 58.2 d), would be sanctioned in accordance with the provisions of article 83.6 of the GDPR.

Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS a warning to the POPULAR MUNICIPAL GROUP IN THE CITY COUNCIL OF GOMEZSERRACIN, (Segovia) NIF G28570927, for a infringement of article 32 of the RGPD and another of article 5.1.f) of the same rule, of in accordance with articles 83.4 a) and 83.5 a), typified in articles 73.f) and 72.1.a) of the LOPDGDD.

SECOND: ORDER POPULAR MUNICIPAL GROUP IN THE CITY HALL DE GOMEZSERRACIN in accordance with the provisions of article 58.2 d) of the RGPD, and 77.2 of the LOPDGDD, which, within a month, adopts as appropriate measures to adjust their actions to the personal data protection regulations, the protocols for obtaining the results suggested in the fundamentals of Law II and V, and the deletion of the claimant's data is proven.

THIRD: NOTIFY this resolution to the POPULAR MUNICIPAL GROUP IN THE CITY COUNCIL OF GOMEZSERRACIN (Segovia).

FOURTH: COMMUNICATE this resolution to the OMBUDSMAN, 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 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

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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-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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