

□ Procedure No.: PS/00333/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The Superior Police Headquarters of Catalonia (hereinafter, the
claimant), dated February 2, 2021, sent the notification record of a
alleged infringement of data protection regulations to the Spanish Agency for
Data Protection.

The following is indicated in the letter of remission of the Minutes, in relation to the matter of
Data Protection:

“The Unit against Immigration Networks and Falsehoods attached to the Brigade
Provincial Immigration and Borders of Barcelona of the Superior Police Headquarters
of Catalonia has detected, as a result of receiving multiple claims and complaints
both from users and agencies and law firms related to the
documentary procedures for foreigners, that this saturation, in addition to the causes
exposed, is also motivated by the practices that have been carried out by
responsible for various establishments open to the public, mainly
booths, and/or individuals who advertise themselves to obtain appointments prior to
exchange of different economic amounts and that, to achieve greater profit,
saturate the computing platform in a way that causes users to have
very difficult to obtain a free appointment with the administration and they are forced
to require their services.

By going to these places, users have been forced to provide their data
personal information, both in writing and by providing a copy of your documentation

identification, to the employees or people who offer this service so that, with said data, they can book the appointment with the administration, since said Appointments are nominal and it is not possible to appear at the documentation offices police officers with proof of appointments that do not correspond to the person who is going to perform the requested procedure.

This transfer of your personal data is made without any guarantee or identification of the person in charge of the treatment of the same, as well as without informing or obtaining the consent of the users in accordance with the provisions of Organic Law 3/2018, Protection of Personal Data and Guarantee of Digital Rights, and the Regulation (EU) 2016/679, on your rights of access to your personal data, rectification, deletion or limitation of its treatment incurring for it, in the opinion of this Police Unit, in a slight infringement of article 74.a of the aforementioned L.O. 3/2018, without prejudice to the fact that with these behaviors they may also be infringing some another of the precepts of the L.O. 3/2018.

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On 01/14/2021, by police officers attached to this Unit, it was carried out an administrative inspection in the call center called "A.A.A. RECRETATIVES", located at ***ADDRESS.1, in which the existence of numerous client files (handwritten papers, copies of documentation, receipts of prior appointment NIE), which were stored in said establishment with the alleged purpose of obtaining prior appointments to carry out different procedures, extending in the place the mandatory inspection record whose copy is

attached to this letter.

Inside the establishment, a precautionary intervention was carried out on 4 original documents (DNI and TIE) belonging to third parties, with the purpose to carry out the corresponding police procedures with the holders of that documentation.

[...]

Once the corresponding procedures were carried out, the summons and subsequent taking of statements from various people whose details appear in the intervened documentation, which have expressed that they were not informed or gave any express or tacit consent to the provisions of the

Article 6.1.a of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, when providing your personal data to those in charge of the establishment to obtain an appointment.

In the same way, these people have stated that due to these procedures they have been charged different amounts of money, when the completion of said step prior to the processing of your documentation before the corresponding administrative unit of the National Police is free.

Based on the foregoing, in the opinion of the interveners, the owner of the establishment, both personally or through its employees, would be infringing one or various precepts of Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights, as well as the Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding to the protection of natural persons with regard to data processing therefore, on 01/21/2021, previously mentioned, he appears in these dependencies, the owner of the establishment called A.A.A. with NIE ***NIE.1,

SECOND: Prior to admitting this claim for processing, the

The Agency transferred it to the person claimed on 03/08/2021, in accordance with the Article 65.4 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD). With date 03/18/2021, the notification was delivered to the respondent by postal mail, according to It appears in the Post Office Receipt Notice.

On 04/26/2021, the respondent submitted a brief of allegations in which he indicates, among others, the following issues:

“The AEPD must issue a resolution, without further ado, filing or submitting administrative file, given that part of a base that is not true, part of the

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based on facts that do not correspond to reality, being that said police officers are not in possession of the truth, far from it. The act administrative process by which information is claimed from the undersigned is null and void right, then the successive acts carried out as a consequence of the first, must also be declared null, so the present must be filed proceedings.

These belong to the Immigration and Borders Brigade, and their actions are governed with the purpose of "discovering" or identifying and, where appropriate, prosecuting and sanctioning foreigners without legal residence in Spain. Since the acting agents could not act against the now claimed, proceeded, arbitrarily, said either in terms of defense, open Act for alleged violation of the Protection Law

Data of the subscriber. Mr. A.A.A. is the one who runs a humble locutorio,

frequented, as is vox populi, by people normally foreigners and with problems in obtaining residence permits in Spain and that is why agents of the National Police entered the locutory on January 14, 2021...”

The documentation that the acting agents of the National Police were able to collect inside the locutorio A.A.A. RECREATIVE, of the now claimed, are, as has said, of foreigners who had left said documentation in the establishment, without having any responsibility the now claimed, without having been neither used nor even handled by it... It insists on the fact that this documentation referred to in the Police Act is from outsiders to the one now claimed, without having any kind of responsibility. Mr. A.A.A., has never asked anyone for documentation, among other things, because he does not have no kind of competence or legitimacy for it.

The locutorio object of registration and by which in an unfair, burdensome and detrimental way Now ask the AEPD for a series of documentation, it complies with all regulations to be able to operate as such, being up to date with all permits and licenses, for what the present administrative file, must be immediately archived.

[...]”

On 05/07/2021, the AEPD requests the respondent to complete the "Declaration responsible" sent in order to clarify certain aspects of his letter of allegations. The notification was delivered to the respondent on 05/14/2021, according to appears in the Notice of Receipt issued by Correos, without a response having been received some.

THIRD: On 06/25/2021, the Director of the Spanish Protection Agency Data agreed to admit the claim filed by the claimant for processing.

FOURTH: The Director of the Spanish Data Protection Agency agreed to initiate

sanctioning procedure to the claimed on 08/05/2021, for the alleged infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: On 08/25/2021 the claimant is notified of the start agreement of this sanctioning procedure and a hearing period of TEN DAYS is granted

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SKILLFUL to formulate the allegations and present the evidence that it considers convenient, in accordance with the provisions of articles 73 and 76 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

SIXTH: The respondent did not make any objections to the agreement to initiate the procedure.

Article 64.2 f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure- establishes that if no allegations are made within the term established on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered motion for a resolution.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infringement of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the respondent has not made allegations to the agreement to initiate the file and in attention to what is established in article 64.2.f LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

SEVENTH: The agreement to initiate the procedure agreed in the fourth point of the part

dispositive “INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement of admission to processing of the claim.”

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The respondent collects data from the natural persons who come to his booth to request an appointment for administrative procedures, without providing the precise information to interested parties in accordance with current regulations on the protection of personal information.

SECOND: The respondent states that the documentation seized by the Police Nacional in its locutorio belongs to people who had left it forgotten and who I was just keeping it until they came to pick it up, without there being a treatment of personal data.

THIRD: Despite the allegations of the respondent in response to the transfer of the claim and request for information, it is proven that the respondent does a treatment of personal data. Well, in the Police Act there is a record of the existence of numerous customer files that collect personal data.

FOURTH: The Spanish Agency for Data Protection has notified the claimed agreement to initiate this sanctioning procedure, but it has not presented allegations or evidence that contradicts the reported facts.

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FOUNDATIONS OF LAW

Yo

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.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the 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

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

"For the purposes of this Regulation, the following shall be understood as:

- 1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;
- 2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of

access, collation or interconnection, limitation, suppression or destruction;”

Therefore, in accordance with these definitions, the collection of personal data

personal on the occasion of the request for an appointment to carry out procedures

administrative constitutes a treatment of data, for which the person in charge

of the treatment must comply with the provisions of article 13 of the RGD,

providing the interested parties with all the information indicated in said precept.

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of duty

to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and,

in case of carrying out low-risk data processing, the free tool

Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

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III

Article 13 of the RGD, a precept that determines the information that must be

provided to the interested party at the time of collecting their data, indicates that:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a)

b)

c)

the identity and contact details of the person in charge and, where appropriate, of their

representative;

the contact details of the data protection delegate, if any;

the purposes of the treatment to which the personal data is destined and the basis

legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge or of a third party;

and)

the recipients or categories of recipients of the personal data, in

Their case;

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

adequacy decision 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 safeguards and means of obtaining

a copy of these or the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this period;

b)

the existence of the right to request from the data controller access to

the personal data related 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 the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;

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

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

F)

the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

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

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

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

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

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

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Article 58.2 of the RGPD provides the following:

"two. Each supervisory authority will have all of the following corrective powers

listed below:

a)

(...)

b) Send a warning to any person responsible or in charge of the treatment

when the treatment operations have infringed the provisions of the

this Regulation;

(...)

d) Order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, when

proceed, in a certain way and within a specified period;

(...)

Yo)

impose an administrative fine under article 83, in addition to or instead of

of the measures mentioned in this section, depending on the circumstances

of each particular case.

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a)

the rights of the interested parties under articles 12 to 22;

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"They are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

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

In this case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

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This Agency has confirmed that the actions of the defendant are not in accordance with the data protection regulations, since it does not inform customers of all the issues listed in article 13 of the RGPD indicated in the foundation of right III.

Thus, in accordance with the facts exposed, we are faced with a infringement of the provisions of article 13 of the RGPD, by the claimed party.

SAW

In accordance with article 58.2 b), for the commission of this infraction, it is appropriate address a warning when collecting personal data from customers and

consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5 b) of the RGPD would constitute a disproportionate burden for the claimed, since there is no record of the commission of any previous infringement in terms of Data Protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution is required to the claimed, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from the themselves to the requirements contemplated in article 13 of the RGPD, as well as the provision of supporting evidence of compliance with the requirements.

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

FIRST: ADDRESS A.A.A., with NIF ***NIE.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUIRE A.A.A., with NIF ***NIE.1, under the provisions of the article 58.2 d) of the RGPD, so that within ten business days from this act of notification accredits before this body the adoption of measures to facilitate information to the people whose personal data it collects, in accordance with the provisions of the article 13 of the RGPD.

THIRD: NOTIFY this resolution to A.A.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 C/ Jorge Juan, 6

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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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