Procedure No.: PS/00404/2018

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

BACKGROUND

FIRST: Dated August 11, 2018, entry is registered in the Agency

Spanish Data Protection Claim formulated by Mr. A.A.A., (in

hereinafter, the claimant or Mr. A.A.A.), highlighting the publication and

dissemination, without your authorization, by the PADRE MENNI HOSPITAL CENTER,

(hereinafter, the claimed), of a letter of thanks sent by mail

to the Management of said Center, dated April 18, 2016, which contained

information referring to the psychological treatment received in it.

According to the claimant, he was aware of said dissemination of data through

a relative who, on July 31, 2018, told him that he had “accessed through

of Google by entering the name and surname of the subscriber, to the full content of

such letter, appearing at the top of the page, A.A.A. (name and both

surnames of the claimant), as a patient of the Hospital Padre Menni”,

circumstance that the claimant verified later, being able to verify

also that "the entire content could be seen in other search engines, such as Yahoo.com

Bing, etc."

The complainant affirms that said information has been published on the Internet “in

uninterruptedly, since June 2016”, adding that as of August 3,

2018 no longer "can not be accessed through Google, but through other

search engines to the heading where the name and surnames appear informing that it is

Center patient.

Together with the complaint, the claimant provides, among others, the following

documentation:

-Screenshot printout dated August 3, 2018 showing the

publication of the letter of thanks in question, obtained from the web address

***URL.1.

It is verified that the text that appears published in the section “Historias del

center” is preceded by the name and surname of the claimant linked to their condition

center patient. The transcription of the content of the letter appears in the Fact

Tested 2).

- Printing of the search results obtained by entering your name and

surnames on Facebook, yahoo.com, dogpile.com, duckduckgo.com, es.ask.com, among

which appears the publication of the aforementioned letter of thanks.

-Copy of the document sent, dated August 3, 2018, by the claimant

to the Managing Director of the aforementioned Center requesting explanations of the reason for the

which the aforementioned letter of thanks had been published and disclosed in the

computer networks without your prior consent and the removal of such posting from

computer networks, as well as the erasure of their Internet traces.

In said brief, the claimant indicates that "at no time, nor have they

requested from said center, nor has it given its consent, so that said

letter of thanks is published and disclosed on the reference page, and therefore

as long as any person has access to it, as is the case in the computer network".

-Copy of the written response to the previous request made by the

Managing Director of the aforementioned Center in which he indicates to the claimant that the

publication of the letter was made with the consent of the claimant, who was

requested authorization "orally", having proceeded to the elimination of said

web document. Likewise, the claimant is informed that the erasure of the trail in

Internet of certain information ("right to be forgotten") must be exercised by the

own interested party before the browser that, in its search results, presents

such information.

SECOND: As a consequence of the actions carried out within the framework of the Real

Decree-law 5/2018 (BOE July 30, 2018), the AEPD received a letter from the

claimed, registered entry dated November 2, 2018, in which

stated the following in response to the request for information that was made

in relation to the facts that had given rise to the claim:

The respondent affirms that: "the cause that has given rise to the claim in

appreciation has been the publication on the website of the center of a letter of

thanks that the interested party had sent to the center itself. In this sense, the

center had proceeded with the publication of the aforementioned letter since it had the

explicit consent of the interested party for these purposes. It is a consent

verbal, and therefore sworn statements are attached by the people who have

participated in this process.

Specifically, it provides:

-

Affidavit signed on 10/31/2018 by three declarants, whose

identification and DNI appear on it, although a copy of said document is not provided.

identification document or their relationship with the claimed party, which indicates that they participated

in the meeting held on August 8, 2018 with the claimant at the Center

Hospitable, and where, among other manifestations, they declare:

"That once the reasons for the event have been explained (...), the claimant,

when it was specifically explained to him that the letter of thanks that was the object of

controversy in this file had been published on the entity's website because

he himself had offered his verbal consent, he did not deny said affirmation, nor did he put it

in doubt at any time.

 That in fact, in relation to the previous point, the interested party

expressly states that despite the fact that he had offered the consent

verbal, he considered that the legislation required obtaining written consent,

and in this sense, no one had transmitted any authorization to sign."

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Affidavit signed on 10/31/2018 by who identifies himself as

External Quality Advisor, including your identification data and DNI, although it is not

Provides a copy of said document or proof of said contractual relationship, stating:

"That in the analysis of the situation that was carried out at the time of the

request sent by the interested party to the center, during the month of August,

met with the worker who received the letter of thanks that is the subject of this

controversy.

 That at the aforementioned meeting, the worker who received said letter of

gratitude conveyed that in the process of collecting said letter, the

The interested party showed its intention that it be made publicly known, since,

In the words of the interested party, "he would like the good work done

by the Padre Menni Hospital Center", giving, therefore, their authorization to proceed

with the publication that is being discussed in this file."

This statement does not identify the worker who received the letter in

question and "in the process of collecting said letter", which according to the claimant

sent by ordinary mail, it was shown by the claimant his intention that it be

make their thanks publicly known.

Regarding the measures adopted to resolve the situation, the respondent

points out:

At the time the claimant expressed his disagreement with the

publication, the published information was removed from the center's website; For

managing the incidence, an immediate analysis of the possible gap of

safety, concluding from the risk assessment carried out that it was not necessary

your communication to it. Attached is a copy of the "Report of the Delegate of

Protection of Data on Valuation for the Management of a RGPD incident", in the

that after assessing the risk calculation, it is concluded that there is an incident and NOT

a security breach.

The claimant has also been informed of all the actions carried out,

providing the necessary information to exercise, where appropriate, the "right to be forgotten".

As for the measures adopted to prevent a recurrence of said

situation, the respondent indicates, although he only documents the first of the

indicated:

That the situation was recorded in the "Incident Record"; He reviewed the

current procedure, clarifying that, to ensure that consent has been

obtained unequivocally, it will be collected in writing in any case and leaving

detailed the specific purposes for which it is collected; have been planned

training with all the staff that processes personal data, with the aim of

to provide the necessary concoctions so that everyone can maintain the

necessary precautions.

THIRD: On November 8, 2018, entry is registered in this Agency

writ of the claimant, the one that in relation to the content of the writ that was

sent by the respondent dated 11/02/2018 informing him of the actions

carried out for the treatment of the situation, reiterates that he did not give his consent

expressly, neither in writing nor verbally, to the open publication of the aforementioned letter of

gratitude.

FOURTH: Accessed on April 3, 2019, the application of the AEPD that manages the

consultation of the history of sanctions and previous warnings in matters of

data protection, it is verified that the claimed party does not have previous records.

FIFTH: On April 9, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure of warning to the

claimed, in accordance with the provisions of article 58.2.b) of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the

protection of natural persons with regard to data processing

personal information and the free circulation of these data, (hereinafter RGPD), due to the alleged

infringement of article 5 of the RGPD, typified in article 83.5.a of the same regulation.

Likewise, for the purposes provided in article 58.2.d) of the RGPD in said

The initial agreement notified the corrective measures that, if confirmed

existence of infraction, could be imposed in the resolution adopted.

Said initial agreement was notified through the Postal Service with

date April 15, 2019.

SIXTH: Notification of the aforementioned initiation agreement, dated April 24, 2019 on

respondent filed a brief with allegations in which, in summary, in addition to reiterating

the arguments and evidence presented, the following points were outlined to the object

to justify the request to file the proceedings:

- That provides photocopies of the DNIs of the signatories of the declarations

affidavits provided in response to one of the points made in the

start agreement. In this sense, it clarifies that Don B.B.B. declare as ***POST.1,

Ms. C.C.C. declares as ***POSITION.2, Don D.D.D. declare as ***POST.3,

in addition to all of them as Members of XXX, while Ms. E.E.E. declare as

***POST.4.

- Regarding the violation of the imputed principle of confidentiality and the need

to have security measures in place to prevent unauthorized processing,

exposes:

a) That the respondent is an entity highly committed to the privacy of the

persons, according to which and as evidenced by the affidavits

provided, the publication of the information occurred as a consequence, unique and

exclusively, of the verbal authorization of the claimant. Add what evidence said

commitment the fact that, after the claim of the interested party and without the intervention of

the Agency, the Center proceeded to suppress the information, which proves its good faith and

the absence of any interest contrary to the interested party, being a common practice

require the consent of the interested parties to proceed with the publication of

any information about you.

b) That the Center has a series of procedures and regulations for

security for the protection of personal data based on the risk of each

treatment activity. Detail and attach:

. The general regulation “SAN.DOCM7505 Personal functions and obligations

with access to data”, in the fourth section of which the Center requires users of its

information systems “keep the necessary secrecy regarding any type of

information of a personal nature, known based on the work carried out, including

once the relationship of the developed work has concluded, even once the

employment relationship with the Center”;

. Clauses that are provided to the users of the center, where they can

check, as indicated by the respondent, the collection of specific consent in

If you intend to publish certain information, whether it is to collect

images or recordings as personal information.

. Instruction “SAN.INST.7501 Duty of information and consent in the

collection of personal data”, collecting the theoretical foundations for

carry out the duty of information in accordance with current legal obligations.

The documentation sent only refers to the duty to inform.

-Additional supporting documentation is provided of the measures aimed at

prevent a recurrence of the incident. Specifically, regarding the actions that had been

proposed for the mitigation and recovery of the incidence. this documentation allows: 1) to check the modification of the indicated procedure with the creation of a new template for collecting written consents in cases of publication of information on the web and other means of dissemination; 2) prove the completion of a training on data protection carried out on 12/11/2018, which included in the program a section on the "lawfulness of the treatment" attaching as a sample five certificates. Five are attached certificates.

In addition, the minutes of the Data Protection Commission dated 09/20/2018, certifying the analysis of the incidents that occurred in the previous three months and the decision to close them due to considering the measures proposed as effective.

On October 24, 2019, this Agency received a letter from the claimed requesting information on the status of the sanctioning procedure of warning after the formulation of the allegations to the agreement of start of it.

SEVENTH: On October 29, 2019, the name and surnames of the claimant in the Google search engine, verifying that on the first page of results does not appear the information object of claim.

EIGHTH: On October 31, 2019, a resolution proposal was formulated, in which sense that by the Director of the Spanish Agency for Data Protection imposed a penalty of warning on the defendant, in accordance with the provisions in article 58.2.b) of the RGPD, for the alleged infringement of article 9.1 of the same standard, typified in article 83.5.a) of the RGPD.

Likewise, it was proposed that, if the correction of the irregular situation described prior to the issuance of the resolution that

appropriate, the Director of the Spanish Data Protection Agency ordered the

claimed, in accordance with the provisions of article 58.2.d) of the RGPD, the

adoption of the necessary security, technical and organizational measures to

ensure that the publication of health data on the website of the center and other

Internet media or supports respond to the provisions of article 9.2.a) of the

GDPR for that special category of personal data. Also, it was proposed

adequacy of the templates for obtaining consent presented to the type of

category of data collected.

It was communicated that such measures would have to be adopted, where appropriate, in the

period of one month computed from the day following the date of notification of the

sanctioning resolution that, in its case, could fall, having to provide the

means of evidence accrediting its compliance.

The aforementioned proposed resolution was notified to the respondent on the 8th of

November 2019.

NINTH: After the period of ten working days granted to formulate

allegations and present documents, dated December 3, 2019, it is registered in

written entry of arguments to the resolution proposal, in which, in summary, the

claimed accepts the warning and communicates that they have eliminated the possibility of

publish any information related to thanks, congratulations, testimonials and

patient opinions on your website or RRSS, to avoid any

breach of privacy or data protection, which is why in the

The Center's web page no longer contains any information to that effect.

Likewise, it indicates the adoption of a series of measures to correct the irregularities corresponding to the models presented under the name “Consent for the Dissemination of Information” and “Consent for the Assignment of Images”, and details the improvements related to capturing and publishing images and voice of the interested parties for the purpose of promoting services, in general situations and without, as they allege, in any case affecting sensitive data. In concrete:

- In response to the irregularity "They do not include information that allows linking the consent requested in said documents to treatments that reach special categories of personal data, among which are the data of Health":

It is argued that although their intention is not to publish sensitive data or especially protected there may be situations in which "the simple publication of said information” allows “the linking of the interested party with the center, (taking into account our sector), as well as the information that the interested party transmits to us in said documents, generates that the published information reaches information of health, for which we should have an explicit consent”.

They indicate that they have adopted the following measures:

1) have eliminated the possibility of publishing any information related to thanks, congratulations, testimonials and opinions of patients on your website o RRSS, to avoid any breach in terms of privacy or protection of data, which is why on the Center's website no longer appears any information to that effect;

2) have modified the informative clause related to the “Consent for the cession of images”, clarifying that the images that are collected are only used to

the purpose of promoting our services and giving visibility to the actions;

3) have left without effect in their information system the clause

“Consent for the dissemination of information”.

- In response to the irregularity: “In the section on the purpose of the

processing of personal data whose consent is requested in the document

“Consent for the transfer of images”, the consent should be requested differently.

consent for the treatment of the purpose of promoting the services and giving

visibility to the actions, the consent for the treatment with purposes

treatment and consent for teaching purposes”:

It is pointed out that it will only be used for the collection of image and voice for

effects of dissemination of its activities, ceasing to use said information for purposes

therapeutic or teaching, these purposes being collected separately if there were

such use in the future. A printout of the updated document is attached.

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In response to the irregularity referred to as: “In the section on

the recipients: the centers linked to the person claimed should be identified to which

personal data may be communicated”:

It is indicated that they have modified the models including the following information to

in order to define the recipients in an unequivocal way: “Sisters Hospitallers

Province of Spain and the centers dependent on it (centers of the

Congregation "Sisters Hospitallers" in Spain and that can be found in the

following relationship: ***URL.2).

- I authorize.

-I do not authorize. “

Likewise, in the "Consent for the transfer of images" model, it is stated

separately, another additional transfer that can be foreseen from a category of

recipients and not from a specific definition: “. Media, for your

subsequent dissemination in its various channels.

- I authorize.

- I do not authorize. “

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

Data in this procedure are considered as

PROVEN FACTS

First: On August 11, 2018, entry is registered in this Agency

claim made by the claimant (Don A.A.A.) against the defendant for publishing

and broadcast from April 2016 to August 3, 2018, inclusive, without having

your authorization to do so, a letter of thanks sent by regular mail,

dated April 18, 2016, to the Claimant's Management with information referred to

to the psychological treatment received in that Hospital Center.

Second: The claimant has provided a screenshot of the date 3 of

August 2018 showing the publication of the letter of thanks from the

claimant on the website ***URL.1, viewing it in the section “Stories of the

center” of the aforementioned web page that under the legend: “A.A.A.. Patient of the Center”

appears the full transcript of the text of the letter of thanks received by the

claimed, which is as follows:

“I hereby, as a patient of ”Sisters Hospitallers. Center

Hospitable Father Menni”, wants to thank and inform you of the treatment

professional and human that from the first moment Dr. Ms.

F.F.F., who has not only been able to diagnose my problem, but also

Through his therapies he has helped me to redirect and manage everything that in his

At the time it seemed impossible to manage.

There have been numerous therapies, numerous conversations, but all this has not

It would have been of no use if the treatment so close and so interested in helping, as the

that was provided to me.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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In the same way, he wants to thank the treatment received by the doctors Dr. G.G.G.,

as well as Dr. D.D.D.D..

I take this opportunity to send you a cordial greeting, and do not doubt that the image and

assessment that I will remember forever of the institution you represent will be

the most outstanding, for the treatment received from its professionals.

In Santander, on April 18, 2016."

Third: On August 3, 2018, the claimant sent a communication to the

claimed requesting clarification about the publication and disclosure on the Internet, without

your prior consent, of the aforementioned letter, as well as the withdrawal of the networks

computerized of said publication in which clinical data of special

protection. In said communication, among other points, it was indicated:

"-That it is informed by a relative who resides in Madrid, as well as by two

co-workers, who through the internet search engine Google", have had

access by entering the name and surname of the undersigned, to said letter of

thanks, one of them on the page “SISTERS HOSPITALLER CENTRO

HOSPITALLER PADRE MENNI”, specifically in its section “Stories of the

Center”, which contains numerous testimonies from various people with their

initials. (…)

-That the undersigned at no time, nor have they been requested from said center, nor the

He himself has given his consent, so that said letter of thanks is

published and disclosed on the reference page, and therefore have access to it,

as is the case in the computer network any person.(...)”

Fourth: On the occasion of the meeting held on August 8, 2018 between the

claimant and the respondent, the latter prepared a document stating that:

“The requirement to have the consent of the interested party does not imply that this

consent or authorization must be written, and may be perfectly valid

verbal consent. And it is precisely at this point where

we find the reason or motive to proceed with the publication on our website of the

thank you tasting that you so kindly sent to our Center. He has

there must have been a misunderstanding, since our staff has communicated to us

precisely that this authorization was requested orally, and that it was

used as a legal basis to proceed with the publication of the letter of appreciation.”

It also stated that the aforementioned publication had been removed from its website and

indicated the way to proceed to erase the trace of the internet in case

continue to find information about you in the search results

of internet browsers. This document was not signed by the claimant.

Fifth: On November 7, 2018, the claimant sends a letter to this

Agency denying the existence of verbal consent to the publication of the letter

which is manifested in the document dated August 8, 2018 cited in the fact

tested earlier. The claimant points out that the document omits moral damages,

honor and personal and family intimacy produced to it, having caused,

In addition, the worsening of his clinical picture and affected the entire family environment that

I was unaware of this pathology.

Sixth: On April 25, 2019, the respondent accredits the adoption of a

battery of measures aimed at avoiding a similar situation, among which

find the preparation of documents to collect the specific consent

of the interested parties for the dissemination of personal information, voice and image

on the website of the claimed party and other means with the specific purposes that are

indicated in these models. These documents do not indicate that the consent

granted refers to health data.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that articles 55.1, 56.2, 57.1 and 58.2 of the

Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27,

2016, regarding the protection of natural persons with regard to the treatment

of personal data and the free circulation of these data, (hereinafter RGPD),

recognize each control authority, and as established in arts. 47 and 48.1 of

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter LOPDGDD), the Director of the

Spanish Agency for Data Protection is competent to resolve this

process.

II

The facts analyzed were qualified in the Initiation Agreement of this disciplinary proceedings as constituting an infringement of article 5.1.f) of the RGPD, typified in article 83.5.a) of the same standard. However, at this stage of the procedure it is considered appropriate to modify the legal classification made and impute to the claimed an infringement of article 9.1 of the RGPD, typified in the article 83.5.a) of the RGPD.

Regarding whether or not it is appropriate to change the rating in the proposal phase of the facts object of the claim made in the Initiation Agreement, and to the impact that such a change may have on the defendant's right to defense, It should be noted that nothing prevents making this modification as long as, as Now it happens, the facts on which the imputation is based remain unchanged formulated.

Article 53.2 of Law 39/2015, of the Common Administrative Procedure of Public Administrations, regarding the "Rights of the interested party in the administrative procedure", establishes the following:

"two. In addition to the rights provided for in the previous section, in the case of administrative procedures of a punitive nature, the alleged responsible will have the following rights:

a)

To be notified of the facts that are imputed to him, of the infractions that such facts may constitute and of the sanctions that, if applicable, are could impose, as well as the identity of the Instructor, the competent authority to impose the sanction and of the norm that attributes such competence.

b)

To the presumption of non-existence of administrative responsibility

Until the contrary is proven.”

The Constitutional Court has been pointing out that “the essential content of the constitutional right to be informed of the accusation refers to the facts considered punishable that are imputed to the accused” (STC 95/1995). (The underline is of the AEPD).

On the contrary, and unlike what happens with the facts, the TC, in Judgment 145/1993 warns that the communication to the alleged offender of the legal qualification and the eventual sanction to be imposed does not integrate the essential content the right to be informed of the accusation. To this extent it is important to put in knowledge of the constitutive facts of the administrative infraction, that the T.C. has declared that the requirements of article 24.2 of the EC are satisfied fundamentally with the sole communication of the imputed facts in order to defend against them (STC 2/1987 and 190/1987).

In this line, the Supreme Court, Judgment of March 3, 2004, indicates that “the primary purpose of the initiation agreement is to report on the facts imputed and not on the legal qualification, of which the proposal of resolution". (The underlining is from the AEPD).

III

The facts object of the claim are subject to the provisions of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to the Treatment of

Personal Data and the Free Circulation of these Data, which is applicable since May 25, 2018.

The claimant filed a claim with the AEPD on August 11, 2018 referred to a treatment of health data carried out by the claimed since April 2016, when the Organic Law 15/1999 of Protection of Personal Data, (hereinafter, LOPD), and which was kept in the time until August 3, 2018, as credited to the date on which already Regulation (EU) 2016/679 was applicable.

The infraction for which the defendant is held responsible is of the nature typical of the so-called permanent infractions, in which the consummation is projects in time beyond the initial event and extends throughout the period of time in which the data is subject to treatment in violation of the regulations of personal data protection. In the present case, despite the fact that at the time of initiating the offending conduct, the applicable norm was the LOPD, the norm that results from application is the one that is in force when the infraction is consummated, because it is in that moment when it is understood committed.

The Supreme Court has ruled on the applicable rule when the offenses are prolonged over time and there has been a regulatory change while committed the offence. The STS of 04/17/2002 (Rec. 466/2000) applied a rule that does not was in force at the initial moment of commission of the infraction, but it was in the subsequent years in which the offending conduct continued. The Judgment examined a course that dealt with the sanction imposed on a Judge for breach of their duty to abstain in preliminary proceedings. The sanctioned alleged the validity of article 417.8 of the LOPJ when the events occurred. the STS considered that the offense had been committed since the date of initiation of the Preliminary Proceedings until the moment in which the Judge was suspended in the

exercise of their functions, so that rule was indeed applicable. in identical

meaning is pronounced by the SAN of 09/16/2008 (Rec.488/2006)

IV

Articles 1 and 2.1 of the RGPD provide the following:

“Article 1. Object

1. This Regulation establishes the rules relating to the protection of

natural persons with regard to the processing of personal data and

rules relating to the free movement of such data.

2. This Regulation protects the fundamental rights and freedoms of

natural persons and, in particular, their right to data protection

personal.

3. The free movement of personal data in the Union may not be

restricted or prohibited for reasons related to the protection of persons

regarding the processing of personal data.

Article 2. Material scope of application

1. This Regulation applies to the treatment in whole or in part

automated processing of personal data, as well as the non-automated processing of data

personal content or intended to be included in a file.”

For these purposes, it is recalled that article 4 of the RGPD, under the rubric

“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

about personal data or sets of personal data, either 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;"

"15) <<data relating to health>>: personal data relating to physical health

or mental health of a natural person, including the provision of care services

healthcare, which reveal information about their health status;

In accordance with the definitions contained in the aforementioned sections 1 and

2 of article 4 of the RGPD the claimed has carried out a treatment of data of

health of the claimant, since he has published on his website the content

full of a letter of thanks received from the claimant with health data of the

himself and that appeared associated with his name and surnames as well as his status as

hospital patient.

v

In the present procedure, the commission by the claimed party is elucidated

of an infringement of section 1 of article 9 of the RGPD for data processing of

health of the claimant without the occurrence of any of the circumstances provided for in the

section 2 of the same precept.

Paragraphs 1 and 2 of article 9 of the RGPD establish the following:

“Article 9. Treatment of special categories of personal data

1. The processing of personal data that reveals the origin

racial or ethnic origin, political opinions, religious or philosophical convictions, or

union affiliation, and the processing of genetic data, biometric data aimed at

uniquely identify a natural person, data related to health or data

relating to the sexual life or sexual orientation of a natural person.

2. Section 1 will not apply when one of the

following circumstances:

a) the interested party gave his explicit consent for the treatment of said

personal data for one or more of the specified purposes, except when the

Law of the Union or of the Member States establishes that the prohibition

mentioned in section 1 cannot be lifted by the interested party;

b) the treatment is necessary for the fulfillment of obligations and the

exercise of specific rights of the person in charge of the treatment or of the interested party in

the field of labor law and social security and protection, to the extent

that is authorized by the Law of the Union of the Member States or a convention

in accordance with the law of the Member States that establishes guarantees

respect for fundamental rights and the interests of the

interested;

c) the processing is necessary to protect the vital interests of the data subject or

of another natural person, in the event that the interested party is not qualified, physical or

legally, to give your consent;

d) the treatment is carried out, within the scope of its legitimate activities and with

due guarantees, by a foundation, an association or any other body

non-profit, whose purpose is political, philosophical, religious or trade union, provided

that the treatment refers exclusively to the current or former members of

such bodies or to persons who maintain regular contact with them in

relation to its purposes and provided that the personal data is not communicated outside of

them without the consent of the interested parties;

e) the treatment refers to personal data that the interested party has made

manifestly public;

f) the treatment is necessary for the formulation, exercise or defense of

claims or when the courts act in the exercise of their judicial function;

g) the treatment is necessary for reasons of an essential public interest, especially

the basis of the law of the Union or of the Member States, which must be

proportional to the objective pursued, respect essentially the right to protection

of data and establish adequate and specific measures to protect the interests and

fundamental rights of the interested party;

h) the treatment is necessary for the purposes of preventive or occupational medicine,

evaluation of the work capacity of the worker, medical diagnosis, provision of

assistance or treatment of a health or social nature, or management of systems and services

of health and social care, on the basis of Union Law or the

Member States or under a contract with a healthcare professional and without

prejudice to the conditions and guarantees contemplated in section 3;

i) the treatment is necessary for reasons of public interest in the field of

public health, such as protection against serious cross-border threats to the

health, or to guarantee high levels of quality and safety of care

healthcare and medicines or medical devices, on the basis of the Right of the Union or the Member States establishing appropriate and specific measures to protect the rights and freedoms of the data subject, in particular the secrecy professional,

j) the processing is necessary for archiving purposes in the public interest, scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, on the basis of the law of the Union or of the Member States, which must be proportional to the objective pursued, respect essentially the right to data protection and establish adequate and specific measures to protect interests and fundamental rights of the interested party.

Said precept must be related to what is indicated in the Recitals 53 and 54 of the RGPD, whose literal tenor is as follows:

(53) The special categories of personal data that deserve greater protection should only be processed for health-related purposes when it is necessary to achieve these purposes for the benefit of natural persons and the society as a whole, in particular in the context of the management of services and health or social protection systems, including the processing of such data by the managing health authorities and central national health authorities for quality control, information management and general oversight purposes national and local health system or social protection, and guarantee of the

continuity of health care or social protection and health care

cross-border or security, supervision and health alert purposes, or for the purpose of

archive in the public interest, scientific or historical research purposes or

statistics, based on the Law of the Union or of the Member State that has to

meet an objective of public interest, as well as for studies carried out in the interest

public in the field of public health. Therefore, this Regulation should

establish harmonized conditions for the treatment of special categories of

personal data relating to health, in relation to specific needs, in

particular if the treatment of said data is carried out, for purposes related to the

health, people subject to the legal obligation of professional secrecy. The Law of

Union or the Member States must establish specific and appropriate measures

to protect the fundamental rights and personal data of individuals

physical. Member States should be empowered to maintain or introduce other

conditions, including limitations, regarding the processing of genetic data,

biometric data or data related to health. However, this should not imply a

obstacle to the free movement of personal data within the Union when such

conditions apply to the cross-border processing of such data.

(54) The processing of special categories of personal data, without the

consent of the interested party, it may be necessary for reasons of public interest in

the field of public health. This treatment must be subject to appropriate measures

and specific in order to protect the rights and freedoms of natural persons. In

that context, "public health" should be interpreted in the definition of the Regulation (EC)

No. 1338/2008 of the European Parliament and of the Council, that is, all the elements

related to health, specifically the state of health, including the

morbidity and disability, the determinants that influence said state of health,

health care needs, resources allocated to health care

healthcare, the provision of healthcare and universal access to it,

as well as the costs and financing of health care, and the causes of

mortality. This treatment of data related to health for reasons of interest

public must not give rise to third parties, such as employers, insurance companies or

banking entities, treat personal data for other purposes.

In relation to the provisions of article 9.2.a) of the RGPD, it must be taken into account

account the provisions of articles 6.1.a) and 7 of the same rule, which provide:

"Article 6. Legality of the treatment.

1.

The treatment will only be lawful if at least one of the

following conditions:

a)

The interested party gave their consent for the processing of their data

personal for one or more specific purposes;

(…)

Article 7. Conditions for consent

1. When the treatment is based on the consent of the interested party, the

responsible must be able to demonstrate that he consented to the treatment of his

personal information.

2. If the data subject's consent is given in the context of a declaration

writing that also refers to other matters, the request for consent will be

presented in such a way as to be clearly distinguishable from other matters, in a manner intelligible and easily accessible and using clear and simple language. It will not be binding any part of the declaration that constitutes an infringement of these Regulations.

3. The interested party shall have the right to withdraw their consent at any moment. The withdrawal of consent will not affect the legality of the treatment based on consent prior to withdrawal. Before giving your consent, the Interested party will be informed of this. It will be as easy to withdraw consent as it is to give it.

4. In assessing whether consent has been freely given, account will be taken to the greatest extent possible whether, among other things, the execution of a contract, including the provision of a service, is subject to the consent of the processing of personal data that is not necessary for the execution of said contract."

Likewise, in relation to the legality of the treatment and the conditions for the consent, it is worth mentioning what is stated in Considering clauses 32, 35, 40 and 42 of the RGPD, whose literal is the following:

“(32) Consent must be given by means of a clear affirmative act that reflects a free, specific, informed, and unequivocal manifestation of the will of the interested in accepting the processing of personal data that concerns him, such as a statement in writing, including by electronic means, or a statement verbal. This could include checking a box on an internet website, choosing technical parameters for the use of information society services, or any other statement or conduct that clearly indicates in this context that the The interested party accepts the proposal for the processing of their personal data. Therefore, the silence, pre-ticked boxes, or inaction should not constitute consent. The Consent must be given for all processing activities carried out with the same or the same ends. When the treatment has several purposes, the

consent for all of them. If the data subject's consent is to be given to

As a result of a request by electronic means, the request must be clear, concise and not

unnecessarily disrupt the use of the service for which it is provided."

"(35) Personal data relating to health should include all

data relating to the state of health of the interested party that provide information on their state

past, present or future physical or mental health. Information is included about the

natural person collected on the occasion of their registration for health care purposes,

or on the occasion of the provision of such assistance, in accordance with Directive

2011/24/EU of the European Parliament and of the Council; any number, symbol or data

assigned to a natural person who uniquely identifies him/her for purposes

toilets; information obtained from tests or examinations of a part of the body or

of a body substance, including from genetic data and samples

biological, and any information relating, by way of example, to a disease, a

disability, risk of disease, medical history, treatment

clinical or physiological or biomedical state of the data subject, regardless of their

source, such as a doctor or other health care professional, a hospital, a device

doctor, or an in vitro diagnostic test."

"(40) For the processing to be lawful, the personal data must be

processed with the consent of the interested party or on some other legitimate basis

established in accordance with Law, either in this Regulation or by virtue of another

Law of the Union or of the Member States referred to in this

Regulation, including the need to comply with the legal obligation applicable to the

responsible for the treatment or the need to execute a contract in which it is a party

the interested party or in order to take measures at the request of the interested party with

prior to the conclusion of a contract.

"(42) When the treatment is carried out with the consent of the

data subject, the data controller must be able to demonstrate that the data controller has

consented to the processing operation. In particular in the context of

a written statement made on another matter, there must be guarantees that

the interested party is aware of the fact that he gives his consent and the extent to which

that makes. In accordance with Council Directive 93/13/EEC, you must provide

a model declaration of consent previously prepared by the

responsible for the treatment with an intelligible and easily accessible formulation that

use clear and simple language, and that does not contain abusive clauses. So that

consent is informed, the interested party must know at least the

identity of the person in charge of the treatment and the purposes of the treatment to which they are

intended personal data. Consent should not be considered freely

lent when the interested party does not enjoy true or free choice or cannot

deny or withdraw your consent without suffering any prejudice."

At the same time, article 9 of the LOPDGDD determines:

"Article 9. Special categories of data.

1. For the purposes of article 9.2.a) of Regulation (EU) 2016/679, in order to

avoid discriminatory situations, the consent of the affected party alone will not suffice to

lift the ban on the processing of data whose main purpose is to identify

your ideology, union affiliation, religion, sexual orientation, beliefs or racial origin or

ethnic.

The provisions of the preceding paragraph will not prevent the processing of said data.

under the other assumptions contemplated in article 9.2 of the Regulation

(EU) 2016/679, when appropriate.

2. The data processing contemplated in letters g), h) and i) of article

9.2 of Regulation (EU) 2016/679 based on Spanish law must be

covered by a standard with the force of law, which may establish requirements

additional information regarding your security and confidentiality.

In particular, said rule may protect the processing of data in the field of

of health when required by the management of health care systems and services

health and social, public and private, or the execution of an insurance contract of which the

affected is a party."

SAW

In view of the set of evidence elements in the procedure

it is accredited that the claimed party has carried out a treatment of health data

concerning the claimant (special category of personal data) that is

prohibited in article 9.1 of the RGPD.

Said affirmation is based on the fact that the respondent has not justified

irrefutably the concurrence of the circumstance foreseen in letter a) of section

second of article 9 of the RGPD, since the affidavits provided do not

prove that they had the explicit consent of the claimant to publish in

the website of its ownership ***URL.1, associated with the name and surname of the

claimant and his condition as a patient of the institution, the letter of thanks

sent by him in April 2016 as a result of the psychological treatment followed in said Hospital.

Likewise, none of the other circumstances contemplated in article 9.2 of said regulation that would legitimize the processing of health data studied, which the respondent maintained at least until he received the communication of the claimant on August 3, 2018.

The respondent has maintained that he proceeded to the publication of the aforementioned letter on the website of the center when mediating explicit consent of the interested party for that purpose, since he had the verbal consent of the claimant for it, as, as it claims, prove the affidavits signed on 31 October 2018 by several professionals from the center who intervened, either in the meeting held with the claimant on August 8, 2018 in order to explain the reasons for the treatment, either in the incident management process.

In order to assess its incidence in the commission of the imputed infraction, it is convenient to know its content.

Thus, one of the declarations was signed on the date indicated by the ***POSITION.3, (Dr. D.D.D.), ***POSITION.2 (Mrs. C.C.C.) and ***POSITION.1 (Mr. B.B.B.) in their capacity as participants in the meeting held with the claimant during the day of August 8, 2018 at the aforementioned Hospital Center. They sign that when it was explained to the claimant that the letter in dispute “had been published on the entity's website because he himself had given his consent verbally, he did not deny said statement, nor did he question it at any time. what of In fact, in relation to the previous point, the interested party expressly states that despite the fact that he had offered verbal consent, he considered that the Legislation required to obtain written consent, and in this sense, nobody had transmitted no authorization to sign.”

In relation to this first affidavit, it is observed that it is

party statements signed by professionals at the service of the center, which,

In addition, they do not demonstrate the alleged existence of the verbal consent of the

claimant nor his supposed acceptance of such circumstance conditioned to

obtain written consent, since in accordance with current legislation

when the treatment is based on the consent of the interested party, the person in charge of the

treatment must be able to demonstrate that he has given his consent to the

treatment operation (article 7.1. RGPD and Recital 42).

The other affidavit provided was signed on the date indicated by the

***POSITION.4, (Mrs. E.E.E.), who, due to her participation in the management of the

incident, stated:

". That in the analysis of the situation that was carried out at the time of the

request sent by the interested party to the center, during the month of August,

met with the worker who received the load of gratitude object of this

controversy.

.That at the aforementioned meeting, the worker who received said letter of

gratitude conveyed that in the process of collecting said letter, the

The interested party showed its intention that it be made publicly known, since,

In the words of the interested party, "he would like the good work done

by the Padre Menni Hospital Center", giving, therefore, their authorization to proceed

with the publication that is being discussed in this file."

In relation to this second affidavit, it is not only appreciated that

It is a declaration of a party, but the declarant refers to the

manifestations of a third party, specifically those that, according to what he declares, he made the

worker who received said letter of thanks, who conveyed that in the

process of collecting said letter, the claimant showed his intention that it be

made publicly known, from which the claimant's authorization to

proceed to the publication of the letter on the web page of the claimed person.

In this statement it is observed that the declarant does not identify the worker

that indicates received the letter in question, does not inform about the exact form and date in

that, allegedly, the claimant was able to show said worker in the process of

collection of the letter his intention that said document be made known

publicly, especially when the letter was received by regular mail. to major

abundance, if there has been a desire for public recognition of such

gratitude on the part of the claimant, which is not proven, nor the content of

the letter itself or the alleged statement made by the claimant to the

worker, it is inferred that the claimant was explicitly consenting to the

Disclosure of the full content of the aforementioned letter on the center's website.

In addition, the complainant has repeatedly denied having authorized in any way the

demanded to publish the aforementioned letter on the aforementioned website.

Seated all of which, the claimed has carried out between mid-April

of 2016 and beginning of August 2018 a treatment of health data of the

claimant by publishing on its website the full content of a letter of

acknowledgment sent by the person to the person claimed for the psychological treatment

cited in the letter, appearing outlined in said publication the data

identification and patient status of the claimant's center.

In accordance with the foregoing, the defendant is responsible for the commission of

an infringement of the provisions of article 9.1 of the RGPD, typified in article

83.5.a) of the aforementioned legal text and classified as very serious for the purposes of prescription in

article 72.1.e) of the LOPDGDD, and may be sanctioned, in accordance with the

provided in article 58.2.b) of the RGPD, with a warning.

7th

Sections b), d) and i) of article 58.2 of the GDPR, “Powers of Attorney”, provide that:

“2 Each supervisory authority shall have all of the following powers

corrections listed below:

(…)

b) sanction any person responsible or in charge of the treatment with

warning when the processing 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 a specified manner and within a specified period;”

“i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

For the purposes of determining the sanction attached to the infraction

described, the following precepts are taken into account:

Article 83 of the RGPD, under the heading “General conditions for the

imposition of administrative fines”, in its sections 2 and 5.b) states that:

"two. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). (…)

5. Violations of the following provisions will be sanctioned, in accordance

with 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 basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;”

In turn, article 72.1.e) of the LOPDGDD, under the heading "Infringements

considered very serious”, provides:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

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

particularly the following:

(…)

e) The processing of personal data of the categories referred to in the

Article 9 of Regulation (EU) 2016/679, without the concurrence of any of the

circumstances provided for in said precept and in article 9 of this Organic Law.”

In the present case, it is considered appropriate to impose on the defendant the sanction of warning provided for in article 58.2.b) of the RGPD. To do this, we value the following circumstances: that the treatment analyzed affects only the claimant health data; that the respondent proceeded to eliminate said publication of its web page as soon as it received, in early August 2018, a letter from the claimant requesting to receive the appropriate clarifications on the occasion of the dissemination of the letter studied without their authorization; the respondent has reinforced the existing security measures to avoid similar incidents that may affect the illicit treatment of data and/or the principle of confidentiality, proceeding to eliminate the possibility of publishing any information related to thanks, congratulations, testimonials or opinions of patients on your page web or RRSS, in addition to being aware of the commission of any previous infraction in matter of data protection.

Confirmed the existence of the infringement of article 9.1 of the RGPD described, and the view of the templates that the respondent attached to the pleadings brief submitted to the agreement to initiate the procedure in order to justify the changes introduced in the procedure for collecting written consent to publish images, recordings or personal information on the web or other means of dissemination, in relation to the models presented under the name "Consent for the Dissemination of Information" and "Consent for the transfer of Images", in the proposed resolution dated October 31, 2019, the following irregularities that would affect, where appropriate, the validity of the consent granted if it is understood as referring to health data, which are those that affect to the case studied:

- They do not include information that allows linking the consent requested in

said documents to treatments that reach special categories of data

personal data, including health data.

- In the section relating to the purpose of processing personal data

whose consent is requested in the document "Consent for the transfer of

Images": consent for treatment should be requested separately

in order to promote the services and give visibility to the actions, the

consent to treatment for therapeutic purposes and consent

for teaching purposes.

- In the section relating to recipients: the Centers should be identified

linked to the claimed party to whom the personal data may be communicated.

In relation to the previous section, referring to the recipients, it is convenient

point out that the information provided was limited to indicating as recipients

centers linked to the person claimed, information that is absolutely insufficient or

even as "recipient categories", so in this case they must be

identified.

Based on the foregoing, in the aforementioned motion for resolution it was indicated that with

Pursuant to the provisions of the aforementioned article 58.2.d) of the RGPD, it was considered

opportune to propose that in the resolution to be adopted the defendant be ordered, as

responsible for the treatment, carry out the implementation of the technical measures

and organizational necessary to ensure that the processing of health data

published on the website of the center and in other Internet media or media is

in accordance with the provisions of article 9.2.a) of the RGPD for that special category

of personal data. For which it should be obtained, in relation to each of the

specific purposes to which the treatment responded, the explicit consent

required by the data protection regulations to publish health data of the

patients of the center on its website, social networks or other means of dissemination or

supports. In addition, it was proposed that, in this case, the

consent templates submitted to data category type

collected, for all of which the provisions of articles 7 and

9 of the RGPD in relation to the conditions, prohibitions and exceptions applicable to

that special category of data such as health data. It was noted that these

measures would have to be adopted, where appropriate, within a period of one month computed from

the day following the notification of the agreed sanctioning resolution,

The means of evidence accrediting compliance must be provided.

Regarding these corrective measures, the defendant in his written

allegations to the proposed resolution has communicated to this Agency the

implementation of the measures detailed in the seventh factual record

of this resolution for the purpose of correcting the deficiencies detected and adapting their

conduct to data protection regulations.

Therefore, in accordance with the applicable legislation and valued the concurrence

of the facts whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE PADRE MENNI HOSPITAL CENTER, with NIF

R3900624B, a penalty of warning, in accordance with the provisions of the

article 58.2.b) of the RGPD, for the alleged infringement of article 9.1 of the same

standard, typified in article 83.5.a) of the RGPD.

SECOND: NOTIFY this resolution to the FATHER HOSPITAL CENTER

MENNI.

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

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

through the

21/21

[https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Sea Spain Marti

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