

□ Procedure No.: PS/00312/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: On March 6, 2020, it has an entry in the Spanish Agency for  
Data Protection (AEPD) a document signed on 03/02/2020 by the Provincial Head of  
\*\*\*LOCATION.1 of the National Police Unit Attached to the Community  
\*\*\* COMMUNITY.1 (hereinafter, the claimant) with which it sends the "Act of Violation  
LOPDGDD" raised during the inspection carried out on 02/07/2020 in a  
establishment of the ASSOCIATION \*\*\*ASOCIACIÓN.1, with CIF G54790191 (in  
later, the claimed one).

The reason on which the claim is based -as stated in the section  
"Observations" of the submitted Infraction Record- is the "Lack of due diligence in the  
custody of the personal data of the associates. Numerous are observed  
photocopies of documents such as DNI, Passport and registration forms supported by  
trays in the entrance hall of the premises, with access for any user or partner".

The document sent by the claimant to the AEPD is a document that bears  
so the anagram of the Generalitat Valenciana and the Agency for Security and  
Emergency and is signed on 03/02/2020 by the Provincial Head of \*\*\*LOCALITY.1.

Attached to the aforementioned letter, two documents are sent to this Agency:

a. A writing with the same anagrams as the previous one, which is stamped with a  
stamp of "Entry" in the "Provincial Police Station of \*\*\*LOCALIDAD.1" on date  
02/19/2020. It is addressed to the "Provincial Commissioner, Head of the Police Station  
Provincial of \*\*\*LOCALITY.1" and is sent by the claimed party signed by the "Chief

Unity Provincial". The subject is "Infringement Act. Law of Protection of Data". In it, the addressee is informed that he is being transferred a copy of the Act of Infraction and that "...The inspection was carried out in association \*\*\*ASOCIACIÓN.1, located at C/\*\*\*DIRECTORY.1 of \*\*\*LOCALITY.2, in collaboration with the Judicial Police Group of the Local Police Station of \*\*\* LOCATION.2, related to proceedings no. \*\*\*ERMISSIONS.1 of Investigating Court No. 2 of said locality".

a. A writing, with the same anagrams as the previous ones, which bears the number "\*\*\*\*ESCRITO.1" and the heading "Data Protection Law Infringement Act".

The Act is signed by officials with professional license number \*\*\* CARD.1 and \*\*\* CARD.2. In the section for signing the reported there is none. Instead it has been indicated "Denied. I know deliver a copy", followed by the NIF of the treasurer of the claimed association.

The police officers who sign the Minutes report the irregularities observed during an inspection visit carried out on the premises, located on Calle C/ Jorge Juan, 6

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of

\*\*\*ADDRESS 1,

\*\*\*LOCATION.2, property of the Association

\*\*\*ASOCIACIÓN.1, in collaboration with the judicial police, in an operation related to the proceedings followed before the Court of Instruction number

2 of \*\*\*LOCALIDAD.2 and with the presence of the Lawyer of the Administration of

Justice of that court.

It is stated in it that the inspection is carried out in the presence of the treasurer of the Association, D. A.A.A., whose home address and NIF appear in the Minutes.

That the Association is registered in the Municipal Registry of Associations with date 12/09/2014, number \*\*\*NUMBER.1, as well as in the Registry of Community Associations \*\*\*COMMUNITY.1, with number \*\*\*NUMBER.2, being its tax identification number G54790191. The Act indicates that the service was held on 02/07/2020 at 11 am.

SECOND: Within the framework of file E/03350/2020, the AEPD, in a document signed on 06/01/2020, transfers the claim to the claimed party so that within a period of month, provide this Agency with an explanation of the facts denounced and detail the measures adopted to prevent situations from occurring in the future

Similar.

The shipment was made by postal mail and was received by the claimed party on 06/09/2020. There is a document in the file issued by the State Corporation Correos y Telégrafos, S.A., "Proof of Delivery", in which it states that the sending of the AEPD with reference NT28\*\*\*\*\*XX, admitted on 06/05/2020, has been delivered- C on 06/09/2020, at 12:58 p.m., the recipient being D. B.B.B. with NIF \*\*\*NIF.1.

As of 09/09/2020, the response from the AEPD had not been received.

claimed to the informative request. Thus, in accordance with the provisions of the article 65 of the Organic Law 3/2018, on Data Protection and Guarantees of the Digital Rights (LOPDGDD) by the Director of the AEPD is agreed on that date accept the claim for processing.

The agreement for admission to processing was notified to the claimant by mail. The document issued by the State Society Correos y Telégrafos, S.A., "Proof of En-delivery", which is in the administrative file, proves that the shipment was made on

09/21/2020 and was delivered on 09/24/2020.

THIRD: On 09/09/20, the claim is admitted for processing

by the Director of this AEPD, in accordance with art. 65 LOPDGDD.

FOURTH: On November 5, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 32 of the RGPD, typified in Article 83.4 of the RGPD.

FIFTH: The representative of the association submits a written statement of allegations to the agreement

beginning, in which it states that, when the Act was drawn up, they had acted

previously the National Police and had taken out the documentation of the

drawers for inspection. The association maintains all the

documentation of its partners that contains personal data in an office in

drawers closed with a person in charge that prevents anyone from accessing the

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themselves. As soon as the registration was finished, the documentation was placed again

locked.

SIXTH: On 07/13/21, the respondent was notified of a "proposal for

resolution" confirming the imputed infraction of art. 5.1 f) RGPD, by not

have adopted the necessary measures for the corresponding custody of the

documentation with personal data of your clients.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

ONLY: The Provincial Chief of \*\*\*LOCALITY.1 of the National Police Unit

Attached to the Community \*\*\*COMUNIDAD.1 sends the "Infringement Act LOPDGDD"

raised during the inspection carried out, on 02/07/2020, in an establishment of the

ASSOCIATION \*\*\* ASSOCIATION.1.

In the "Observations" section of the submitted Infraction Record, it is indicated "Lack of

of due diligence in the custody of the personal data of the associates.

Numerous photocopies of documents such as DNI, Passport and identification cards are observed.

inscription supported on trays in the entrance hall of the premises, with access from

any user or partner".

FOUNDATIONS OF LAW

Yo

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

control, and according to the provisions of articles 47 and 48 of the Organic Law

3/2018, on the Protection of Personal Data and Guarantee of Digital Rights

(LOPDGD), the Director of the Spanish Data Protection Agency is responsible for

te to start and resolve this procedure.

II

The RGPD deals in its article 5 with the principles that must preside over the

treatment of personal data and mentions among them those of "integrity and

confidentiality". The provision provides:

"1. The personal data will be:

(...)

f) Treated in such a way as to guarantee adequate security of the

personal data, including protection against unauthorized or unlawful processing,

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational (<<integrity and confidentiality>>)".

Article 5.2. RGPD establishes: "The data controller will be responsible for compliance with the provisions of paragraph 1 and capable of

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demonstrate it (<<proactive responsibility>>)"

The principle of integrity established in article 5.1.f) RGPD is developed through through articles 32 to 34 RGPD, framed in section II of chapter IV that

It bears the heading "Security of personal data". Article 32, "Security of the treatment," he says:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of probable liability and severity for the rights and freedoms of natural persons, the responsible and the person in charge of the treatment will apply technical and organizational measures appropriate to guarantee a level of security appropriate to the risk, which in its case include, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to guarantee the confidentiality, integrity, availability and permanent silence of treatment systems and services;
- c) the ability to restore availability and access to personal data promptly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and evaluation of the effectiveness technical and organizational measures to guarantee the security of the treatment

I lie.

2. When evaluating the adequacy of the security level, particular account shall be taken of  
takes into account the risks presented by the processing of data, in particular as a consequence  
accidental or unlawful destruction, loss or alteration of personal data  
transmitted, stored or otherwise processed, or the communication or unauthorized access  
torized to such data.

3. (...)

4. The person in charge and the person in charge of the treatment will take measures to guarantee  
warrant that any person acting under the authority of the person in charge or the person in charge  
do and have access to personal data can only process said data following instructions  
instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the  
Union or of the Member States. (The underlining is from the AEPD)

III

The conduct of the respondent that determined the opening of this file  
sanctioning is the omission of the security measures necessary to guarantee the  
confidentiality of the personal data subject to treatment, given that,  
in the "LOPDGDD Infringement Act" that the claimant has sent us, the officials  
acting officials verified that in a local of the claimed association there were numerous  
rous documents with personal data - photocopies of DNI, passports and cards  
of inscription- supported in trays located in the hall of the premises "to the access of any-  
any user or partner".

This behavior of claimed evidences that it did not adopt the organizational measures  
necessary to guarantee the security of the personal data of third parties that she

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treated, thus breaching the obligation that the RGPD, article 32.1., imposed on it.

ne. This precept specifies the general principle of "integrity" that has presided over the treatment of personal data of third parties. The Consideration refers to this principle.

do 39 of the RGPD when it says "...Personal data must be treated in a way that guarantees adequate security and confidentiality of personal data, including measures to prevent unauthorized access or use of such data".

In the same sense, Recital 74 of the RGPD indicates that "It must be established the responsibility of the person in charge of the treatment for any treatment of personal data made by himself or on his behalf. In particular, the controller must be obliged to apply timely and effective measures and must be able to show compliance of processing activities with this Regulation, including the effectiveness of the measures. These measures must take into account the nature, nature, scope, context and purposes of the treatment, as well as the risk to the rights and freedoms of natural persons."

#### IV

In accordance with the evidence available in this sanction file, it is concluded that, in fact, the known facts constitute a violation of article 32.1.

RGPD, in relation to article 5.1.f) RGPD, typified in article 83.4.a) RGPD, which states:

"Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of 10,000,000 Euros 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 obligations of the person in charge and of the person in charge in accordance with the articles 8,11, 25 to 39,42 and 43;”.

The art. 77 section 5 of Law 39/2015 (October 1) provides the following:

"5. The documents formalized by the officials who are recognized as condition of authority and in which, observing the corresponding legal requirements, teeth the facts verified by those are collected will prove them except that the contrary be proven" (\*bold belongs to this body).

A copy of the Inspection Report dated 02/07/21 is provided (Annex I claim) where in the “Observations” section it is stated, in the opinion of the acting force, the presence of various documents with personal data that do not meet the security measures required for this type of data, being easily “observable” by any person who enters the establishment subject to research.

Regarding the statute of limitations for this infraction, we will have to be at the provisions of the (LOPDGDD). Article 73, f) LOPDGDD qualifies as a serious infringement “The lack of adoption of those technical and organizational measures that are appropriate to guarantee a level of security appropriate to the risk of treatment in the

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terms required by article 32.1 of Regulation (EU) 2016/679”. Article 73

LOPDGDD provides that serious infractions will have a statute of limitations of two years.

v

Article 58.2 RGPD attributes to the control authorities the following powers:

corrective res:

“(…)

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

when the treatment operations have violated the provisions of this

Regulation;

c)...

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

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

(…)

i) Impose an administrative fine in accordance with article 83, in addition to or instead of

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

each particular case;

(…)”

Despite the sanction of a fine that article 83.4 RGPD sets for infractions

pified in said precept, Considering 148 of the RGPD indicates: “In case of in-

minor fraction, or if the fine likely to be imposed constituted a burden

disproportionate for a natural person, instead of sanctioning by means of a fine,

impose a warning. However, special attention must be paid to the nature

nature, seriousness and duration of the infraction, its intentional nature, the measures

taken to mitigate the damages and losses suffered, to the degree of responsibility or to

any previous relevant infringement, to the way in which the supervisory authority has

had knowledge of the infraction, to comply with the measures ordered against the

responsible or in charge, adherence to codes of conduct and any other cir-

aggravating or mitigating circumstance.”

It is recalled that a new finding of any "irregularity" in  
of data protection, may lead to the opening of a new sanctioning procedure.  
pecuniary character.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria  
tion of the sanctions whose existence has been proven,  
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS a warning to the entity ASOCIACIÓN CANNABIS

\*\*\*ASOCIACIÓN.1, with CIF G54790191, for a violation of Article 32 of the RGPD,  
typified in Article 83.4 of the RGPD.

SECOND: ORDER the claimed party so that within a period of 1 month from the notification  
cation of this act adopts the necessary measures to safeguard the data  
personal data of clients who are treated under their responsibility.

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THIRD: NOTIFY this resolution to ASOCIACIÓN CANNABIS \*\*\*ASO-  
CIACIÓN.1 and REPORT the result of the actions POLICE UNIT (CO-  
COMMUNITY \*\*\*COMMUNITY.1).

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  
resents may optionally file an appeal for reconsideration before the Director  
of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal  
before the Contentious-Administrative Chamber of the National High Court,  
in accordance with the provisions of article 25 and section 5 of the additional provision  
Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-  
administrative, within a period of two months from the day following the notification  
tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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