

□ File No.: PS/00464/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated July 27, 2020
filed a claim with the Spanish Data Protection Agency.

The claim is directed against CITY COUNCIL OF ***CITY COUNCIL.1 with CIF
*** CIF.1 (hereinafter, the claimed party).

The reason on which the claim is based is that the councilors of the aforementioned city council
have general and indiscriminate access to the documents of the Entry Registry of the
City hall.

The claimant claims to know the facts when in the Ordinary Plenary Session of the Municipality
of *** TOWN HALL.1 of January 30, 2020, it became clear that all
councilors of the corporation have free access to the entry register and
departures from the City Council, even making express reference to registration numbers
matters outside their respective areas of management or competence.

On July 16, 2020, a councilor from the corporation confirms the aforementioned accesses, and
acknowledges having agreed to a request submitted by the claimant.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), on September 25, 2020, said transfer was made
claim to the claimed party, so that it proceeded to its analysis and inform the
this Agency within a month, of the actions carried out to adapt to
the requirements set forth in the data protection regulations.

No response has been received to this letter.

THIRD: On December 9, 2020, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

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On June 15, 2021, the respondent sends this Agency the following information and demonstrations:

1.

That the dispute arises from the situation created by reason of the motion presented by all the opposition councilors of the City Council of

*** TOWN HALL.1, where it is requested that they be provided with access to the full content of the Entry Records of the City Council, which was approved in a Plenary Session of date January 30, 2020.

Provides Minutes of the ordinary session, held by the Plenary on January 30, 2020 where it consists:

“Submitted the Motion to a vote, the Corporation by eight votes in favor (1 from the PSOE, 2 from UNPA, 2 from *** TOWN HALL. 1 May, 1 from VOX, 1 from IU-RPS and 1 from the councilor not attached), and with seven abstentions (4 from the PP and 3 from Ciudadanos), agreed:

Make available to opposition councilors immediate access to all and each of the entry and exit records existing in the different

Departments of the City Council, exactly the same as the current access that now have the General Registry of entries and exits, to know each and every one of the writings that are received and dispatched in the Consistory, in order to carry out their control and oversight work, which as opposition councilors have entrusted, in a complete and unbiased way.”

Provides Minutes of the extraordinary session, held by the Plenary on July 20, 2020 where it consists:

"FIRST. Approval of the availability of councilors who are not part of the government team access, within a maximum period of one week from the celebration of the plenary session, to each and every one of the entry and exit registers existing in the different departments of the City Council.

The proponents accept that it is Except for the auxiliary records of Income and Collection, as indicated in the Secretariat Report. Next, open the turn of interventions, there is a succession of those that appear in the audio of the session, which are find in the file.

The Corporation was put to the vote by nine votes in favor (3 from the PSOE, 2 from UNPA, 2 from *** TOWN HALL.1 May, 1 from VOX and 1 from IU-Republicans), and eight in against (4 from the PP, 3 from Ciudadanos and 1 from the non-attached Councilor), agreed to put disposition of the councilors who are not part of the government team the access, within a maximum period of one week from the holding of the plenary session, to each and every one of the entry and exit registers existing in the different departments of the

City Hall, with the exception of the auxiliary records of Income and Collection.”

two.

That two contradictory reports have been prepared as to their recommendations. In the first report, from the DPD, he opposes this massive access and which indicates that the initial access of the Councilors must be limited to the matter and number of file, eliminating from this first consultation the possibility of accessing any personal information. That in the second report written by the General Secretary

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and following the recommendations of the Consultant ESPUBLICO, justifies the need of such indiscriminate access, so that the councilors can do their job.

A copy of the DPD report dated and signed on 03/10/2020 is provided, where it is stated as a conclusion that:

“[...]

this access must be limited (at first) to the subject and file number, eliminating from this list all the personal data of the interested party.

Subsequently, the councilor, and on the issues he considers, must direct written to the Mayor's Office identifying by its number the file to which you request access and the cause of his interest, so that, after considering the need, the Mayor access or deny it, always in a motivated manner.

[...]”

A copy of the report of the General Secretariat dated and signed on 03/06/2020 is provided where it is concluded that:

"V CONCLUSIONS

1 . Opposition councilors currently have electronic access to

General Entry and Exit Registries, the proposed agreement is that they have it also to the rest of the Auxiliary Registries of the City Council: Culture, Collection, Rents, Urbanism, Secretariat and Personnel.

2. The Auxiliary Revenue and Collection Registries could have a specific if they contain tax data, subject to the limitations provided in the General Tax Law. art. 95 of Law 58/2003, of December 17, General Tributaria (LGT), which in section 1 states that: "The data, reports or records obtained by the tax administration in the performance of its functions are reserved and may only be used for the effective application of taxes. "Which does not prevent you from requesting access to the specific files of these matters, in the terms of articles 14 to 16 of the ROF.

3. By considering the councilor of the opposition as "assignee" of protected data, it is is considering him "third", when he is part of the Public Administration (authorities, officials and employees) who use the personal data of the citizens in their daily duties and jobs.

4. Law 39/2015 establishes the right and obligation to interact electronically with the Public Administrations.

5. In any case, it should be remembered that the councilors who access this information They may only use the data within the scope of their competences, since this is the limit established in the Law of Bases of Local Regime.

However, and in accordance with the purpose limitation principle, Article 5.1 .b) of the RGPD, the data must be processed to control the activity of the entity of the corresponding Local Administration, since another use would be incompatible with said

purpose, not being able to publicize these data or communicate them to any third party.

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Therefore, the approval of the availability of the councilors who are not part of the access government team, to each and every one of the entry and exit records existing in the different departments of the City Hall, with the exception of those for Collection and Income, may only be used for the effective application of taxes.

Provides a copy of an email sent by the Mayor on 09

3.

June 2021 and sent to ***EMAIL.1, where it is stated that:

“[...]”

At the beginning of the Legislature, I declared my intention to give the Opposition access to the different registers of entry, exit and Decrees. After passing half of it,

It is clear that some councilors have not complied with their duty secrecy and responsibility regarding the processing of information, which has caused that some neighbors have presented complaints and even denunciations.

We even have a judicial process open pending resolution or sentence for a similar case.

For all these reasons and in a definitive manner, the Agency will be sent as many reports and processes are considered to be necessary, to establish in this and in future situations, the access and the form of treatment of the information with

Regarding the Records by the Councillors.

For the time being, the entry and exit registers that they consider to be clarified, they must follow the rule given in the ROF, justifying their need and the information requested, electronically. Likewise, the Decrees will be sent to all Councilors every fortnight, beginning with the last of May and continuing with June, until having the corresponding report from the Agency, in order to comply with the Law as scrupulously as necessary for the development and security of all the members of the Corporation and our neighbors.”

Four.

Regarding access to the entry and exit registers by the councilors manifested in a report issued by the Department of New Technologies dated 06/14/2021:

“Politicians with government responsibilities: who have access to records general input and output registers and auxiliary registers according to their delegated responsibilities, for example, to the personnel register, only the mayor.”

“Politicians without government responsibilities (opposition): They have access to the application from a web server, which means they can be accessed from anywhere and device to check-in and check-out books. Currently from the books input and output can check the reference (title), date and registration number and If you need more information, you must submit a request for registration of entry indicating requested registration number and purpose of the request.”

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Dated September 17, 2021 CITY COUNCIL OF ***CITY COUNCIL.1

sends this Agency the following information and statements:

1.

That, since the beginning of the mandate of this Corporation, the councilors of the opposition had access to the General Entry and Exit Registries. These accesses they comprised the different lists and the specific Entry or Exit document. That they did not have access to some special records such as Personnel, Urbanism and Collection.

two.

That, due to the complaint of a neighbor, apparently, by the diffusion by some data councilor of the General Entry Registry, as of June 1, 2021, the Mayor ordered that these accesses be invalidated and from that date the Councilors of the opposition can see the lists of the Entry and Exit Registry but they do not have access to documents. They must expressly request the entry documents and Exit that they need to know to carry out their opposition work and they are provided prior resolution of the Mayor's Office.

3.

That since August 1, 2019, the VOX Councilor has made 2,353 actions on the records and documents management system of the Municipality of *** TOWN HALL.1. That none of these actions corresponds to any record or document relating to the claimant's entries.

FIFTH: On October 15, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the GDPR.

SIXTH: After the term granted for the formulation of allegations to the agreement

of the beginning of the procedure, it has been verified that no allegation has been received by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the

initiation agreement, when it contains a precise statement about the

imputed responsibility, may be considered a resolution proposal. In the

present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

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

In this proceeding, the following are considered proven facts:

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FACTS

FIRST: The councilors of the aforementioned city council have general and

indiscriminately to the documents of the Town Hall Entry Register.

SECOND: On October 18, 2021, the claimant is notified of the settlement agreement

beginning of this procedure, turning said agreement into a resolution proposal

in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP), to the not make the claimed allegations within the indicated period.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

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

The RGPD in its article 5, "Principles related to the treatment" says that "The data personal will be:

- a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);
- b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");
- c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during

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longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the

interested party ("limitation of the retention period");

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

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

or appropriate organizational ("integrity and confidentiality").

2. The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility")."

The infraction for which the defendant is held responsible is provided for in article 83.5

of the RGPD that establishes:

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

section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of

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

Total annual global business of the previous financial year, opting for the one with the highest amount:

a)

consent under articles 5,6,7 and 9.”

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

In turn, the LOPDGDD in its article 72.1.a) qualifies as a very serious infraction,

purposes of prescription, “a) The processing of personal data violating the

principles and guarantees established in article 5 of Regulation (EU) 2016/679.”

III

The LOPDGDD in its article 77, Regime applicable to certain categories of responsible or in charge of the treatment, establishes the following:

“1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment are related to the exercise of powers of public law.

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h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies

autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the

that depends hierarchically, where appropriate, and to those affected who had the condition

interested party, if any.

3. Without prejudice to what is established in the previous section, the data protection authority

data will also propose the initiation of disciplinary actions when there are

sufficient evidence for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on disciplinary or sanctioning regime that

result of application.

Likewise, when the infractions are attributable to authorities and managers, and

proves the existence of technical reports or recommendations for the treatment that

had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and will order the publication in the Official State or Autonomous Gazette that correspond.

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

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

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

When the competence corresponds to a regional authority for the protection of data will be, in terms of the publicity of these resolutions, to what your specific regulations”.

IV

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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.

Article 58.2 of the RGPD provides the following:

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

listed below:

(...)

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

(...)

“d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;”

“i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;”

v

In the present case, as a consequence of the indiscriminate and free access of the councilors of the city council object of the present claim, to the documents that were attached to the inscriptions of the general registers of entry and exit of the aforementioned consistory, the data protection regulations have been infringed, since a councilor of the claimed city council has had access to a request from the claimant despite the fact that this was not necessary for the exercise of its functions, which supposes a infringement of article 5.1 c) of the RGPD, as indicated in the grounds of right II.

The council object of conflict, has recognized the facts and has addressed this Agency stating that as of June 1, 2021, measures have been adopted in such a way that free access to the general registry of this council from that date, so that the opposition councilors only

will be able to access the existing documents to carry out their work of opposition, prior Mayor's resolution.

Despite this, this Agency is going to direct a warning against the town hall, for the personal data that prior to the measure adopted by the aforementioned town hall on June 1, 2021, were processed in violation of article 5.1 c) RGD, that regulates the principle of data minimization, establishing that they cannot processing more data than is strictly necessary for the purpose pursued, Therefore, the data must be "adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed.

However, a warning will be sent without the need to adopt measures by claimed, since the necessary measures have already been taken to rectify the ailment that caused this claim.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE TO TOWN HALL OF *** TOWN HALL.1, with CIF

*** CIF.1, for an infringement of article 5.1.c) of the RGD, typified in article 83.5 of the RGD, a sanction of warning.

SECOND: REQUEST TO TOWN HALL OF *** TOWN HALL.1, with CIF

*** CIF.1, under the provisions of article 58.2 d) of the RGD, which adopts the measures necessary to comply with the principle of data minimization regulated

in article 5.1 c) of the RGPD.

Said measures must be adopted within a period of one month computed from the date in which this sanctioning resolution is notified, and the means must be provided proof of compliance.

THIRD:

*** TOWN HALL.1.

NOTIFY this resolution to the CITY COUNCIL OF

FOURTH: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

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

counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal

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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

Director of the Spanish Data Protection Agency

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