

□ Procedure No.: PS/00230/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The Superior Police Headquarters of *** COMMUNITY.1, dated March 4,
February 2021, he sent the Notification Act of an alleged violation of the regulations
of data protection to the Spanish Agency for Data Protection.

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

“Organic Law 2/1986, of March 13, on Security Forces and Bodies, in its
Article 11.1.a) requires the agents of the authority to "ensure compliance with the
Laws and general provisions, executing the orders received from the Authorities.
des, within the scope of their respective competences”

Within the framework of the functions related to documentation of foreigners, as well as
that for the issuance of the national identity document, and as it happens in di-
various areas of public administration, it is necessary to request a
appointment for the materialization of the different procedures, which is obtained free of charge
through the website <https://sede.administracionespublicas.gob.es/>.

On this website you can get an appointment, anywhere in the national territory,
for the issuance/renewal of documents, collection of identity cards from ex-
foreigners (TIE), asylum applications, invitation letters, fingerprinting for the experience
issuance of cards, certificates of registration of citizens of the European Union, as well as
for another series of administrative procedures.

The fact of the suspension of administrative deadlines due to the declaration of the

state of alarm throughout the national territory derived from the pandemic caused by Covid-19 added to the fact that, during the current year 2020, they have been responsible for renewal of their documents to foreign citizens who availed themselves of the process of regularization of their administrative situation that was implemented in the year 2015, has resulted in a situation of congestion in police services related to the materialization of different procedures and files in matters of immigration, which have overwhelmed the capacity of the immigration offices of the Police. National Office in the province of ***PROVINCIA.1 which have had to be reinforced in terms of personal and technical means, to respond to the force

It demands you experienced in such a short space of time.

In this context, the Unit against Immigration Networks and Falsehoods attached to the Provincial Immigration and Borders Brigade of ***PROVINCE.1 of the Su- police officer of ***COMUNIDAD.1 has detected, as a result of receiving multiple

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ple claims and complaints both from users and agencies and offices of lawyers related to the documentary procedures of foreigners, which is saturated tion, in addition to the causes exposed, is also motivated by the practices carried out by those responsible for various establishments open to the public. shops, mainly call centers, and/or individuals who advertise themselves to obtain ci- advance payments in exchange for different economic amounts and that, in order to achieve a ma- for profit, they saturate the computer platform in such a way that they cause users to find it very difficult to obtain a free appointment with the administration and look

obliged to require their services.

By going to these places, users have been forced to provide their personal data.

documents, both in writing and by providing a copy of their identification documentation.

goes, to the employees or people who offer this service so that, with said data,

can reserve an appointment with the administration, since said appointments are nominated.

and it is not possible to appear at the police documentation offices with justification.

appointments that do not correspond to the person who is going to carry out the requested procedure.

do.

This transfer of your personal data is made without any guarantee or identification

of the person in charge of the treatment of the same, as well as without informing or obtaining the

consent of the users in accordance with the provisions of Organic Law 3/2018,

Protection of Personal Data and Guarantee of Digital Rights, and the Rule-

(EU) 2016/679, on your rights of access to your personal data, rectification

suppression, deletion or limitation of its treatment incurring for it, in the opinion of this Unit

police authority, in a minor infringement of article 74.a of the aforementioned L.O. 3/2018, without prejudice

that with these behaviors they may also be infringing some other of the

precepts of the L.O. 3/2018.

Based on all of the above, on 01/14/2021, by police officers

assigned to this Unit, an administrative inspection was carried out in the call center called

mine "**** LOCUTORIO", located in *** ADDRESS.1 (** PROVINCE.1), in which

confirmed the existence of numerous client files (handwritten papers, copies

of documentation, NIE prior appointment receipts), which were stored in said

establishment with the supposed purpose of obtaining prior appointments to carry out

ization of different procedures, extending in the place the obligatory act of inspection

tion, a copy of which is attached to this document.

Inside the establishment, a precautionary intervention was carried out on 9 documents

data containing personal data (name, surnames, document, telephone, etc.), per-
belonging to third parties, in order to carry out the corresponding management
police disputes with the holders of that documentation.

Once the corresponding procedures had been carried out, the citation and post-
taking statements from various people whose data appears in the documentation
intervened, which have expressed that they were not informed or provided con-
express or implied sentiment regarding the provisions of article 6.1.a
of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27
2016, by providing your personal data to those in charge of the establishment for the
obtaining an appointment.

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Based on the foregoing, in the opinion of the interveners, the owner of the establishment, both
personally or through your employees, you would be infringing one or more
rio precepts of the Organic Law 3/2018, of December 5, on Data Protection
Personal and Guarantee of Digital Rights, as well as 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 processing of personal data
Therefore, on 02/03/2021, previously mentioned, he appeared in these offices.
dences, the owner of the establishment called A.A.A. with NIE ***NIE.1.”

SECOND: Prior to the acceptance of this claim for processing, it is transferred
claimed, in accordance with the provisions of article 65.4 of the Organic Law
3/2018, of December 5, on the Protection of Personal Data and guarantee of the rights

digital data (hereinafter, LOPDGDD). The request for information on the many statements were received, on March 9, 2021, as recorded in the Notice of Receipt issued by the Post Office, without any reply having been received. na.

THIRD: On 06/11/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: On 07/08/2021 the claimed party is notified of the agreement to initiate this sanctioning procedure and a hearing period of TEN DAYS is granted

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

FIFTH: The respondent did not make any objections to the agreement to initiate the procedure. Article 64.2 f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure- establishes that if no allegations are made within the term established on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, it may be considered a motion for a resolution.

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

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

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

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FACTS

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

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

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of individuals with regard to the processing of personal data and the free circulation of these data (hereinafter RGPD) recognizes each control authority, and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

is competent to initiate 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

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

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

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

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Therefore, in accordance with these definitions, the collection of personal data personal on the occasion of the request for an appointment to carry out procedures administrative constitutes a treatment of data, for which the person in charge of the treatment must comply with the provisions of article 13 of the RGPD, providing the interested parties with all the information indicated in said precept.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, indicates that:

"one. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative.
- tant;
- b) the contact details of the data protection delegate, if any;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests swindles of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in their case;
- f) where appropriate, the intention of the controller to transfer personal data to a third party

country or international organization and the existence or absence of a decision of adequacy

Commission, or, in the case of transfers indicated in articles

46 or 47 or article 49, section 1, second paragraph, reference to the adequate guarantees

adequate or appropriate and the means to obtain a copy of them or the fact of

that have been borrowed.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained,

them, the following information necessary to guarantee fair data processing and

transparent:

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

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ble, the criteria used to determine this term;

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

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article

9, paragraph 2, letter a), the existence of the right to withdraw consent in any

any time, without affecting the legality of the treatment based on consent.

lien prior to withdrawal;

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

e) if the communication of personal data is a legal or contractual requirement, or a re-

necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;

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

3. When the data controller plans the further processing of personal data for a purpose other than that for which they were collected, will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

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

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

"one. When the personal data is obtained from the affected party, the data controller must inform the affected party of the existence of the right of access to the information and may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to which refers to the following section and indicating an electronic address or other means that allows easy and immediate access to the rest of the information.

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

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

If the data obtained from the affected person were to be processed for the elaboration of

them, the basic information will also include this circumstance. In this case, the concerned shall be informed of their right to oppose the adoption of decisions

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automated individuals that produce legal effects on him or affect him significantly.

similarly, when this right concurs in accordance with the pre-

seen in article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of

corrective powers in the event of an infraction of the precepts of the

GDPR.

Article 58.2 of the RGPD provides the following:

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

listed below:

to) (...)

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

treatment operations have violated the provisions of this Regulation;

c) (...)

d) order the person responsible or in charge of 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 the measures mentioned in this section, according to the circumstances of each case particular".

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of 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:

b) the rights of the interested parties pursuant to articles 12 to 22;"

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

"They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

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

v

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

This Agency has confirmed that the actions of the defendant are not in accordance with the data protection regulations, since it does not inform customers about the treatment of the personal data provided by them, as required in article 13 of the RGD, indicated in the legal basis III.

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

SAW

In accordance with article 58.2 b), for the commission of this infraction, it is appropriate address a warning when collecting personal data from customers and consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5 b) of the RGD would constitute a disproportionate burden for the claimed, since there is no record of the commission of any previous infringement in terms of Data Protection.

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

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

FIRST: ADDRESS A.A.A., with NIE ***NIE.1, for a violation of article 13 of the RGD, typified in article 83.5 of the RGD, a warning.

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

article 13 of the RGPD.

THIRD

: NOTIFY this resolution to A.A.A. with NIE ***NIE.1.

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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 contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Sea Spain Marti

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