 Procedure No.: PS/00431/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: On 09/22/2019, Ms. A.A.A., with DNI ***NIF.1 (hereinafter, the

claimant), represented by D. B.B.B., with DNI ***NIF.2, filed a claim with

the Spanish Agency for Data Protection. The claim is directed against the

entity ESTACIONAMIENTOS Y SERVICIOS, S.A.U., with CIF A28385458 (in

hereinafter PARKING AND SERVICES), a company that provides parking services

management of parking lots and car parks for the

TOWN HALL OF

***LOCATION.1, with CIF P1814200J

(hereinafter, CITY COUNCIL OF

***LOCATION.1 or claimed entity). The grounds on which the claim is based are,

in short, the following:

On 11/05/2018, the staff of the entity PARKING AND SERVICES

filed a complaint against the claimant for an infraction in the Zone of

Regulated Parking (ORA) of ***LOCALIDAD.1, which gave rise to the

interposition of a sanction by the CITY COUNCIL OF ***LOCALITY.1. Through

writ of 02/12/2019, the claimant requested the aforementioned City Council to annul the

penalty procedure.

Subsequently, on 03/22/2019, the claimant, acting through her

representative, filed a claim in the same sense against the entity

PARKING AND SERVICES, using the form called

“Complaints and Claims Sheet” of the Junta de Andalucía. This form is

accompanied by a document in which the claimant explains the reasons for her

complaint, specifies your request (annulment of the fine), and, as another, exercises your right to

the limitation of the treatment of all your personal data that works in

PARKING LOTS AND SERVICES, in opposition to its deletion or deletion

while the allegations filed against the procedure were resolved

related penalty.

The claimant attaches a copy of this document addressed to PARKING AND

SERVICES, which is outlined in the Fifth Proven Fact.

Based on the facts revealed, the claimant adds that it constitutes the

object of the claim made before this Agency the lack of attention to the right

requested, on which it has not received any response from

PARKING AND SERVICES. He adds that he considers that this entity does not

offers sufficient guarantees as the person responsible for the processing of personal data, and

that his inaction seriously violates his rights in terms of

Data Protection.

Likewise, it states that, on 06/12/2019, it also filed a claim against

PARKING AND SERVICES before the Municipal Information Office at

Consumer (OMIC) of ***LOCATION.1 due to lack of response to the "Data Sheet"

claims” presented in March of that same year (provides a copy of the supporting document

of registration, but not the written claim).

SECOND: On 10/15/2019, the claim was transferred to

PARKING AND SERVICES for analysis and communication to the claimant

of the decision adopted in this regard and to inform this Agency about the

issues stated therein.

On 11/14/2019, PARKING AND SERVICES responded to the aforementioned transfer

exposing the following:

On 02/02/2001, the CITY COUNCIL OF ***LOCALITY.1 and the entity

PARKING AND SERVICES, the latter as a service provider,

signed a service contract for the comprehensive management of car parks in

***LOCATION.1.

The regulations of Public Administration Contracts in force at the time of

the contract did not contain any reference to the protection of personal data. In

Instead, the current Law 9/2017, of November 8, on Public Sector Contracts, yes

indicates that, in the event that the contracting implies the contractor's access to

personal data for the treatment of which the entity is responsible

contracting party, the latter will be considered the data processor.

Pursuant to this rule, the CITY COUNCIL OF ***LOCALITY.1 is the

responsible for treatment and PARKING AND SERVICES intervenes as

in charge of the treatment.

Adds PARKING AND SERVICES that, on 08/20/2008, presented

before the CITY COUNCIL OF ***LOCALITY.1 a proposal to regularize the

situation regarding the treatment of personal data that the service of

comprehensive management of car parks in ***LOCALIDAD.1, which was never signed by

the aforementioned local entity.

In relation to the claim made before this Agency, PARKING AND

SERVICES states that, on 04/04/2019, it responded to the complaint raised

by the claimant on 03/22/2019, indicating that she should go to the CITY HALL

OF *** LOCATION.1, both in relation to the penalty for parking violation

as in relation to the right to limitation of treatment, as this

City Council the competent to resolve the sanctioning procedure and the entity

responsible for the treatment.

Despite indicating that the right to limitation of treatment must be answered by

the City Council, the entity PARKING AND SERVICES indicates that this

right was not exercised in accordance with the provisions of article 18 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD) and in the

Guide for the Citizen of the AEPD, considering that the treatment carried out

the CITY COUNCIL OF ***LOCALITY.1 is lawful and necessary for the fulfillment of

the legal obligation of the person in charge, who has incurred a sanctioning procedure

against the claimant.

Lastly, it indicates that it has transferred the claim to the City Council and

that the treatment order agreement is being updated.

Provides a copy of the response addressed to the claimant on 04/04/2019, related to the

complaint made by it on 03/22/2019. It is found that, despite

informed by PARKING AND SERVICES in its written response to this

Agency, the answer given to the complainant does not make any reference to the right to

treatment limitation. The text of this answer is summarized in the

Proven Fact Sixth.

THIRD: On 02/19/2020, in accordance with article 65 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed by the claimant.

FOURTH: In view of the facts denounced in the claim and the

documents provided by the claimant, the Subdirectorate General for Inspection of

Data proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, by virtue of the investigative powers

granted to the control authorities in article 57.1 of the RGPD, and in accordance

with the provisions of Title VII, Chapter I, Second Section, of the Organic Law

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

digital rights (hereinafter LOPDGDD).

1. On 08/02/2020, the CITY COUNCIL OF ***LOCALITY.1 refers to this

Agency the following information:

The requested City Council informs that it is unaware of the reason why the

proposal made by PARKING AND SERVICES in 2008 to

regularize the situation regarding the processing of personal data entailed by the

comprehensive management service for the ***LOCALIDAD.1 car parks, awarded by

public contracting, although there is proof of the documentary entry record entry

(not the documents themselves). Alleges as justification of the indicated

previously the documentary treatment in paper format of that moment, the

subsequent death of the head of its General Secretariat and the change of

municipal officials.

The City Council presents as evidence a copy of the "Agreement of the person in charge of the

processing of personal data on behalf of the City Council of ***LOCALIDAD.1",

dated 12/04/2019, listed as an annex to the service provision contract

signed in 2001 between PARKING AND SERVICES and the CITY COUNCIL OF

***LOCATION.1. Of the statements and stipulations contained in this Agreement, it is

those that are listed in the Seventh Proven Fact stand out.

Likewise, the CITY COUNCIL OF ***LOCALITY.1

informs that, as of

01/16/2018, contracted the services of a company to carry out the

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audit, consulting and implementation services in matters of "LOPD" and RGPD,

including the implementation of the National Security Scheme, biennial audit

required by the "LOPD", consultancy and implementation and adaptation to the "LOPD" and

adaptation to the RGPD (provide a copy of this contract).

2. On the other hand, the AEPD Inspection Services report that, as of the date

11/16/2020, the CITY COUNCIL OF ***LOCALIDAD.1 had not communicated to this

Agency the appointment of a Data Protection Officer.

FIFTH: On 02/17/2021, the Director of the Spanish Agency for the Protection of

Data agreed to initiate sanctioning proceedings against the CITY COUNCIL OF

*** LOCATION.1, for alleged violations of articles 18 and 28.3 of the RGPD,

typified, respectively, in articles 83.5.b) and 83.4.a) of the same Regulation;

stating in said agreement that the sanction that could correspond would be

warning, without prejudice to what results from the investigation.

SIXTH: Once the aforementioned start-up agreement has been notified,

TOWN HALL OF

***LOCATION.1 submitted a brief of allegations, in which it requests the filing of the

actions according to the following considerations:

the

1. The claimant has not exercised before the City Council the right to limit the

treatment of your data. He only submitted a "Claim Sheet" against

the entity PARKING AND SERVICES in which, among other issues,

It stated verbatim “to exercise the treatment of all your personal data

opposing its deletion or deletion”, requesting the concessionaire to adopt

the opportune measures that guarantee said end. This claim form is

presented at the Municipal Office of Consumption, for the purposes provided in the regulations

sectorial.

No further news in this regard until 01/21/2020, the date on which the claimant

resubmits a letter to the Municipal Consumer Office requesting the initiation of

sanctioning procedure against the service concessionaire.

Furthermore, dated March 22, PARKING AND SERVICES

sends a response to the complaint made by the claimant, in which it communicates that it is

the City Council is responsible for the treatment before which you must exercise your rights

in terms of data protection. Despite this, no application was ever made.

any about it.

Nor did the concession company notify the City Council of the request for

limitation.

2. The application submitted to PARKING AND SERVICES does not meet the

requirements required by the RGPD. Although the right had been exercised before the

CITY COUNCIL OF ***LOCALITY.1, a generic request in which it states

“exercise the treatment of all your personal data opposing its deletion or

suppression” is not enough to carry out any action.

Firstly, because the right to restrict processing is not a right

absolute, but its exercise can be considered when the person challenges the

accuracy of your personal data, until that request is resolved; and if the data

were processed unlawfully and the data subject opposes the deletion and requests the restriction

instead; the company no longer needs the personal data, but the person needs

that you keep them to establish, exercise or defend a legal claim; or when

the person has objected to the processing of their data under article 21 of the

GDPR and the company is considering whether its legitimate reasons prevail over those

of the person.

In this case, with the request made it is not possible to know what the claimant is asking for, nor

has proven the concurrence of any of these circumstances.

3. In relation to the violation of article 28.3 of the RGPD, the

CITY COUNCIL OF ***LOCALITY.1 that the contract with PARKING AND

SERVICES for the comprehensive management of car parks was formalized on

02/02/2001, when there was no specific regulation on the procedure for the

treatment and protection of personal data between the current

responsible and in charge of the treatment.

He admits that, on 08/20/2008, PARKING AND SERVICES presented a

written before the City Council, but indicates that he has no record of its content

and processing. At that time the registration and entry of documents was still done

in paper format and they were not scanned or digitally archived.

In addition, the recipient that appears in the entry was the owner of the Secretariat

General, who ceased to hold that position due to death.

Finally, it indicates that, on 12/04/2019, the CITY COUNCIL OF

***LOCALIDAD.1 and the repeated contractor signed an Agreement to Order

Treatment of Personal Data.

SEVENTH: On 08/05/2021, the available information is accessed through the

website of the Council for Transparency and Data Protection of the Junta de Andalucía and

it is verified that the CITY COUNCIL OF ***LOCALITY.1 has notified the aforementioned

entity the designation of a Data Protection delegate.

EIGHTH: On 08/11/2021, a resolution proposal was formulated in the sense

following:

1. That the Director of the Spanish Agency for Data Protection addresses

warning against the claimed entity, for infractions of articles 18 and

28.3 of the RGPD, typified in articles 83.5 b) and 83.4.a) of the same Regulation,

respectively.

2. That the claimed entity be required so that, within the period determined,

adopt the necessary measures to adapt its actions to the regulations of

protection of personal data, with the scope expressed in the Foundations of

Rights of the proposed resolution.

NINTH: Once the requested entity has been notified of the aforementioned resolution proposal, the

term granted to it to formulate allegations elapses without this

Agency has received any written.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: On 02/02/2001, the CITY COUNCIL OF ***LOCALITY.1 and the

entity PARKING AND SERVICES, the latter as provider of

services, signed a service contract for the comprehensive management of the

car parks in *** LOCATION.1. The aforementioned contract does not include any stipulation

regarding the protection of personal data.

SECOND: On 08/20/2008, PARKING AND SERVICES presented

before the CITY COUNCIL OF ***LOCALITY.1 a proposal to regularize the

situation regarding the treatment of personal data that the service of

comprehensive management of car parks in ***LOCATION.1. This proposal was never

formalized by the aforementioned entities.

THIRD: On 11/05/2018, the staff of the entity PARKING AND

SERVICES filed a complaint against the claimant for an infraction in the Zone of

Regulated Parking (ORA) of ***LOCALIDAD.1, which gave rise to the

interposition of a sanction by the CITY COUNCIL OF ***LOCALITY.1.

FOURTH: On 02/12/2019, the claimant requested the aforementioned City Council to

annulment of the sanctioning procedure initiated on the occasion of the complaint

outlined in the Third Proven Fact and the refund of the amount collected.

FIFTH: On 03/22/2019, the claimant filed a claim with the entity

PARKING AND SERVICES, using the form called

“Complaints and Claims Sheet” of the Junta de Andalucía. This form is

accompanied by a document in which the claimant explains the reasons for her

complaint, specifies your request (annulment of the fine), and, as another, exercises your right to

the limitation of the treatment of all your personal data that works in

PARKING SPACES AND SERVICES, with opposition to their deletion or deletion. In

In relation to the exercise of the right of limitation, said document indicates:

“Another yes I say,

Through this writing, in application of current regulations on personal data protection

and by virtue of the rights that assist him, this party comes to exercise his right to limitation

of the treatment of all your personal data opposing its deletion or deletion,

this concessionaire company, as the data controller, must adopt the measures

opportune that guarantee such end”.

SIXTH: On 04/04/2019, PARKING AND SERVICES responded to

the complaint filed by the claimant on 03/22/2019. The text of this reply is

following:

“In relation to your claim on March 22, 2019, I inform you that, in the event of

have received a notification of complaint for violation of the regulations of the Service of

Limited Parking, you must make the allegations you deem pertinent before the body

Instructor of the City Council of ***LOCALIDAD.1, providing the cancellation ticket, which is

who decides the case. Likewise, it informs you that there is no record in our files of the

copy of the cancellation ticket provided; if so, the notice of

complaint".

SEVENTH: On 12/04/2019, the CITY COUNCIL OF ***LOCALITY.1 and

PARKING AND SERVICES formalized an annex to the contract for the provision of

services of 02/02/2001, outlined in the First Proven Fact, called

“Agreement of the person in charge of the processing of personal data on behalf of the

Town Hall of ***LOCATION.1”.

This Agreement identifies the City Council as the data controller and

PARKING AND SERVICES as in charge of the treatment in the activity

referred to the public service of integral management of the car parks of

***LOCATION.1, operation of the area regulated by parking meters.

In the third stipulation (3.6) of the agreement, it is established that the person in charge of the

treatment will not meet the data protection rights on behalf of the

responsible for the treatment, although it will transfer it within 72 hours

business/working days any request you may receive.

In the fourth stipulation of the agreement (4.2.5 and 4.2.6) it is established that the responsible

of the treatment will have adequate mechanisms for the exercise of the rights

regarding the protection of personal data due to its treatment activity, as well as

as procedures that allow responding to the exercise of said rights in the

legally established deadlines.

FOUNDATIONS OF LAW

I

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.

II

The rights of individuals regarding the protection of personal data are

regulated in articles 15 to 22 of the RGPD and 13 to 18 of the LOPDGDD. I know

contemplate the rights of access, rectification, deletion, opposition, right to

limitation of treatment and right to portability.

The formal aspects related to the exercise of these rights are established in the

articles 12 of the RGPD and 12 of the LOPDGDD.

Article 12 “Transparency of information, communication and modalities of

exercise of rights” of the RGPD establishes the following:

"one. The person responsible for the treatment will take the appropriate measures to facilitate the interested party

all information indicated in articles 13 and 14, as well as any communication with

in accordance with articles 15 to 22 and 34 regarding the treatment, in a concise, transparent,

intelligible and easily accessible, in clear and simple language, in particular any information

specifically targeted at a child. The information will be provided in writing or by other

means, including, if applicable, by electronic means. When requested by the interested party, the

Information may be provided verbally as long as the identity of the interested party is proven.

By other means.

2. The person responsible for the treatment will facilitate the interested party in the exercise of their rights under

of articles 15 to 22. In the cases referred to in article 11, paragraph 2, the person responsible

will not refuse to act at the request of the data subject in order to exercise their rights under

Articles 15 to 22, unless you can show that you are unable to identify the

interested.

3. The data controller will provide the interested party with information regarding their actions

on the basis of a request under articles 15 to 22, and, in any case, in the

period of one month from receipt of the request. This period may be extended for another

two months if necessary, taking into account the complexity and number of requests. The

responsible will inform the interested party of any of said extensions within a month to
from receipt of the request, indicating the reasons for the delay. When the interested
submit the application electronically, the information will be provided electronically.
electronic when possible, unless the interested party requests that it be provided in another way.
mode."

4. If the person in charge of the treatment does not process the request of the interested party, he will inform him without
delay, and no later than one month after receipt of the request, of the reasons for
its non-action and the possibility of presenting a claim before a control authority
and to exercise legal actions.

5. The information provided under articles 13 and 14 as well as all communication and
any action carried out under articles 15 to 22 and 34 will be free of charge.
When the requests are manifestly unfounded or excessive, especially due to
its repetitive nature, the data controller may: a) charge a reasonable fee in
depending on the administrative costs incurred to facilitate the information or communication
or perform the requested action, or b) refuse to act on the request. The responsible
of the treatment will bear the burden of demonstrating the manifestly unfounded or
excessive request.

6. Without prejudice to the provisions of article 11, when the data controller has
reasonable doubts in relation to the identity of the natural person who makes the request to which
referred to in articles 15 to 21, you may request that additional information be provided
necessary to confirm the identity of the interested party.

7. The information that must be provided to the interested parties under articles 13 and 14
may be transmitted in combination with standardized icons that allow the provision of
easily visible, intelligible and clearly legible form an adequate overview of the
planned treatment. The icons that are presented in electronic format will be legible
mechanically.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 92

in order to specify the information to be presented through icons and the

procedures for providing standardized icons".

For its part, article 12 "General provisions on the exercise of rights"

of the LOPDGDD, in sections 2, 3 and 4, adds the following:

"two. The person responsible for the treatment will be obliged to inform the affected party about the means at its disposal.

disposition to exercise the corresponding rights. Media should be easily

accessible to the affected. The exercise of the right may not be denied for the sole reason

to choose the affected by another means.

3. The person in charge may process, on behalf of the person in charge, the requests for exercise

formulated by those affected by their rights if this is established in the contract or legal act

that link them.

4. Proof of compliance with the duty to respond to the request to exercise their rights.

rights formulated by the affected party will fall on the person responsible".

On the other hand, article 28 of the RGPD establishes that when a treatment is carried out

of data on behalf of a person in charge of the treatment, the person in charge of the treatment

"will assist the person in charge… so that he can fulfill his obligation to respond

to requests that have as their object the exercise of the rights of the interested parties

established in Chapter III". This obligation must be stipulated in the contract or act

that binds the person in charge with respect to the person in charge (section 3 of the aforementioned

article 28 of the RGPD).

In accordance with the provisions of these rules, the data controller
must arbitrate formulas and mechanisms to facilitate the interested party in the exercise of their
rights, which will be free (without prejudice to the provisions of articles 12.5 and 15.3
of the GDPR); and must give instructions to the person in charge of the treatment, if any,
to send you the requests you receive or to process them conveniently,
if so provided in the contract or legal act that binds them. Also, the
responsible for the treatment or the person in charge, where appropriate, are obliged to respond
requests made no later than one month, unless they can show that
they are not in a position to identify the interested party; as well as to express their reasons
in case they do not respond to the request.
From the foregoing, it follows that the request for the exercise of rights made by the
The interested party must be answered in any case, falling on the person in charge
proof of compliance with this duty.
This obligation to act is not enforceable when the data controller
can demonstrate that it is not in a position to identify the interested party (in cases
referred to in article 11.2 of the RGPD). In cases other than those provided for in this
article, in which the data controller has reasonable doubts in relation to
with the identity of the applicant, may require additional information necessary to
confirm that identity.
In this regard, Recital 64 of the RGPD is expressed in the following terms:
“(64) The controller must use all reasonable measures to verify the
identity of data subjects requesting access, in particular in the context of services
online and online identifiers. The person in charge must not keep personal data with
the sole purpose of being able to respond to possible requests”.
Regarding the right to limitation of treatment, the RGPD stipulates in its
article 18 the following:

"one. The interested party shall have the right to obtain from the controller the limitation of the

data processing when any of the following conditions are met:

a) the interested party challenges the accuracy of the personal data, during a period that allows the

responsible for verifying the accuracy of the same;

b) the treatment is illegal and the interested party opposes the deletion of the personal data and

request instead the limitation of its use;

c) the person in charge no longer needs the personal data for the purposes of the treatment, but the

interested party needs them for the formulation, exercise or defense of claims;

d) the interested party has objected to the processing under article 21, paragraph 1, while

it is verified if the legitimate reasons of the person in charge prevail over those of the interested party.

2. Where the processing of personal data has been limited pursuant to paragraph 1, such

Data may only be processed, with the exception of its conservation, with the

consent of the interested party or for the formulation, exercise or defense of claims,

or with a view to protecting the rights of another natural or legal person or for reasons of

important public interest of the Union or of a certain Member State.

3. Any interested party who has obtained the limitation of processing in accordance with section 1

will be informed by the person in charge before the lifting of said limitation".

As the owner of your personal data, the interested party affected by the

treatment can exercise before the person in charge of the treatment this new right to

the limitation of the treatment when any of the indicated conditions are met.

The present case is referred to the treatment of data for infractions in the Zone of

Regulated Parking (ORA) of *** LOCATION.1, consequence of a

complaint made by the entity ESTACIONAMIENTOS Y SERVICIOS, which manages

these services by virtue of a contract formalized with the CITY COUNCIL OF

***LOCATION.1. Considering this contractual relationship, the aforementioned City Council

intervenes as the entity responsible for the processing of personal data and the

service provider indicated as in charge of the treatment.

The complaint outlined and the consequent opening of a sanctioning procedure and

imposition of a fine gave rise to the presentation, by the

denounced/sanctioned (the claimant in this proceeding), to the

presentation of various claims before the two entities involved with the

object that that procedure and the sanction were annulled.

Likewise, it is clear that the claimant, on the occasion of the filing of one of those

claims for the annulment of the sanction, he formally addressed the entity

PARKING LOTS AND SERVICES exercising their right to limit the

treatment of all your personal data, "opposing its deletion or deletion".

The exercise of this right was not answered in any way by the entity

responsible for the treatment, that is, by the CITY COUNCIL OF ***LOCATION.1.

Not even this City Council had arranged the mechanisms and procedures

necessary to meet the exercise of rights by citizens, in the sense of

that he had not given precise instructions to the person in charge of the treatment on

how to act before such requests, in accordance with the provisions of the precepts above

reviewed.

On this issue, PARKING AND SERVICES, in its response to the procedure
transfer of the claim, stated that he answered the exercise of the right
indicating to the claimant that she should go to the Town Hall. However, this
response, which is outlined in the Sixth Proven Fact, did not make any
reference to the limitation of data processing requested.
It has also been alleged that the request was not exercised in due form or that it was not
it was appropriate to access the request, as the applicant had not accredited the concurrence
of any of the foreseen causes. This fact, even if true, does not allow the
responsible for leaving the request made unanswered, as if it had not been
produced, since said entity is obliged, as stated, to admit the
request regardless of the means through which it is formulated, to process the
same, demanding the corresponding correction if necessary, and to explain the
reasons for its non-action, if it considers that this is appropriate.
In any case, contrary to what was stated by the
TOWN HALL OF
*** LOCATION.1, it is known that the request was made before the person in charge of the
treatment, which is obliged to assist the person in charge in its processing; exposed of
concrete form its object ("By means of this writing, in application of the current regulations
in protection of personal data and by virtue of the rights that assist you, this
party comes to exercise their right to limit the processing of all their data
personal opposing its deletion or deletion…"); and had cause in the
claims filed by the claimant against the sanction for violation of the
parking regulations.
Consequently, in accordance with the exposed evidence, the aforementioned facts
violate the provisions of article 18 of the RGPD. This non-compliance entails

commission of an offense typified in section 5 b) of article 83 of the RGPD, which

under the heading “General conditions for the imposition of administrative fines”

provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with section

2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company,

of an amount equivalent to a maximum of 4% of the total annual global turnover of the

previous financial year, opting for the highest amount:

(…)

b) the rights of the interested parties according to articles 12 to 22”.

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute

infractions the acts and behaviors referred to in sections 4, 5 and 6 of the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law”.

For the purposes of the limitation period, the LOPDGDD in its article 74 c), "Infringements

considered mild”, states the following:

“The remaining infractions of a merely character are considered minor and will prescribe after a year.

of the articles mentioned in paragraphs 4 and 5 of article 83 of the Regulation (EU)

2016/679 and, in particular, the following:

c) Failure to respond to requests to exercise the rights established in articles 15 to 22

of Regulation (EU) 2016/679, unless the provisions of article

72.1.k) of this organic law”.

III

Secondly, the CITY COUNCIL OF *** LOCALITY.1 is charged with the violation

of article 28 of the RGPD, “In charge of the treatment”, section 3, which establishes the

following:

"3. The treatment by the person in charge will be governed by a contract or other legal act in accordance with the

Law of the Union or of the Member States, which binds the person in charge with respect to the

responsible and establishes the object, duration, nature and purpose of the treatment, the

type of personal data and categories of interested parties, and the obligations and rights of the

responsable. Said contract or legal act shall stipulate, in particular, that the person in charge:

a) will process personal data only following documented instructions of the

responsible, including with respect to transfers of personal data to a third country or

an international organisation, unless required to do so under Union law

or of the Member States that applies to the person in charge; in such a case, the person in charge will inform the

responsible for that legal requirement prior to treatment, unless such Law prohibits it by

important reasons of public interest;

b) will guarantee that the persons authorized to process personal data have

committed to respecting confidentiality or are subject to an obligation of

confidentiality of a statutory nature;

c) take all necessary measures in accordance with article 32;

d) will respect the conditions indicated in sections 2 and 4 to resort to another person in charge of the

treatment;

e) will assist the person in charge, taking into account the nature of the treatment, through measures

appropriate technical and organizational measures, whenever possible, so that it can comply with

their obligation to respond to requests that have as their object the exercise of rights

of the interested parties established in chapter III;

f) will help the person in charge to guarantee the fulfillment of the obligations established in the

articles 32 to 36, taking into account the nature of the treatment and the information to

disposal of the manager;

g) at the choice of the person in charge, will delete or return all personal data once

ends the provision of treatment services, and will delete existing copies unless

that the conservation of personal data is required by virtue of the Law of the Union or of

the member states;

h) will make available to the person in charge all the information necessary to demonstrate the

compliance with the obligations established in this article, as well as to allow and

contribute to the performance of audits, including inspections, by the person in charge or

another auditor authorized by said person in charge.

In relation to the provisions of letter h) of the first paragraph, the person in charge will inform

immediately to the controller if, in his opinion, an instruction violates this

Regulation or other provisions on data protection of the Union or of the

Member states".

These specific obligations may be supervised by the authorities of

data protection, without prejudice to the control that may be carried out in relation to

with compliance with the Regulation or the LOPDGDD by the person responsible for the

treatment.

In accordance with article 28 of the RGPD, the person in charge and the person in charge of

data processing must regulate data processing in a contract or act

legal that binds them; that contract or legal act must establish the object, the

duration, nature and purpose of the processing, the type of personal data and

categories of interested parties, the obligations and rights of the controller, etc.

In this case, the entities CITY COUNCIL OF ***LOCALITY.1 and

PARKING AND SERVICES, dated 02/02/2001, signed a contract

of services for the integral management of car parks in ***LOCALIDAD.1 that does not

included no stipulation regarding the protection of personal data. Is

The situation continued until 12/04/2019, the date on which both entities

formalized an annex to the service provision contract dated 02/02/2001,

called "Agreement of person in charge of the processing of personal data on behalf of

of the City Council of ***LOCALIDAD.1", in which the City Council is identified as

responsible for the treatment and to PARKING AND SERVICES as

in charge of the treatment in the activity referred to the public service of integral management

from the car parks of ***LOCATION.1.

The need to formalize the performance of processing on behalf of third parties

by means of a writing, or in any way that allows to prove its celebration and

content, was already regulated in the Organic Law 15/1999, of December 13, of

Protection of Personal Data (LOPD).

Therefore, the breach of this obligation by the aforementioned entities, does not

It is justified by the changes produced in the City Council staff or in the

managers of the corporation.

Consequently, in accordance with the exposed evidence, the aforementioned facts

represent a violation of the provisions of article 28.3 of the RGPD, typified as

violation of article 83.4 a) of the RGPD, which establishes the following:

"4. Violations of the following provisions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a

company, of an amount equivalent to a maximum of 2% of the total annual turnover

of the previous financial year, opting for the highest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43;".

For the purposes of the limitation period, the LOPDGDD in its article 73 k), "Infringements considered serious", states the following:

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679, they are considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

k) Entrust data processing to a third party without the prior formalization of a contract or another written legal act with the content required by article 28.3 of the Regulation (EU) 2016/679".

IV

Notwithstanding what is stated in the previous Legal Foundations, article 83.7 of the RGPD provides that, without prejudice to the corrective powers of the authorities of control under Article 58(2), each Member State may establish rules on whether and to what extent administrative fines can be imposed on public authorities and bodies established in that Member State.

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

"one. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of the

autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General State Administration, the Administrations of the autonomous communities

and the entities that make up the Local Administration.

d) Public bodies and public law entities linked to 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

with the exercise of powers of public law.

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 commit any of the

the infractions referred to in articles 72 to 74 of this organic law, the authority of

protection of data that is competent will issue a resolution sanctioning them with

warning. The resolution will also establish the measures to be adopted so that

stop the behavior or correct 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 which

depends hierarchically, where appropriate, and those affected who had the status of

interested, if any.

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

It will also propose the initiation of disciplinary actions when there are indications

enough for it. In this case, the procedure and the sanctions to be applied will be the

established in the legislation on the disciplinary or sanctioning regime resulting from

application.

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

existence of technical reports or recommendations for treatment that had not been

duly attended to, the resolution in which the sanction is imposed will include a

reprimand with the name of the responsible position and the publication will be ordered in the

Official Gazette of the corresponding State or Autonomous Community.

4. The data protection authority must be notified of the resolutions that fall

in relation to the measures and actions referred to in the preceding sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the

autonomous communities the actions carried out and the resolutions issued under the

this article.

6. When the competent authority is the Spanish Agency for Data Protection, 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 data protection authority,

It will be, in terms of the publicity of these resolutions, to what its regulations have

specific".

In the case at hand, it is found that the CITY COUNCIL OF

***LOCALIDAD.1 has violated the regulations on the protection of

data, by not attending to the exercise of the right of limitation requested by the claimant and

for not having arranged the formalization of a treatment order contract with

the company awarded the comprehensive management of car parks in the municipality or

another legal act.

Said conduct constitutes an infringement of the provisions of articles 18 and

28.3 of the GDPR, respectively.

It should be noted that the LOPDGDD, without prejudice to the provisions of article 83 of the

RGPD, contemplates in its article 77 the possibility of resorting to the sanction of

warning to correct the processing of personal data that is not appropriate

to the provisions contemplated in said Regulation and in the aforementioned Organic Law,

when those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 83 of the RGPD and articles

72 to 74 of said organic law.

Likewise, it is contemplated that the resolution issued may establish the measures

that it is appropriate to adopt so that the conduct ceases, the effects of the infraction are corrected

that had been committed and the necessary adaptation is carried out, in this case, to

the requirements contemplated in articles 18 and 28.3 of the RGPD, as well as the

provision of means accrediting compliance with the requirements.

Thus, in accordance with the provisions of the aforementioned article 77 of the LOPD, it is appropriate to require

the responsible entity so that it adapts its actions to the regulations for the protection of

personal data, with the scope expressed in the Foundations of Law of the

this motion for a resolution. Specifically, it is appropriate to require the CITY COUNCIL

OF *** LOCALITY.1 to attend to the right to limitation of treatment

requested by the claimant or sufficiently explain the reasons that prevent

attend to this right, in the event that the circumstances that

determined the claimant's request and the purpose of the request would have been lost.

The aforementioned City Council must inform this Agency about the agreed actions.

It is not deemed appropriate to impose any measure in relation to the violation of the

article 28.3 of the RGPD, due to the fact that a

“Agreement of the person in charge of the processing of personal data on behalf of the

Town Hall of *** LOCATION.1”

formalized on 04/12/2019 by the

CITY COUNCIL OF ***LOCALIDAD.1 and PARKING AND SERVICES. This

does not imply, however, any pronouncement on the regularity or legality of the

content of that "Agreement", because they are aspects that exceed the object of the

present procedure.

In this regard, it is noted that not meeting the requirements of this body

can be considered as a serious administrative infraction by “not cooperating with

the Control Authority” before the requirements made, being able to be valued such

conduct at the time of opening an administrative sanctioning procedure.

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: ADDRESS A WARNING to the entity CITY COUNCIL OF

***LOCALIDAD.1, with CIF P1814200J, for infractions of articles 18 and 28.3

of the RGPD, typified in articles 83.5 b) and 83.4.a) of the same Regulation,

respectively.

SECOND: REQUEST the entity CITY COUNCIL OF ***LOCALITY.1, to

that, within a period of one month, counted from the notification of this resolution,

adapt its actions to the personal data protection regulations, with the scope

expressed in the Basis of Law IV. Within the indicated period, the CITY COUNCIL

OF *** LOCATION.1 must justify before this Spanish Agency for the Protection of

Data attention to this requirement.

THIRD: NOTIFY this resolution to the entity CITY COUNCIL OF

***LOCATION.1.

BEDROOM

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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.

Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga Pérez Sanjuán, Resolution 4/10/2021