

□ File No.: PS/00402/2021

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 the Basque Country (hereinafter, the complainant), dated 05/27/2021, sent the Report-Complaint to the Spanish Agency for Data Protection. The complaint is directed against A.A.A. with NIF ***NIF.1 (in hereafter, the accused party).

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

“Group II of the Bilbao Provincial Immigration and Border Brigade of the Headquarters Police Superior of the Basque Country has detected, as a result of receiving multiple claims and complaints both from users and agencies and offices of lawyers related to the documentary procedures of foreigners, which this saturation, in addition to the causes exposed, is also motivated by the practices that are being carried out by those responsible for various establishments open to the public, mainly booths, and/or individuals who advertise for the obtaining previous appointments in exchange for different economic amounts and that, in order to achieve greater profit, saturate the computer platform in such a way that they cause that users find it very difficult to obtain a free appointment before the administration and are forced to require their services.

By going to these places, users have been forced to provide their data personal information, both in writing and by providing a copy of your documentation identification, to the employees or people who offer this service so that, with

said data, they can book the appointment with the administration, since said

Appointments are nominal and it is not possible to appear at the documentation offices

police officers with proof of appointments that do not correspond to the person who is going to perform the requested procedure.

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

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

rectification, deletion or limitation of its treatment incurring for it, in the opinion of

this Police Unit, in a slight infringement of article 74.a of the aforementioned L.O. 3/2018,

without prejudice to the fact that with these behaviors they may also be infringing some

another of the precepts of the L.O. 3/2018.

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On 5/11/2021, by police officers assigned to this Unit, it was

carried out an administrative inspection in the company called "****LOCUTORIO.1",

located at ***ADDRESS.1 of Bilbao, in which the existence of

numerous client files (handwritten papers, copies of documentation,

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

the supposed purpose of obtaining prior appointments to carry out different

procedures, extending in the place the mandatory inspection record whose copy is

attached to this letter.

Once the corresponding procedures were carried out, the summons and subsequent taking of statements from various people whose details appear in the intervened documentation, which have expressed that they were not informed or gave any express or tacit consent to the provisions of the Article 6.1.a of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, when providing your personal data to those in charge of the establishment to obtain an appointment.

In the same way, these people have stated that due to these procedures they have been charged different amounts of money, when the completion of said step prior to the processing of your documentation before the corresponding administrative unit of the National Police is free.

Based on the foregoing, in the opinion of the interveners, the owner of the establishment, both personally or through its employees, would be infringing one or various precepts of Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights, as well as the Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding to the protection of natural persons with regard to data processing so, on 05/19/2021, he appears in these dependencies, the owner of the establishment, called A.A.A., whose remaining affiliation data is already consist.

SECOND: Prior to admitting the complaint for processing, the Agency gave transfer of it to the accused on 06/08/2021, in accordance with article 65.4 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD). The application of information on the facts revealed was notified to the accused to through postal mail on 06/25/2021, as stated in the Notice of delivery of

Post.

On 07/20/2021, the respondent submitted a brief of allegations in which she indicates, among others, the following issues:

"Clients, many of them, do not have the means, or the time, or simply they don't want to be glued to the internet all day, and ask my store if I can help them make the appointment, so it was explained to them verbally that there was no security in being able to remove it, the data requested by the application, and it was explained to them that no data was saved, at any time - NEVER- a copy of your identification document is requested, as expressed in the "document" sanction I have received.

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The "inspection record" does not affirm that either, also because there cannot be clients of mine who confirm that copies of documents are requested for said procedure, On the contrary, there are many clients who would confirm what I have stated here, that copies of identifications are not requested, the identification data of the client for the appointment were verbally facilitated by the client with their tacit verbal consent.

Many of my clients personally tell me that I charged very cheaply for appointments, for considering it one more service for them, 5 euros charged only with the purpose of attracting new clients for my main activity as call shop; well in other sites and businesses were very expensive, also in my business on the billboard There are informative NOTES on compliance with the RGPD in my store.

[...]

I do not have databases, nor files, nor archives of client documents, my customers are informed verbally and through many of the companies with which what work; and in the case of "previous appointments" the data was verbal provided by the client with his consent, written down on sheets that were kept by me personally, under my safety; once the appointment is received via email the proof of the same was printed and delivered to the client, and the data destroyed and the mail definitively eliminated (at least my clients knew it), currently for customers who request the service (which really are not many) must sign an INFORMATIVE NOTE on data protection and destruction, of which I attach a NOTE also, as an example.

[...]

Along with the pleadings brief, submit a copy of the informative protection note of data that currently makes customers who provide their personal data sign.

It indicates the following: "In compliance with the RGPD 679/2016 EU and the LOPDGDD 3/2018, *** LOCUTORIO.1, as data controller, informs that collects and processes the personal data provided by you, for the fulfillment of the purpose of obtaining an appointment before the different institutions and administrations public.

In an independent paragraph it includes: "The legitimacy for the treatment of your personal information is the application of pre-contractual measures at your request and the execution of the same, which consists of the provision of our services and the compliance with the legal obligations derived from the aforementioned regulations".

It adds: "We will keep your data for the duration of the purpose for which they were picked up. Once this period ends or you request the deletion of your data, these will be duly eliminated. In no case will they be used for develop databases or the like. You have the right to request access,

rectification or deletion of data. Below is the name and surname, the number

Identity document, date and signature of the applicant.

THIRD: On 08/05/2021, the Director of the Spanish Protection Agency

of Data agreed to admit for processing the complaint filed by the denouncing party.

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Well, despite the fact that currently customers must sign the aforementioned note, the

content of this does not inform in a clear and simple way to its clients of all the

matters required by article 13 of Regulation (EU) 2016/679 of the Parliament

European and Council, of April 27, 2016, on the protection of people

regarding the processing of personal data (hereinafter, RGPD).

FOURTH: On 09/07/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the accused party, in accordance with

to the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 13 of the RGPD, typified in article

83.5 of the GDPR.

FIFTH: Having been notified of the aforementioned initiation agreement, the accused party submitted a written

of allegations in which, in summary, it stated the following:

“The claimed party was limited in the exercise of its business activity, and always

with the express consent of its clients to collect the necessary information to

request foreign appointments (...).

Once the appointment was obtained, the client in question was called to deliver the appointment and the

information provided by the same, not keeping the claimed party with ANY

DATA OF THE CUSTOMER IN QUESTION.

Obtaining the quote is FREE but this party considers that charging €5.00 per

the aforementioned management was merely testimonial.

All the information obtained and provided voluntarily by the clients was supposed

necessary to obtain the corresponding appointment (...).

Attach a copy of the document that, under the heading "Data Protection of

Personal Character", sign the clients who provide their personal data. Specific,

indicates that "In compliance with the RGPD 679/2016 EU and the LOPDGDD 3/2018,

*** LOCUTORIO.1, as data controller, informs that it collects and treats the

personal data provided by you for the fulfillment of the purpose of

get an appointment with the different institutions and public administrations.

The legitimacy for the treatment of your personal information is the application of

pre-contractual measures at your request and the execution of the same, which consists of the

provision of our services and compliance with legal obligations

derived from the aforementioned regulations.

We will keep your data for the duration of the purpose for which they were

collected. Once this period ends or you request the deletion of your data,

these will be duly eliminated. In no case will they be used to develop

databases or the like. You have the right to request access, rectification,

suppression, limitation of its treatment, to oppose the treatment and the portability of

the data, as well as the right to file a claim with the authority of

control (article 13 of the RGPD).

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You can go to (...)". Below is the name and surname, Document No.

Identity, date and signature of the client.

SIXTH: On 02/04/2022, the instructor of the procedure agreed to open a trial period, taking into account the previous actions of investigation, E/06530/2021, as well as the documents provided by the defendant on 01/28/2022.

SEVENTH: On 02/07/2022, a resolution proposal was formulated in which proposed to direct a warning to the accused, for the violation of article 13 of the RGD, since it collected data from the natural persons who came to its call center to request appointments for administrative procedures, without providing the information required by the aforementioned precept.

Also, in accordance with article 58.2 of the RGD, you were ordered to complete the document "Protection of Personal Data" that makes customers sign who provide their personal data.

EIGHTH: On 02/16/2022, the proposed resolution was notified to the person denounced through postal mail, according to the Notice issued by Correos. To this day, this Agency has not received any response.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The accused party requires its clients to provide their data to reserve an appointment for them to carry out administrative procedures, without providing them with detailed information in accordance with article 13 of the RGD.

SECOND: It is stated by the defendant that the clients have granted the

consent for the processing of your personal data, since you must know them

to request an appointment in your name, and that, in no case, does it keep the data of the affected once the appointment is obtained. Provide a copy of the document "Protection of Personal Data" that it currently makes its clients sign.

THIRD: Despite the allegations of the respondent to the initial agreement, she has not been able to prove that before initiating this sanctioning procedure, it informed to its clients of the aspects indicated in article 13 of the RGPD.

FOURTH: The current document on "Protection of Personal Data" that must sign the clients of the locutorio of the denounced does not include the provisions of the article 13.1.e) of the RGPD. Even if you do not intend to communicate the data to third parties, This section must always appear.

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

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

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in 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;”

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:

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"1. 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 applicable;

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, 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 tar 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 the applied logic, as well as the importance and the foreseen consequences

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of said treatment for the interested party.

3. When the data controller plans the further processing of personal data personal data for a purpose other than that for which they were collected, will provide the received, 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 measure in which the interested party already has the information.”

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

"1. When the personal data is obtained from the affected party, the data controller ment 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 less:

- 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 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:

a) (...)

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

treatment operations have violated the provisions of this Regulation;

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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:

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, this Agency has confirmed that the defendant requires its customers who provide their personal data to reserve an appointment for them carrying out administrative procedures.

Despite the allegations of the defendant to the opening agreement, he has not been able to prove that before initiating this sanctioning procedure it informs its clients of the aspects indicated in the aforementioned precept. Furthermore, looking at the current “Personal Data Protection” document that you make your clients sign.

customers, does not include the provisions of article 13.1 e) of the RGPD, because, although it does not intends to communicate the data to third parties, it must always appear.

Therefore, in accordance with the facts exposed, we are faced with a

Violation of the provisions of article 13 of the RGPD, by the accused.

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

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS A.A.A., with NIF ***NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUIRE A.A.A., with NIF ***NIF.1, under the provisions of the article 58.2 d) of the RGPD, so that within ten business days from this act of notification accredits before this organism to have completed the information that offers 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 NIF ***NIF.1.

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

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

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

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

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