

□ File No.: PS/00129/2022

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party) dated February 21,  
2022 filed a claim with the Spanish Data Protection Agency. The

The reasons on which the claim is based are the following:

That the complaining party has been made aware, within a judicial proceeding, of  
the complaint made by D. B.B.B., (...) of the Association of Socialist Voters of  
Cacabelos, before the Ponferrada Area Prosecutor's Office on May 16, 2019, for a  
electoral crime consisting of a massive registration in order to obtain  
votes in a candidacy, declaring D.B.B.B. you have been able to verify:

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- That in the months of December and November 2018, the  
register some forty people in the municipality of Cacabelos, (...).

- That the applications for registration in the register have the same signature in all  
documents. It points out that in said requests the name of the declarant does not appear,  
only the DNI corresponding to the registered person.

The claimant provides a copy of the letter sent by D.B.B.B. to the Prosecutor's Office  
Area of Ponferrada and act of the Electoral Board of the Area of Ponferrada by which  
agrees that the allegations of D.B.B.B. are beyond the competence of the Board,  
being able to go to court.

The complaining party states that D. B.B.B. cannot have access to the information of the  
municipal register, from which a violation of data protection can be deduced,

ignoring the "modus operandi" and all the authors involved in the alleged infringement.

SECOND: On March 30, 2022, the Director of the Spanish Agency for Data Protection agreed to start a sanctioning procedure against the CITY COUNCIL OF CACABELOS, with NIF P2403100G (hereinafter, the claimed party), in accordance with the provided in articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged violation of article 5.1.f) of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), typified in the article 83.5 of the GDPR, and for the infringement of article 32 of the GDPR, typified in the Article 83.4 of the GDPR.

The aforementioned initiation agreement was notified to the claimed party, in accordance with the rules established in the LPACAP, on March 30, 2022.

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THIRD: With the registration date of April 1, 2022, the claimed party requested a copy of the file, as well as an extension of the term to present allegations.

On April 4, 2022, the file was forwarded to the defendant, granting the

At the same time, a new term to present allegations.

FOURTH: The claimed party submitted a brief of allegations on April 26, 2022, in which, in summary, he stated:

1.- There is no proof that D.B.B.B. had access to register documentation

municipal, that when it indicates that "it has been able to verify" it is a mere manifestation of staff.

2.- That in the event of any infringement, it would be time-barred, so

In accordance with article 73 of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter,

LOPDGDD), which establishes that serious infractions will prescribe after two years.

It indicates that "even though we do not know the exact date of the events, but in any case, before

May 2019 (date of the complaint before the Prosecutor's Office) and having issued an agreement

of initiation and notified to this party in April 2022 (art.75 of the LOPDGDD) the

agreement to initiate disciplinary proceedings is more than evident that

the 2 years passed very long."

FIFTH: On April 29, 2022, it is agreed to open a practice phase of

proof. It is also agreed to incorporate into the file, for evidence purposes, the

claim that gave rise to the disciplinary procedure and its attached documentation and

the allegations to the agreement to initiate PS/00129/2022 presented by the party

claimed.

The following test procedures are carried out:

to. Before the claimed:

1. In the same letter dated May 30, 2022 in which the

opening of the test phase, you are required to submit a report on the following

ends:

- Who can access registration requests and register data

municipal.

- What security measures have been adopted to access the municipal register.

- If between the months of November and December 2018 there were people who

registered in (...), and if applicable, how many registrations were there in the aforementioned

place.

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2. On May 13, 2022, a response was received from the claimed party to the proof requested, in which it informs of:

- Which public employees could access, in the months of November and

December 2018, to registration applications through the SWAL program

(Web System for Local Administration)

- Which public employees could access, in the months of November and

December 2018, to the data of the municipal register through the SWAL program with purpose of obtaining registration certificates.

- Regarding the security measures adopted to access the Register

Municipal:

a) In relation to requests made in paper format,

They are currently kept in a locked cabinet on the premises of the

Municipal secretary.

b) In relation to the existing Municipal Register data in format

digital, they are collected through the SWAL computer program. To access

This program requires a registration with a username and password that is assigned

individually to each public employee and with restricted permissions.

- That, except for errors or omissions, between the months of November and December of

In 2018, 37 people were registered in (...).

b. Before the complaining party:

1. On May 12, 2022, the claimant was required to copy documentation

certifying that there has been improper access to the municipal register of Cacabelos,

as long as it is documentation that was not submitted in the claim

initial.

2. With the registration date of May 19, 2022, the claimant

presents:

- Copy of the document presented by D. B.B.B. before the Ponferrada Area Prosecutor's Office on

May 16, 2019.

- Copy of the agreement of the Electoral Board of the Ponferrada Zone dated May 13

of 2019, where the incidence related to the presentation of writings (...) of the

Group of Socialists of Cacabelos (B.B.B.), as well as \*\*\*CARGO.1 D.

C.C.C.

- Copy of the denouncement decree of the Ponferrada Area Prosecutor's Office presented before the

Investigating Court of Ponferrada on October 3, 2019.

- Copy of the 28 registration documents in the Municipal Register of Cacabelos, which

have the data of 37 people registered in \*\*\*ADDRESS.1 of

Cacabelos, corresponding to (...).

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- Copy of the testimonial recording of D.B.B.B. before the Court of Instruction No. X of

Ponferrada on December 17, 2019 within the Preliminary Proceedings of the

Abbreviated Procedure 0000XXX/2019.

c. In view of

D.B.B.B.

:

1. The Instructor of the sanctioning procedure agrees on April 29, 2022

ask D.B.B.B. information regarding:

- How did you become aware of the registration of some 40 people in the municipality of Cacabelos, specifically in (...), between the months of November and December 2018.

- How have you been able to verify that in applications for registration in the register municipality of Cacabelos that he has denounced before the Prosecutor's Office, "there is the same signature on all documents, the name of the declarant does not appear and only accompanying said application with a DNI corresponding to the registered person", as stated in the brief that he filed with the Ponferrada Area Prosecutor's Office on May 2019.

2. Every time the notification of the aforementioned test by incorrect address, on July 22, 2022, the City Council of Cacabelos that will indicate the address for the purposes of D.B.B.B. notifications. On July 28, 2022, the Cacabelos City Council sent the address of D.B.B.B. that appears in the municipal register.

3. On August 18, 2022, the Instructor of the sanctioning procedure requested D.

B.B.B. information regarding:

- How and when did you become aware of the registration of some 40 people in the municipality of Cacabelos, specifically in (...), between the months of November and December 2018.

- How and when have you been able to verify that in the applications for registration in the municipal register of Cacabelos that he has denounced before the Prosecutor's Office, "confirms the same signature on all documents, the name of the declarant does not appear and

only a DNI corresponding to the

registered", as stated in the document that he registered in the Area Prosecutor's Office of Ponferrada on May 16, 2019.

4. On August 29, 2022 D.B.B.B. submitted a letter stating:

"- I have learned of the registration of some 40 people (...), in the first months of the year 2019.

- I have been able to review the different applications in the first months of 2019.

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- On those dates, (first months of the year 2019), the undersigned person, (...), formed part of the government team, of the Cacabelos City Hall, for which he had access to all kinds of information related to it."

SIXTH: On September 12, 2022, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency

order the filing of this disciplinary file to the CITY COUNCIL OF

CACABELOS, with NIF P2403100G, because the facts that are the object of this

prescribed disciplinary procedure, in accordance with current legislation.

SEVENTH: Notification of the proposed resolution in accordance with the established rules

in the LPACAP, the claimed party has not submitted a written statement of allegations.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: In the first months of 2019, D. B.B.B., a member of the

government of the City Council of Cacabelos, agreed to the requests for registration of 37 people in \*\*\*ADDRESS.1 of Cacabelos, corresponding to (...).

SECOND: On February 21, 2022, the claimant filed a claim before the Spanish Data Protection Agency denouncing that it has learned, within a legal proceeding, that D.B.B.B., as representative of the Association of Socialist Voters of Cacabelos, has agreed to data from the municipal register of Cacabelos.

#### FUNDAMENTALS OF LAW

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In accordance with the powers that article 58.2 of the RGPD grants to each authority of control and as established in articles 47 and 48.1 of the LOPDGDD, it is competent to initiate and resolve this procedure the Director of the Agency Spanish Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

The claim that has given rise to the disciplinary procedure was presented on February 2022, beginning by agreement to start on March 30, 2022.

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During the probationary period, D.B.B.B. acknowledged that it agreed to the requests for registration of 37 people in \*\*\*ADDRESS.1 of Cacabelos, corresponding to (...) in the first months of 2019.

In other words, despite having proven that an unauthorized person has had access to personal data of the municipal register of the City Council of Cacabelos, after the practice of a very complete test and the instruction of the procedure tending, among other issues, to determine the date of commission of the facts, it has not been possible to determine exactly what is the exact day of the commission of the facts.

Article 83.4, section a) of the GDPR, under the heading "General conditions for the imposition of administrative fines" provides that:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the total annual global business volume of the previous financial year, opting for the highest amount:

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

Indicating article 73 of the LOPDGDD, for the sole purpose of the limitation period the next:

Article 73. Offenses considered serious.

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, 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:

(...)

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679.”

Every time D.B.B.B. has had access to the municipal register data in the first months of the year 2019, as stated repeatedly without specifying more, and the agreement to initiate this disciplinary procedure was initiated and notified to the claimed party on March 30, 2022, the facts are prescribed in in relation to the infringement of article 32 of the GDPR.

On the other hand, article 83.5, section a) of the GDPR, under the heading "Conditions rules for the imposition of administrative fines" provides that:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

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in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;”

Indicating article 72 of the LOPDGDD, for the sole purpose of the limitation period the next:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679,

are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679.”

It is proven in this disciplinary file that the events occurred in the first months of 2019, without having been able to prove a greater accuracy of such an event despite the test carried out, so there is no doubt reasonable that the alleged infringement of article 5.1.f) of the GDPR has prescribed.

For this reason, access to data from the municipal register by D. B.B.B. should have taken place after March 30, 2019 for the violation to not be considered prescribed.

Thus, not stating the exact date of commission of the facts for the purposes of the prescription computation, and it cannot be demonstrated that the facts that make up the infraction were carried out in the three years prior to the agreement to start the disciplinary procedure, the principle in dubio pro reo (in case of doubt in favor of the defendant) obliges to file the procedure on understanding that the infraction could have prescribed at the time the initiation of the procedure was agreed.

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

FIRST: ARCHIVE the procedure PS/00129/2022 initiated at the CITY COUNCIL DE CACABELOS, with NIF P2403100G.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF CACABELOS, with NIF P2403100G.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the Director of the Spanish Agency for Data Protection within a period of one month from count from the day following the notification of this resolution or directly

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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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

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