

□ File No.: EXP202100124

## RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claiming party) dated June 4, 2021

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against the DEPARTMENT OF UNIVERSAL HEALTH AND HEALTH

PUBLIC, GENERALITAT VALENCIANA with NIF S4611001A (hereinafter, the

CONSELLERY). The reasons on which the claim is based are the following:

states that the digital version of the newspaper \*\*\*PERIÓDICO.1 published the news about

his resignation after verifying non-compliance with the vaccination strategy. On the foot

of the news indicates that "... he is among the people who have been vaccinated against the

SARS-CoV-2, according to documentation to which he has had access \*\*\*PERIODICO.1. (...)

Your name appears on the list of those vaccinated against SARS-CoV-2 at the

salud \*\*\*CENTRO.1 of the city of Castellón between January 11 and January 12

from which it disappears afterwards".

It considers that unauthorized access and improper use of the same constitutes a

breach of the security of your personal data. He is not aware that the

responsible for the processing of your personal data related to health has been

notified to the Control Authority nor has it been communicated to you as an interested party.

Along with the notification, a screenshot of "XXXXXXXX" is provided, which according to

manifested by the complaining party is the health management system of the CONSELLERIA.

Likewise, a screenshot of the news item published in the digital version of the

newspaper \*\*\*PERIÓDICO.1 dated 01/27/2021, in which the resignation was reported

of the complaining party.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in LOPDGDD), the claim was forwarded to the CONSELLERIA, for to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP), was collected on 07/06/2021 as stated in the acknowledgment of receipt in the file.

No response has been received to this letter of transfer.

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THIRD: On 09/04/2021, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

## BACKGROUND

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The complaining party as of January 11, 2021 held the position of (...).

On that date, he received the first dose of the vaccine within the

COVID-19 vaccination orchestrated by the CONSELLERIA. This fact is

registered that same day in the CONSELLERIA's management system.

- On January 27, 2021, the digital version of the newspaper \*\*\*PERIÓDICO.1

published a piece of news reporting the resignation of (...) and the

statement issued by the (...) in which, according to the news, it was accepted

said resignation after verifying non-compliance with the vaccination strategy

COVID-19. The claimant refers that the publication included the following

text: "the (...), is among the people who have been vaccinated against SARS-

CoV-2, according to documentation to which \*\*\*PERIODICO.1" has had access as well

as "your name appears on the list of those vaccinated against SARS-CoV-2

of the health center \*\*\*CENTRO.1 of the city of Castellón between the 11th of

January and the January 12 of the one that disappears later.

- Considers that unauthorized access and improper use of the same supposes

a breach of the security of your personal data. has no record of

that the person responsible for the processing of your personal data has notified the

facts to the Control Authority nor have they been communicated to him as

interested.

Relevant documentation provided by the claimant:

- Refers as "screenshot" of the management system of the

CONSELLERIA document number 1 attached to the claim. Contains the

name of the system and the autonomous community in which it is used, and refers to the

date April 20, 2021. The name of the party is also observed

complainant, the name of a primary care nurse, and the list of

health care. Among the latter, the attention

"READING FOR IMPROVING IMMUNE STATUS" assigned per day

January 11.

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Screenshot of the news item published in \*\*\*PERIÓDICO.1 on the 27th of

January 2021.

The antecedents that appear in the information systems are the following:

Within the framework of procedure E/07627/2021, the AEPD, by virtue of article 65.4 of the

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

guarantee of digital rights, forwarded the claim to the CONSELLERIA.

This, in his response (entry registration number in the AEPD

000007128e2100034202) stated the following:

-

"This delegation received on July 6, 2021 transfer of claim and

request for information by the Spanish Agency for the Protection of

Data with ref.: exp202100124, and addressed to the Conselleria de Sanidad Universal

and Public Health. We have not received as of today, the deadline, the

Official response from the Ministry responsible. On the same question and the

The same health center received claims from other DPDs

citizens. About these we were informed from the Ministry that it was sent

an informative note to its governing bodies on the duty of confidentiality and that information was required from the health department corresponding, indicating that they would inform us as soon as they had the information."

## RESULT OF INVESTIGATION ACTIONS

In addition to the documentation mentioned in the background section, it includes information from the following sources:

- Written from the Editorial Unit registered entry in the AEPD with dated February 1, 2022 and number O00007128e2200004385 (hereinafter WrittenEditorial Unit).
- Written from the CONSELLERIA registered entry in the AEPD with dated February 28, 2022 and number O00007128e2200009306 (in forward Written CONSELLERIA #1).
- Written from the CONSELLERIA registered entry in the AEPD with dated June 21, 2022 and number REGAGE22e00025680371 (in forward Written CONSELLERIA #2).
- Written from the CONSELLERIA registered entry in the AEPD with dated June 29, 2022 and number REGAGE22e00027157120 (in forward Written CONSELLERIA #3).

Proceedings in front of the CONSELLERIA

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After not having received a response to the issues raised in the transfer of the

claim, on January 18, 2022 a new requirement of

information to the CONSELLERIA. This information request was answered by the

February 28, 2022 (Written CONSELLERIA #1) stating the following:

“The response period for this requirement ended on February 18. HE

reiterated this circumstance on February 21 to the Ministry, and they answered us

that from the security office they would send all the information they could to the

regard. As soon as we receive it, we will forward it to the Agency.”

From the AEPD, later, on June 7, 2022, the request for

information. The CONSELLERIA has responded with two letters (Written

CONSELLERIA #2 and Written CONSELLERIA #3). The first of them contains, among

others, the following documents:

- Letter from the General Directorate of Planning, Technological Efficiency and

Patient Care (DGPETAP) of the CONSELLERIA that describes the

Actions taken to clarify the leaks to the media

in relation to the vaccination process. States that, on March 12,

2021, an information file was opened to determine the nature of the

facts consisting of access to the lists of the Registration System

Nominal Vaccination (RNV) against COVID-19 of the Health Center 9 de

October of Castellón for its subsequent transfer anonymously to

certain means of communication, at the same time that they are requested to provide

people who have had access to the RNV lists. After this fact

cites a series of communications between different bodies of the CONSELLERIA

in order to collect the list of people who would have had access to the RNV

without any conclusions being drawn in this regard.

- Agreement to open an information file in order to clarify the

leaks that occurred signed by the manager of the health department of

Castellón on March 12, 2021.

- Official letter of March 12, 2021 from the Economic Department of the Hospital in the requesting the list of people who have had access to the RNV under of the open information file.

- Email dated April 4, 2022 that refers to the "Transfer application by the Legal Services to the "Service for the Promotion of Health and Prevention in the stages of life" in which the list of people who have had access to the RNV by virtue of the information file open.

On the other hand, Written CONSELLERIA #3 attaches a report from the Service of Health Promotion and Prevention Programs signed on June 28, 2022 that contains, among other things, the following information:

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- Regarding the definition of the Vaccine Information System:

either (...)

either (...)

- Regarding the management of users and control of access to the SIV:

either (...)

either (...)

either (...)

- About the incident:

either (...)

either (...)

- About possible improvements:

either (...)

Actions against UEIG

In the course of these proceedings, Unidad Editorial was requested the following information:

(...)

(...)

In response, Unidad Editorial provided the following information (EscritoUnidadEditorial):

- Regarding the responsibility for the information published in \*\*\*PERIÓDICO.1:

Editorial Unit declares (see EscritoUnidadEditorial) that the owner company of the newspaper \*\*\*PERIÓDICO.1 is UEIG "not being responsible Unit

Editorial of the publications made in said newspaper nor of the

information poured into them". However, in relation to the letter

received from the AEPD indicates that "in order to collaborate with the Spanish Agency

of Data Protection and in favor of guaranteeing compliance with the principle of

procedural economy, relevant information has been collected from UEIG to

to be able to respond to the request for information in the name and on behalf of

Of the same."

- Regarding the requested documentation and the scope of the right to freedom of expression and information and the professional secrecy of journalists:

"Within the rights and guarantees recognized by article 20 of the

Spanish Constitution, by regulating the fundamental rights to freedoms

of expression and information, the right to secrecy is expressly recognized

journalists as a fundamental right, including within

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of the same the right to the protection of the confidentiality of the sources. This

Thus, the right constitutes a guarantee that operates functionally to preserve freedom of the press and the right to freely communicate or receive information truthful by any means of diffusion, indispensable guarantee of a company democracy, as proclaimed both in article 20.1 d) of the Constitution such as article 10.1 of the European Convention on Human Rights.

The European Court of Human Rights (hereinafter, "ECtHR") has indicated repeatedly that freedom of information represents a legal right

Preferably in a democratic society. Within the framework of the protection of said right, the Court has stated on multiple occasions that it is essential for their protection the safeguarding of professional secrecy, given that the absence of protection of sources could lead to a situation in which that they be discouraged from making contributions to the media that allow and guarantee access to truthful information.

In this sense, the doctrine of the ECtHR has delimited in different judgments the

Scope of the right to professional secrecy in a broad sense, not limited

exclusively to the non-disclosure of the sources of obtaining the

information. Thus, the Court has considered that the protection of this right

fundamental extends to (i) the way in which the journalist obtained the

information; (ii) the unpublished part or content of the information

provided to the journalist by the source; and (iii) the materials, supports and

journalist's work instruments: notes, recordings, photographs,

documents, computers, external storage devices, etc.

(among others, Roemen v. Luxembourg; Nagla v. Latvia; Tillack v. Belgium; and Sanoma II v. Holland).

On the other hand, Recommendation No. R (2000) 7 of the Committee of Ministers of the Council of Europe, of March 8, 2000, has stressed that it is considered information that could be revealed by the source, and that is therefore protected by the professional secrecy, the "unpublished content of the information provided by a source to the journalist".

For all these reasons, and to the extent that the requested documentation is expressly protected by professional secrecy, as a fundamental right recognized by jurisprudence within the freedom of expression and information, being that it includes the materials and documentation that have been able to serve as support for the published information, also given that according to the aforementioned doctrine, the identification could be inferred from said documents. of the source from which the information was obtained, the secret of which is equally object of protection within the framework of fundamental rights, we consider that it is not possible to meet the information request or provide the AEPD with a copy of the requested document.

- On the purposes and legal basis of the treatment carried out:

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"[...] the only purpose for which the aforementioned treatment has been carried out does not the exercise of the right to freedom of expression and information is another,

also enshrined in article 20 of the Spanish Constitution.

In this case, there is a possible conflict between two rights

fundamental, the doctrine of the National Court has recognized in

repeatedly since his judgment of April 12, 2013 (rec.

410/2010) that the legal basis of the treatment would be in the interest

legitimate prevailing that the constitutional legislator and the doctrine of the Court

Constitutional Court have granted the rights enshrined in article 20 of

the Constitution, with respect to those held by the media,

In addition, a reinforced ownership in accordance with the aforementioned jurisprudential doctrine.

Therefore, the legal basis for processing is found in article 6.1.f) [...] and

in particular, the satisfaction of two legitimate interests:

- o On the one hand, the one consisting of the author's right of the article, as

journalist and worker in a media outlet and, ultimately,

of the media itself, to communicate truthful information to the

potential recipients of the information.

- o On the other, correlatively, the right of such recipients to be

informed about events of public importance in such a way

that they be provided with elements of judgment that contribute to forming their

own opinion about such events, as has happened in this

case.

Additionally, and based on what has just been reasoned, it should be noted

also take into account the context and content of the information to which

refers to the published article, and must also consider, on the same basis

of the reinforced protection that our constitutional jurisprudence grants to the

Article 20 of the Constitution that the legal basis for data processing

of health that could be derived from the news would also be found in the

exception to the prohibition of data processing belonging to categories provisions included in article 9.2.g) of the aforementioned Regulation, being that essential public interest the exercise of the fundamental right to freedom of information and its contribution to the formation of public opinion on matters that have public relevance and social interest, through the disclosure of truthful information.

In this sense, the Judgment of the National Court 3343/2018, of 12 June (rec. 551/2016) maintains that "deserves special constitutional protection the dissemination of ideas that contribute to the formation of public opinion and make it easier for citizens to freely form their opinions and participate responsibly in public affairs."

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There is no doubt that the fact that a public official allegedly used their condition to receive preferential treatment in the vaccination protocol against SARS-CoV-2, in the context of the global pandemic, is a fact endowed with a special public relevance that justifies that it should be known to the citizens.

## CONCLUSIONS

The complaining party refers to an exfiltration of data from the systems of the CONSELLERIA de Salud, as well as a treatment of personal data devoid of legal basis by the media. Required clarification of the made to the CONSELLERIA, which has provided documentation showing the opening

of an internal information file on the events in March 2021 that did not I would have come to conclusions. It also provides a report describing the user registration procedure in the Vaccination Information System of the autonomous community and states that all users who accessed the system are they were authorized to do so.

The media that published the news, relying on article 20 of the Spanish Constitution and in the existing jurisprudence in this regard, does not facilitate the documentation to which he had access as a source of the news. It also refers to the means of communication that the purpose of the treatment is the exercise of the right to freedom of expression and information enshrined in article 20 of the Constitution Spanish. On the legal basis of the treatment, he cites the legitimate interest in a double slope, the author and the recipients of the article. Likewise, it refers to the interest essential public as the exception that lifts the prohibition on the treatment of special categories of personal data in the present case.

FIFTH: On July 22, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of Article 5.1.f) of the GDPR and Article 32 of the GDPR, typified in Article 83.5 of the GDPR.

On 08/04/2022, the CONSELLERIA presents a letter of allegations to the Agreement Of start.

SIXTH: On October 18, 2022, a resolution proposal was formulated, proposing:

That the Director of the Spanish Data Protection Agency proceeds to the ARCHIVE of the actions initiated against the CONSELLERIA DE SANIDAD UNIVERSAL AND PUBLIC HEALTH, GENERALITAT VALENCIANA, with NIF S4611001A, for a violation of Article 5.1.f) of the GDPR, typified in article

83.5 of the GDPR.

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That the Director of the Spanish Data Protection Agency proceed to the  
ARCHIVE of the actions initiated against the CONSELLERIA DE SANIDAD  
UNIVERSAL AND PUBLIC HEALTH, GENERALITAT VALENCIANA, with NIF  
S4611001A, for a violation of Article 32 of the GDPR, typified in Article 83.4  
of the GDPR.

No arguments have been submitted to the motion for a resolution.

#### PROVEN FACTS

FIRST: It is proven that on 01/27/2021 the digital newspaper

\*\*\*PERIÓDICO.1 published the news of the resignation of the complaining party, after having  
covid-19 vaccinated without being a preferred group.

SECOND: It is accredited, extracted from the news published in the digital newspaper  
EL MUNDO, that the State Attorney General's Office issued a statement according to which,  
"after verifying the non-compliance by (...), of the provisions of the strategy of  
covid-19 vaccination in Spain, approved by the plenary session of the interterritorial council of the  
national health system, and executed by the Autonomous Communities, the (...), has  
accepted the resignation

#### FUNDAMENTALS OF LAW

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

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

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

Organic 3/2018, of December 5, 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: "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."

In response to the allegations presented by the respondent entity, it should be noted

the next:

II

FIRST: The CONSELLERIA alleges that the vaccination information system (SIV) has

The objective is that the information related to the vaccination history of the people

residents in the Valencian Community is available in the health system so that

all professionals can have the necessary information.

All SIV users access (...). In each case an agreement profile is assigned

with the functions that must be carried out, being the consultation of the information

registered individually.

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Access to the information can be done directly to the SIV or through the

links available in the history of primary care or specialized care.

In the case of direct access to the SIV, the accreditation of the users is carried out from the General Directorate of Public Health and Addictions (DGSPA). For this the Users must submit an application form in which, in addition to their own data (identification data, scope of work and professional profile) includes the authorization from the person in charge of the work center. In the form it is indicated literally: 'The applicant assumes the responsibilities of the misuse of the authorization of access to the Register of Nominal Vaccines, especially those derived from the data protection regulations in force.

The DGSPA assigns the profile corresponding to their professional category and territorial scope.

For access to the SIV for this route, a username/password is assigned, which the user must change the first time you access, there is also the possibility of accessing directly with a digital certificate. Accreditation for access from the respective health histories is carried out by the General Directorate of Planning, Technological Efficiency and Patient Care.

The DGSPA has obtained information on access to the SIV in the center de salud \*\*\*CENTRO.1 the days on which the incident is supposed to have occurred.

All people have the proper authorization to access the system for the exercise of their functions. From the investigations carried out, it has not been possible to conclude responsibility for the leaking of the information registered in the SIV through communication by them nor has it been possible to rule out that the information has been provided by other means not directly related to the IVS.

In this regard, this Agency recognizes that, although it is evident that the irregular vaccination of the complaining party was leaked, thereby giving rise to tendered his resignation, it has not been possible to determine at what moment or for what party from whom said leak occurred.



Likewise, the previous investigative actions carried out by the AEPD itself have not been able to conclusively conclude how it was leaked the news, when the newspaper \*\*\*PERIÓDICO.1 availed itself of its right to secrecy professional, thus ignoring what data and documents were in the statement provided by the Prosecutor's Office, or where they came from.

In conclusion, it has not been possible to determine if the list of vaccinated refers to the newspaper \*\*\*PERIÓDICO.1 is an official list prepared by the CONSELLERIA, or some other type of document where, informally, data have been collected from vaccinated persons.

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

II

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the personal data, including protection against unauthorized processing or illicit and against its loss, destruction or accidental damage, through the application

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of appropriate technical or organizational measures ("integrity and confidentiality»).".

In the present case, it is clear that the personal data of the complaining party, obtained in the CONSELLERIA database, were improperly exposed, since according to the statement issued (...) accepts the resignation of the claimant party after

verify that (...).

However, from the investigation carried out, it has not been possible to demonstrate that the filtration of said data came from the CONSELLERIA itself, not being able to rule out that it has leaked in some other way, even at the level of citizens individuals who may have observed the event and denounced it, such as It appears in various news published by the media.

Article 32 "Security of treatment" of the GDPR establishes:

IV.

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of processing, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical and appropriate organizational measures to guarantee a level of security appropriate to the risk, which may include, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience permanent treatment systems and services;
- c) the ability to restore the availability and access to the personal data of quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular consideration will be given to take into account the risks presented by data processing, in particular as consequence of the destruction, loss or accidental or illegal alteration of data personal information transmitted, preserved or processed in another way, or the communication or unauthorized access to such data.

3. Adherence to an approved code of conduct pursuant to article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the controller or processor and have access to personal data can only process such data by following instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States.

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In the present case it has not been possible to demonstrate that within the CONSELLERIA produced a breach, so it cannot be said that they did not have the appropriate technical and organizational measures to prevent an incident from occurring.

In view of all the proceedings, the Director of the Spanish Agency for the Protection of Data RESOLVES:

FIRST: ARCHIVE this disciplinary proceeding.

SECOND: NOTIFY this resolution to the CONSELLERIA DE SANIDAD

UNIVERSAL AND PUBLIC HEALTH, GENERALITAT VALENCIANA, and report on the result of the performances to A.A.A..

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

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

Resolution will be made public once 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

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-](https://sedeagpd.gob.es/sede-electronica-web/)

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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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