

□ Procedure No.: PS/00280/2020

## RESOLUTION OF PUNISHMENT 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 claimant) on June 3, 2019 filed

claim before the Spanish Agency for Data Protection against B.B.B., with DNI

\*\*\*NIF.1 (hereinafter, the claimed) The reasons on which the claim is based are the  
following:

"[...] FIRST. On April 3, 2019, it was carried out in accordance

with the provisions of article 26 of the Organic Law of the General Electoral Regime

(LOREG), and within the powers attributed by this article, the draw of

those people who would be part of the Electoral Tables that would have to

form for the celebration of the General Elections on April 28, 2019.

[...]

THIRD. Once the draw has been made, which is done through an application

information technology for this purpose, it is reported to the Plenary of the City Council

\*\*\*LOCATION.1.

FOURTH. At this time, B.B.B., spokesperson for the Socialist Municipal Group (PSdeG

– PSOE) proceeds to take a series of photographs of the statements with his phone

that are obtained from the computer application of the census, through which the

draw, and in which they appear, not only the names of the people who will integrate said

polling stations, but also personal data such as your ID number, and your

complete home.

FIFTH. Shortly after, these photographs, with the data previously

mentioned, are distributed through the instant messaging application

WhatsApp, including them in a broadcast list whose number is unknown

recipients, but it is estimated at least 500 people.

SIXTH. That such dissemination of personal data is also done in a

indiscriminate, ignorance if the file of recipients of the

themselves, as well as their manager, comply with the provisions of Organic Law 3/2018, of

December 5, Protection of Personal Data and Guarantee of Rights

Digital or, specifically in this case, and if applicable, in accordance with the

mechanisms established in Circular 1/2019 of the AEPD, which regulates the sending of

communications by electronic means of political parties. [...]”.

Along with the claim, it provides a Report from the Agent \*\*\*AGENT.1 of the Local Police of

\*\*\*LOCATION.1 on reception by WhatsApp on the official Police telephone number

Local (number \*\*\*TELÉFONO.1), of images with the name and surname data,

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DNI, voter number and address of the members of the polling stations,

from the telephone number \*\*\*TELÉFONO.2, whose contact is B.B.B., as well

as a capture of the received images.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred to the Socialist Municipal Group of \*\*\*LOCALIDAD.1 and to the Socialist Party

Spanish worker, in accordance with the provisions of article 65.4 of the Organic Law

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

digital rights (hereinafter, LOPDGDD), being notified on 06/24/2019 and

06/21/2019, respectively.

On 07/19/2019, this Agency received a letter from the Protection Delegate of Data of the Spanish Socialist Workers' Party through which it sends the answer of the Spanish Socialist Workers Party and B.B.B. to transfer.

a) Response of the Spanish Socialist Workers Party:

"[...] FIRST. - On the specification of the causes that have motivated the incident that gave rise to the claim

The claimant D. AAA, in his brief bases the same in that the past 3 of April, through the instant messaging application WhatsApp, it was sent photographs containing documents containing personal data (name and surnames, DNI and address) of different people. These documents were specifically, the result of the composition of the electoral tables of the municipality of \*\*\*LOCALIDAD.1 (Pontevedra) for the General Elections of 2019, whose lottery was held that same day in said consistory. As such photographs were sent from the telephone number \*\*\*TELÉFONO.2, attributed to D. B.B.B., and were received at the telephone number \*\*\*TELEPHONE.1, which corresponds to the local police of \*\*\*LOCALIDAD.1

D. B.B.B., was at the time, April 3, a member of the Municipal Corporation of \*\*\*LOCALIDAD.1, as Councilor of the Socialist Municipal Group, and today currently Alderman of the Municipality, when concurring in the lists of the PSOE to the municipal elections as the head of the list. D. A.A.A., it was on April 3, Mayor of the municipality of \*\*\*LOCALIDAD.1, and currently, Councilor of the City Council of \*\*\*LOCALIDAD.1 of the Municipal Group of the PP, when concurring in the lists of this political party as head list for municipal elections.

After requesting from this Data Protection Delegate information on the facts to D. B.B.B., he informs us that after knowing as Councilman the

documentation on the polling stations for the holding of elections on 3 of April that he realized to the Plenary, from his personal mobile phone, he sent the same, to the number in your phonebook that corresponds to the public telephone of the police local, for the purpose of informing about the results of the public draw of the tables electoral.

From this, we conclude that, D. B.B.B., having had access to the documentation indicated and to which he was entitled in accordance with art. 14 of RD 2568/1986, of Regulation of Organization, Functioning and Legal Regime of the Entities

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Local, for the development of its functions, understood that that information to the having carried out a public draw could be of interest to the Local Police, one of the security forces responsible for ensuring the proper functioning of the electoral journey; it turns out, therefore, that this was his only interest at the time of the sending the documentation, without it being their intention to divulge the personal data of the neighbors.

SECOND. - On the origin of the data subject to treatment, the legal basis on which the processing of the claimant's data is substantiated

From the documentation we have, we understand that the origin of the object data treatment is access to them as a result of the character of Councilor of

D. B.B.B., on the basis of art. 14 of RD 2568/1986, and the municipal electoral roll for the realization of the draw that configures the electoral tables, in accordance with the LOREG.

The treatment is carried out by D. B.B.B., on its consideration that the draw has a public nature, in accordance with the provisions of article 26.2 of the LOREG, and that the information as it has been provided can be made known to the telephone that sent by the Local Police of \*\*\*LOCALIDAD.1, for information purposes.

From the foregoing, it is concluded that this political organization does not carry out treatment of any data for which it was responsible, and that neither, in relation to the facts had any intervention, nor were media or data used responsibility of this organization.

Without prejudice, that in any case there is no responsibility of this organization as indicated, and according to the best criteria of this Spanish Data Protection Agency, D.B.B.B's performance we understand that it is protected by the mentioned norm above, as well as the rights inherent to the Councilors for the exercise of their functions in local corporations, however, it is true that, according to the current regulation on data protection rights, the General Regulation of Data Protection, the principle of minimum data should have been applied, to scrupulously respect the rights of citizens, and especially the personal data, so the information that is transferred to the Councillors, should not include more than those that are necessary to ensure the development of the lottery process in accordance with the LOREG – check that they are people included in the corresponding electoral census -, therefore, not including the data of home, especially.

SECOND [Sic.]. - Of the accredited facts and the concurrent circumstances

The complainant, D. A.A.A., alleges that the data was distributed through “a list of distribution” and that “although the number of recipients is unknown, He estimates there were at least 500.”

Well, from the documents transferred, such documents cannot be considered

subjective manifestations, since the transferred photographs correspond to the reception of communication in "a mobile", without mention of any distribution list, and the report accompanied by the Municipal Police only refers to the reception in

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said mobile, without referring to other mobiles or any distribution list. and to greater abundance, without stating, neither through this Agency, nor directly to this Data Protection Delegate, any complaint from other people who had received such documentation.

Therefore, we must consider that only that information was sent to the telephone number \*\*\*TELÉFONO.1, public number belonging to the Local Police of \*\*\* LOCATION.1 (image is attached), from the personal number of D. B.B.B.

On the other hand, it must be considered that the events occur in full development of the electoral processes, which could be insignificant in another situation, but we must be aware that the scene where the events took place was that of some imminent general elections and other European, regional and local elections; And how much the claimant as against whom the claim is directed, are the representatives maximum of two political parties that concur to the electoral processes in the Municipality, which after the May 26 elections, have exchanged their positions in the local corporation. [...]

THIRD. [Sic.]- Regarding the performance of D. B.B.B., as Councilor of the Municipality of \*\*\*LOCATION.1.

In any case, we insist on the terminal and its use corresponds personally to

D. B.B.B., member of the Municipal Socialist Group of the City Council of

\*\*\*LOCATION.1, which for this shipment did not use a medium or a database responsibility of the PSOE, and, without this organization, had been transferred to any electoral or organic responsible instruction in this sense on electoral processes.

With this, we come to expose that the position of councilor, and his responsibility as such is inherent to the person who has been democratically elected by elections, with the protection granted by the fundamental right of article 23.2 of the Spanish Constitution, since it guarantees that those who have accessed them [at office of councilor] remain in them without illegitimate disturbances (STS 1011/2006, of January 23). That is, the right to participate in public affairs is recognized in favor of citizens, not political parties, since "they are the candidates and not the political party who, regardless of the system electoral, they receive the representative mandate" (STC 5/1983, of February 4).

In the same way, and as this Agency has come to understand, it is understandable that a political organization, in this case the PSOE, cannot be held responsible for the acts carried out by the members of the municipal corporations to the extent that the Municipal Groups are constituted within the Administrations Public and, as we have just examined, their actions obey the functions purchased at your expense. [...]"

b) Reply from B.B.B. to the request made by the Protection Delegate of Data of the Spanish Socialist Workers' Party:

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"[...]1. On April 3, 2019, on the occasion of the General Elections of April 28,

April, at the City Hall of \*\*\*LOCALIDAD.1 the draw was held for the formation of polling stations.

2. To me personally, as councilor of the City Council of \*\*\*LOCALIDAD.1 and after that plenary session, I was provided with said documentation.

3. The aforementioned photos of the documents related to the polling stations

I made from my personal mobile phone and sent them to the phone number

\*\*\*PHONE.1, which I had in my personal agenda and which is public, since it belongs to the Local Police.

4. The intention of the shipment was none other, perhaps wrongly, than to report a public lottery for polling stations.

5. These events occurred spontaneously, on my own personal initiative, without, of course, being an action derived from any instruction of the Party, nor performed as such. [...]»

Provides the Official Gazette of the Province of Pontevedra dated \*\*\*DATE.1 where consists:

1. Within the Popular Party candidacy for the 2019 municipal elections

Electoral constituency of \*\*\*LOCALITY.1 appears as Holder 1 A.A.A.

2. Within the candidacy of the Socialist Party of Galicia-PSOE (PSdeG-PSOE) to the municipal elections 2019 electoral constituency of \*\*\*LOCALIDAD.1 consists as Head 1 B.B.B..

Provides a screenshot of the website \*\*\*URL.1 where the Police mobile is displayed

Local \*\*\*PHONE.1

THIRD: The claim was admitted for processing by resolution of the Director of the Spanish Agency for Data Protection on August 9, 2019.



FOURTH: In view of the facts denounced in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out preliminary investigation actions to clarify the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the established in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the rights (hereinafter LOPDGDD).

As a result of the investigative actions carried out, As a result of the investigative actions carried out, the report prepared by the inspector acting reveals the following:

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“On February 21, 2020, the defendant sends this Agency the following information and demonstrations:

1. That the reason why he sent the images to the Local Police was merely to informative level.

2. That the Local Police agent is the person in charge of delivering the notifications to the members of the polling stations chosen by lottery.

3. That to the question about, to how many and to what other recipients the information contained in the images states:

"To date I don't remember."

4. That to the question about, other telephone numbers that you may have,

of which it was disseminated or forwarded successively declares that:

"I don't have any other phone. I do not know if the information was forwarded.

5. That to the question of whether the information contained in the images is accessible

public declares that, once the draw is over, a copy is provided for

knowledge to the members of the municipal corporation attending the Plenary.

6. That in relation to the computer application states that:

a. That the application is from the National Institute of Statistics, generic for all municipalities.

b. It is accessed through a website with a password.

c. That to access the application, the INE facilitates, by email, the access key to download the corresponding application, to the person who carry out the management tasks of the Register of inhabitants and that appears in the corresponding INE database in Pontevedra.

6. Provide a copy of the invoice for the line \*\*\*TELEFONO.2 with invoice date April 10 of 2019 where the defendant is listed as the owner.

On March 23, 2020, a request for information was sent to the complainant requesting information about the messages distributed through the application instant messaging WhatsApp with the photos including them in a list of diffusion. The notification is made by postal mail and appears with the status "Delivered" on 06/10/2020 at 12:02. No reply received."

FIFTH: On September 30, 2020, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the same rule..

SIXTH: Formal notification of the initiation agreement by appearance in

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Citizen Folder on October 4, 2020, the respondent has not submitted brief of allegations, for which what is stated in article 64 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which in its section f) establishes that in case of not making allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when contains a precise statement about the imputed responsibility, therefore that a Resolution is issued.

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

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: On April 3, 2019, the City Council of \*\*\*LOCALIDAD.1 carried out the raffle for the formation of the Electoral Tables for the celebration of the Elections April 28, 2019, in accordance with the provisions of article 26 of the Organic Law 5/1985, of June 19, on the General Electoral Regime (hereinafter LOREG).

SECOND: The result of the lottery was communicated to the Plenary of the City Council of \*\*\*LOCATION.1.

THIRD: The defendant held on that date the position of councilor of the plenary session of the Council of \*\*\*LOCALIDAD.1, for which he had access and knowledge to the documentation resulting from the draw made.

FOURTH: On April 3, at 5:28 p.m., the mobile phone number

\*\*\*TELEPHONE.1 belonging to the Municipal Police of \*\*\*LOCATION.1, a

WhatsApp message from the phone number \*\*\*PHONE.2 with 9

images of documents that contain the data of name and surnames, DNI,

address, voter number and position at the table of the people, who, according to the draw

celebrated, they would integrate the electoral tables of the municipality in the elections.

FIFTH: The respondent states that he spontaneously took photographs with his

particular mobile phone of the documents related to the composition of the tables

elections and having communicated them to the Municipal Police for informational purposes.

SIXTH: The respondent accredits the ownership of the telephone number from which the

broadcast the message.

SEVENTH: There is no accredited dissemination of the documents to a list of

distribution.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

The defendant is imputed the commission of an infraction for violation of article 5.1.f)

of the RGPD, which states that "personal data will be" treated in such a way that it is ensure adequate security, including protection against unauthorized processing authorized or unlawful and against loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

The infringement is typified in article 83.5 of the RGPD and is qualified as having the Next:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 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:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; [...]"

For the purposes of the limitation period for infractions, the infraction indicated in the previous paragraph is considered very serious and prescribes after three years, in accordance with Article 72.1 of the LOPDGDD, which establishes that:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679. [...]"

#### IV

The present sanctioning procedure brings its cause in the possible illegality of the communication made by the respondent on April 3, 2019 to the agent of the

Local Police (through a WhatsApp message from his personal mobile) of some images containing the statements resulting from the electoral lottery held on same day for the determination of the people who would integrate the tables elections in the general elections to be held on April 28, 2019. In these

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Estadillos included the personal data mentioned in the proven fact fourth.

Article 5.1.f) of the RGDPD establishes the principle of confidentiality as one of the basic principles that must be observed in all processing of personal data.

Regarding this obligation, Considering 39 of the same law provides that "[...] the data must be treated in a way that guarantees that it guarantees security and appropriate confidentiality of personal data, including to prevent access or unauthorized use of said data and of the equipment used in the treatment". In

our system, likewise, this issue is highlighted by article 5 of the LOPDGDD in a complementary manner to the duty of professional secrecy. the literal tenor of this article is as follows:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even

when the relationship of the obligor with the person in charge or in charge of the treatment".

Based on the foregoing, it can be considered, in accordance with the proven facts, that even when the respondent had knowledge and legitimate access to those statements because these were part of the documentation related to the electoral lottery that was communicated to the plenary session of the City Council of \*\*\*LOCALIDAD.1 and he was part of the himself as a councilman, he did not act with due diligence in order to guarantee the due confidentiality of the personal data contained in the aforementioned documentation, making, instead, a communication of the same. The fact of that this communication be made to another municipal instance (Local Police) with informative purpose since, in accordance with what was declared by the defendant in the answer to the transfer of the claim, said instance is in charge of deliver the notifications of the draw, it cannot imply a validation of your performance. It is necessary to point out at this point that, by virtue of the LOREG, it is at City Council as the entity in charge of the formation of the electoral tables and their subsequent communication to the designated persons, functions to be carried out according to its operating system.

As already stated in the agreement to initiate this proceeding, no considers for sanctioning purposes the statements made by the claimant about alleged dissemination of information to a distribution list through the Messaging application reviewed, as it was not accredited.

v

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among they have the power to sanction with a warning -article 58.2 b)-, the

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power to impose an administrative fine in accordance with article 83 of the RGPD

-article 58.2 i)-, or the power to order the controller or processor

that the treatment operations comply with the provisions of the RGPD, when

appropriate, in a certain way and within a specified period -article 58. 2

d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine

administrative.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with what is stated in Considering 148:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its

intentional nature, to the measures taken to alleviate the damages suffered,

the degree of liability or any relevant prior violation, the manner in which

that the control authority has been aware of the infraction, compliance

of measures ordered against the person responsible or in charge, adherence to codes of

conduct and any other aggravating or mitigating circumstance.”

SAW

In the present case, when deciding the sanction to be imposed, they have taken into account



count the following items,

☐ That it is a natural person whose main activity is not linked to the

treatment of personal data.

☐ That there is no recidivism, because there is no record of the commission of infractions

previous.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions to be imposed for the infractions whose existence has

accredited, the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE B.B.B., with DNI \*\*\*NIF.1, for an infraction of article 5.1.f)

of the RGPD, typified in article 83.5 of the RGPD, a sanction of WARNING.

SECOND: NOTIFY this resolution to B.B.B. and inform A.A.A.

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.

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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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