

□ Procedure No.: PS/00275/2021

## 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 Catalonia, dated February 4,  
2021, sent the Notification Act of an alleged violation of the regulations of  
data protection to the Spanish Data Protection Agency.

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

“Organic Law 2/1986, of March 13, on Security Forces and Bodies

ity, in its article 11.1.a) requires the agents of the authority to "ensure compliance

observance of the Laws and general provisions, executing the orders they receive from  
the Authorities, within the scope of their respective competences”

Within the framework of the functions in matters of documentation of foreigners, at the

the same as for the issuance of the national identity document, and as it happens

in various areas of public administration, it is necessary to request a

an appointment for the materialization of the different procedures, which is obtained in a

free through the website <https://sede.administracionespublicas.gob.es/>.

On this website you can get an appointment, anywhere in the national territory.

for the issuance/renewal of documents, collection of identity cards,

foreigners (TIE), asylum applications, invitation letters, fingerprinting

for the issuance of cards, certificates of registration of citizens of the European Union

pea, as well as for another series of administrative procedures.

The fact of the suspension of administrative deadlines due to the declaration

of the state of alarm throughout the national territory derived from the occasional pandemic given by the Covid-19 added to the fact that, during the current year 2020, they have corresponded the renewal of their documents to foreign citizens who availed themselves of the process of regularization of their administrative situation that was implemented in the year 2015, has resulted in a situation of congestion in police services related to the materialization of different procedures and files in matters of immigration, which have overwhelmed the capacity of the immigration offices of the Police. National Society in the province of Barcelona which have had to be reinforced, in As far as personal and technical means are concerned, in order to respond to the strong commands experienced in such a short space of time.

In this context, the Unit against Immigration Networks and Falsehoods addressed written to the Provincial Immigration and Borders Brigade of Barcelona of the Sub- of Police of Catalonia has detected, as a result of the receipt of multiple claims complaints and complaints from both users and agencies and law firms related to the documentary procedures of foreigners, that this saturation, in addition

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more than by the causes exposed, it is also motivated by the practices that carried out by those responsible for various establishments open to the public, mainly mainly booths, and/or individuals who advertise themselves to obtain prior appointments. via in exchange for different economic amounts and that, in order to obtain a greater lucro, saturate the computing platform in a way that causes users to have make it very difficult to obtain a free appointment with the administration and are forced to

inclined to require your services.

By going to these places, users have been forced to provide their data.

personal data, both in writing and by providing a copy of your documentation

identification, to the employees or people who offer this service so that, with di-

such data, they can reserve an appointment with the administration, since said appointments

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

with proof of appointments that do not correspond to the person who is going to carry out the

requested procedure.

This transfer of your personal data is carried out without any guarantee or identification.

cation of the data controller, as well as without informing or obtaining

have the consent of the users in accordance with the provisions of the Organic Law

3/2018, on the 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.

Based on all of the above, on 01/14/2021, by police officials,

assigned to this Unit, an administrative inspection was carried out in the call center

called "\*\*\*\*ESTABLIMIENTO.1", located at \*\*\*ADDRESS.1 (Barcelona), in the

which the existence of numerous client files was verified (handwritten papers,

copies of documentation, NIE prior appointment receipts), which were stored in

said establishment with the alleged purpose of obtaining prior appointments for the

carrying out different procedures, extending in the place the mandatory certificate of in-

a copy of which is attached to this document.

Inside the establishment, a precautionary intervention was carried out on 40

documents containing personal data (name, surnames, document, telephone, etc.) and 3 original documents (Passports and residence permit), belonging to third parties, in order to carry out the corresponding police procedures. them with the holders of that documentation.

Once the corresponding procedures were carried out, the summons and subsequent taking of statements from various people whose details appear in the document intervened, which have expressed that they were not informed or provided did not expressly or tacitly consent to the provisions of article

6.1.a of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27

April 2016, by providing your personal data to those in charge of the establishment to obtain an appointment.

Based on the foregoing, in the opinion of the interveners, the owner of the establishment,

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either personally or through your employees, would be in violation of one or several precepts of Organic Law 3/2018, of December 5, on the Protection of Data

Personal Rights and Guarantee of Digital Rights, as well as Regulation (EU)

2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data

Therefore, on 02/03/2021, previously mentioned, he appeared in these offices.

dences, the owner of the establishment called A.A.A. with NIE \*\*\*NIF.1.”

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

claimed, 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 rights digital data (hereinafter, LOPDGDD). The request for information on the revealed facts could not be notified to the claimed after two attempts cough, as stated in the Delivery Impossibility Notice issued by Correos. The first The first of them took place on 03/31/2021 and the second on 04/7/2021, which was "Returned to origin due to surplus (not picked up at the office)" on 04/15/2021. Subsequently, re-sent the transfer dated 05/05/2021 to the claimant, but it was "Returned to origin" gen due to incorrect address" dated 05/18/2021.

THIRD: On 06/18/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged violation of article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons in relation to regarding the processing of personal data and the free circulation of these data (hereinafter, RGPD), typified in article 83.5 of the RGPD.

FOURTH: On 07/30/2021 the claimant is notified of the start agreement of this sanctioning procedure and a hearing period of TEN DAYS is granted SKILLFUL to formulate the allegations and present the evidence that it considers convenient, in accordance with the provisions of articles 73 and 76 of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP).

FIFTH: The respondent did not make any objections to the agreement to initiate the procedure. Article 64.2 f) of the LPACAP - provision of which the respondent was informed in the agreement to open the procedure- establishes that if no allegations are made within the term established on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, it may be considered a motion for a resolution.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infringement of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the respondent has not made allegations to the agreement to initiate the file and in attention to what is established in article 64.2.f LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

SIXTH: The agreement to initiate the procedure agreed in the fourth point of the part dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the

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claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim".

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: The respondent collects data from the natural persons who come to his booth to request an appointment for administrative procedures, without providing the precise information to interested parties in accordance with current regulations on the protection of personal information.

SECOND: The Spanish Agency for Data Protection has notified the claimant the agreement to initiate this sanctioning procedure, but it has not presented allegations or evidence that contradicts the facts denounced.

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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.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the 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,

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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:

"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 any;

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 person responsible for the  
treatment will facilitate the interested party, at the moment in which the data is obtained  
personal, the following information necessary to guarantee data processing  
fair and transparent

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a) the period during which the personal data will be kept or, when it is not  
possible, the criteria used to determine this period;

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 time, without affecting the legality of the treatment based on the

consent prior to its 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

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

provide 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, information

about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the

interested party, prior to such further processing, information on that other purpose

and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that 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 person responsible for the

treatment 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

referred to in the following section and indicating an electronic address or other

medium 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.

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If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of 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;

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."

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In this case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

This agency has confirmed that the actions of the respondent are not in accordance with the data protection regulations, since it does not inform customers about the treatment of the personal data provided by them, as required in article 13 of the RGD, indicated in the legal basis III.

Thus, in accordance with the facts exposed, we are faced with a infringement of the provisions of article 13 of the RGD, by the claimed party.

SAW

In accordance with article 58.2 d), for the commission of this infraction it is appropriate address a warning when collecting personal data from customers and consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5 b) of the RGD would constitute a disproportionate burden for the claimed, since there is no record of the commission of any previous infringement in terms of Data Protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGD, in the resolution is required to the claimed, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from the themselves to the requirements contemplated in article 13 of the RGD, as well as the provision of supporting evidence of compliance with what is required

Therefore, in accordance with the applicable legislation,  
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 body the adoption of measures to facilitate information 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.

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

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Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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