

□ File No.: EXP202103904

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 September 1,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against the CITY COUNCIL OF ZAMORA with NIF P4930500F
(hereinafter, the CITY COUNCIL). The reasons on which the claim is based are the following:
following:

On September 1, 2021, D. B.B.B., ***POSITION.1 (...), has used the system
Manage to disseminate a communication that includes the full text of the Decree of
Mayor's Office *** DECREE.1. Said decree expressly provides that the communication
exclusively to the complaining party and to D^a C.C.C., as a party in the procedure
court from which it derives.

The decree has been transferred to a group of more than 30 people, without making reference
any to the reserved nature of the data contained therein, nor guarantee, as
It is the obligation of his position, that they do not transcend outside the group of
responsible.

The issued decree expressly refers to a forensic medical report on
the complaining party, which includes (...):

“(…):

(…)”

Reiterate health data again:

"they must also be analyzed to find a solution (...)"

Likewise, reference is made to legal proceedings to which the claimant party

has come in defense of his civil servant rights:

"In the opinion, likewise, of this (...), for the adequate fulfillment of the

Sentence, the (...) must find a technical explanation for then,

equally, to find a solution to the evident problem that exists in the

City Council and that the Contentious Administrative Court of Zamora

residence the obligation of the resolution in (...). We can cite as

example and not exhaustive the following electronic files: (...) ..."

Finally, a charge of violation of the Law for the Protection of Personal Data is made public.

Data for monitoring essential files during their last

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2/30

low, (...), going so far as to affirm that he has delayed his recovery, when the duration

expected drop (...).

Along with the notification is provided:

-Internal communication document of ***DEPARTMENT.1 of the TOWN HALL

(Expte. (...)) addressed to the Heads of Service, transferring the Decree of Mr. Mayor

of the TOWN HALL, expte. (...), which includes a report from ***DEPARTMENT.1

on execution of sentence number (...) of the Supreme Court of Castilla y León, of May 7, and

writ of clarification of the same dated 11/XX/20XX.

- Opinion and Resolution of (...) of the complaining party, issued by Management

Territorial Social Services of Zamora.

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 forward LOPDGDD), said claim was transferred to the CITY COUNCIL, 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 11/03/2021 as stated in the acknowledgment of receipt in the file.

On 11/22/2021, this Agency received a written response indicating:

“One.- With entry registration on September 15, 2021, ***POINT.2,

Mr. A.A.A., presents an instance highlighting the following aspects: What is stated in the electronic administration system of the City Council of Zamora "Gestiona", in several files contain documentation containing personal data and very close to this official, which, according to the LOPD, can only be used for those reasons for which they had been provided to the Administration by the interested party or by the competent authority. And then he refers to the precepts of the Organic Law on Data Protection together with the EU Regulation in which bases its request, concluding that, in its opinion, it is permissible to verify that the use of the documents carried out by the City Council are not covered by any legal cause for which:

FIRST: Request that legal imperative proceed within a month to delete from the electronic administration system MANAGES

1-Report of XX/XX/2018 issued by the Zamora Branch of the Institute of Legal Medicine and Forensic Sciences of León and Zamora, issued in preliminary proceedings (...) of the Investigating Court (...) of Zamora, in which

Zamora City Council was not part

2-Auto XXX/2018 reviewed in the procedure indicated in which

certain subjective assessments related to my person.

SECOND: That they refrain from incorporating into the system or, if they have already incorporated, proceed to delete, within the same period, my file (...) and

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3/30

incorporate exclusively

its attached documentation, including (...) by the University of Salamanca,

being able

the valuation resolution

decausalized, with due reservation, and preventing its use for purposes

illicit as those previously indicated in this writing.

THIRD: That the identity of the person in charge and the

in charge of data processing in the Zamora City Council, to which

timely legal effects.

Two.- The documentation to which Mr. A.A.A. basically refers, has its reflection

fundamental in the "Electronic File" contract that the City Council has

contracted with the company esPublico and that appear, basically, with the signatures

(...) and (...) who bring their case in the exercise of the right of defense in the court of

administrative litigation, in the first case and a complaint, by Mr.

*** POSITION 2, for violation of fundamental rights, propitiated, in the opinion of the

claimant, by the municipal institution, in the second case.

Three.- Similarly, the documentation referred to by Mr. A.A.A. figure in the proceedings (...). And it brings its cause in the protection of the health and occupational health of the Mr.***POSITION.2, but also of other officials such as ***POSITION.3. This file in turn is closely related to (...).

[illegible]

All these files are related, in a large number of them, to a direct relationship in the conflict that Mr. ***POSITION.2 maintains, not only with the City Council and its managers, but also with officials, as the applicant understands of ***PUESTO.2, who is being violated in his fundamental rights and to the point of having prolonged this conflict for years, without have found, up to the time of writing this report, an integrative solution of all the legitimate rights and interests at stake, but which are seriously jeopardizing risk, in the opinion of ***DEPARTMENT.1, the proper functioning of the City Hall, as we will refer to below.

LEGAL BASIS

Introduction

1.- In order to resolve the issue that arises, we must refer to the Organic Law of Data Protection, hereinafter LOPD, Law 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights. and in intimate relation to EU Regulation 216/679. In addition, one should undoubtedly take into account the Consolidated Royal Decree 3/2010, of January 8, which regulates National Security Scheme in the field of Electronic Administration, without Nor should we forget the Consolidated Royal Decree 4/2010, of January 8, which Regulates the

National Interoperability System in the field of Electronic Administration and,
Of course, Royal Decree 203/2021, March 30, which Regulates the Regulation of
Action and Functioning of the Public Sector by Electronic Means. Also, and
with regard to Electronic Administration, Law 39/2015, of October 1,

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4/30

of the Common Administrative Procedure of Public Administrations, together with
Law 40/2015, of October 1, on the Legal Regime of the Public Sector.

2.- In view of these precepts, we can establish as an unquestionable reality the
following principles referring to the preambles of the aforementioned legal precepts:

A.- The Internet has become an omnipresent reality both in our lives
personal as collective.

B.- Digital transformation is a reality in our present and future development.

C.- The person responsible for the processing of personal data must consider the measure that
is adopted from the point of view of active responsibility, which means assessing the risk
that could generate the treatment in each specific case, hence it acquires
special relevance is self-regulation and where the Spanish Agency for the Protection of
Data, with its legal interpretation, must undoubtedly have significant importance.
fundamental, in this case for the municipal institution; also in the resolution of
Conflicts that may arise regarding the processing of personal data
which forms the basis of this report.

D.- And Law 39/2015, Law 40/2015, with R.D.203/2021 establish the principles in which
that effectively the electronic processing of procedures should constitute the

habitual action of public administrations and not just a special form of their management; that is to say, it is perfectly consolidated that the Public Administration, in this case the Zamora City Council, must act on behalf of electronic media.

And for this purpose, and to guarantee safety in the treatments, honestly

With transparency, this regulation corresponds to the State. And to exercise this

function should play a relevant role private companies accredited by the company itself

Administration, as in the specific case of the Zamora City Council with

the company isPublic.

E1.- With the entry into force of Law 3/2018, of December 5, Organic Law of

Data Protection, which modifies Law 39/2015, consent no longer constitutes

legal basis for the processing of personal data, without prejudice to the fact that the

affected interested party can exercise the right of opposition.

E2.- The person in charge and the person in charge of the treatment can act with the data

personal information without the consent of the affected party in a lawful, loyal and transparent manner,

When in this proactive function, which is recognized by the Law and the Regulations of

Data Protection, I did it protected by legitimizing regulations, being consistent in

that intellectual process:

a) That this action is necessary to satisfy the legitimate interest,

pursued by the controller, but also by interested third parties.

b) And that, consequently, as a result of this weighting, it is necessary not to

violate the fundamental rights and freedoms of the data subjects, but

simply that they move for concrete and singular cases sufficiently

weighted and balanced.

F.- Principle of Confidentiality and Professional Secret: 1.- Those responsible and

data processors, as well as all the people involved in

any phase of this, will be subject to the duty of confidentiality. 2.- This

Confidentiality is complementary to the duties of their professional secrecy, both the managers in charge and other servers of the data processing of personal character.

II.- LEGAL APPLICATION TO THE CASE PRESENTED TO US

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5/30

One.- The Zamora City Council, in compliance with the regulations described above, Since 2017, all the files of this municipal institution are structured through through the electronic file on the "Gestiona" platform, accredited through the company isPublic. And in the development of the principles of protection legislation of data, these instruments of security and interoperability and protection of data personal data guaranteeing transparency, together with the Zamora City Council, which is carried out by the aforementioned company. And with the adaptations that the State itself It is regulating through art. 149.1.18 of the Spanish Constitution the file e-mail from the "Gestiona" platform of esPublico, in our opinion, is coming applying the quality standards regulated by the Consolidated Royal Decree 3/2010, of January 8, to guarantee security in the area of the City Council of Zamora, as well as applying Royal Decree 4/2010, with regard to the "interoperability".

In short, and as a First Conclusion, this ***DEPARTMENT.1 states that the Zamora City Council through the electronic file platform Manage with the company is Public, also conforms to Royal Decree 203/2021, of March 30,

Regulating the Operation of the Public Sector by electronic means.

Two.- Establishing the action in accordance with the rules of Internet use as omnipresent reality, both in our personal and collective lives, which refers to the preamble of the LOPD and that complying with Law 39/2015 (LPACAP) and the Law 40/2015 (LRSP), which establishes the electronic processing of the procedures of the public administrations, and not only a form of special management of the themselves, referred to in Royal Decree 203/2021, it is appropriate in this case to analyze whether the action carried out by the City Council in the processing of personal data of the Mr. ***POINT.2, Mr. A.A.A., can be classified as illicit treatment or, for the contrary, a treatment has been carried out in a lawful, loyal, transparent and weighted according to the legal powers attributed to the person responsible for the City Council and also, to the rest of the public servants in the treatment of these personal information. And in this sense we pronounce ourselves below, namely:

A.- It is established in the introduction of this report of a permanent conflict of the Mr. A.A.A. with the municipal Institution, its representatives and also with the services of this Institution, which has led to a very significant number of conflicts in the criminal field, in the contentious-administrative field, and in the administrative field, in which they have been affected, in addition to the municipal Institution, the people physical entities that represent it and the public servants that serve it.

B.- The use of personal data of Mr. A.A.A., has had as its purpose fundamental, to motivate for the (...) of the Institution, the defense of the interests municipal, fundamentally in the denunciation of violation of rights carried out by Mr.***POSITION.2 before the Court of Contentious-Administrative and whose motivation has been incorporated into the electronic file (...) and also especially, in the file (...), with the Decree *** DECREE.1. In both files, the City Council and officials

have referred the personal data of Mr. ***PUERTO.2 in the exercise of the right of defense, of article 24 of the EC.

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6/30

And due to its relevance, we must analyze this *** DECREE.1 for compliance with sentence that annuls ***DECREE.2, of distribution of functions between the own ***POSITION.2 of the City Council and ***POSITION.3, which distinguishes:

a) Between compliance with the Judgment, which corresponds to the City Council, and the execution of the same, which corresponds to the Contentious-Administrative Court No. 1 of Zamora.

b) And for this compliance and subsequent knowledge of its execution, that corresponds to the Court, this administrative act motivates that (p. 5 *** DECREE.1) "...for its compliance, its explicit pronouncements must be examined, but whose concretion and scope is determined in the facts discussed and the legal arguments of the parties, which, although they do not literally go to the ruling, as It is logical, they do constitute the basis for its correct compliance". And keep motivating this Resolution, that for this compliance... must be assessed... with the technical reports that this Authority requires, in addition to the weighted assessment of the facts debated and the arguments that are inferred throughout the Judgments nos. (...) and the (...)"

And in this regard, the aforementioned resolution considers essential:

1.- Refer to the essential characteristics of Mr. A.A.A. to find the cause of the conflicts maintained with the Institution, its representatives and other servers

public. And it strictly refers to that part of the report that is essential to be able to comply with the Judgment, that taking into account the facts discussed and the arguments of the parties, are essential for their proper compliance, following the jurisprudence of the TS, in compliance with the sentences, that the decree itself quote widely.

2.- And these characteristics described in the report constitute an essential basis in the motivation of the Decree for this execution that finds a technical explanation to tackle this conflict maintained by the now claimant, Mr. A.A.A., with the Institution, its representatives and officials.

3.- And these characteristics described in the report constitute an essential basis for this execution that finds an explanation and a solution to the repeated and very prolonged sick leave, significantly compromising the Service.

4.- And these characteristics described in the report constitute an essential basis for this execution and a solution to the repeated entries in files, downloads and packages of a very relevant amount of documents related to files consulted by Mr. ***POSITION.2; Entry records consulted and Third Parties consulted and/or edited, as referred to by the Technician of the ICT Unit in the report that work in the electronic file (...). And in these inputs, downloads and packaging affects various services, civil servants and companies, with the also relevant data of these medical leave operations have also been carried out, which, Undoubtedly, this activity, in addition to affecting third parties of the services and power compromise the impartiality of Mr. *** POSITION.2. When the moment comes procedural for your report, may have a negative effect on the duty of the official to recover his health as soon as possible for his prompt incorporation into the Entrusted service.

5.- And this motivation of this information used by the Authority of the Mayor, the act

administrative document in which the essential aspects of their situation appear (...)

for the correct execution of the judgment, leads this Authority to conclude:

* That, in order to comply adequately with the Judgment, guaranteeing the

personal and labor rights of Mr. *** POSITION 2., but also these same

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7/30

rights of the City Council, with its services and officials, the Authority

municipality intends:

- Avoid any hint of arbitrariness or abuse in the exercise of functions (...).

- That the labor rights be preserved, not only of *** POSITION 2, but of

***POSITION 3, like the rest of the municipal employees.

- That the health of all personnel at the service of the

Municipal Public Administration.

Three.- In view of this administrative act, the question now is to analyze whether

complied in this act with the requirements referred to in the Data Protection Law and the

EU Regulation 216/679, so that one can speak of lawful acts when dealing with

personal data of the claimant, that is, if it was necessary for the satisfaction of the

legitimate interest pursued by the data controller, in such a way that it can

displace the rights and freedoms, in this case of ***POINT.2, not to use,

even the essential aspects of their situation (...) for the satisfaction of this

legitimate interest. Let's see:

A) For compliance with the Judgment, the Decree itself provides the reasons

essential aspects of this partial and essential use of the medical-forensic report of

date (...).

B) And the objective is based on the preservation of the rights of the user

Mr.***POSITION2 claimant and, also, of the third parties responsible for the Services that have been referred to in this report.

In short, as a second Conclusion to this part on the use of data

Mr. *** POSITION 2, the interest pursued by the Mayor, in the opinion of this

*** DEPARTMENT.1, undoubtedly considers it legitimate, lawful, loyal and

transparent, since this information provided is supported by the Law

7/85, of April 2, Law Regulating the Bases of Local Regime, and legislation

information, basically art.22 that refers to the powers of this

Authority in the pursuit of the general interest as the most responsible

corresponds to the direction of the Government and the municipal administration. and this same

support, with regard to occupational health, also refers to it, the Protection Law

of Occupational Risks, corresponding to the Mayor to guarantee the prevention of risks

labor and health of all municipal employees. And it is nodular not to unlink

this Decree of the main cause that originates it, which is none other than compliance

of the Contentious-Administrative Judgment, which corresponds to its

final execution to (...) of the Contentious-Administrative and, all based on the Law

29/98, of July 13, Law of the Contentious-Administrative Jurisdiction.

C) And with respect to the use by public officials referred to in the

Mr.***PUESTO.2 in your instance, the question is to determine if these attributes of legality described can be applied to the specific cases raised. and about it

We must refer to what has already been stated in the introduction to this report, as it is that the

Consent no longer constitutes a legal basis for exclusively

use personal data without it, since as we have been saying, when it is

pursues a legitimate interest also by third parties, this displacement is possible. And of

again we have to reiterate that this use of the personal situation of the

Mr. *** POSITION 2, is limited to the scope of protection of the rights that

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8/30

They are exercising, like the City Council itself, the fundamental right of

Effective judicial protection, referred to in art. 24 of the CE, at the same time that they are based

all these actions, in Law 7/85, April 2 and Law 39/2015 of

Common Administrative Procedure together with Law 29/98 itself, of the Jurisdiction

Administrative Litigation.

As a third Conclusion to this part on the use of the personal data of the

Mr. *** POSITION 2, the interest pursued by the officials referred to in the

Mr. ***POSITION.2, in the opinion of this ***DEPARTMENT.1, undoubtedly the

considered covered by art. 24 of the CE, while all these are based

actions, in Law 7/85, April 2 and Law 39/2015 of Procedure

Common Administrative Law together with Law 29/98 itself, of the Contentious Jurisdiction-

Administrative, because it deals with the exercise of effective judicial protection, in some cases, in

the judicial defense of the legitimate interests of others, and also, in the execution of the

administrative act of the aforementioned *** DECREE.1, no. XXXX/2021, with the

following particularities:

a) That according to the administrative act, the strict personal data used

They constitute an essential piece to fulfill the rights of the Institution and the rest of the public workers.

b) That in no case has their veracity been questioned by the

claimant.

c) That the purpose of all these actions is none other than to carry out the execution of the Judgment, preserving the rights of all interested parties in your solution.

d) That the use of these essential personal data of the Mr.***POSITION.2, have been reduced, fundamentally, to the internal scope of the Administration, guaranteeing that yes, the transparency of the files, in such a way that the protection of personal data be made compatible with digital rights.

e) That, in addition, these essential data used, it is not noticed that it has been breached the duty of confidentiality which, as is known, is complementary to the duties of professional secrecy of public servants. And proof of this duty fulfilled, is that Mr. *** POSITION 2 in his instance does not question this fact, nor the exact nature of what is contemplated in this use.

Four.- And emphasizing in these conclusions that this Secretariat has come informing, it is convenient in this sense to refer to the legal reports of the Agency Spanish Data Protection, which justifies the legitimacy of the person responsible for the processing of personal data, displacing the need for the consent of the interested party, on the one hand and, on the other, defining the principle of confidentiality as complementary to the duty of professional secrecy as justifying this use of the personal data, when proactively the data controller, and having pondered the different interests, he concludes the need for this use.

And in this regard we refer to the following reports:

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□ Report 2017-0289, this report refers to the Judgment of the TC no. 292/2000, which, while enshrining the right to protection of personal data staff, of art. 18.4 of the CE, as an autonomous right and informer of the Constitutional Text, also states that "this Court has declared that the right to data protection is not unlimited, and although the Constitution does not expressly impose specific limits, or refer to the Public Authorities for its determination as it has done with other fundamental rights, not there is no doubt that they will find them in the remaining rights constitutionally protected fundamental rights and legal rights, as it is so requires the principle of unity of the Constitution." The legislator has created a system in which the protection of the right to protection of personal data personnel cede in those cases in which the legislator himself (constitutional or ordinary) has considered the existence of reasoned and well-founded reasons that justify the need for data processing, incorporating said assumptions to standards of at least the same rank as the one that regulates the matter protected. Following this criterion, it must be interpreted that the use of the documents referred to in the query as evidence in court could based on the Spanish Constitution itself, which regulates the right of the parties to obtain effective judicial protection in the exercise of their rights and interests (article 24.1 of the Constitution), and, specifically, the fundamental right of the parties "to use the pertinent evidence for their defense" (article 24.2 of the Constitution)".

And concludes this report, which is written to resolve the scope of the protection of personal data in a judicial process that, ultimately, will be the Court that is hearing the process, the one that determines the Order of Admission of

tests. And in the present case that concerns us, we are not aware, up to now,
no resolution in this regard against this use.

□ Report 2021-0026 defines the confidentiality in the use of data from
personal nature for those responsible for data processing,
as well as all the people who intervene in any phase, all being
They are subject to the duty of confidentiality that is complementary to the
duties of professional secrecy.

Similarly, this report defines the concept of "active responsibility" that
contemplates the Organic Law on Data Protection 3/2018, referring to: In conclusion, the
scope of the information that is provided... will be conditioned by multiple
factors that will be applicable to the specific case and whose assessment corresponds to the
controller, as a further manifestation of the principle of
active liability (article 5.2 GDPR).

Fifth. On the other hand, and for greater abundance, we must delve into the facts that
bring cause of this resource and that are relevant to clarify and conclude the situation
which now arises.

Let us recall that, in the legal proceedings mentioned by the appellant, the
Mr.***POSITION.2 himself provides, as evidence in his favor, (...), and this with the purpose of
show and demonstrate (...). Introduce in the context of the lawsuit, an element of evidence
which was, until then, unknown to municipal officials, since

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10/30

never, at any time prior to that, had Mr.***POSITION.2 given to

know (nor did he have to) (...).

Now, once known (...), and within the workplace in which he claimed to feel harassed, introduces an element that he cannot now retract, pretending to obscure a test that served as a thrown weapon against the prosecuted but without them now being able, at their discretion, to use it in the same context.

Thus, one must resort to the doctrine of own acts, reiterated and consolidated by jurisprudence, and according to which it is not possible to invoke facts or rights, and then retract the allegations. If in the context of a procedure, regardless of the jurisdiction, it was intended to benefit from a situation, not can now, but assume, the part of said situation that can harm him, especially taking into account that neither the City Council nor its managers have disclosed any information regarding (...), (given that (...) has been maintained in the within judicial or administrative proceedings with restricted access), but rather on the contrary, having been invoked by himself, the City Council, within the judicial lawsuits assumes said allegation for itself and values it in its fair measure, as it is relevant and fundamental given the work he performs in the City Council.

The Constitutional Court says in a judgment dated January 30, 1995:

"According to the doctrine of own acts that prevents the party from adopting a contradictory behavior, and the general principle of good faith in the exercise of rights, which presides over the procedural actions, expressly required in the procedural scope (arts. 7.7 CC and 11.1 LOPJ), (SSTC 67/1984, 73/1988 and 3/1991)".

And this is also how the Supreme Court, Third Chamber, pronounces itself in a judgment of 22 January 2007:

"The principle of protection of legitimate expectations has also been accepted by the jurisprudence of this Chamber of the Supreme Court (among others, in the Judgments of 1

February 1990, February 13, 1992, February 17, June 5 and July 28, 1997), and is enshrined in Law 30/1992, of November 26, after its modification by Law 4/1999, which in its article 3, whose number 1, paragraph 2, contains the following wording: 'Equally, they (Public Administrations) must respect in their acting on the principles of good faith and legitimate trust'. The interpretive context of these legal principles is noted in the Statement of Motives of the aforementioned Law administrative procedure, when it states the following: 'In the preliminary title it is introduce two principles of action of the Public Administrations, derived from the legal certainty. On the one hand, the principle of good faith, applied by the contentious-administrative jurisprudence even before its receipt by the title preliminary of the Civil Code. On the other hand, the principle, well known in law European administrative procedure and also collected by jurisprudence contentious-administrative, of the legitimate trust of citizens that the performance of the Public Administrations cannot be arbitrarily altered' (reiterated in STS –3rd Room–, of 10/18/2012).

The same Court, outlining its doctrine, affirms further on:

“the doctrine of own acts, based on the protection of trust and the rule of good faith, is formulated in the sense that whoever believes in a person a

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11/30

confidence in a certain apparent situation and thereby induces it to act in a

a certain sense, on the basis of which it has relied, cannot furthermore

pretend that that situation was fictitious and that what should prevail is the situation

real" (SSTS 3-12-08 and 4-21-06), demanding that such acts be an expression unequivocal consent (SSTS 6-7-10, 10-20-05 and 1-22-97) or that result unequivocal, not proceeding its claim when the acts are flawed by mistake or wrong knowledge (SSTS 5-8-06 and 1-21-95), so that the incompatibility or contradiction between past and current conduct (SSTS 25-3-07 and 1-30-99) and there must not be any margin of error for having acted the subject with full awareness to produce or modify a right (SSTS 7-12-97 and 1-27-96)" (STS 06/21/2011).

Thus, the situation created by Mr. ***POSITION.2 himself, cannot now become inexistent, given, as has been expressed, the relevance for their daily work. If he The alleged fact, which is (...), was relevant to Mr. ***POSITION.2 to accuse, not can now be retracted (...), when the part of the report is true and essential contributed and essential and fundamental to resolve the conflict in all variants exposed that protects the legitimate interest of the City Council, the rights of the Mr. ***POSITION.2 and the rights of the rest of the officials.

In summary, as a final conclusion, in the opinion of ***DEPARTMENT.1 the Authority of the Mayor through the administrative act described and the use of personal data that have been exposed in this report, as well as the use of the same, in its essential part, as has been exposed, in our opinion, are justified in the scope of the weighted and transparent legality for the achievement of the stated objective, as it is essential for the execution of the judicial sentence and the solution of the conflict in its entirety, respecting all the rights of the parties.

PROPOSED RESOLUTION

(art. 175 of the ROF)

First.- Consider the use of personal data referred to by the

Mr. *** POSITION 2 lawful, we ponder, loyal and transparent not violating the

right to the consent of Mr.***POSITION.2 but displacing the same for the satisfaction of the legitimate interest recognized in Law 7/85, Law 39/2015, Law 29/98 and Law 31/95, November 8, on Occupational Risk Prevention, as well as art. 24.2 EC.

Second.- Not being able to delete from the electronic administration system "Manages" the reports that it refers to based on the principle of transparency, insofar as it allows us to Find yourself in a new electronic Administration that clearly refers to both the Law 39 as Law 40/2015 and is thus developed by Decree 203/2021, March 30, which regulates the performance and operation of the Public Sector by electronic means and by be these files related to the execution of the Judgment that puts an end to the conflict, guaranteeing all the rights of both the City Council and the rest of the public servants.

Third.- To give the minimum and essential extension of the character data personnel referred to by Mr.***POSITION.2, in the files (...) request from Mr.

In charge of the UTIC that in these files the access is restricted allowing the

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12/30

same only to the Secretary of the City Council in one case (...) and, in the other to the Delegate of Occupational Risks (...), the latter official having to incorporate

In this file, the report referred to by Mr. *** POSITION 2 in the second request.

Fourth.- Complying with the third request, send Mr.***POSITION.2 to the Bulletin Official of the Province no. 14, of 20XX "Final approval of the Ordinance regulator of the Electronic Administration of the Hon. Zamora Town Hall."

And based on the powers granted to me by the Law, I RESOLVE:

First.- Consider the use of personal data referred to by the

Mr. *** POSITION 2 lawful, balanced, loyal and transparent not violating the

right to the consent of Mr.***POSITION.2 but displacing the same for the

satisfaction of the legitimate interest recognized in Law 7/85, Law 39/2015, Law 29/98 and

Law 31/95, November 8, on Occupational Risk Prevention, as well as art. 24.2 EC.

Second.- Not being able to delete from the electronic administration system "Manages" the

reports that it refers to based on the principle of transparency, insofar as it allows us to

Find yourself in a new electronic Administration that clearly refers to both the

Law 39 as Law 40/2015 and is thus developed by Decree 203/2021, March 30, which

regulates the performance and operation of the Public Sector by electronic means and by

be these files related to the execution of the Judgment that puts an end to the

conflict, guaranteeing all the rights of both the City Council and the rest of the

public servants.

Third.- To give the minimum and essential extension of the character data

personnel referred to by Mr.***POSITION.2, in the files (...) request from Mr.

In charge of the UTIC that in these files the access is restricted allowing the

same only to the Secretary of the City Council in one case (...) and, in the other to the

Delegate of Occupational Risks (...) the latter official having to incorporate

this file the report referred to in ***POINT.2 in the second request.

Fourth.- Complying with the third request, send Mr.***POSITION.2 to the Bulletin

Official of the Province no.14, of 2016 <<Final approval of the Ordinance

regulator of the Electronic Administration of the Hon. Zamora Town Hall>>"

THIRD: On December 1, 2021, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On August 10, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR.

Notified of the Commencement Agreement, the CITY COUNCIL submitted a written statement of allegations in which, in summary, he stated:

-That they disagree with the Agreement to Initiate the Sanctioning Procedure received, since that scrupulously comply with the interpretation of the Law for the Protection of

Data, which previously already considers the Decree of that authority of August 26,

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28001 – Madrid

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13/30

2021, which makes visible that of October 7, 2021, and in turn makes an interpretation according to the Constitutional Court, of the unnecessaryness of obtaining consent of the affected person in terms of communication of aspects related to their health, when previously it has been carried out from the principle of active responsibility, valuing the risk that the treatment could generate, as is the case.

In this regard, this agency is unaware of the judgment of the Court

The Constitutional Council is referring to the CITY COUNCIL, since they do not cite it in his statement of allegations, according to which data of health of a person without the need to obtain their consent.

However, it is worth mentioning for our part Judgment 76/2019, of May 22

of 2019, of the Constitutional Court, on whose legal basis 4 the

following reference:

“According to paragraph 1 of article 9 GDPR, the use of processing of personal data... data related to health...”

And also cite Judgment 70/2009, of March 23, also of the Court

Constitutional, in which it is stated:

"Within that proper and reserved area in front of the action and the knowledge

of others that preserves the right to privacy contained in art. 18.1

CE, undoubtedly includes information relating to physical or mental health

of a person, to the extent that the data relating to health refer to

constitute an important element of his private life (in this sense ECHR

of October 10, 2006, case L.L. c. France, § 32). To this affirmation

adds the injunction of the European Court of Human Rights that establishes

that, taking into account that respect for the confidential nature of the

Health information is an essential principle of the legal system

of all States party to the Convention, domestic legislation must provide

the appropriate guarantees to prevent any communication or disclosure of

personal data related to health contrary to guarantees

provided for in art. 8 of the European Convention on Human Rights (STEHR

case Z. c. Finland of February 25, 1997, § 95, and case L.L. c. France, of

October 10, 2006, § 44)".

-That it complies with Law 30/2015, of Common Administrative Procedure of the

Public Administrations, how it is notified, and how the acts are communicated

administrative orders issued by the Mayor.

In this regard, this agency points out that no

non-compliance in that sense, so it has nothing to add.

-That, with the communication to the Services, ****DEPARTAMENTO.1 does not breach the

*** DECREE.1, on the contrary, processes it reinforcing its applicability.

That, through ***DECREE.2, the functions are distributed between ***POSITION.2 and

***POINT.3.

That the judicial conflicts that ***PUESTO.2 raises with the City Council are because considers that it can freely delegate and withdraw the delegation, a circumstance that the *** DECREE.1, in view of the Supreme Court Judgment of May 7, 2021, clarifies

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28001 – Madrid

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14/30

that (...) is subject to the municipal organization that does not depend on the

***POINT.2.

In this regard, this Agency once again points out that in the present

Sanctioning procedure, no breach of any of the

no Decree issued by the Mayor, nor has it entered into an assessment of the form of organize the work of the CITY COUNCIL.

-That for the execution of the Judgment a medical report is required so that the City Council can execute it, in such a way that it is preserved in the best possible way the public service and the rights also of the health of one's own *** POSITION.2 and

POINT.3. That they consider it essential to transfer the base document on the that the file be initiated by the Data Protection Agency, as dictated by the authority of the Mayor, since this knowledge is necessary for the different Heads of Service, and that this communication, not publication, already appears minimized in the terms referred to in the Data Protection Law, ignoring all those others data that appear in the forensic report itself, which are considered unnecessary for the role of the complainant in its public projection (...). And clear the doubts of the tendency of Mr.POSITION.2 to recover all functions, as inferred from the reprimand issued by the TSJ in the Order of June 11, 2021, a circumstance

this one to return to assume all the functions of direct contact with the Heads of Service, that this fact frightened them. And that in the face of these fears that holders of the Services, expose before ***DEPARTMENT.1 of the City Council, this communicates *** DECREE.1, which from the respect for data protection, of the six pages of the forensic report, it only includes exclusively what the Order already referred to (...).

In short, that the paragraph on which the complaint relates and on which the disciplinary procedure, is not the product of lack of prudence, but is product of a lawful, loyal, transparent and prudent reflection, after having pondered the protection in order to pursue, of protection of the public service and the right of all parties involved. And it does not proceed to its anonymization precisely for the purpose pursued, that is, the protection of all employees and to guarantee the public service, considering that the transferred data is essential, transferring exclusively that part of the report essential for the purpose described. That is to say, appears already minimized, not incorporating more in the Decree that is communicated than what strictly pertaining to what is of interest in the public aspect as ***POINT.2 of the City Council, and that the Heads of Service should know.

In this regard, this Agency considers, as has already been stated in the Initiation Agreement, that personal data must be "adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed".

In the present case, the communication that ***DEPARTAMENTO.1 makes to the Heads of Service, its purpose is to clarify doubts about how they should process their files to (...), since it seems that after several judicial processes and dismissals labor, the Heads of Service were not clear about the division of functions in force between ***POINT.2 and ***POINT.3, and for this purpose, it is excessive, and therefore both violates data protection regulations, transcribing a series of data

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28001 – Madrid

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15/30

related to the health of the complaining party, obrantes in judgment
judicial.

As understood by this Agency, to clarify such doubts, the
initial notification (a copy of which is in this file) according to which:

"We transfer the Decree of Mr. Mayor, *** DECREE.1 (file (...)), by
which, until the corresponding instructions are given, is applied in
all its points *** DECREE. 2, that is, the same criteria that came
applying before May 3, 2021"

Assuming that the Heads of Service know the content of the
Decree *** DECREE.2, the need to add the
content of a (...) of the complaining party, considering that it is
their knowledge is essential for the Heads of Service to carry out such
Decree of the Mayor.

-That according to the report of the Legal Office 26/2021 of the AEPD itself on whether

It is strictly essential to notify the Prevention Delegates

who are aware of data subject to data protection, concludes:

"... is the person responsible for the treatment, advised, where appropriate, by the Delegate of
Data Protection, which corresponds to carry out the judgment of weighting and the
application of the principle of minimization, taking into account the circumstances of the case
specifically, derived... from the application of the principle of proactive responsibility,
has information that this Agency does not know about the structure,

organization, staff, etc. of the entity, which can be taken into account when to carry out said assessment. Therefore, the data controller must have into account if the communication of personal data to the Prevention Delegates, exceeds the judgment of proportionality in relation to the application of the principle of minimization, taking into account that it is he who knows the characteristics of the structure and organization of the work center and can establish whether a certain information is or is not necessary for the Prevention Delegates to develop their functions.”

And all these weighted judgments are those that the City Council, on the subject that we occupies, has applied.

In this regard, this Agency points out that the aforementioned report refers to communication of personal data to the Prevention Delegates, and not to Heads of Service or staff in general of any organization.

FIFTH: On August 24, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency impose on CITY COUNCIL OF ZAMORA, with NIF P4930500F, for an infraction of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR a penalty of warning.

SIXTH: Once the proposed resolution has been notified, the CITY COUNCIL presents a new brief of allegations in which it is ratified in those already presented, and states:

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28001 – Madrid

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16/30

"The Instructor in the proposed resolution considers it proven that the

The only function of the communication of ***DECREE.1, was to clarify doubts of how the heads of services should process their respective files to

*** DEPARTMENT.2. And with all due respect, this test that Mrs.

Instructor, it does not correspond to reality, and we make it clear in the brief of allegations of August 17, 2022, especially in the last paragraph of section I.III. and section a) of I.IV.

The prudence and secrecy of ***DEPARTMENT.1 in its internal note, has been used by Mrs. Instructor to the detriment of the Municipal Institution, since the

The fundamental reason for this communication to the Services is found in the alarm that is caused in them, given the fact that Mr. *** POSITION.2

returned to his old ways, when he recovered his functions (...). And those are the facts real, and not those that with all due respect the Instructor considers approved, simplifying the serious problem that the City Council has to the simple reminder of the Decree *** DECREE.2.

It is provided as evidence No. 1 and complementary to the previous ones that

We will reinforce in this written document, of those already made, the following:

-Procedure of ***DEPARTMENT.1 signed (...), and referred to one of the Heads of Service, due to the treatment in the Local Government Board of the occupation of the positions of the marquee of Hoteliers of the Market of Abastos de Zamora during the year XXXX,... an incident occurred with the Mr.***POSITION.2, arriving with an exalted tone to brand (...) a scoundrel, causing some uneasiness etc. ...

Proof No. 2 is provided, in which it is stated by *** DEPARTMENT. 1 and who signs on November 28, 2018, expressions similar to evidence no. 1, poured by Mr.***POSITION.2 to (...), which like others we ignore for his protection:

(...)

This ***POINT.1 also wants to state that similar expressions

They have been pouring out to different people for the aforementioned Mr. *** POSITION.2

outside the municipal headquarters, transferring to this *** POSITION.1 the impression of

these interlocutors, in addition to noticing irregular behavior, a

certain obsession with certain members of the City Council, both responsible

politicians as civil servants, in addition to his first impression of not

join the City Council until after the next elections, which

it has repeatedly been manifested to the aforementioned people.

I.II. Regarding the not always need for consent in the data as

which it brings us, is an unquestioned fact of the legislation of

Data Protection, when there are reasons of suitability, moderation and

when more benefits and advantages are derived from this adopted measure for the

general interest, that damages to the assets or values in conflict, such as

the case.

As proof of the above, we refer to Regulation (EU) 2016/679 of the

Parliament and the Council, recital (54) "The treatment of categories

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28001 – Madrid

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17/30

special personal data, without the consent of the interested party, can

be necessary for reasons of public interest, in the field of public health,

that includes the art itself. 6 as legality of the treatment or art.9.

And in the present case, through the intellectual process and in view of the

situation analyzed, it is considered that it should be communicated to the Heads of Service, minimizing the data to the essentials, the situation (...) of the Mr.***POSITION 2, since it is so referred to in Law 31/95, on Risk Prevention Labor, which is based in addition to art. 43.1 of the C.E, which states that "it recognizes the right to health protection" art. 40.2 of the E.C. that "entrusts the public powers, as one of the guiding principles, to ensure for safety and hygiene at work" and that develops the art. 15 of own law, as obligations of the administration and in parallel as obligations of the official in art. 29 to communicate his situation, so that he can ensure working conditions that are safe and do not involve risks to the safety and health of workers.

And this has been reiterated by the Spanish Data Protection Agency itself through his Legal Office. Let us remember in this regard, report no. 2017-0289, and referred to in this report, the sentence of the TC nº 292/2000, when indicating that the right to data protection is not unlimited, and that it already includes in more detail the Decree of October 7, 2021, provided as document number 4 of evidence on page 4 7. That is, the Legislator has created a system in which the protection of the data protection right of personal character yields to those cases in which the legislator himself (constitutional or ordinary), has considered the existence of reasons reasoned. And in the present case the City Council, through *** DEPARTMENT.1, as responsible for these data, deems it necessary after an intellectual process, with an elective judgment, which transfer minimized the situation (...) of Mr. ***POSITION.2, as a person with dimension public, it was and is necessary to know by those responsible for the services by derive from this communication more benefits or advantages for the interest

general that damages caused; and not only for the general interest, but also to preserve and ensure the safety and hygiene at work of the Heads of Service to whom this communication is made, as it constitutes imperative mandate, as a guiding principle based on art. 40.2 of the EC, imposed by Law 31/95, on Occupational Risk Prevention, specially developed in art. 14 and 15.

And this duty of the Administration must be accompanied by the obligation to the workers, in the present case of Mr. *** POSITION 2 to inform immediately about any situation that, in his opinion, involves a risk for the safety and health of workers, but also to cooperate with the Administration so that, in this case, the City Council can guarantee working conditions that are safe and do not pose a risk to the safety and health, in this case, for public servants.

And this is the scenario, on which the intellectual process operates with the judgment elective to communicate ***DECREE.1, without hiding the strict paragraphs that describes the situation (...) of Mr. *** POSITION 2, a situation considered ideal and

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28001 – Madrid

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18/30

effective to guarantee the general interest and the particular interest of the Services tormented with the possibility of being subjected to the outrages of the Mr.***POINT.2, who also uses the complete forensic report regarding multiple conflicts, appeals, litigation and complaints in criminal proceedings, not with in order to cooperate, but rather as a thrown weapon against all those servants

public that do not settle for their way of understanding the law, with the

consequent

missing them,

ridiculing and threatening them.

invectives frightening them,

I.III. We consider it equally applicable to the present case, and not only as

maintains Ms. Instructor, applicable to Risk Prevention technicians

Labor, the legal report of the cabinet of the Protection Agency itself

of Data, since it is a comprehensive, detailed and wide-ranging report.

I.IV. Test no.4: Publication in the newspaper **DIARIO.1, on January 9,

20XX, after issuing the Order of December 20, 20XX, in which it includes the

situation (...)

of Mr. ***POINT.2, the newspaper “**DIARIO.1” publishes

this paragraph in its entirety:

“... (...).”

Despite this public dimension of the event and of Mr.***PUERTO.2 himself in his

public aspect, the subsequent communication of the Decree to the Services was

precise and it is necessary that all the Chiefs with such a close relationship with (...)

know your situation so that in this way you can accept these (..), for your

own occupational health and for public service: this knowledge of their

situation has done a lot of good for the City Council and has done a lot

well reassuring the Heads of Service tormented by his behavior and who

thus, it is transferred to ***DEPARTMENT.1, which constitutes the base of the process

intellective with the elective judgment described.

I.V. Test no.5: In this public dimension, Mr.***POSITION.2

permanently victimizes himself, when really he is the harasser, who

Whenever he has the opportunity, he refers to his permanent casualties. As a test

The public statements made by Mr. ***POSITION.2 are provided to
through his lawyer, on December 31, 2021, where he says that: "(...)..."

B. DEVELOPMENT OF THE PREVIOUS SECTIONS.

I.- The City Council is ratified in the pleadings signed by this
Mayor on August 17, 2022, emphasizing those aspects that the
City Council considers it essential to persuade Ms. Instructor of the
file, that the actions of the City Council, in this proceeding denounced,
has been suitable and effective, obtaining more benefits and advantages than damages,
applying the principles of preventive action, which constitute obligations
for the City Council to adopt measures that put the protection
collective to individual, as referred to in Law 31/95, on the Prevention of
Occupational Risks, which based on art. 40.2 of the C.E, entrusts to the
public powers, as one of the guiding principles, to ensure the security and
hygiene at work and that develops the art. 15 of the Law itself.

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28001 – Madrid

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19/30

II.- The communication made is the product of an intellectual and intimate process,
which ends with an elective trial, after having assessed the effects, is
that is, the risk of communicating the situation (...) of Mr. ***POSITION.2, minimized
this communication to what is strictly necessary, and exclusively to what
pertaining to its public aspect.

III.- And this reasoning is defended by the Legal Office of the company itself

Data Protection Agency, in report 2021-026. And this precisely is what the City Council has done through this intellectual process described, which we ratify in the arguments already exposed in the brief of the August 18, 2022,

The ***DEPARTMENT.1, simply complying with the procedure, communicates, reassures and promotes the best functioning of the public service municipal. And the Heads of Service comply with the duty of confidentiality reinforced with the duty of professional secrecy. These two reasons among others are those that the City Council considers through this elective process described to strictly communicate what affects the situation of the

Sr.***POSITION.2 in its public dimension, ignoring the rest of the extensive report coroner and that, if so requested by Mrs. Instructor of the file, this City Council would be transferred in full, if it were questioned that effectively it is minimized to the strictly essential, as it already did the Order (...), of the Investigating Court (...) of Zamora and the Decree itself release.

(...)

It corresponds to Mr.***POSITION.2 to immediately report any situation that, in his opinion, entails a risk to the integrity and health of the workers, on the one hand, but on the other, it is also up to them to cooperate with the City Council so that it can guarantee working conditions that are safe and do not pose risks to the safety and health of the workers (art. 29 in different sections of Law 31/95).

However, despite the obligations of Mr.***POSITION.2, so that he can comply adequately by the City Council theirs in the prevention of

occupational hazards of all personnel, and despite the fact that Mr.***POSITION.2 knew your situation (...) (if so requested by the Instructor, the date on which he knows this situation) when he does it in 20XX it is not to fulfill their duty but to accuse the City Council and the civil servants for not calming down to their way of seeing professional activity; I don't know communicates his situation, but uses it as a throwing weapon throughout the different claims, administrative resources and judicial resources, both in contentious-administrative and criminal matters.

In summary, the City Council considers that the communication made has been necessary and effective to achieve the proposed objective, that is, that the behavior of Mr. ***POSITION.2 intolerable, also in the public sphere, It was necessary and it is necessary that all the Heads of Service with such close relationship with ***DEPARTMENT.2 know your situation so that in this

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28001 – Madrid

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20/30

way you can accept these (...), for your own occupational health and for the service public:

And this is the process that the City Council has adopted and that undoubtedly in the meritorious report of the Legal Office of the Spanish Agency of Data Protection no. 2021-0026 recognizes as the work of the person in charge of treatment,

IV.- And the decree ***DECREE.1 minimized and regarding the reference (...) of Mr.***POSITION.2, it is true that it is not eliminated from the

communication, but certainly no information is disclosed

Reserved for Heads of Services who, due to their close and constant relationship

with ***DEPARTMENT.2 they all knew the (...) at the time referred to

in the Decree that, let us remember, only refers to (...).

V.- Lastly, and as a complement to what has already been stated, highlight again that

The Heads of Service have respected professional secrecy and the

duty of secrecy And here, finally, we have to refer to the evidence provided

as number 5 that strengthens the need to transfer the situation (...) of the

Sr.***POSITION2 to the Heads of Service. That is to say, it is entrenched in the idea,

as the Legal Office itself refers, that the Heads of Service must

know your situation (...) in its strict terms to preserve the Service and

also their right to work with peace of mind even though they may in

occasions to be (...) by Mr.***POSITION.2, who, if he did not know his situation,

would be unbearable and that knowing it reinforces the duty to endure this

situation.

VI.- For all the above, REQUESTS:

First.- That this document be admitted with its allegations to the proposal

of the resolution of the disciplinary procedure, notified to the town hall with

R.E August 24, 2022, as well as the proposed tests.

Second.- That, after the appropriate procedures, the file be archived

disciplinary action instituted, since no cause was found to justify it, since the

actions followed by the City Council are considered suitable,

necessary and balanced deriving more benefits than harm

framed in the principles of preventive action, which corresponds to the

City Council to adopt measures that put collective protection before

individual as we have justified, in relation to the end pursued.

FIRST OTHER IF I SAY: Admit as evidence:

Test no. 1: Diligence of *** DEPARTMENT. 1 of the City Council, signed on August 29, 20XX, qualifying Mr.***POSITION.2 to Mr.**POSITION.4 of "scoundrel".

Test no.2: Proceedings of ***DEPARTMENT.1 of the Town Hall signed on November 28, 20XX, describing the situation of the behavior of the Sr.***POS.2 with the most responsible officials, such as Heads of Service, in addition to political leaders.

C / Jorge Juan, 6

28001 – Madrid

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sedeagpd.gob.es

21/30

Test no. 3: Order of December 20, 20XX, of the Investigating Court (...), agreeing to the definitive file of the proceedings of Mr. *** PUESTO.2 against municipal officials and which strictly includes that part of the forensic report pertaining to the public projection of Mr.***PUESTO.2 that justifies his conduct in public affairs, behavior due to (...).

Test no.4: Publication in the newspaper **DIARIO.1, dated January 9, 20XX, the (...) from ***POINT.2 that the Car had previously picked up.

Test no. 5: Press release from Mr. *** POSITION 2 of the City Council of Zamora, December 20XX, which publicizes that "... (...) ...".

Exhibit no. 6: Judgment of the Superior Court of Justice of Castilla y León, (...), which dismisses the Appeal confirming that of the Court of Administrative Litigation of Zamora, with costs imposed on the appellant, not having violated any fundamental right by the City Council.

Exhibit no. 7: That a statement be taken from Ms. C.C.C., that she testify the treatment received by Mr.***POSITION.2 in the Local Government Board of the year 20XX, causing her to cry and having to intervene (...) before the aggressiveness of Mr.***POSITION.2 in a matter related to (...).

Test no. 8: A statement is taken from the employment officer D. D.D.D. on the treatment received by Mr. ***POSITION.2 in matters related to (...) and that, in view of his behavior, he must have intervened (...) to reassure, fundamentally, to Mr.***POSITION.2.

Test no. 9: That a statement be taken from (...), D^a E.E.E., about the situation Lived with Mr.***POSITION.2.

Test no. 10: That a statement be taken (...) D^a E.E.E., D.F.F.F., on the situation experienced and observed with Mr. *** POSITION.2.

Exhibit no. 11: That a statement be taken from the Lawyer, Ms. G.G.G., on the very serious incident that arose with Mr. *** POSITION 2, due to the settlement of the contract of (...), between (...), D. H.H.H., Mr. (...), D. I.I.I. and mr. ***POINT.1.

Test no. 12: That a statement be taken from *** POSITION 1 of the City Council, D.B.B.B.

Test no. 13: That a statement be taken from *** POSITION 3, Ms. C.C.C..

Exhibit no. 14: Resolution of the Public Prosecutor in Castilla y León, entry registration July 27, 2022, that after the complaint of Mr. *** POSITION.2 of "... workplace harassment suffered by him (...) ..." "... it has been agreed to suspend our actions and proceed to file the file."

Test no. 15: That the document sent in the file "(...) be admitted.

C / Jorge Juan, 6

28001 – Madrid

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22/30

Test no. 16: Statement of Mr. *** POSITION 5, D. J.J.J. before the Court of Administrative Litigation (...), on January 29, 20XX

Test no. 17: That a letter sent to the Attorney of the Common of Castilla y León, signed by D^a C.C.C.

Exhibit no. 18: Letter sent by *** POSITION 5 to the Public Prosecutor of Castile and Leon.

Test no. 19: Some press releases that include the intervention of the Mr.***POINT.2 in the year 20XX, at a conference in ***LOCATION.1 against the most responsible public officials, as well as the political makers.

Test #20: Some extensive evidence of the advertising that this behavior of Mr.***POST.2 picks up the press over the years in the City of Zamora, with special reference to that note from press in which ***POSITION.2 qualifies the current ***POSITION.5 of (...). He ***DATE.1, Mr. himself appears in the press.***POSITION.2:

"He

Mr.***POINT.2 is compared to (...)" .

Test no.21: Press release from ***DIARIO.3, year 20XX, revealing a identical behavior on that date, to the behavior that has followed in the Zamora City Council against political leaders and officials.

And if possible, collect all the information and conflicts that this

Mr.***POSITION.2 maintained (...), both in the administrative field and in the judicial. It is interesting that a statement be taken from the then ***POINT.1 of the

Town Hall, D.K.K.K. and casualties and health problems caused by

the behavior of Mr.***POSITION.2.

SECOND OTHERWISE I SAY: that all the information be incorporated into these allegations

documentation provided by this City Council, pending if so

requested by Mrs. Instructor, any other test that she considers so,

including full forensic report, if minimization is in question

carried out by this City Council, as the court order itself did.

Also, if the Instructor so requires, the close relationship will be provided

between the Heads of Service and (...), who currently carries out the

POSITION.3, and that being back in the hands of Mr.POSITION.2 is the basis

on which is constituted the fear of the services that transfer him to the

*** DEPARTMENT.1, and which constitutes the fundamental reason for the process

intellective of the communication of the Decree *** DECREE.1”

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

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28001 – Madrid

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23/30

FIRST:

It is proven that from ***DEPARTMENT.1 of the

TO THE CITY COUNCIL, a communication was sent to all the Heads of Service that included

the full text of the Mayor's Decree *** DECREE.1, which contains a report of

*** DEPARTMENT.1 on execution of judgment number XXX/2021 of the TSJ of

Castilla y León, of (...), and clarification order of the same of XX/XX/2021.

SECOND: It is proven that said Mayor's Decree refers to

Expresses health data relating to the claimant party specially protected.

THIRD. It is proven that the internal communication made by

*** DEPARTMENT.1 to the Heads of Service, in which the Decree is transferred

of Mr. Mayor, *** DECREE.1 (...), is carried out with the sole function of clarifying the

Doubts about how they should process their files to Intervention, as set out

in the transfer document: (the underlining corresponds to the AEPD)

“Doubts have been raised with this General Secretariat about how they should process their

files to ***DEPARTMENT.2. And on this particular we transfer the

Decree of Mr. Mayor, *** DECREE.1 (file (...)), by which, until

the corresponding instructions are given, the Decree is applied in all its points

*** DECREE.2, that is, the same criteria that had been applied before the 3rd of

May 20XX, (...).

FUNDAMENTALS OF LAW

Yo

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.”

With respect to the allegations presented to the resolution proposal, we proceed to respond to them.

II

FIRST: The CITY COUNCIL alleges that the communication function of the Decree

*** DECREE.1, was not only to clarify doubts about how they should process the

heads of services their respective files to ***DEPARTMENT.2, as has been

considered this Agency in the motion for a resolution, since the fundamental reason

of this communication to the Services is found in the alarm that is caused in the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

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24/30

themselves, given the fact that Mr.***POSITION.2 returned to his old ways, upon recovering the functions (...), and again "frighten them, making them less, ridiculing them".

-In this regard, this Agency once again indicates, as was done in the motion for a resolution, that the internal communication led by

*** DEPARTMENT.1 to the Heads of Service, a copy of which is in the

file provided by the claimant, refers exclusively to

to the indication of how they should process their files to

*** DEPARTMENT.2. It is not indicated at any time in said

communication, which also has the purpose of informing of possible (...) to

the complaining party, and that it is necessary to know to know how to process the

files to ***DEPARTMENT.2.

In said communication, it is indicated to the Heads of Service that in order to resolve the

doubts, they are given transfer of the Decree of Mr. Mayor, *** DECREE.1 ((...)), by which, "until the corresponding instructions are given, is applied in all its points *** DECREE. 2, that is, the same criteria that came applying before May 3, 2021"

All the problems raised by the CITY COUNCIL regarding the

The action of the complaining party is not the subject of this proceeding, which is limited to assessing whether the provisions of article 5.1.c) of the GDPR, considering that it was not necessary to refer to (...) on the part claimant in the communication made.

SECOND: The CITY COUNCIL alleges that it is not always necessary to consent.

As proof of the above, we refer to Regulation (EU) 2016/679 of the Parliament and Council, recital (54) "The treatment of special categories of personal data, without the consent of the interested party, it may be necessary for reasons of public interest, in the field of public health, which includes the art itself. 6 as legality of treatment or art.9. And in the present case, through the process intelligence and in view of the analyzed situation, it is considered that it should be communicated to the Heads of Service, minimizing the data to the essentials, the situation (...) of the Mr.***POSITION 2, since it is so referred to in Law 31/95, on Risk Prevention Labor, which is based in addition to art. 43.1 of the C.E, which states that "it is recognized the right to health protection" art. 40.2 of the E.C. that "entrusts to the public powers, as one of the guiding principles, ensure safety and hygiene at work" and that develops the art. 15 of the law itself, as obligations of the administration and in parallel as obligations of the official in art. 29 of communicate their situation, so that they can guarantee working conditions that are safe and that do not pose risks to the safety and health of the

workers

-In this regard, this Agency insists that it is not assessing the
the need to notify the Heads of Service of the (...) of the party
claimant so that they understand their way of acting, but what is being examined
is the fact of including such information in the answer to a specific question,
that is, how to process your files

, since

to indicate the way of acting of the Heads of Service, as or to whom they should
to ***DEPARTMENT.2

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

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25/30

address, it is not essential to inform you of the health data of
other workers of the TOWN HALL.

THIRD: The CITY COUNCIL alleges that there was a publication in the newspaper

**DIARIO.1, on January 9, 20XX, after issuing the Order of December 20, 20XX,

in which (...) of Mr. ***PUESTO.2 is collected since the newspaper "***DIARIO.1" publishes
this paragraph in its entirety: "... (...)".

Despite this public dimension, of the fact and of Mr.***POSITION.2 himself in its aspect
public, the subsequent communication of the Decree to the Services was precise and is precise
that all the Heads with such a close relationship with ***DEPARTMENT.2 know
their situation so that in this way they can accept (...), for their own occupational health
and for the public service: this knowledge of their situation has done a lot of good to the
service of the City Council and has done a lot of good reassuring the Head of Service

tormented by his behavior and that is how he is transferred to *** DEPARTMENT.1 that

it constitutes the base of the intellectual process with the described elective judgment.

-In this regard, this Agency points out that, even having been published in

press the data, this does not exempt subsequent processing from liability

to be done Each participant in the treatments is responsible for the

treatments you carry out, regardless of what others do.

FOURTH: The CITY COUNCIL alleges that ***POINT.2 permanently

victimizes, when really he is the harasser, that whenever he has the opportunity he refers

of their permanent casualties. As evidence, the public demonstrations that

makes *** POSITION 2 through his lawyer, on December 31, 20XX, where

says that: "(...) ..." (news published in the newspaper "****DIARIO.3" on ***DATE.1).

-In this regard, this Agency points out that, once again, the issue is not the subject of

this disciplinary procedure.

FIFTH: The CITY COUNCIL alleges that the communication made is the product of a

intellective and intimate process, which ends with an elective judgment, after having

assessed the effects, that is, the risk of communicating the situation (...) of the

*** POSITION 2, minimizing this communication to what is strictly essential, and

exclusively with regard to its public aspect.

-In this regard, this Agency has already indicated, and reiterates in this, that it does not

considers it necessary to refer to data relating to health,

including the mention of (...) of the complaining party, for compliance with the

purpose of the communication made by ***DEPARTMENT.1 of the

City Council to the Heads of Service.

SIXTH: The CITY COUNCIL alleges that, as Administration, it corresponds to them

guarantee the occupational health of all municipal employees, adopting measures

that put collective protection before individual protection (arts. 14 and 15 Law 31/95).

And that in parallel corresponds to ***POSITION.2: report immediately on any situation that, in his opinion, entails a risk to the integrity and health of the workers, on the one hand, but on the other, it is also up to them to cooperate with the City Council so that it can guarantee working conditions that are

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

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26/30

safe and do not involve risks to the safety and health of workers (art. 29 in different sections of Law 31/95)

-In this regard, this Agency does not pronounce itself, since this matter does not is being elucidated in this disciplinary proceeding.

SEVENTH: The CITY COUNCIL provides a series of tests numbered from 1 to 6, and from 14 to 21, on which he bases his allegations.

Likewise, it requests that the following tests be practiced (numbered from 7 to 13):

-Test no. 7: That a statement be taken from Mrs. C.C.C., that she testify to the deal received by ***POSITION.2 in the Local Government Board of the year 20XX, causing crying to it and having to intervene (...) in the face of the aggressiveness of ***POST.2 in a matter related to (...).

-Test no. 8: A statement is taken from the employment officer D. D.D.D. about him treatment received by ***POSITION.2 in matters related to (...) and that, in view of his behavior must have intervened (...) to reassure, fundamentally, the ***POINT.2.

-Test no. 9: That a statement be taken from (...), D^a E.E.E., about the situation experienced

with ***POST.2.

-Test no. 10: That a statement be taken from the Legal Adviser (...) D^a E.E.E., D. F.F.F., about the situation experienced and observed with the ***POSITION.2.

-Test no. 11: That a statement be taken from the Lawyer, Ms. G.G.G., about the very Serious incident that arose with ***POSITION.2, due to the liquidation of the contract of (..), D.H.H.H., (...) D.I.I.I. and Mr. ***POSITION.1.

-Test no. 12: That a statement be taken from *** POSITION 1 of the City Council, Mr. B.B.B.

-Test no.13: That a statement be taken from ***POSITION.3, Ms. C.C.C..

-Regarding the practice of the proposed evidence, this Agency considers it appropriate to reject it for not having proposed at the time timely procedure. It is also considered that the evidence requested they would not serve the merits of the matter dealt with in the sanctioning procedure.

This Agency does not enter into assessing the problems that may exist in the CITY COUNCIL regarding the actions of the complaining party in the performance of their duties, considering that it is outside the purpose of the this procedure, since it has been initiated due to a breach of the

Article 5.1.c) of the GDPR, principle of data minimization, when considering,

As we have been repeating, that in the communication made to the Heads of Service, signed by ***POSITION.1, answers were given to doubts

your records to raised from

"As they should process

C / Jorge Juan, 6

28001 – Madrid

***APARTMENT.2". And to answer that question, this Agency

considers, as has been reiterated several times, that (...) are data that do not are pertinent, adequate, nor limited to what is necessary in relation to the purposes for which they are processed.

Article 5, "Principles relating to processing" of the GDPR establishes:

II

"1. Personal data will be:

(...)

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");"

It must be clarified that this article does not limit the excess of data, but the need. Is

In other words, the personal data will be "adequate, pertinent and limited to the need",

for which they were collected, in such a way that, if the objective pursued can

achieved without excessive data processing, this should be done at all

case.

Similarly, recital 39 of the GDPR indicates that: "Personal data only

should be processed if the purpose of the processing cannot reasonably be achieved by

other media." Therefore, only the data that is "adequate,

relevant and not excessive in relation to the purpose for which they are obtained or processed".

The categories of data selected for processing must be the

strictly necessary to achieve the stated objective and the person responsible for the

treatment must strictly limit the collection of data to that information that

is directly related to the specific purpose that is intended to be achieved.

In this case, the internal communication made by ***DEPARTMENT.1 to the Heads of Service, which aims to clarify doubts about how they should process their files to *** DEPARTMENT.2, and in which the Decree of Mr. Mayor, *** DECREE.1 (file (...)), by which, "until the corresponding instructions, ***DECREE.2 is applied in all its points, it is that is, the same criteria that had been applied", did not require, to take full effect, the inclusion of any report contributed to the cause substantiated in the Procedure Abbreviated (...), which bears judgment XXX/20XX of the TSJ of Castilla y León, especially, of course, the (...):

“(…)...”

Likewise, it was not mandatory to refer to (...) of the complaining party.

These data relating to the complaining party are excessive and unnecessary for the purpose pursued in said communication.

Access to personal data that is not necessary, relevant or adequate, violating the principle of data minimization, constitutes an infringement of what provided in article 5.1.c) of the GDPR.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

28/30

Article 83.5 of the GDPR under the heading "General conditions for the imposition of administrative fines" provides:

IV.

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

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 under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law".

For the purposes of the limitation period, article 72 "Infractions considered very serious" of the LOPDGDD indicates:

"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. (...)"

Article 83 paragraph 7 of the GDPR provides the following:

V

Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and bodies public establishments established in that Member State."

Likewise, article 77 "Regime applicable to certain categories of responsible or in charge of the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

(...)

c) The General State Administration, the Administrations of the communities autonomous entities and the entities that make up the Local Administration.

(...)

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

29/30

2. When the managers or managers listed in section 1 commit

any of the offenses referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

likewise, the measures that should be adopted to cease the conduct or to correct it.

the effects of the offense committed.

3. Without prejudice to what is established in the previous section, the data protection authority

data will also propose the initiation of disciplinary actions when there are

enough evidence for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on the disciplinary or sanctioning regime that

be applicable.

Likewise, when the infractions are attributable to authorities and executives, and

accredit the existence of technical reports or recommendations for the treatment that

had not been duly attended to, in the resolution in which the

sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or regional Gazette that

corresponds.

4. The data protection authority must be informed of the resolutions that fall in relation to the measures and actions referred to in the sections previous.

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF ZAMORA, with NIF P4930500F, for an infringement of Article 5.1.c) of the GDPR, typified in Article 83.5 of the GDPR, a warning sanction.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF ZAMORA.

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

C / Jorge Juan, 6

28001 – Madrid

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30/30

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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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