

□ Procedure No.: PS/00347/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant), dated 02/14/2020, filed
claim before the Spanish Data Protection Agency. The claim is
directed against the CITY COUNCIL OF EL ESCORIAL with NIF P2805400E (hereinafter,
the claimed). The grounds on which the claim is based are: the claimant, worker
of the City Council, states that when publishing the list of granting of aid of
social action violates data protection regulations; Note that in the list
The amount assigned to each worker in relation to the aid requested is stated; according to
the claimant the list of aid has been sent to all the workers of the
consistory.

Provides printing of the published list.

SECOND: Upon receipt of the claim, the Subdirector General for Inspection
tion of Data proceeded to carry out the following actions:

On 06/03/2020, the claim submitted was transferred to the defendant for analysis
and communication to the claimant of the decision adopted in this regard. Likewise, it
required for it to send certain information to the Agency within a period of one month.
tion:

- Copy of the communications, of the decision adopted that has sent the claim
regarding the transfer of this claim, and proof that the claimant-

You have received the communication of that decision.

- Report on the causes that have motivated the incidence that has originated the claim.

mation.

- Report on the measures adopted to prevent similar incidents from occurring.

lares.

- Any other that you consider relevant.

On 09/11/2020, the respondent sent a letter in which he stated, in summary: that the re-claim refers to the internal remission of provisional and definitive resolutions.

grants granted to municipal employees within the framework of the action fund

municipal social formation and that said resolutions only contain the name, surnames and

amounts assigned to each worker and requirement of corrections in the contribution

documentation.

That it is necessary for the worker to know both data, otherwise

It would make sense to open a public information procedure and for the worker to know

the specific allocation of amounts that would allow you to exercise your right to claim

or correct the necessary documentation. In this sense, it should be noted that the Law

19/2013, of December 9, on transparency, access to public information and good

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government, imposed mandatory advertising of all subsidies and other aid

public. The notification of the resolutions does not allow to know any personal data

protected or that violates the necessary confidentiality.

That the granting and processing of aid is carried out in accordance with the regulations in force.

approved by the social representation of which the claimant is a part. This re-

regulation expressly establishes that the aid will be processed and studied by a

commission made up of members representing the company and the company. The secretary in charge of the formalization of documents and publication of aid falls on the social part.

That it is not the City Council or the Delegate Department of Personnel and Human Resources responsible for the processing and resolution of these grants and therefore cannot of being responsible for the actions of this collegiate body.

However, if it were considered that this publication of names and assigned quantities could violate any precept of the data protection law, through the

The presidency will propose to this body the modification of its management regulations so that in the future the secretary of this body carries out the individual notification dualized to each worker of the allocated amount.

THIRD: On 09/30/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the re-claim filed by the claimant against the respondent.

FOURTH: On 11/16/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infraction. tion of article 5.1.f) of the RGPD, contemplated in article 83.5.a) of the aforementioned Regulation-ment.

FIFTH: Once the initiation agreement was notified, the respondent, on 11/27/2020, presented brief of allegations indicating that the process of granting aid is not competitive attendance, in accordance with the municipal regulations on the matter; that at no time was the information made public on freely accessible web pages by third parties; that said communication was made in order to comply with the specifications do in article 8.1.c) of Law 19/2013; that the modification of the regulation will be proposed management element so that individualized notification is carried out for each worker. guarantor of the allocated amount.

SIXTH: On 12/14/2020, a period of practice tests began, in accordance with

do the following

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services that are part of file E/10062/2019.

- Consider reproduced for evidentiary purposes, the allegations to the initial agreement cio presented by the claimed

SEVENTH: On March 31, 2021, a resolution proposal was formulated, stating that the Director of the Spanish Data Protection Agency sanctioned

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to the CITY COUNCIL OF EL ESCORIAL, for an infraction of Article 5.1.f) of the RGD, typified in Article 83.5 of the RGD, with a penalty of warning.

PROVEN FACTS

FIRST: On 12/03/2018 it has entry in the Spanish Data Protection Agency.

written documents of the claimant, President of the Company Committee, stating that after of the year 2016 has been publishing the list with the relationship of aid of the denomination do Social Action Fund granted by the City Council containing the name and surnames of the workers who have requested help, the amount they will receive from the Social Action Fund and providing information on whether the aid corresponds to expenses dentistry, orthodontics, orthopedics, etc.

SECOND: There is a screen printout provided in excell format of the List of aid granted.

THIRD: The respondent in writing dated 09/25/2020 has indicated that: “the concession
sion and processing of aid is carried out in accordance with the regulations in force and approved
by the social representation of which the claimant is a part.

This regulation expressly establishes that the grants will be processed and studied
by a commission made up of members representing the social and business
sa. The secretary in charge of the formalization of documents and publication of the
aid falls on the social side”.

FOURTH: The respondent in writing dated 11/26/2020 states that: “However, and if
consider that this publication of names and amounts assigned could violate
any precept of the data protection law, through the presidency it is proposed
will give this body the modification of its management regulations so that in the future the
secretary of this body carries out the individualized notification to each worker
of the allotted amount.

FIFTH: It is stated that the Joint Regulation of the Social Action Commission of the
Civil Servant and Labor Personnel of the El Escorial City Council and its Autonomous Organism
nome

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of
control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director
of the Spanish Agency for Data Protection is competent to initiate and to re-
solve this procedure.

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The facts denounced materialize in the publication of the concession list social action grants whose list includes personal data, as well as such as the amounts granted, reasons for refusal, etc., violating the duty of confidentiality.

Article 58 of the RGPD, Powers, states:

"two. Each control authority will have all the following powers:

rectives listed below:

(...)

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;

(...)"

Article 5, Principles relating to processing, of the GDPR states that:

"1. The personal data will be:

(...)

f) treated in such a way as to guarantee adequate security of the damages personal data, including protection against unauthorized or unlawful processing to and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

(...)

Also article 5, Duty of confidentiality, of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing, as well as all

people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary

of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain

even when the relationship of the obligor with the person in charge or person in charge had ended

of the treatment”.

III

On the other hand, article 83.5 a) of the RGPD, considers that the infringement of “the principles

basic principles for treatment, including the conditions for consent to treatment.

nor of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000

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maximum or, in the case of a company, an amount equivalent to 4% as

maximum of the total global annual turnover of the previous financial year, op-

taking the highest amount”.

The LOPDGDD in its article 72 indicates: “Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

entail a substantial violation of the articles mentioned therein and, in particular,

ticular, the following:

a) The processing of personal data violating the principles and guarantees established

established in article 5 of Regulation (EU) 2016/679.

(...)

IV

The documentation in the file offers clear indications that the claimed, violated article 5 of the RGPD, principles related to treatment, in relation to article 5 of the LOPGDD, duty of confidentiality, upon publication of the list of grants for social action and, in addition, be sent to all workers the list of aid.

This duty of confidentiality is an obligation that falls not only on the controller and in charge of the treatment but to anyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

As was already reported in the initial agreement, in the case of social assistance there was to distinguish between those that are granted under a competitive bidding regime and non-competitive competition, thus distinguishing two scenarios:

In cases of competitive competition, and therefore without a maximum number of requests to be accepted by the entity, the notification should be individualized such that personal data should not be accessible to third parties.

In cases of non-competitive competition, the applicants - never the third parties to the procedure- they will be able to know the list of aid awards, but not data not necessary or dispensable (eg, ID number).

Consequently, the entities that intend to grant aid charged to a fund of social action cannot publish the list of grants awarded and/or denied on a freely accessible web page, or on a bulletin board located in an area open to the public, because it would allow third parties outside the procedure to have access to personal data.

The respondent in his response to the agreement to initiate the procedure indicated that the

The procedure in question was not one of competitive concurrence, a reality that could be verified after reading the JOINT REGULATION OF THE COMMISSION OF SOCIAL ACTION OF THE OFFICIAL AND LABOR STAFF OF THE CITY COUNCIL OF EL ESCORIAL AND ITS AUTONOMOUS ORGANISM.

Likewise, it pointed out that the list containing the information related to the aid did not had been published on web pages freely accessible by third parties, but the www.aepd.es

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notification was made through the document manager's own program, being necessary or have access to said software and in order to comply with what is specified in Article 8.1.c) of Law 19/2013, of December 9, on transparency, access to public information and good governance that points out:

"1. The subjects included in the scope of application of this title must make public, as a minimum, the information related to the acts of administrative management with economic or budgetary impact indicated below: (...)

c) Subsidies and public aid granted with an indication of their amount, objective or purpose and beneficiaries. (...)"

An IGAE report indicates that "aid for Social Action and advances non-reimbursable loans granted to public administration personnel are not subsidies or public aid, but fall within the remuneration scope of the personnel, and have the fiscal and budgetary treatment of these expenses"

The respondent indicates that, if it could be considered that said notification of names and assigned amounts could violate any precept of the law of protection of

data, the modification of its management regulations would be proposed so that it is carried out carry out the individualized notification to each worker of the allocated amount. With According to what is indicated, the indicated modification should be made.

v

The LOPDGDD in its article 77, Regime applicable to certain categories of responsible or in charge of the treatment, establishes the following:

"1. The regime established in this article will be applicable to treatments of which they are responsible or entrusted:

a) The constitutional bodies or those with constitutional relevance and the institutions tions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

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

d) Public bodies and public law entities linked to or depending from the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies autonomous communities, as well as the political groups of the Local Corporations.

2. When the persons in charge or persons in charge listed in section 1

had any of the infractions referred to in articles 72 to 74 of this law

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organic, the data protection authority that is competent will issue resolutions

tion sanctioning them with a warning. The resolution will also establish

as the measures that should be adopted to stop the behavior or correct the effects

cough of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

gain of which it depends hierarchically, in his case, and to those affected who had the

Interested party status, if any.

3. Without prejudice to the provisions of the preceding section, the protection authority

tion of data will also propose the initiation of disciplinary actions when

there are sufficient indications for it. In this case, the procedure and the sanctions to

apply will be those established in the legislation on the disciplinary or sanctioning system.

dor that results from application.

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

and the existence of technical reports or recommendations for treatment is proven

that had not been duly attended to, in the resolution imposing the

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

will order the publication in the corresponding Official State or Autonomous Gazette.

gives.

4. The resolutions must be communicated to the data protection authority.

tions that fall in relation to the measures and actions referred to in the

previous sections.

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

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infringement.

When the competence corresponds to a regional protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

In the case examined, the publication of the data relating to the granting of aid in the field of social action violates the regulations on the protection of personal data as it is considered that it violates the principle of confidentiality.

In accordance with the available evidence, such conduct constitutes, by the claimed infringement of the provisions of article 5.1.f) of the RGPD.

However, it should be noted that the RGPD, without prejudice to what is established in its article 83, contemplates in its article 77 the possibility of resorting to the sanction of warning to correct the processing of personal data that is not appropriate to its forecasts, when those responsible or in charge listed in the section

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1 committed any of the offenses referred to in articles 72 to 74 of

this organic law.

Likewise, it is contemplated that the resolution issued will establish the measures that appropriate to adopt so that the behavior ceases, the effects of the infraction that had been committed and its adaptation to the requirements contemplated in article 5.1.f) of the RGD of the RGD, as well as the provision of accrediting means of the compliance with what is required.

However, the respondent has informed this Agency of the circumstances in which that the incident that led to the claim occurred, as well as the measures to be taken. adopt in order to prevent events such as the one claimed from occurring again in the future, as it is that the modification of its management regulations will be proposed in order to carry out individualized notification to each worker of the assigned amount of the social action fund, so it is required to report if there were carried out or any other action taken.

Likewise, taking into account the absence of bad faith in the aforementioned publication, which in At no time was the information made public on freely accessible web pages by third parties, that a notification was made through the manager's internal program documentary and that to access it it was necessary to have access to the software, it was considers that the response has been reasonable, acknowledging the facts and trying to correct the error made, not having evidence of other claims for part of the people affected, so it is not appropriate to urge the requested adoption of additional measures.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria tion of the sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE EL ESCORIAL CITY COUNCIL, with NIF P2805400E,

for an infringement of Article 5.1.f) of the RGD, typified in Article 83.5 of the RGD,

a warning sanction.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF EL ESCO-
RIAL.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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

resents may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a month from the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

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Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for 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 interested party

do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

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