

□ Procedure No.: PS/00098/2019

938-051119

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant), filed with this Agency  
Spanish Data Protection Agency (AEPD) on 08/13/2018 a claim against  
to the General Directorate of the Civil Guard, with NIF S2816003D (hereinafter, the  
claimed).

The claim is based on an alleged breach of the obligation to  
inform the people from whom data is collected in the terms provided by the  
regulations governing the right to the protection of personal data.

On 08/10/2018, the claimant went with his minor daughter to the post of the  
Civil Guard of \*\*\*LOCALIDAD.1 (Valencia) to process an exit authorization  
abroad of the minor, for which he provided his personal data by completing a  
form and exhibited the respective identity documents, of which the agent  
obtained two photocopies. He explains that neither orally by the agent who assisted them, nor  
In the official document that they gave him authorizing the trip, they were informed about the  
treatment of your personal data or about the destination that they would give to the photocopies that  
obtained from their identity documents.

Contribute with your claim:

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The copy of an official document with the anagrams of the Ministry of the Interior and  
of the Civil Guard called "Signed declaration of travel permit for

minors or persons with judicially modified capacity". In the document shows the date and time of the appearance before the post of the Civil Guard; the data of the minor (name, two surnames, DNI, date and place of birth and domicile); the data of the claimant and the data of the former spouse of the claimant and mother of the minor (also name, two surnames, DNI, date and place of birth and address). Trip information included. (country and locality of destination, date and name of the companion). It is signed by the claimant and by the mother of the minor and incorporates the stamp of the Civil Guard Command.

- Copy of the claimant's DNI.
- Copy of the complaint that the claimant filed for these facts before the Ministry of the Interior: the official form and an additional document in which Gives a detailed account of what happened. Both bear a stamp official. The date of entry in the Civil Guard registry is 08/13/2018.

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SECOND: In view of the facts set forth in the claim, the AEPD, in the framework of file E/6887/2018, in a letter dated 10/04/2018, notified her to the Data Protection Delegate (DPD) of the Ministry of the Interior so that in Within one month, it will provide this Agency with an explanation of the purpose of the claim, it will detail the measures adopted to avoid that in the future producing similar situations and also proceeded to communicate its decision to the claimant.

Likewise, in a document signed on 10/04/2018, the AEPD addressed the claimant acknowledging receipt of the claim and informed him that his brief had been transferred to the one claimed so that within a month it could inform this Agency of the actions carried out to adapt to data protection regulations

On 12/07/2018, the response of the DPD of the Civil Guard to the information request in which it stated the following:

That the facts that motivate the claim are essentially “the lack of update of the base application document” and “the procedural error of the processor”. The measures adopted have been the implementation of a document updated and the training and awareness of the processors. In this sense, it states:

a) That the data controller, INTPOL, has been urged to, within the sooner have the model updated with the appropriate information and that it is being developing a model that will soon be mandatory.

b) That the data controller, INTPOL, has been urged to carry out effect the necessary actions to ensure that those who have to manage this type of documents is aware of the procedure and specifically of the non need to provide photocopies of the documents, which should only be shown to purpose of verifying identity.

It adds that it has informed the claimant that it has verified that “within the document updating process that is being carried out after the entry into force of the General Data Protection Regulation, said certification model has not yet has been updated, lacking the mandatory information,” . It has also informed that it has been verified that, “due to an error of interpretation on the part of of the processing Civil Guard, at first photocopies of the personal documentation attached by the applicants, which were destroyed with later when it was verified that they were unnecessary, requesting

We apologize for these inconveniences that in no case have prevented or hindered the departure of his daughter abroad.

Provide as an attached document a copy of the letter sent to the claimant, with date of departure from that General Directorate on 11/19/2018, in which he acknowledges receipt of the claim filed with the AEPD; informs you that, indeed, the document used had not been updated after the entry into force of the RGPD; regrets it occurred, which is due, he says, to the large amount of documentation and models to update and informs you that this fact was caused by an interpretive error of the civil guard who attended him, who mistakenly understood that he had to make a copy of the identity documents provided when he had only to verify the data provided. After which, he adds that "once the error was verified, the photocopies were removed by paper shredder. It also provides a document from the S.E.

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Post and Telegraph, S.A.E. that accredits the certified delivery of the letter to the claimant.

On 02/15/2019, in accordance with the provisions of article 65 of the Law

Organic 3/2018, on data protection and guarantee of digital rights

(LOPDGDD) agreed to admit the claim for processing.

THIRD: On 05/27/2019 the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the one claimed by the

alleged infringement of article 13 of Regulation (EU) 2016/679, General of

Data Protection (RGPD) sanctioned in article 83.5.b)

FOURTH: The agreement to initiate the sanctioning procedure was notified

electronically to the claimed one as evidenced by the document of the Folder

Citizen in which it is stated that the AEPD sent the notification on 05/30/2019 and that the recipient accessed it on 06/04/2019.

FIFTH: Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

"two. The initiation agreement must contain at least:

(..)

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in the event of not making allegations within the stipulated period on the content of the resolution of initiation, it may be considered a resolution proposal when it contains a precise pronouncement about the imputed responsibility."

In application of the transcribed precept (article 64.2.f, LPACAP) and taking into account that the respondent has not made allegations to the initial agreement, it is appropriate to resolve the sanctioning procedure PS /98/2019.

Of the actions carried out in this proceeding and of the documentation contained in it, the following have been accredited

## FACTS

1.- The claimant, D. A.A.A., has stated that he facilitated at a Guard post Civil your personal data and those of your minor daughter on the occasion of completing the "Signed declaration of travel permission for minors or persons with disabilities" form judicially modified capacity" and also a copy of the DNI of both, without manage the procedure, neither verbally nor in the document that was delivered to him, he was had informed about the processing of your personal data or about the destination that it was to be given to the photocopies they obtained of their identity documents.

2.- Work in the file, provided by the claimant, a copy of the official document

called "Signed declaration of travel permit for minors or persons with

judicially modified capacity", which bears the anagrams of the Ministry of

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Interior and the Civil Guard. It contains, in addition to the date and time of the

appearance before the Civil Guard post, the details of the minor - name, two

surnames, DNI, date and place of birth and address-; the details of the claimant and the

data of the ex-spouse of the claimant and mother of the minor -also name, two

surnames, DNI, date and place of birth and address. Record the travel data

-country and locality of destination, date and name of the companion-. It is signed by

claimant and by the mother of the minor and incorporates the seal of the Command of the

Civil Guard.

3.- The official document called "Signed declaration of travel permit for

minors or persons with judicially modified capacity", described in Fact

Tested 2 and that the claimant has contributed, includes in its lower left part a

independent box with the heading "Documentation presented": In it are

marked with a cross the lines with these legends. "Guardian identity documents

legal of the minor"; "Identity document of the minor"; "Family book or document

proof of affiliation.

4. The official document called "Signed declaration of travel permit for

minors or persons with judicially modified capacity", described in Acts

proven precedents, does not contain any information regarding the treatment of

personal information.

5.- Work in the file, provided by the General Directorate of the Civil Guard, copy of the Official Letter addressed to this Agency, with entry date in the registry on 12/07/2018, in which states that the DPD has resolved to communicate these extremes to the claimant:

- That it has been found that the model used was not updated and lacked of the information required by the RGPD.

- That due to an error of the processing civil guard, at first attached photocopies of identity documents, but, later, when it was found that they were not necessary, they were destroyed.

They have apologized for it.

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- That you have been informed that, as stated, the document used in the Civil Guard post to which he alludes in his complaint “has not been updated after the entry into force of the European Data Protection Regulation” for which it lacks the mandatory information; that due to an error of the civil guard

At first, the processing agent attached the photocopies of the personal documentation being subsequently destroyed when proved its unnecessary.

- That it has been agreed to urge the INTPOL data controller to as soon as possible, have the model updated with the information mandatory.

6.- Provide as an attached document a copy of the letter sent to the claimant, with date of departure from that General Directorate on 11/19/2018, in which he acknowledges receipt of the claim filed with the AEPD; informs you that, indeed, the document used had not been updated after the entry into force of the RGPD; regrets it

occurred, which is due, he says, to the large amount of documentation and models to

update and informs you that it was caused by an inadvertent error by the guard

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civilian who attended him, who mistakenly understood that he should make a copy of the

identity documents provided when it was only necessary to verify the data

facilitated. After which, he adds that "once the error was verified, the photocopies were

removed by paper shredder. It also provides a document from the S.E.

Post and Telegraph, S.A.E. that accredits the certified delivery of the letter to the claimant

FOUNDATIONS OF LAW

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

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

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

Article 58 of the RGPD, "Powers of Attorney", says:

II

"2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;



(...)

d) order the data controller that the processing operations be carried out  
comply with the provisions of this Regulation, where appropriate, in a  
certain manner and within a specified period;

Article 83.7 of the RGPD provides that "Without prejudice to the corrective powers  
of the supervisory authorities within the meaning of Article 58(2), each Member State  
may establish rules on whether and to what extent fines can be imposed  
administrative authorities and public bodies established in that State  
member".

Under the authorization that the RGPD (article 83.7) grants to the States  
members, our LOPDGDD, in article 77, under the heading "Regime applicable to  
certain categories of data controllers or processors" provides:

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

(...)

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

(...)

2. When the managers or managers listed in section 1  
committed any of the offenses referred to in articles 72 to 74 of  
this organic law, the data protection authority that is competent will dictate

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resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects 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 body on which it reports hierarchically, where appropriate, and those affected who have the condition of interested parties, if any". (The underlining is from the AEPD)

Therefore, our legal system (former article 77 LOPDGDD) provides that when it is a body of the General State Administration -as here occurs- the person responsible for data processing typified in articles 72 to 74 of the LOPDGDD -related to very serious, serious and minor infractions- the sanction to impose will be the warning (provided for in article 58.2.b, of the RGD) and may also determine what measures should be taken to stop or correct the effects of the infractions in which it had incurred.

### III

Article 5 of the RGD, "Principles related to treatment", mentions among others, section a), that of "transparency":

"Personal data will be:

processed in a lawful, loyal and transparent manner in relation to the interested party (<<legality, loyalty and transparency>>)

In this sense, Recital 60 of the RGD says:

"The principles of fair and transparent processing require that the interested party of the existence of the treatment operation and its purposes. The responsible of the treatment must provide the interested party with as much complementary information as is necessary to ensure fair and transparent processing, taking into account the specific circumstances and context in which the personal data is processed. I know must also inform the interested party of the existence of profiling and

the consequences of such elaboration. If personal data is obtained from interested parties, they must also be informed of whether they are obliged to provide them and of the consequences if they don't. This information may be transmitted in combination with standardized icons that offer, in an easily visible way, intelligible and clearly legible, an adequate overview of the treatment provided. Icons presented in electronic format must be legible mechanically." (The underlining is from the AEPD)

Article 12 of the RGPD states that the data controller "will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14, as well as any communication under articles 15 to 22 and 34 related to the treatment, in a concise, transparent, intelligible and easily access, in clear and plain language, in particular any information directed specifically a child. The information will be provided in writing or by other means, including, if applicable, by electronic means. When requested by interested, the information may be provided verbally as long as the identity of the interested party by other means.

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Article 13 of the RGPD, under the heading "Information to be provided

when the personal data is obtained from the interested party", it says:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the basis representative;
- legal treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;
- e) the recipients or categories of recipients of the personal data, in your case;
- f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;
- c) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of

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personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.” (The underlining is from the AEPD)

The infringement of article 13 of the RGPD is typified in article 83.5

of Regulation (EU) 2016/679 precept that establishes:

“Infringements of the following provisions will be sanctioned in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

(...)

b) the rights of the interested parties according to articles 12 to 22;

(...)”

At the same time, the LOPDGDD typifies in article 72.1.h) as a very serious “The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this Organic Law”.

IV

In the case at hand, it has been fully proven that the "Signed declaration of travel permission for minors or persons with disabilities" form judicially modified capacity” that they used in the posts of the Civil Guard

In August 2018, it did not provide information in the terms of article 13 of the RGPD to the people from whom personal data is collected; that is, to the parents or guardians of minors or legally incapacitated persons.

As indicated in the proven facts, there is in the file a copy of the aforementioned form, duly completed by the parents of the minor and sealed by the Civil Guard, which allows corroborating that there is no informative clause.

In addition, the DPD of the Civil Guard, in its response to the information request made by this Agency in the phase of admission to processing of the claim, stated that had "verified that effectively, within the process of updating

documentary that is being made after the entry into force of the General Regulation of Data Protection, said certification model has not yet been updated, lack of required information

". (The underlining is from the AEPD)

Regarding the copy of the identification documents (DNI) that are collected from the claimant and his family, the explanation offered by the DPD is that It was an isolated event derived from the improper interpretation of the investigating agent. However, the terms in which that clause of the form is written

-“Documents presented”, followed by a list of the possible documents

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to contribute- propitiate such an interpretation.

In addition to the above, it should be noted that the RGPD entered into force at twenty days of its publication in the Official Journal of the European Union, which occurred on 05/04/2016, but which was not effective until 05/25/2018 (article 99 of the GDPR). So enough time passed between the two dates to adjust to the new legal regime of data protection the models of forms that the Civil Guard uses.

Thus, the subjective element of the behavior is present in the behavior analysed.

guilt - materialized in a serious lack of diligence shown by that center

executive - whose presence is essential to demand administrative responsibility

sanctioning The principle of culpability governs in our sanctioning law, which

prevents the imposition of sanctions based on the strict liability of the alleged

offender – principle implicit in articles 9.3 and 25 of the C.E. according to STC 76/1999, and

Article 28 of Law 40/2015, on the Legal Regime of the Public Sector.

The omission in the forms used by the Civil Guard to certify the

travel permits for minors or people with modified capacity

judicially of the information that according to article 13 of the RGD of the

to provide to the people from whom the data is collected is subsumable in the

penalty type of article 83.5.b. of the GDPR. And for prescription purposes it would be

framed in the sanctioning type of article 72.1.h) of the LOPDGDD.

In view of the foregoing, it is agreed to impose on the General Directorate of the

Civil Guard, as responsible for an infringement of article 13 of the RGD, foreseen

in its article 83.5.b, a sanction of warning.

It is also agreed to order it to adapt to the informative requirements of the

article 13 of the RGD the forms through which you certify the permission for

travel by minors or with judicially modified capacity, and must

accredit this end before the Agency within a period of one month computed from the

receipt of this resolution. Likewise, in order to prevent the security agents from

the civil guard that instructs these acts, copies of the documents of

identity of the people who provide their data, it is urged to give a new wording to

the corresponding clause, so that it refers only to the

documents that have been exhibited to verify the reality of the data provided and

not, as it appears in the analyzed form, to the “provided documents”.

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE the GENERAL DIRECTORATE OF THE CIVIL GUARD, with NIF

S2816003D, for an infringement of article 13 of the RGD, typified in article

83.5.b) of the RGD, a sanction of WARNING in accordance with the provisions



in article 58.2.b) of the RGPD.

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SECOND: Likewise, in accordance with article 58.2.d) of the RGPD, it is ORDERED to the

GENERAL DIRECTORATE OF THE CIVIL GUARD, with NIF S2816003D, which informs

this Agency and provide documentary evidence within a month following the

notification of the resolution, that in the forms destined to the "Declaration

signed travel permit for minors or people with modified capacity

judicially" used by the Civil Guard provide the information required by article

13 of Regulation (EU) 2016/679, General Data Protection.

THIRD: NOTIFY this resolution to the GENERAL DIRECTORATE OF THE

CIVIL GUARD with NIF S2816003D.

FOURTH

established in article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, as

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

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 article

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

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