File No.: PS/00364/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 04/16/2020, filed a claim before the Spanish Agency for Data Protection. The claim is directed against GONZÁLEZ LABORATORIES, S.L. (hereinafter CLAIMED). The reasons on which the claim are that his work center, City Council of *** TOWN HALL.1, started “yesterday “a process consisting of the extraction and analysis of blood for the detection of antibodies COVID-19 through a "private laboratory" "to which I expressly consented", "my COVID 19 antibody results, my surprise was that they gave me the result they gave it to me in the afternoon through my email to me and my chief-political representation”. “I asked ex applications to the company, since no one has informed me of that”.

He adds that in any case only the positive cases should have been communicated, but Sanidad, not "my Councilor and/or Mayor".

Along with the claim, provide a copy of:

-Email addressed to CLAIMED on 04/16/2020, with literal: “he has sent me my medical result me and my boss and you do not have my consent to give this very personal information to anyone more than me”, and the answer that the laboratory transcribes: “..the contracting person of the The service must have proof of the result, in case there is a positive case, take the necessary measures. pertinent, in the event that the worker is unconscious and being the period of infecting people continues to come to work. For this reason, this type of analysis cases are sent to the person in charge of the service..."

SECOND: In view of the facts stated in the claim and the documents provided

ted, motivating the non-application of the suspension of deadlines, the General Subdirectorate of

Data Inspection moved on 04/27/2020 for the purposes of the provisions of article 65.4 of the

Organic Law 3/2018, of 5/12 on the Protection of Personal Data and guarantee of rights

(hereinafter, LOPDGDD), the claim to the claimed and the CITY COUNCIL of

*** TOWN HALL.1 (investigated). They were asked:

"1. The decision made regarding this claim.

2. Report on the causes that gave rise to the incident that gave rise to the claim.

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

implementation sheets and controls carried out to verify its effectiveness.

4. Any other that you consider relevant."

THIRD: Claimed, dated 05/14/2020, states:

1. The notification is sent directly to the person in charge of the service (in this case, the Councilor).

1. "The legal basis for treatment has changed due to the alarm situation caused by the epidemic.

mia of COVID-19, it is no longer the express consent of the employee but rather it legitimizes

the employer (City Hall of ***CITY COUNCIL.1) to carry out the tests and analyzes

to detect COVID-19 in its workers and also to know the results of the tests.

bas, as well as to communicate them to the City Council employee".

2. "For urgent or necessary health reasons, it has been foreseen that the Administrations

Public authorities and competent health authorities will be the ones who must make the necessary decisions.

caesarians".

“The foregoing expressly refers to the possibility of processing the personal data of

health of certain individuals by the Personal Data Processing Managers.

in this case "Town Hall of *** TOWN HALL.1", when by indication of the authorities

competent health authorities, it is necessary to communicate to other people with whom said

natural person has been in contact with the circumstance of contagion, to safeguard

both to said natural persons of the possibility of contagion (vital interests of the same)

when to prevent said natural persons, due to ignorance of their contact with a

infected can spread the disease to other third parties (vital interests of third parties and

essential and/or qualified public interest in the field of public health).

In the same way, and in application of what is established in the regulations for the prevention of occupational risks,

labor, and occupational medicine, employers may treat, in accordance with said regulations

and with the guarantees that these regulations establish, the data of its employees necessary to

guarantee the health of all its employees, which also includes the rest of the employees

different from the interested party, to ensure their right to health protection and avoid contagion

within the company and/or workplaces.”

3. Provide a copy of: "COVID 19 ANALYTICAL BUDGET" without date or signature and where

ta:

- “According to the conversation, the performance of the blood test for COVID 19, for the

serological determination of the levels of Ig G – Ig M antibodies, would take an amount of

€ for each worker.”

“In case of accepting said budget, in advance of the day of realization, it must be arranged

have a list of workers in excel format in which they must include: Name

full of the worker; ID; Date of Birth; telephone and a centralized mail of the company

dam where to send the results.

Workers should know that this laboratory will send a copy of said analysis to the

management of the company, so that it has proof of the state of health of its workers-

in relation to a possible infection by COVID 19. Likewise, the positive cases are communicated

will be sent to the Epidemiology service of the Ministry of Health (Order of 03/04/1977 of the

Department of Health).

If any worker does not agree that said results be communicated to the company,

You must state it at the time of the blood draw, providing an email address.

only place to communicate the result."

5. Provides a copy of the report of the Legal Office of the AEPD number 17/2020 "in relation to

data processing resulting from the current situation resulting from the spread of the virus

COVID-19", of 03/12/2020, which indicates in article 9.2 of Regulation (EU) 2016/679 (Regulation-

General Data Protection Regulation, hereinafter RGPD), the different assumptions that can

may concur depending on the circumstances for the treatment of health data, raising

the prohibition of article 9.1 of the same norm.

FOURTH: Dated 06/1/2020, CITY COUNCIL OF ***CITY COUNCIL.1 informs and manifests

party:

1. "The cause that originates the incidence is given by the interested party for the remission of the result

of the tests carried out by COVID-19 by email, with a copy to your superior, original

creating discomfort in those interested in communication".

On 04/11/2020 "it was proposed to workers in the social services area to submit to

voluntarily to a COVID-19 antibody test.", for being employees who are in

first line, in some cases in direct contact with COVD-19 patients. "What having

taking into account the legitimizing basis of legal obligation, public interest in the field of public health,

Public/preventive or occupational medicine and/or medical diagnosis, from the Department of Services Social Services, the contracting of an External Laboratory is decided and approved: Laboratorios González S.L." who had previously performed blood tests on protective service personnel civil of *** TOWN HALL.1. Twenty-five people accepted.

"The company was provided with the names of the workers who were taken to carry out the test, ID and contact email, after previously requesting the data. as email of the person in charge included that of the Delegate Councilor of the Area".

"On 04/15, the workers carried out the analysis and that same day each one was informed the result of the test by email, putting a copy in each email to the Delegate Councilor of the area."

"The interested party sends by email, dated 04/16/2020, the discomfort to the Laboratory. who has performed the tests, indicating that he has not given consent for such communication. tion."

1. "The consents of the contracted external Laboratory are being studied to verify bar proper compliance with data protection."

2. A communication has been sent to the affected party.

3. They have requested information from the Laboratory about the duties of information, audit in matter of data protection, or equivalent documentation as evidence of technical measures unique and organizational, a copy of the emails sent, but, as of 05/27/2020, they have not received do reply.

4. "The name of the people who have tested positive has not been communicated to the

entity staff.”

5. “The City Council of *** TOWN HALL.1 will reinforce the consent for the case of future evidence, bearing in mind the duty of information.”

FIFTH: The Director of the AEPD, in accordance with the provisions of article 65 of the LOPDGDD, dated 10/9/2020 agrees to admit this claim for processing.

SIXTH: On 03/01/2021, within the preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Government Regulation) General Data Protection, and article 67 of the LOPDGDD, the RESPONDENT is requested to input:

"1. Copy of the contract signed with the City Council of *** TOWN HALL.1 in relation to the performing the analytics.

2. Accreditation of the information provided to the claimant in relation to data processing as well as to whom they would inform the result of the analysis.”

On 03/17/2021, the respondent responds that there is no signed contract, the system is:

a) The Department contacts the Laboratory, requesting a budget, which has already been sent in previous reply. Once the budget is accepted, the Department passes it to its economic department to make a credit reserve.

b) “On the day of sampling, the staff (who are gathered in a room) are told that the results will be sent to the Councilor on duty and to the interested party, none showing their opposition verbal or written to carry out said test and to communicate the results to the councilor of turn."

SEVENTH: On 07/14/2021, the Director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE against the CITY COUNCIL OF ***CITY COUNCIL.1, with NIF P0304700H for the alleged violation of the RGPD, articles:

- 6.1, in accordance with 83.5.a).

-25.1, in accordance with 83.4.a).”

The proposed penalty was a warning, as stated in article 77 of the

LOPDGDD.

Against the claimed, procedure PS/00323/2021 is followed.

EIGHTH On 08/02/2021, the City Council of *** TOWN HALL.1 stated:

1) There is no infraction in the conduct of the City Council of *** TOWN HALL.1 in the treatment

Data processing of the COVID-19 analysis carried out voluntarily by the claimant based on

with the consent of the affected party.

“The results of the tests were communicated both to the workers individually

as well as the Councilor responsible for the service, as this is the protocol to be followed by LABORA-

TORIOS GONZALEZ S.L., and having been expressly consented to by the workers”. "The

data were sent to the person in charge of the service “per protocol of the laboratory service”,

half to check the existence of antibodies in their employees.”

2) The legal basis of the treatment can be multiple, both of public interest, or vital, of

according to recital 46. As the agreement indicates, the prohibition of data processing

personal data yields when any of the circumstances of article 9.2 of the RGPD concur”

”In the present case there are several of them, such as section a), b), c), g), h), i). It has been

to take into account the exceptional circumstances of the social and health context in which

the events occurred

“In the context of the state of alarm, the tests can be applied in the workplace, in the

to the extent that, in the context of an occupational risk prevention policy, they are an instrument

ideal instrument to prevent contagion and spread of the pandemic, this being the purpose

of its practice and its legitimating base". "The tests were carried out on those workers

who expressly gave their consent, being aware that it would be communicated to

the company the result, unless they expressed their disagreement at the time of ex-

blood traction, which did not happen in the present case "A data processing occurs

exclusively limited to the result of the COVID 19 test carried out, based on the consent

lie of the affected person"

3) The treatment of this data has been carried out at all times applying the principles of

transparency, purpose limitation, accuracy and minimization that govern the applicable regulations

ble in terms of data protection. In accordance with these principles, the City Council

health data derived exclusively from the COVID-19 diagnostic tests, feeling

Its only destiny is the adoption of the necessary measures to guarantee the security of the

employees and prevent the spread of the virus among them, and preserving the results

only for the time strictly necessary to control the pandemic.

NINTH: On 02/07/2022, the test practice period begins, giving

reproduced for evidentiary purposes the claim filed by the claimant and its

documentation, the documents obtained and generated during the admission process phase

of the claim, and the report of previous investigation actions that are part of the

procedure E/08228/2020.

Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement to initiate the

sanctioning procedure referenced,

presented by CITY COUNCIL OF

*** TOWN HALL.1 and the documentation that accompanies them.

It is extended to the request for information made to the CITY COUNCIL OF

*** TOWN HALL.1, to report or respond to the following questions:

a) Category, number and type of work activity carried out by the personnel who were

offered COVID testing. If all developed the same functions.

Why if the employees made daily contact with the population in the provision of the service?

of risk, the obligation to carry out the test was not decided based on the LPRL, art 22 a

the entire collective.

Report whether there was an assessment of the degree of occupational risk of these employees.

On 03/01/2022, a response was received stating that the performance of the tests

analytical bases was initially limited only to the Department of Social Services, to the per-

who "provided service in person in contact with other colleagues and users

rivers."

In the context of the declaration of the State of alarm, in mid-April 2020, taking

open to the public services of an essential nature, such as the provision of home help to

dependent persons or care for users with basic needs, constituted a risk that

should be reduced as much as possible.

The decision to carry out the tests was preceded by a request from those affected and

in this sense "the simplest possible formula was arbitrated, what was the contracting by

of the City Hall of a laboratory to carry out the tests." This measure must understand

be considered as a decision of the City Council aimed at improving "the prevention of a lax risk

very concrete boral".

The initial idea was that the tests should preferably be submitted to "the workers of the

home care service that provided assistance to advanced dependent people

age, although the definitive one was that this possibility be offered to all service workers.

social services without it being mandatory.”

Article 14 of Law 31/1995 on occupational risk prevention requires the employer to earn

Guarantee without excuses or exceptions the safety and health of the workers at your service in

all aspects related to work, being obliged to adopt as many measures

necessary to avoid serious risks.

“Article 22 of the aforementioned law can even force these tests to be carried out for the sake of

avoid specific risks for the worker himself, his colleagues or the users, treating

You are clearly a preventive measure.”

“Of course the result of these tests has to be known by the employer because

otherwise it is impossible to implement prevention measures in order to remove those

ll infected workers to prevent the spread of the virus.”

“This knowledge of the results of the tests by the employer is legitimized

based on the provisions of article 22 of the aforementioned law on the prevention of occupational risks.

b) Inform if they had approved a Specific Occupational Risk Prevention Plan before the

Coronavirus. Inform with what entity and with what modality of prevention of labor risks

coverage is given to the health and safety of their staff, and paper that at the date of the analyses.

sis was performing said Occupational Risk Prevention Service (SPRL)

He responded that in April 2020, the City Council with most of its services closed to

public and its employees confined to their homes, made the decision by the obligation of the

face-to-face work and direct contact with elderly users, especially vulnerable

bles, of carrying out the virus detection tests in the aforementioned Department.

“In this very particular context, a specific prevention plan was not necessary, since to determine

detect contagion in those asymptomatic people, this type of analytical tests were the

the only possible measure at such a critical moment”.

As for the SPRL, it reports that it is carried out by the company CUALTIS SL, and that it proceeded to

carry out an assessment of the risks of exposure to viruses in the different centers, as

was recovering face-to-face activity in them.

At the time of the reported events, there was no prevention plan against COVID given

the extraordinary unforeseen nature of the pandemic

Likewise, to point out with respect to the procedure that is currently followed in the preparation of

PCR tests, which is offered to people who have had contact with a

male or female partner who is positive after an antigen test or PCR in the laboratory

ral and during working hours. The person who understands that he is in those circumstances

You must inform your manager, and request to undergo the test in our department

of Health. From the Department of Health they take the following data, to send them to the

HCB clinic: - Name and surnames. - Telephone number (reachable). - Email. And, he was told

ca that the HCB clinic will contact them to make an appointment and do the PCR.

Regarding the result, it is communicated to the email that the worker gives to HCB, and this

It is sent to you by private password.

If it is positive, the worker must inform their manager, contact

with the public health service, and send the withdrawal to human resources as soon as possible.

Provides a copy of "ASSESSMENT OF RISK OF EXPOSURE TO CORONAVIRUS" initial edition

cial 03/25/2020, last update 06/11/2020, to the City Council of *** TOWN HALL.1,

Social Welfare, carried out based on exceptional circumstances due to the state of

alarm decreed in Royal Decree 463/2020 of 03/14 and its derived regulations. In the

tasks to be evaluated and in the workplace, those referred to as home assistants or assistants, with tasks

care for sick and disabled elderly people. Other positions are also valued

as office or concierge staff in customer service.

Provides a classification table in three ranges of risk scenarios exposure to coronavirus

rus in the work environment. As relevant aspects, it could be meant that they contain me-

measures of a general nature applicable in work centers in the event that a worker

dor began to have symptoms compatible with the disease, and the associated process that

It includes “immediate contact with the telephone enabled for it by the autonomous community or

corresponding health center, and, where appropriate, with the corresponding preventive services.

tion of occupational risks, and more specific measures for the home care sector” of

in accordance with the provisions of the Technical Document for the home management of COVID-

19 published by the Ministry of Health of the Government of Spain (version March 17,

2020), for which practically the same is foreseen, that in case of presenting “symptomatology

respiratory illness should not go to work. They should consult the health services to

carry out an individualized assessment of the relevance of the continuity of its activities

labour.”, adding that_

“-If it is confirmed that the assistant has tested positive for coronavirus, the company will be the res-

responsible for communicating it to the users who have attended or to their families. In addition to-

must establish communication with the users of the service with whom said assistant has

been in contact during the last 14 days”

“General measures for the PROTECTION OF THE HEALTH OF STAFF

ASSISTANCE TO USERS AFFECTED BY CORONAVIRUS”

“4.4. Rules of action if symptoms of the disease appear If the symptoms appear

dinner at home:

Any worker who presents symptoms compatible with the disease will not go to the work center, will communicate it to the company and will contact the services of health, following the recommendations indicated. Keep the company informed of the evolution.

The possible presence of workers who have had close contact should be assessed. with this worker, considering as close contact any person who has been in the same place as a case, at a distance of less than 2 meters and for more than 15 minutes. utes. The period to consider will be from 2 days before the onset of symptoms until the moment in which the case is isolated. Close contacts of confirmed cases will conduct home quarantine for 14 days from the date of last contact with the case, performing monitoring by the Prevention Service.

c) Information that was provided to the personnel on the treatment of the data related with the blood test, and communication of results, whose ends are contained in the ar- article 13 of the RGPD. They must consider that in the budget they received from the fi- guraba and knew

-which would have to be provided along with the list of workers, "a centralized mail- do of the company where to send the results “

-that “workers should know that a copy of said analysis will be sent to the management tion of the company.”

-that "If any worker does not agree that said results be communicated to the company, you must state it at the time of the blood draw, providing a co- e-mail where to communicate the result”.

Responds that "information to those affected about the processing of personal data staff was provided by the Laboratory and all those who underwent the test signed their consent with full knowledge of the legal requirements.”

d) What was the purpose of the respective Department knowing the complete analysis, together with

your name and surnames and it was decided to provide your e-mail to the laboratory, and if you did not object by

the City Council reasoning to this request of the laboratory. Reason if there was no other option

not include that statement to the Department so as not to disseminate results data as in

this case, negative.

He answers that the purpose of the Department knowing the results of the tests is so

obvious as well as justified since it was about verifying if there was any infected employee for the sake of

to implement all preventive measures. The purpose of the test was to ensure

the safety of employees and users, being "the sole purpose of the test to provide

information to the City Council to avoid risks to people. And considering the lack of

staff at that time, it is clear that there was no other option, given that the Department

assumed the responsibility of guaranteeing the safety of workers and users".

e) If the Data Protection Delegate intervened in the design of the data processing process.

data, report made. If you didn't intervene, why didn't you do it?

They point out that he did not intervene in the decision because it was not considered necessary and also because the

confinement situation prevented work normally on those dates.

f) Explanation of whether any optional criteria were contemplated for carrying out the tests

diagnostic tests for the detection of COVID-19 to the personnel referred, to carry out the analysis

COVID 19 blood test, for serological determination of Ig antibody levels

G–IgM

He points out that the optional criterion followed was the one recommended by the contracted laboratory

Bearing in mind that at that time, PCR tests were the exception due to their scarcity.

sez and antigen tests were practically non-existent. “The National Service of

Health, in April 2020, did not have a clear protocol for the preventive detection of the disease.

dad.”

g) If there was any positive among the tests carried out, and what was the procedure for

follow, once the results were obtained, whether negative or positive, considering that it was

an antibody detection test that reveals that the virus has been passed, and why

that no other type of test was carried out and this was the case.

He replied that the tests carried out did not show any positive contagion, “although in some

In some cases they did reveal traces of previous contagion in a worker“”. "It was about

a measure adopted in extremis, with the sole purpose of isolating those workers who

could spread the disease.

“No protocol had to be applied because no active contagion was detected.”

h) Based on the compliance measures (art 25 of the RGPD) a copy of the registration is requested

documentation that must be available before carrying out the data processing, insofar as

to the risks that data processing entails for the rights of individuals, means and

mode of treatment to effectively apply the principle of confidentiality in the

creto examination of blood sample extraction for the purpose that was intended.

Doesn't respond.

i) Based on the compliance measures (art 5.2 of the RGPD documentation that supports

specific to the legitimate basis of treatment that they consider is the one that concurred for the realization

tion of the evidence and communication to the Councilor, considering the purpose of the group, the

context, and the willingness to submit or not to it.

Doesn't respond.

j) Copy of the record of treatment activity (art 30 RGPD)

Doesn't respond.

k) If, after this claim, measures have been taken to be taken into account so that

facts such as those denounced are not repeated, explain which ones.

Doesn't respond.

On the other hand, to LABORATORIOS GONZÁLEZ SL, PS/00323/2021, (incorporated to keep

connection with the facts analyzed), what was requested in the same testing period:

a) If the people from whom the samples are taken were informed of the health data that was

are going to collect, its treatment, purpose and the rest of the elements that are contained in the

article 13 of the RGPD. Copy of the information that was provided in this case to the claimant-

tea.

On 02/15/2022, a reply was received, stating that they were verbally informed of

the tests to be carried out and their purpose. “By logistical error, the consensus was supposed to

informed treatment with the patient, was carried out in the Town Hall of *** TOWN HALL.1 and

it was not collected at the time of the blood draw, as it was a voluntary test.”

b) What did you subsequently do with the data from the results of the analyses?

It states that "with the result, positive/negative, it is reported by email to the

responsible for the City Council, a company that hires us for this purpose, and the interested party that

He voluntarily came to take the test.”

c) If you have introduced variations in the form of referral of the results of the practical tests

ticadas, or the content in negative or positive cases and reasons.

He answers “Yes. The patient who comes to have a sample taken is informed by

your company of the purpose and treatment of said analysis and that you can state that the result

ted is sent only to him, and not to the contracting company at the time of taking the

sample".

TENTH: On 03/07/2022, a resolution proposal is issued with the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with

warning to CITY COUNCIL OF *** TOWN HALL.1, for breach of the RGPD,

articles:

- 9.2.a) of the RGPD, in accordance with 83.5.a) of the same, typified as very serious in the

Article 72.1.e) of the LOPDGDD.

-25.1 of the RGPD, in accordance with 83.4.a) of the same, typified as serious in the article

73.d) of the LOPDGDD."

ELEVENTH: City Council of *** TOWN HALL.1 carries out on 03/17/2002, the

following allegations:

1) Show your disagreement with the sanction of article 9.2.a) of the RGPD, since the

City Council, when carrying out diagnostic tests on its employees, has the objective of protecting

the right to life and health. He reiterates that when that decision is made, April 2020, the country

was confined and with a few essential workers who provided service in form

face-to-face Therefore, the decision to request the analysis for the detection of contagions had

two purposes, one for the prevention of occupational risks and the other as a measure to avoid

infections. It emphasizes that the result of these analyzes had to be known by the

City Council, to be able to adopt the measures as responsible for the service. did not hire the

test for the knowledge of employees only. The exclusive knowledge of the employee

made sense when it came to taking action. Consider that the consent to

having the analyzes done, implied that the result was going to be communicated to the City Council.

2) States that in the treatment of health data concurs the cause that raises the

prohibition of article 9.2 of the RGPD, in literals b), c), and h).

3) Regarding the infringement of article 25 of the RGPD, the City Council only asked the Laboratory

know the result of the test for the sole purpose of verifying if there was any contagion between

its employees, so if those responsible for the Laboratory sent any additional data

It's his responsability. They consider that it was not necessary in the specific case to take any

measure of those referred to in that article 25 of the RGPD.

TWELFTH: Of the actions carried out in this procedure and of the

documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: On 04/11/2020 the Department of Social Services of the City Council of

***CITY COUNCIL.1 proposed to workers in the area of social services to submit to

voluntarily to a COVID-19 antibody test. There is no document of the same,

the claimant agreeing to take the test, which was carried out in the offices of the City Council on

morning of 04/15/2020.

The test carried out on the claimant and 24 other employees, on 04/15/2020, consisted of a

blood test for COVID 19, for the serological determination of the levels of

Ig G – Ig M antibodies, recommended and contracted with an external laboratory:

LABORATORIOS GONZÁLEZ S.L, (LG) which is followed for the same facts

sanctioning procedure PS/00323/2021.

Some of the employees who were tested provide services in aid

home in contact with vulnerable people.

SECOND: As a way of articulating communicating the results to the employees who are

practice the tests and that serves as the procedure adopted in this process, the

City Council of *** TOWN HALL.1e accepted some conditions, which LG presented to it,

reflected in the COVID 19 ANALYTICAL BUDGET document, which indicated the

following requirements:

- “There must be a list of workers in excel format in which they de-

Ben to include: Full name of the worker; ID; Date of Birth; telephone and a

centralized mail of the company where to send the results.

- Workers must know that this laboratory will send a copy of said analysis.

policy to the company's management, so that it has proof of the state of health of its

workers in relation to a possible COVID 19 infection.

If any worker does not agree that said results be communicated to the company,

You must state it at the time of the blood draw, providing an email address.

only place to communicate the result.”

In developing this last condition of communication of results data, there is no evidence that

neither of the two parties, City Hall or LG, would inform the claimant, and the claimant, expressly

She simply stated that she was not informed of such communication in the results of the analysis,

arguing the Laboratory that on the day of taking samples the personnel are told that they are

"meeting in a room, that the results will be sent to the Councilor on duty and to the interested party, not

none showing their verbal or written opposition to carrying out the test and to communicate

the results".

THIRD: The claimant states in her claim that she receives the results of the analysis

in her email with a copy to her boss, Councilor, and the first thing she did was ask for an explanation.

cations to “her company”, stating that no one had informed her of that. Then, handle

party that went to the Laboratory by e-mail asking about the facts, indicating in a copy

of e-mail you provide, dated 04/16/2020 “you do not have my consent to give this information

very personal to anyone but me.”

From reading the claim, there is no proof that the claimant tested positive for COVID

19 in the test, does not state it, and what was stated by the City Council of *** TOWN HALL-

MIENTO.1 in tests is also deduced like this, indicating that there were no positives.

FOURTH: It is not accredited or derived from the “budget”, nor from the statements of the parties.

tes, that LG had the email of the claimant, to send the results of the

tests, but if an email from the City Council of *** TOWN HALL.1 arranged for this purpose.

Of the manifestations of this and of LG (he stated in tests that with the results, it is possible

positive or negative, the person in charge of the City Council is informed by email),

It follows that the claimant gets to know her analytics by sending it by e-mail that

the City Council does on 04/15/2020 in the afternoon, although the claimant tells the Labor

ratory that “he has sent me and my boss the results of the tests”, is not ruled out, because

that the City Council in its allegations states that it transferred to the Laboratory: “names

of workers who were going to take the test, DNI, and contact email, after so-

request the data beforehand. As email of the person in charge, the one of the

Delegate Councilor of the area ".

FIFTH: The claimant makes a complaint to the Laboratory, an entity dedicated to providing services

sanitary vices in the branch of clinical analysis, answering this: "the person

contracting service must have proof of the result, in case there is any positive case all

take the pertinent measures, in the event that the worker is unconscious and is

While the period of infecting people continues to go to work. For this reason,

this type of analytics is sent to the person responsible for the service.” , although in this case the re-

result was negative, he proceeded to transfer to the City Council the result of the analysis of the re-

cried out.

SIXTH: The City Council of *** TOWN HALL.1 refers to the Department of Social Services.

such as the person in charge of the personnel service to whom the analysis was carried out. in test-

bas provided a copy of the “CORONAVIRUS EXPOSURE RISK ASSESSMENT” made

tuned by the Occupational Risk Prevention Service with which the risks are covered

labor, initial edition 03/25/2020, area, or department of "Social Welfare", referred to between

another to the related personnel who underwent the analytical test. In addition to not looking

a type of preventive analysis without symptoms, none of its sections contemplate that in

case of any positive in an employee, case that has not been the object of the claim,

but it was negative, the complete result of the analysis must be communicated to the company,

or to a Councilor responsible for the area of activity in which it falls. If you point out, that the eva-

The solution provides for the participation of prevention services as a contact service in the event of

of positives that assesses and monitors the quarantines.

SEVENTH LG stated in evidence that the people he performs the analyzes on are interested in

verbally of the tests to be carried out and their purpose, adding that

assumed that the informed consent with the patient would be carried out by the City Council of

*** TOWN HALL.1.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of the RGPD, grants to each control authority

and according to what is established in articles 47 and 48.1 of the LOPDGDD, is competent to initiate and

resolve this procedure the Director of the Spanish Agency for Data Protection.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures processed by The Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, in so far as they are not contradicted, on a subsidiary basis, by the general rules about administrative procedures.

II

Article 4.15 of the RGPD defines health data as “personal data related to the physical or mental health of a natural person, including the provision of health care services taria, to reveal information about their state of health.”

Article 4.11 of the RGPD indicates: “consent of the interested party”: any expression of will freedom, specific, informed and unequivocal by which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that con- hover;”

The Regulation establishes a very broad concept of health data, and grants it a specific, that corresponding to the so-called "special categories of data" referred to in Article 9 of the normative text refers. They are called that way because their treatment im- involves situations in which a serious data protection risk arises, from the consequences consequences that their improper use can have for people, and they are considered so harmful that your treatment is prohibited unless an exception applies.

Data protection regulations (such as the RGPD) do not hinder the measures adopted to fight the COVID-19 pandemic. The GDPR is a legislative act of great scope and includes different provisions that allow managing the processing of personal data with various purposes related to the COVID-19 pandemic, without prejudice to the rights fundamental to privacy and the protection of personal data.

In this case it is about the health of the employees of the City Council of *** TOWN HALL.1,
people who provided their services in home help who could be in contact with
the virus and voluntarily attend the blood test offered free of charge by
the City Council to the employees, through a private clinical analysis company.

The processing of personal data in health emergency situations continues to be so,
in accordance with the personal data protection regulations (RGPD and LOPDGDD), by
which all its principles are applied, contained in article 5 of the RGPD, and among them that of
treatment of personal data with legality, loyalty and transparency, limitation of the
purpose (in this case, to detect a possible contagion so that they do not go to work, and to facilitate the
tracing and tracing of contacts of positive, probable or possible cases of COVID-19),
principle of limitation of the term of conservation, and of course, and it is necessary to make special
emphasize it, the principle of data minimization. Regarding this last aspect,
make express reference to the fact that the data processed must be exclusively those limited to
those necessary for the intended purpose, without said treatment being able to extend to
any other personal data not strictly necessary for said purpose, without
convenience can be confused with necessity, because the fundamental right to protection
of data continues to be applied normally, without prejudice to the fact that, as has been said, the
Personal data protection regulations establish that in emergency situations,
for the protection of essential public health and/or vital interests of natural persons,
If this is the case, the necessary health data may be processed to prevent the spread of the disease.
disease that has caused the health emergency.

The lawful processing of personal data must have a legal basis that falls under al-

one of the cases provided for in article 6.1 of the RGPD.

The personal data protection regulation itself, the RGPD contains the safeguards and rules necessary to legitimately allow the processing of personal data in situations occasions, such as the present one, in which there is a general health emergency. when applied said precepts provided for these cases in the RGPD, in accordance with the regulations sector applicable in the field of public health, considerations related to the pro-Data protection - within the limits provided by law - should not be used to obstruct cullize or limit the effectiveness of the measures adopted by the authorities, especially those health, in the fight against the epidemic, since the data protection regulations contains a regulation for such cases that reconciles and weighs the interests ses and rights in contention for the common good.

In principle, personal data should only be processed on the basis of the vital interest of another natural person when the processing cannot be manifestly based on a legal basis says different. (considering 46).

“As a legal basis for lawful processing of personal data, notwithstanding that they may There are other bases, such as compliance with a legal obligation, art. 6.1.c) RGPD (for the employer in the prevention of occupational risks of its employees)-, the RGPD explicitly recognizes the two mentioned: mission carried out in the public interest (art. 6.1.e) or vital interests of the interested party or other natural persons (art. 6.1.d).”

However, for the treatment of health data it is not enough that there is a legal basis of art. 6 GDPR, but in accordance with art. 9.1 and 9.2 RGPD there is a circumstance that lift the prohibition of treatment of said special category of data (among them, data of Health).

Thus, article 9 of the RGPD, after establishing in its section 1 a general prohibition for the treatment of this data, contemplates, its section 2, a series of exceptions in which the processing of the data is possible, starting with the explicit consent and following, when one of the circumstances that it lists concurs, (only those that have relation to the case of health surveillance control or medical diagnosis).

"1. The processing of personal data that reveals ethnic origin or racial, political, religious or philosophical convictions, or trade union membership, and the processing of genetic data, biometric data aimed at uniquely identifying a natural person, data relating to health or data relating to sexual life or orientation sex of a natural person.

2. Section 1 shall not apply when one of the following circumstances occurs:

"a) the interested party gave his explicit consent for the treatment of said personal data- them with one or more of the specified purposes, except when the Law of the Union or of the Member States provides that the prohibition referred to in paragraph 1 cannot be legal. raised by the interested party;

[…]"

c) the processing is necessary to protect the vital interests of the data subject or another person physically, in the event that the interested party is not capable, physically or legally, to give Your consent;

[…]"

g) the treatment is necessary for reasons of an essential public interest, on the basis of the De- right of the Union or of the Member States, which must be proportional to the objective pursued. fundamentally respect the right to data protection and establish adequate measures das and specific to protect the interests and fundamental rights of the interested party;

h) the treatment is necessary for purposes of preventive or occupational medicine, evaluation of the worker's ability to work, medical diagnosis, provision of assistance or treatment of health or social type, or management of health and social care systems and services, so- on the basis of the law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in the ted 3;

i) the treatment is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health, or to ensure high levels of quality and safety of health care and medicines or medical devices, on the basis of the Law of the Union or of the Member States that establish adequate and specific measures to protect the rights and freedoms of the interest sado, in particular professional secrecy"

[…]"

3. The personal data referred to in section 1 may be processed for the purposes mentioned in section 2, letter h), when your treatment is carried out by a professional subject to the obligation of professional secrecy, or under your responsibility, in accordance with the Law of the

Union or of the Member States or with the standards established by the bodies competent nationals, or by any other person also subject to the obligation of secrecy in accordance with the Law of the Union or of the Member States or the regulations established by the competent national bodies."

For its part, the LOPDGGD, in its article 9, indicates:

"1. For the purposes of article 9.2.a) of Regulation (EU) 2016/679, in order to avoid situations discriminatory, the consent of the affected party alone will not suffice to lift the prohibition of processing of data whose main purpose is to identify their ideology, union affiliation, religion, sexual orientation, beliefs, or racial or ethnic origin.

The provisions of the preceding paragraph will not prevent the processing of said data under the the remaining cases contemplated in article 9.2 of Regulation (EU) 2016/679, when so appropriate.

2. The data processing contemplated in letters g), h) and i) of article 9.2 of the Regulation (EU) 2016/679 based on Spanish law must be covered by a norm with the force of law, which may establish additional requirements related to its safety and confidentiality.

In particular, said rule may protect the processing of data in the field of health when required by the management of health and social care systems and services, public and private, or the execution of an insurance contract to which the affected party is a party."

In addition, it dedicates its seventeenth additional provision to the processing of health data, in the following terms: "Seventeenth additional provision. Data processing of Health.

1. They are covered by letters g), h), i) and j) of article 9.2 of the Regulation (EU) 2016/679 the processing of data related to health and genetic data that are regulated in the following laws and their development provisions:

[…]"

a) Law 14/1986, of April 25, General Health.

b) Law 31/1995, of November 8, on the Prevention of Occupational Risks.

c) Law 41/2002, of November 14, regulating basic patient autonomy and rights and obligations regarding information and clinical documentation.

d) Law 16/2003, of May 28, on cohesion and quality of the National Health System. the A

Law 44/2003, of November 21, on the organization of health professions.

[…]"

g) Law 33/2011, of October 4, General Public Health. "

That is, the RGPD and the LOPDGDD legitimize the processing of health data, if there were no

explicit consent of the interested party, if some of the aforementioned assumptions concur,

adding, that in addition, like any treatment, it must be adjusted to a legal legal basis.

gitimadora and comply with the general principles established in article 5 of the aforementioned RGPD.

In response to the fact that the "legal basis for the treatment has changed due to the situation of

alarm over the COVID-19 epidemic, it is no longer the express consent of the employee but

that the employer (City Hall of ***CITY COUNCIL.1) is authorized to carry out the

tests and analytics to detect COVID-19 in its workers and also to know the

results of the tests.", the treatment consisting of carrying out tests must be differentiated

the test, submit to a clinical analysis, and the communication of the results, in attention to

that these results constitute, as a result, part of the claimant's clinical history,

which results from the application of the guarantees established in its management and custody.

The report of the Legal Cabinet 17/2020, indicates the various possibilities that in

moments of pandemic exist for the treatment of health data, explaining some

requirements and differences between them. Because it can be related to the object of the

analysis and the collective, it indicates:

"The personal data protection regulations, insofar as they are aimed at safeguarding a

fundamental right, is applied in its entirety to the current situation, since there is no reason

any that determines the suspension of fundamental rights, nor has said measure been adopted"

"In this case, it stands out that although the legitimating base could be enabled by the letter b, as compliance with obligations in the field of labor law, as the employee is subject to dor to the regulations on the prevention of occupational risks, from whose article 14 a decree duty of the employer to protect workers against occupational risks, in this occasion it cannot be said that this cause concurs, since it was not carried out with the channels that said rule provides.

The art. 29 of Law 31/1995, of 8/11, on the prevention of Occupational Risks, regarding the implementation of measures to promote the improvement of the safety and health of workers at work, also establishes obligations of workers in terms of risks prevention. Thus, it is up to each worker to ensure, according to their possibilities and by complying with the prevention measures that are adopted in each case, for their own safety and health at work and for that of others whom they may affect their professional activity, due to their acts and omissions at work, in accordance with their training and the instructions of the employer. This is specified in that must immediately inform their direct hierarchical superior, and the workers designated to carry out protection and prevention activities or, where appropriate, to serve of prevention, about any situation that, in his opinion, involves, for reasonable reasons, a risk to the safety and health of workers; contribute to the fulfillment of the obligations established by the competent authority in order to protect the safety and health of workers at work and cooperate with the employer so that he can guarantee working conditions that are safe and do not entail risks for the safety and health of workers. In the context of the current situation derived from covid-19 this means that the worker must inform his employer in case of suspicion of contact with the virus, in order to safeguard, in addition to their own health, that of others

workers of the workplace, so that appropriate measures can be taken. The

The employer must process said data in accordance with the RGPD, and the necessary measures must be taken.

security measures and proactive responsibility that the treatment demands”

It is different that the employee communicates to the employer, in case of suspicion, his symptoms, to that

a Laboratory communicates to the employer the full result of an analysis that has as

purpose of detecting the virus, in which there is no infection, considering the need and

proportionality of the treatment in which the purpose and purpose of the detection does not cover

more than the communication of the suspicion, not the full analysis of the analytics carried out.

III

Order SND/344/2020, of 04/13, which establishes exceptional measures for the

reinforcement of the National Health System and the containment of the health crisis caused by the

COVID-19 that enters into force on 04/14/2020 BOE 04/14/2020, which develops the Royal Decree

463/2020 of 03/14, which declares the state of alarm for the management of the situation of

health crisis caused by COVID-19, determines that for the exercise of the functions

provided for in it under the superior direction of the President of the Government, the Minister of

Health will have the status of delegated competent authority and is empowered to dictate

orders, resolutions and provisions and interpretive instructions necessary to guarantee

the provision of all services in order to protect people and goods and places

by adopting any of the measures provided for in article 11 of the Law

Organic 4/1981 of 1/06 of the States of alarm, exception and site.

Its THIRD section establishes the obligation for private diagnostic centers to notify

notify the competent health authority of the Autonomous Community in which they are located
located and/or provide their services, confirmed COVID-19 cases of those who have had
knowledge after carrying out the corresponding diagnostic tests. Also, already
The same obligation exists for private hospital centers through Decree 312/996,
from 12/24. On the other hand, Law 33/2011, General Public Health, allows the Authorities
Sanitary collect information without the consent of the interested parties for epidemiological reasons.
logic and public health. It also establishes the obligation of private centers to send said
information to the competent health authority.
Its second section indicates that "the indication for carrying out diagnostic tests
for the detection of COVID-19 must be prescribed by a physician in accordance with the di-
guidelines, instructions and criteria agreed for this purpose by the competent health authority"
In the Valencian Community, this Ministerial Order is developed by the resolution of
04/16/2020 of the Ministry of Universal Health and Public Health, which complies with
SNED order 344/2020, of 04/13, will enter into force on 04/17/2020. In this resolution
The solution reiterates in the fifth article that all service centers and health establishments
clinical diagnosis clinics, regardless of their ownership, that are located or
provide their services in the Valencian Community that carry out diagnostic tests
outside the scope of the public health system must:
A) Have the prescription by a doctor in accordance with the guidelines and instructions and
criteria established by the health authority.
B) Guarantee the necessary means to complete the diagnostic process of current infection.
by COVID-19 according to current protocols and guarantee the performance of tests
necessary supplements.
C) Once the entire diagnostic process has been completed, notify the diagnosed cases to the
General Directorate of Public Health and Addictions, by email
The Ministry of Health issued a series of instructions, which appear on its website "Docu-

technical documents for professionals", address https://www.sanidad.gob.es/profesionales/saludPublica/ccayes/alertasActual/nCov/documentos.htm, which have been updated in different versions. Related to the matter, the following stand out:

-"Procedure for action against cases of infection by the new coronavirus (SARS-CoV-two)":

In addition to indicating the situations in which the detection of infection in people should be carried out, nas with "clinical picture" "of respiratory infection" Indicates that the participation of health services prevention against exposure to SARS COv-2 in the business environment is crucial, adapted their activity with up-to-date recommendations and compliance with preventive measures. prevention: of an organizational nature, of personal protection, of a worker who is especially vulnerable ble and level of risk, study and management of contacts that have occurred in the company and of collaboration in the management of temporary incapacity, "as explained in the Procedure for occupational risk prevention services against exposure"

It also alludes to the situations in which infection detection must be carried out, in situations tions of people with clinical pictures of respiratory infection, and refers to the guide for the use tion of rapid antibody tests for COVID 19, in which it specifies that in general, "the Diagnostic tests will only be carried out in symptomatic, moderate or severe patients in the hospital setting or mild in the out-of-hospital setting "In addition, it is indicated that the tests rological the use "in the outpatient setting, it is only prioritized in residences of people elderly and social health centers and its use is indicated in symptomatic patients, if they have Several days have elapsed since the onset of symptoms."

As for the confirmed COVID 19 cases, it is prescribed that they are the centers, services and

health establishments of clinical diagnosis, regardless of their ownership, those that

they must notify the competent health authority of the Autonomous Community of confirmed COVID cases

of which they have been aware.

In other words, it is not up to the company or, in this case, the employer, the City Council of

***CITY COUNCIL.1 the complete analytical results, in this case negative.

-Instructions on performing diagnostic tests for the detection of COVID-19 in

the field of companies

-Method of action for occupational risk prevention services (SPRL) against the

exposure to SARS COV-2. First review 02/28/2020

The SPRL “are called upon to cooperate with the health authorities in the early detection of

all cases compatible with COVID-19 and their contacts, and in the reintegration of persons

you sound vaccinated …It is up to the companies to assess the risk of exposure in which they

workers can find in each of the differentiated tasks that they perform.

and follow the recommendations on the subject issued by the prevention service, if-

following the guidelines and recommendations formulated by the health authorities.”

Any decision-making on the preventive measures to be adopted in each company must

be based on information gathered through the specific exposure risk assessment,

which will always be carried out in accordance with the information provided by the health authorities.

tarias. In this process, workers will be consulted and their proposals will be considered. In

depending on the nature of the activities and transmission mechanisms of the coronavirus

SARSCoV-2, we can establish the different exposure scenarios in which it can be

find the workers, which are presented in Table 1…"

Companies, through prevention services, are called upon to collaborate with the authorities.

health authorities in the early detection of all cases compatible with COVID-19 and its

contacts, to control transmission. The participation of health services personnel

of prevention in the National Epidemiological Surveillance Network with the collection of information

and the notification of COVID-19 cases is an obligation, but also a fundamental action.

such in the control and monitoring of cases and contacts in the work environment. The teachers

professionals of the SPRL health service will be in charge of establishing the mechanisms

for the detection, investigation and monitoring of cases and close contacts in the field

of its powers, in coordination with the public health authorities. The Communities

Authorities and the Autonomous Cities will establish the procedures and circuits to be followed in each

case.

That the claimant voluntarily submits to the test does not mean that the City Council does not

has obligations in compliance with data protection regulations, and that the claim

mante does not enjoy guarantees that are contemplated in said regulations

The RGPD defines in its article 4:

IV

"2) «processing»: any operation or set of operations performed on data

personal data or sets of personal data, whether by automated procedures or not,

such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or

any other form of authorization of access, collation or interconnection, limitation, suppression or

destruction;

7) "controller" or "controller": the natural or legal person, authority

public, service or other body that, alone or jointly with others, determines the ends and means of the

treatment; if the law of the Union or of the Member States determines the ends and means

of the treatment, the person in charge of the treatment or the specific criteria for their appointment

may be established by the Law of the Union or of the Member States;"

The City Council of ***AYUNTAMIENTO.1 hires and in this case accepts the terms that LG

exposed him, to carry out some antigen detection analyzes with the purpose of

protection of employees, knowing that LG requests a contact e-mail to receive

the results of the analyses, not only did he not say anything in the hiring process, but he also

provided the e-mail, receives the results and delivers them to the claimant, with a copy to the

Councilor for Social Services.

Thus, two processes are observed, one the realization of the test and its purpose, two,

Subsequently, an email is provided that the City Council gives to the Laboratory to receive the results.

It is observed that although the one that finances the test is the City Council, the owner of the data does not

is informed or aware of the transfer of analytical results, because it has not been

offered neither information nor any option on that second operation that articulates the

City Hall and the Laboratory about the test results.

Within the legitimacy for said communication of health data, what is obtained as

result is the breach of the confidentiality of the results of the analysis of its owner, especially

the basis of agreement between the parties, since it is the full result of the analysis,

it is no longer the mention that it is positive, which it was not, it is that in addition, it is not proven that

for this there would be consent, in the way required by the RGPD for this type of data,

"explicit" within what such consent must be, unequivocal, informed and specific. Nope

existing that consent, there is no authorization for the transfer of the results to the

employer, nor for the distribution of the result to the Department.

However, the results of a complete blood test, even if you don't have the

coronavirus, are also health data, so not only its collection, but in general,

its treatment is subject to the articles already reviewed.

The City Council has processed the health data - complete analysis of the test, violating the

treatment of health data linked to the analytics carried out, being included in the

article 9.2.a of the RGPD that determines:

"1. The processing of personal data that reveals ethnic or racial origin,

political opinions, religious or philosophical convictions, or trade union membership, and

treatment of genetic data, biometric data aimed at uniquely identifying

a natural person, data relating to health or data relating to sexual life or orientation

sex of a natural person.

2. Section 1 shall not apply when one of the following circumstances occurs:

a) the interested party gave their explicit consent for the processing of said personal data

with one or more of the specified purposes, except when the Law of the Union or of the

Member States provides that the prohibition referred to in paragraph 1 cannot be

raised by the interested party;

It is accredited that it has processed health data in its systems, the complete analysis carried out,

incorporating them from LG and communicates them to the person on whom the claim depends. This, without

that the necessary explicit consent is present so that the City Council in this operation

other than the practice of the analytical test obtain the results, remembering that the

himself validated this issue in the contract, without there being an exemption that can be included in

some of those listed in the aforementioned article 9.2 of the RGPD for these purposes.

Regarding the allegations to the proposal, the infringement of article 9.2 a) of the

RGPD for having implemented the option of testing employees who

they were made voluntarily, but rather to implement the enabling option, as it is accredited,

of the transfer of the claimant's health data to the City Council itself, and this or within

this, to the hierarchical superior of the claimant. It was not just a communication.

affirmative or negative sense, but of the report of the complete analytic.

Data that are considered health, over which should also prevail by nature,

the duty of secrecy of their knowledge, as determined among other laws, Law 41/2002

of 11/14, basic regulation of patient autonomy and rights and obligations in

matter of information and clinical documentation, and that clearly belong to the privacy

of the individual who owns them. The City Council not only contracted LG to carry out

tests on employees who voluntarily agreed to submit to it, but

that accepts the clause of the Laboratory, does not discuss it, authorizing the sending of the

results, to know the hierarchical superior, and with the supposed purpose it adds in the

pleadings to prepare and organize the taking of measures. In this regard, it should be noted that

knowledge is not linked to the practice of the test, and it does not seem necessary more than to know if

perhaps the positive cases, but it is also that it is not ideal to disclose all the

results of all the analyzes nor these complete, for said purpose, nor proportional nor

necessary.

The allegations made do not allow reconsidering the statement of the commission of the

imputed offense.

v

Article 83.5 a) of the RGPD contains:

“Infractions 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,

of an amount equivalent to a maximum of 4% of the total annual global turnover of the

previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent to

tenor of articles 5, 6, 7 and 9;”

For the purposes of calculating its prescription, the LOPDGDD states in its article 72:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the following:

“e) The processing of personal data of the categories referred to in article 9 of the

Regulation (EU) 2016/679, without any of the circumstances provided for in said

precept and in article 9 of this organic law.”

SAW

On the other hand, the City Council of *** TOWN HALL.1 is charged with the infraction of article

25.1 of the RGPD that indicates:

"1. Taking into account the state of the art, the cost of the application and the nature,

scope, context and purposes of the treatment, as well as the risks of different probability and

seriousness that the treatment entails for the rights and freedoms of natural persons, the

responsible for the treatment will apply, both at the time of determining the means of

treatment as at the time of the treatment itself, technical and organizational measures

appropriate, such as pseudonymization, designed to effectively implement the principles

of data protection, such as data minimization, and integrate the necessary guarantees in

processing, in order to meet the requirements of this Regulation and protect the rights

of those interested."

The hints in the startup agreement for this were:

- Lists various legitimizing bases in the treatment carried out. The explanation of the bases of legitimacy of the treatments must be clear in each case, in the present reference has been made to some that do not fit into the scheme of employment and health control.

-They have requested information from the Laboratory about the duties of information, audit in matter of data protection, or equivalent documentation as evidence of technical measures unique and organizational.

- “The consents of the contracted external laboratory are being studied to verify proper compliance with data protection.”

Considering also that the events could have happened in other areas of the City Council, and in this specific case to 24 other people who came to take the test.

All of this evidence contributes to the consideration that in the design of the treatment operation the purpose and its content, essential organizational elements were not taken into account. tive and technical for, in consideration of the elements that intervene in the treatment and risks to rights and freedoms, would have been applied from the beginning as per example the wording of the contractual clauses, the necessary guarantees in the treatment to protect the rights of data subjects.

On the other hand, when opening the start-up agreement, it can be seen that these deficiencies increase, that occur both at the time of determining the means of treatment and at the time of carrying out out the treatment. Like it shows:

- Does not provide a documentary proof of having informed the claimant of the communication tion of the results of the analysis or what would be done with the data, in case of a positive result or as

would affect you at work, specifically, who would follow up on close contacts?

chos and legitimacy for it, because the prevention services did not intervene.

- There is no news of the participation or information to the staff representatives. In

evidence, argumentative request or protocol that would be followed from the result of the tests, only

He replied that they all tested negative.

-The Data Protection Delegate did not intervene, with an alleged justification that was too general.

Nérica, appreciating that it is a case that affects personal data.

-Accept a condition in the treatment of LG that assumes by default that the data is co-

known by the contractor of the service, the City Council itself, when indicating: "The workers

They should know that this laboratory will send a copy of said analysis to the address of the

company, so that it has proof of the state of health of its workers in relation to

possible COVID 19 infection.

If any worker does not agree that said results be communicated to the company,

You must state it at the time of the blood draw, providing an email address.

only place to communicate the result."

-Does not take into account the processing of minimum data that would be necessary accordingly

with the intended purpose. You want to organize and arrange the measures in case there were any

no positive in the disease. Negative results do not have to identify their holder

for not being precise, much less with the complete sending of the analytics.

It is hereby accredited that the City Council of *** TOWN HALL.1 has failed to comply with the obligations

regulations of the RGPD in the design of treatment operations, established in article 25 of the

itself, which imposes this obligation on all data controllers per-

and that implies the application of adequate measures and guarantees necessary for the application

effective implementation of the principles of Data Protection and, consequently, of the rights and

liberties of the interested parties. It must also specifically consider the principles of the article

5 of the RGPD in the context of the treatment in question. In this case, for example, it deserves

additional consideration the principle of adequacy and relevance in relation to the purposes for which

that are treated (5.1.c) of the RGPD), since the negative data in the analysis can lead to

treatment different from that which has occurred through the communication of the full result of

the analysis of the test, a consideration that has not been taken into account by the City Council of

*** TOWN HALL.1, and additionally, the specificity of the risks of different probabilities.

gravity and seriousness that the treatment entails for the rights and freedoms of natural persons.

cas in attention to the confidentiality of specifically protected medical data.

On the allegation that the request for the result, the complete analysis sent was a matter of the

Laboratory, it must be indicated that the purpose of data processing was not correct.

mind configured for various reasons, organizational, regulatory and integration of principles

in the treatment of its employees in a test that although practiced by a professional, it does not imply

complemented the basic elements indicated in the aforementioned article.

The infringement is contained in article 83.4 of the RGPD, which indicates:

“Infractions of the following provisions will be sanctioned, in accordance with section

2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company,

of an amount equivalent to a maximum of 2% of the total global annual turnover of the

previous financial year, opting for the highest amount:

a) the obligations of the person in charge and the person in charge under articles 8, 11, 25 to 39, 42

and 43;”

For the purpose of calculating its prescription, the LOPDGDD states in its article 73:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, they are considered

serious and will prescribe after two years the infractions that suppose a substantial violation

of the articles mentioned therein and, in particular, the following:

d) Failure to adopt those technical and organizational measures that are appropriate

to effectively apply the principles of data protection by design, as well as

the non-integration of the necessary guarantees in the treatment, in the terms required by the

Article 25 of Regulation (EU) 2016/679."

7th

Article 58.2 of the RGPD provides: "Each control authority will have all the following

You have corrective powers indicated below:

a) order the controller or processor that the processing operations be carried out

comply with the provisions of this Regulation, where appropriate, of a given

manner and within a specified period;

The imposition of these adjustments is compatible with the sanction consisting of a fine

administrative, according to the provisions of art. 83.2 of the GDPR.

"i) impose an administrative fine pursuant to article 83, in addition to or instead of the measures

das mentioned in this section, according to the circumstances of each particular case;"

Article 83.7 of the RGPD adds:

viii

"Without prejudice to the corrective powers of the supervisory authorities under article 58,

paragraph 2, each Member State may lay down rules on whether and in what

measure, impose administrative fines on authorities and public bodies established in

that Member State.”

The Spanish legal system has chosen not to fine entities

public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: “1. The

regime established in this article will be applicable to the treatments that are

responsible or in charge:

“c) The General Administration of the State, the Administrations of the communities

autonomous and the entities that make up the Local Administration.”

"two. When those responsible or in charge listed in section 1 commit any

of the infractions referred to in articles 72 to 74 of this organic law, the authority

of data protection that is competent will issue a resolution sanctioning them

with warning. The resolution will also establish the measures to be adopted to

that the conduct ceases or the effects of the infraction that had been committed be corrected.

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

depends hierarchically, where appropriate, and those affected who had the status of

interested, if any."

"4. The resolutions that

fall in relation to the measures and actions referred to in the preceding sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the

autonomous communities the actions carried out and the resolutions issued under the

this article.

6. When the competent authority is the Spanish Agency for Data Protection, this

will publish on its website with due separation the resolutions referring 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 infraction.”

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SANCTION the CITY COUNCIL OF ***CITY COUNCIL.1

with CIF P0304700H, for the violation of the RGPD, articles:

- 9.2.a) of the RGPD, in accordance with 83.5.a) of the same, typified as very serious in the Article 72.1.e) of the LOPDGDD.

-25.1 of the RGPD, in accordance with 83.4.a) of the same, typified as serious in the article 73.d) of the LOPDGDD.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF ***CITY COUNCIL.1.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the established in article 77.5 of the LOPDGDD.

FOURTH: In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the interested parties may optionally file an appeal for reconsideration before the Director of the Agency Spanish Data Protection Authority within a month from the day following the notification of this resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National High Court, in accordance with the provisions of the article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13 July, regulatory of the Contentious-administrative Jurisdiction, in the term of two months to count 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, it may be provisionally suspend the firm resolution in administrative proceedings if the interested party expresses his/her intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through 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 will also need to transfer the Agency the documentation that proves the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would terminate the precautionary suspension.

Sea Spain Marti

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