

□ Procedure No.: PS/00329/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated May 21, 2020

filed a claim with the Spanish Data Protection Agency.

The claim is directed against the CITY COUNCIL OF BURGOS with NIF

P0906100C (hereinafter claimed)

The reasons on which the claim is based are that the aforementioned council lacks a  
data protection officer.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), with reference number E/04057/2020, transfer of

said claim to the respondent, on June 10, 2020, to proceed with its

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations,

without having received any response to the aforementioned request.

THIRD: On November 17, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the

alleged infringement of article 37 of the RGPD, typified in article 83.4 of the RGPD.

FOURTH: Notification of the aforementioned initiation agreement, the one claimed on January 8, 2021,

He presented a brief of allegations in which, in summary, he stated that he proceeded to

tender the provision of technical assistance service by a company

specialized in information security and data protection

personnel, a contract that was awarded on August 18, 2020 to the company Centro

Regional Advanced Services, S.A. with a duration of 10 months.

FIFTH: On January 19, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous investigation actions, E/04057/2020.

SIXTH: On February 11, 2021, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency

sanction the CITY COUNCIL OF BURGOS, with NIF P0906100C, for an infraction

of article 37 of the RGPD, typified in article 83.4 of the RGPD, a sanction of

warning.

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Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: It is stated that the CITY COUNCIL OF BURGOS lacks a

data protection officer.

SECOND: The aforementioned council has argued that for the provision of the service of

technical assistance on data protection, held on August 18, 2020

a contract with the company Centro Regional de Servicios Avanzados, S.A., for a

duration of 10 months, in order to adapt their treatments to the LOPDGDD and

ENS.

THIRD: At present, the Burgos City Council has not appointed a Delegate

Data Protection and has so notified the AEPD.

## FOUNDATIONS OF LAW

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

II

The Public Administrations act as data controllers of personal character and, on some occasions, they exercise functions of those in charge of treatment, for what corresponds to them, following the principle of responsibility proactively, meet the obligations that the RGPD details, among which is included, the obligation to appoint a data protection delegate and communicate it to this

AEPD

The obligation is imposed by article 37 of the RGPD, which indicates:

"1. The person in charge and the person in charge of the treatment will designate a delegate of data protection provided that:

a) the treatment is carried out by a public authority or body, except those courts acting in the exercise of their judicial function;"

Article 37.3 and 4 of the RGPD indicates about the designation of the DPD "When the

The person responsible or the person in charge of the treatment is a public authority or body, may designate a single data protection delegate for several of these authorities or bodies, taking into account their organizational structure and size.

4. In cases other than those referred to in section 1, the person in charge or the in charge of the treatment or the associations and other organisms that represent

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categories of managers or managers may designate a protection delegate of data or they must designate it if so required by the Law of the Union or of the States members. The data protection delegate may act on behalf of these associations and other organizations that represent those responsible or in charge.”

The LOPDGDD determines in its article 34.1 and 3: “Appointment of a delegate of Data Protection”

1. Those responsible and in charge of the treatment must designate a delegate of data protection in the cases provided for in article 37.1 of the Regulation

(EU) 2016/679 and, in any case, in the case of the following entities:

3. Those responsible and in charge of the treatment will communicate within a period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional authorities for data protection, appointments, appointments and dismissals of the data protection delegates both in the cases in which they are obliged to their designation as in the case in which it is voluntary.

The infringement is considered as such in article 83.4.a of the RGPD, which states: “4. The Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 a 39, 42 and 43;”

Article 83.7 of the RGPD indicates:

“Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether

can, and to what extent, impose administrative fines on authorities and organizations

public authorities established in that Member State.

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

following corrective powers indicated below:

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

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period.

In this sense, article 77.1 c) and 2, 4 and 5 of the LOPGDD, indicates:

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

who are responsible or in charge:

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c) The General Administration of the State, the Administrations of the Communities

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

2 “When those responsible or in charge listed in section 1 committed

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

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish 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 of the that depends hierarchically, where appropriate, and to those affected who had the condition of interested, in his case.”

4." The resolutions that fall in relation to the measures and actions referred to in the sections earlier.”

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

### III

Article 73 of the LOPDDG indicates: Infractions considered serious “Based on the provisions of article 83.4 of Regulation (EU) 2016/679, 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:

v) Failure to comply with the obligation to appoint a data protection delegate when his appointment is required in accordance with article 37 of the Regulation (EU) 2016/679 and article 34 of this organic law.”

### IV

The aforementioned city council in response to the agreement to initiate this procedure sanctioning party, has proven that in order to correct the facts that caused this procedure has proceeded to celebrate on August 18, 2020 a contract with the company Centro Regional de Servicios Avanzados, S.A., for the provision of the service

of technical assistance on data protection, for a duration of 10

months, in order to adapt their treatments to the LOPDGDD and ENS.

However, the City Council of Burgos has not yet appointed a Delegate of

Data Protection and has so notified the AEPD.

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Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the BURGOS CITY COUNCIL, with NIF P0906100C, by

an infringement of article 37 of the RGPD, typified in article 83.4 of the RGPD, a

warning sanction.

SECOND: REQUEST the CITY COUNCIL OF BURGOS, with NIF P0906100C that

appoint a Data Protection Officer within a period of 2 months, since that

obligation they have since May 25, 2018, in accordance with article 37.3

and 4 of the RGPD date of entry into force of the current data protection regulations.

THIRD: NOTIFY this resolution to the BURGOS CITY COUNCIL.

FOURTH

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

: COMMUNICATE this resolution to the Ombudsman,

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

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

Interested parties may optionally file an appeal for reconsideration before the

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

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

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

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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Director of the Spanish Data Protection Agency

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