

□ File No.: PS/00045/2021

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 complaining party) dated September 23,
2020, filed a claim with the Spanish Data Protection Agency. The
claim is directed against LLUCMAJOR CITY COUNCIL with NIF P0703100H
(hereinafter, the CITY COUNCIL). The grounds on which the claim is based are
following:

-According to what he says, he picked up a letter at the post office and outside, without
need to open or unseal it, it could be read that it was about a
sanction in matters of Traffic, Circulation of Motor Vehicles and Road Safety.
It adds that such information has been exposed to an unknown number of people.
Along with the claim, provide a copy of the outside and inside of the letter received.

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), said claim was transferred to the CITY COUNCIL, to
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements set forth in the regulations of
Data Protection.

The transfer was sent on 10/29/2020 through the Notification Service
Electronic and Enabled Electronic Address, being notified the same day
10/29/2020.

On 11/25/2020, this Agency received a written response, transferring

of a report prepared by the Tax Agency of the Balearic Islands (hereinafter,

ATIB) indicating:

-It corresponds to the ATIB, by order of the LLUCMAJOR CITY COUNCIL, the

processing of the sanctioning files in the matter of Traffic of the City Council.

-The claim refers to the notification of an administrative act (initiation agreement

of sanctioning procedure in the matter of Traffic), carried out, as a postal operator,

by the entity Sociedad Estatal Correos y Telégrafos SA, and responds to what is established

in articles 40 and following of Law 39/2015 of October 1, of the Procedure

Common Administrative of Public Administrations, in relation to what is established

in the consolidated text of the Law on Traffic, Circulation of Motor Vehicles and

Road Safety, approved by Royal Legislative Decree 6/2015 of October 31, in

particular article 90 and following.

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-Regarding the format of administrative notifications, it is necessary to take into account the

provided for in Law 43/2010 of December 30 on the universal postal service and its

Regulation approved by Royal Decree 1829/1999 of December 3, in which article

40 establishes that:

<<The admission of notifications by the operator that has been entrusted with the

provision of the universal postal service requires that the word

"Notification", and, below it and in smaller characters, the act to which it is

refers (summons, requirement, resolution) and the indication "File number..." or

any other expression that identifies the act to notify.

These shipments will be accompanied by the supporting document of their admission>>

- Once the specific notification object of the claim has been verified, it is considered that conforms to the exposed regulations, consisting only visible in the upper part of the acknowledgment of receipt of the notified act: "Notification of alleged traffic violation".

If the claim refers to the fact that once the acknowledgment of receipt has been withdrawn, display the text of the notified act, it must be taken into account that the visible text is refers generically to the regulations of the Traffic sanctioning procedure, without containing data from the complaint. That text is the one that appears in the notifications practiced in the Single Edictal Board of the Official State Gazette, in the notifications related to sanctioning procedures in matters of Traffic, and could only be visible by the postal operator once the acknowledgment of receipt.

-To access the specific data of the complaint (registration of the vehicle, amount of sanction etc) you have to separate the edges of the document.

-Despite not considering that any regulations regarding Data Protection, have proceeded to remove from the acknowledgment of receipt the information relating to the notified act.

THIRD: On 12/23/2020, the claim filed by the claiming party.

FOURTH: On October 29, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the CITY COUNCIL, for the alleged infringement of Article 5.1.f) of the RGPD and Article 32 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: On 11/16/2021, a brief of allegations is received in which, in In short, the CITY COUNCIL states:

-The claim refers to the notification of an administrative act (initiation agreement

of sanctioning procedure in the matter of traffic) carried out, as a postal operator, by the entity Sociedad Estatal Correos y Telégrafos SA. Therefore, first of all, the notification responds to the provisions of articles 40 and following of the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in relation to what is established in the consolidated text of the Law on Traffic, Circulation of Motor Vehicles and Road Safety, approved by the

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Royal Legislative Decree 6/2015, of October 30 -in particular, articles 90 and concordant-).

-Secondly, with regard to the format of administrative notifications,

The provisions of Law 43/2010, of December 30, on the service must be taken into account.

universal postal service and its Regulations, approved by Royal Decree 1829/1999, of 3

December, in which the admission and delivery of notifications of organs is regulated

administrative. In this regard, it should be noted that, in accordance with article 40

of Royal Decree 1829/1999, of December 3, the admission of notifications by the

operator entrusted with the provision of the universal postal service

requires that the word “Notification” appear on the shipment, and, below it and in

smaller characters, the act to which it refers (summons, request,

resolution) and the indication “file number...” or any other expression that identifies

the act to notify.

Likewise, it should also be noted that both article 7 of Law 43/2010, as well as the

Article 6 of Royal Decree 1829/1999, of December 3, establishes the obligation to

data protection by the postal operator, which will include the duty of secrecy of those of a personal nature, the confidentiality of the information transmitted or stored and privacy protection.

-Once the specific notification object of the claim has been verified, it is considered that it conforms to the exposed regulations, being only visible in the part above the acknowledgment of receipt the notified act, in this case indicating "Notification of Alleged Traffic Violation" (to which only the operator has access postal) resulting in that at the time of delivering the notification said part of the acknowledgment is detached by the postal operator from the notification document so that it is returned to the issuing entity of the act, delivering the notification to the person addressee or, where appropriate, enabled for reception.

-If the claim refers to the fact that, once the acknowledgment of receipt has been withdrawn, To view the text of the notified act, the following must be taken into account:

a) The only visible text (which is the one that was attached to the submitted claim) is refers, in a generic way, to the regulations of the traffic sanctioning procedure, without that the data of the complaint is recorded at any time. Furthermore, this text is the one that appears in the publications in the Official State Gazette of notification of the initiation of sanctioning proceedings in the matter of traffic for not having been able to carry out the personal notification (ref.: articles 90.3 and 91 of the consolidated text of the Law on Traffic, Circulation of Motor Vehicles and Road Safety). Therefore, the text that could be visible by the postal operator or another person in the time of notification of the act after releasing the acknowledgment of receipt, is the same that appears in the publications of the notifications by appearance made to the protection of the aforementioned articles of the traffic regulations, as well as article 44 of Law 39/2015, of October 1, on the Common Administrative Procedure of the public administrations, and in accordance with Additional Provision 7 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights.

b) To access the data of the complaint (such as data of the accused, fact denounced, date and place of denouncement, vehicle registration, amount of the penalty),

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that are also attached to the claim, must be separated, or more

specifically, necessarily peel off the edges of the document. Therefore, it

In any case, manual handling is required.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The facts bring cause for the claim dated 09/23/2020, through

of which the complaining party informed this Agency that he had

received a postal notification from the TOWN HALL that violated the regulations of

data protection, considering that your personal data had been

exposed.

SECOND: It is accredited that the complaining party received a notice of

start of a sanctioning procedure in the matter of traffic, by means of a certified letter

with acknowledgment of receipt, stating in the acknowledgment the inscription "notification of Alleged

Traffic Violation". According to the CITY COUNCIL, even considering

that the regulations on data protection have not been violated, they have proceeded

to suppress said registration in the notifications of sanctioning procedures in

matter of Traffic, Circulation of Motor Vehicles and Road Safety.

THIRD: It is proven that the generic information related to the typification of the traffic sanctioning procedure is not visible on the outside of the letter, being perfectly hidden by the acknowledgment of receipt.

FOURTH: It is accredited that any other specific data related to the infraction, personal data of the offender, vehicle, amount of the fine, etc. it's just visible if the letter is opened, an operation that only the recipient of the letter performs.

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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

Article 89.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, indicates the following:

II

“Article 89. Proposed resolution in sanctioning procedures.

1. The investigating body will resolve the completion of the procedure, with a file of the actions, without it being necessary to formulate the resolution proposal, when in the procedure instruction it becomes clear that there is any of the following circumstances:

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(...)

c) When the proven facts do not constitute, in a manifest way, an infringement administrative. (...)"

III

In the present case, after examining the arguments presented by the CITY COUNCIL, as well as all the documentation in the file, should be conclude that there has been no violation of data protection, since the data of the complaining party have not been exposed, as stated in his claim, when verifying that the possible external information of the letter, - generic information regarding the classification of the sanctioning procedure in matters of traffic-, is hidden at all times by the acknowledgment of receipt, not being able to considered that the simple fact of withdrawing said acknowledgment by the employee responsible for the delivery supposes exposure of data, being subject to the duty of secret, the confidentiality of the information transmitted or stored and the protection privacy (article 6 of Royal Decree 1829/1999, of December 3, by which the Regulation that regulates the provision of postal services is approved, in development of what is established in Law 24/1998, of July 13, of the Postal Service Universal and Liberalization of Postal Services).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES

FIRST: FILE this sanctioning procedure.

SECOND: NOTIFY this resolution to the LLUCMAJOR CITY COUNCIL, and report the outcome of the proceedings to A.A.A..

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 LOPDGD, 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through

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Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving 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 end the precautionary suspension.

Sea Spain Marti

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