

□ Procedure No.: PS/00073/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: PROFESSIONAL COLLECTIVE OF MUNICIPAL POLICE (CPPM) (hereinafter,
the claimant) on 07/09/2018 filed a claim with the Spanish Agency for
Data Protection against COSLADA CITY COUNCIL (hereinafter, the claimed party).

The reasons on which the claim is based are that the recordings of the
radio transmissions of the INTEGRAL COMMUNICATIONS CENTER (CICO) for purposes
disciplinary. It adds that the police unions were informed that the recordings
were aimed at aspects of security, organization and coordination, and the
image retention period. It does not identify the employee who was initiated the
neither the file nor the claim appears any mention of his possible identity.

Together with the claim it contributes.

-Minutes of a meeting between Corporation and Unions, of 03/27/2017, appearing in one of the
points of the day, the aspect of "recording transmissions and telephone calls". "Whether
recording the communications should publish it and make it extensive to the entire staff" "The
Corporation declares that no type of communication is recorded.

SECOND: In view of the facts and the documents provided by the claimant, at
claimed, a copy of the claim is sent to them through the AEPD, so that they can send:
Copy of the communications and the decision adopted that has been sent to the claim.

1.

maintenance regarding the transfer of this claim.

two.

mation.

3.

lares.

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

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

THIRD: On 10/1/2018 the respondent provides:

Letter from the Coslada Local Police dated 09/12/2018, subject "technical report on

A)

processing of personal data and communications in the CICO of the Police

Local", of Mayor-chief of local police. In the letter it is stated that the

communications that are kept in the CICO telecommunications room (located in

the headquarters of the City Council) are, among others, video surveillance of traffic, and security of

municipal buildings. The room works with two agents per shift continuously and

uninterrupted every day, 24 hours, in three daily shifts and a Sub-inspector

coordinate.

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They develop the functions of:

Attention and management of all telephone calls that arrive at the switchboard of the

a)

local police.

Direction and management of communication traffic, via radio transmissions, between the

b)

service units and the CICO itself.

Establishment and coordination of communications with other services of

c)

emergency or other public services.

Introduction of data on the development of the service shift in the application

d)

computer GESPOL.

Video surveillance of traffic and municipal buildings through a security system.

and)

monitoring installed in the room itself.

Among other tools, they have a CICO protocol that systematizes the work that is

develops in the CICO room, gives guidelines and guidelines for the operational quality of the work, and

contains a section on "internal work regulations".

They state that the audio recording function is not contemplated in the communications

that are kept in the CICO through video cameras.

Regarding the recording of communications between local police, difference:

1.

Radio transmission channel base station of the CICO to: radio transmitters of the

radio patrol vehicles and individual portable mobile radio telephones, known as

"walkies" and vice versa, and communications through the telephone network. These

Communications are recorded by means of a "recording module". A record is stored

voice" and "event log" in a folder of the GESPOL application. They indicate that: "The

The sole purpose of the recording is security, and quality in the management and execution of the

set of public services that are demanded."

two.

Telephone communications: calls from abroad are not recorded at the moment.

3.

If calls made with short, four-digit numbers that form part of the City Council's internal telephone network, including those located in other rooms and offices of the Police. Recording is also activated.

CICO communications-corporate mobile phones that have this short number.

“The purpose of the recordings is the same as that indicated with respect to communications by radio transmissions.

The recording files are kept for a maximum of 30 days. "Just in the in the event that during that period the need to conserve any certain recording, its automatic deletion is blocked, it is saved". They are yielded to Judges and prosecutors or the State Security Corps and Forces.

Four.

It states that with respect to the transfers of recordings made in the last twelve months, dated 04/23/2018 “in response to the request for data and information required by the instructor of the disciplinary file XXX-X/00/00, since the

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official file, agent ***AGENTE.1-who identifies with name and surnames (in hereinafter ***AGENT.1), in possible serious infraction due to disobedience”, a “CD ROM that contained an audio file, extracted from the recording of a certain and specific time slot of the radio transmission system of this Local Police.”

“Regarding the information provided to the police officers on the recording of

5.

communications, since they are in tests, a formalization has not been made

communication to the staff. "Until it is operational, reliable and stable, at which point

that the Headquarters will participate to all the components in the implementation of the system". "The

staff knows this provisionality in terms of the recording system".

A) Letter issued on 09/26/2018 from the Coslada City Council to the claimant with his receipt in the

which is indicated:

1.

Communications between members of the local police are recorded (those made

by radio transmissions) and telephone calls made to certain extensions of the network

internal telephone service of the City Council). The data from recordings in the CICO and

the audio files are stored in the police activity management file.

The purpose of recorded communications is to provide security and quality in management. The

data from the recordings in the CICO have not been obtained through the use of

video surveillance.

The treatment of data in the area of the local police of the CICO is legitimized for being

two.

necessary for the exercise of legal competences established in matters of security

by the City Councils, art 25 of Law 7/1985 of 2/04 and 11 of the Law of Coordination of

Local Police of the CCAA of Madrid.

Reports the transfer for disciplinary file at the request of the instructor of a

disciplinary procedure XXX-X/00/00 "in accordance with the provisions of article 23.4

of the LO 4/2010 of 05/20 of disciplinary regime of the CNP in which it is foreseen that all the

organisms are obliged to provide the instructor with the background information and reports necessary

as well as the personal and material means that you need for the development of your

actions, except legal precept that prevents it". States that the disciplinary file

processed is directly related to the management of police services in the CICO, without deal with incompatible purposes.

A) Letter from the City Council addressed to the AEPD stating the actions carried out:

a. Issuance of the chief mayor of the local police of the aforementioned report of 09/12/2018.

b. Communication to the claimant.

c. They consider that the personal data has not been used for a incompatible purpose or transferred illegitimately.

d. It is considered that the legality of the treatment is due to compliance with a legal obligation that is directly related to the legal powers that must be exercised by municipalities.

and. Since 09/1/2018 they have a Data Protection Delegate.

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FOURTH: On 09/03/2019, it was agreed by the director of the AEPD:

“INITIATE PUNISHMENT PROCEDURE of warning the CITY COUNCIL OF COSLADA, for the alleged infringement of article 5.1 a) of the RGPD, in accordance with the article 83.5 a) of the RGPD.

FIFTH: Allegations are received from the respondent on 09/20/2019, specifically:

Letter from the mayor of 09/20/2019 in which he reiterates what has already been stated.

a)

b) Report of the Local Police Chief Intendant of 09/18/2019, which ratifies the previous one of 09/12/2018. Reiterates the obligation to deliver and facilitate records and reports to a

instructor of a disciplinary file during processing. State that the delivery

It served as the beginning of said procedure. Considers that the delivery of the files of

audios to the instructor does not respond to a purpose of monitoring the tasks entrusted, but to

that of granting quality and security in the management of police activity. State that you must

prevail the right to security against the right to privacy, pointing out

application of the judgment of the Constitutional Court 186/00 of 07/10/2000. The sentence deals

of an amparo resource deals with the cash mismatches produced in a commissary

of ENSIDESA, and the placement of a camera to monitor the cash registers and the

merchandise passage counter, resulting in the surveillance carried out in

different dates, the adoption of disciplinary measures against the three cashiers, the

The appellant was fired and the other two were given a sanction of suspension of employment.

employment and salary. "Recorded video tapes revealed that the actor deliberately performed

repeated maneuvers in the collection of articles to the clients of the commissary, subtracting

different amounts of the box. The appellant files the declaration of dismissal

inadmissible among other issues. In the sentence, the adjustment to law of the

images obtained and privacy and own image (article 18.1 of the constitution

Spanish) at work, which is one of the reasons for the appeal against the control of development

of a particular behavior of the workers. Regarding the video images, the

appellant its annulment for having been obtained in violation of their fundamental rights. In the

fifth foundation that indicates: "Seated the above, it proceeds to analyze the rest of

complaints of the appellant, starting with the one that constitutes the heart of the matter and that is

circumscribed to determining whether, as the appellant maintains, his right to

effective judicial protection (art. 24.1 CE) because the judicial bodies have founded their

decisions on null evidence because they were obtained in violation of the fundamental right to

privacy (art. 18.1 CE)." "Likewise, it is the reiterated doctrine of this Court that "the

The right to privacy is not absolute, just as none of the rights

fundamental, being able to yield to constitutionally relevant interests, provided that

the cut that he has to experience is revealed as necessary to achieve the end

foreseen legitimate, proportionate to achieve it and, in any case, be respectful of the

essential content of the right" (SSTC 57/1994, FJ 6, and 143/1994, FJ 6, for all).

In this sense, it must be taken into account that the managerial power of the employer,

essential for the smooth running of the productive organization (organization that reflects

other constitutionally recognized rights in arts. 33 and 38 CE) and recognized

expressly in art. 20 LET, attributes to the employer, among other powers, that of adopting

the measures it deems most appropriate for surveillance and control to verify compliance

of the worker of his labor obligations. But this faculty must be produced in all

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case, as is logical, within due respect for the dignity of the worker, as

expressly reminds us also labor regulations [arts. 4.2 c) and 20.3 LET]."

It indicates that "We have also declared that the right to privacy is applicable to the

of labor relations, as we have shown in our recent STC

98/2000, of April 10 (FFJJ 6 to 9)."

Report of the Instructor of file XXX-X/00/00, (document 2 instructor report) that

c)

calls "on whether the use of the personal data of the

filed within the disciplinary framework. Point out:

c1-"By the morning shift local police service chief of ***DATE.2, it was sent

report to the Chief Officer about events that occurred on that shift, which are summarized in the

repeated disobedience of a direct order and lack of respect on the part of the ***AGENT.1

to the head of service.”

c2- “The Chief Official submits a letter to the mayor on 02/02/2018, proposing the initiation of

sanctioning procedure for said agent. By resolution of the mayor: Decree 2018/RRR

of *** DATE.1 it is agreed to initiate a file, attributing two faults, of articles 8.a and

8.b of the Organic Law 4/2010 of 05/20 of the disciplinary regime of the CNP. In the agreement

appointed instructor.”

c3- "As a first action, the instructor, on 03/16/2018, took a statement from the file,

who stated that "the hours reflected by the head of the duty service do not correspond

with real hours, providing GESPOL service sheet, where you can see the start time”

and "makes statements about the CICO."

The Instructor considers that "it is the case file itself that indicates certain timetables

determined", and to verify its veracity, "it is requested, on 03/19/2018, the traffic

of telephone calls, incoming and outgoing, of the CICO". “This request is answered by

the Mayor-Chief of Local Police, by means of a document dated 04/13/2018.” Consider that

“when informing the file of the recordings”, and as it provides documents from “GESPOL and

CICO” is a sign of prior knowledge “of the purpose for which this data collection-

phone call traffic could be used.”

Finally, it indicates that "the influence of the data provided on the traffic of calls in

our disciplinary file had a minimal importance, because what in the end was

sanctioned the file was a lack of repeated disobedience towards the superior

hierarchical.”

In short, it states that “the content of the request for the recordings at the initiative of the

instructor is a consequence of what was declared by the file, so that the content of the

same were ratified before him, and were valid for the evidentiary purposes of declining the

presumption of innocence, or as evidence proposed by the alleged offender, so that

based on the principles of defense and contradiction could articulate its defense”

Finally, he highlights the hierarchical nature of the organization of the police and adds that the public employees are subject to a relationship of special subjection with consequences in the disciplinary field by the special official link. It is provided for in article 54.3 of the Statute of the public employee the obligation to obey instructions and orders senior professionals.

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SIXTH: After the deadline for allegations, on 02/17/2020, it is agreed to open the period of practice of tests, according to the provisions of article 77 of Law 39/2015, of 1/10, of the Common Administrative Procedure of Public Administrations.

It is AGREED to carry out the following tests:

1.

Consider reproduced for evidentiary purposes the claim and its documentation, the documents obtained and generated by the Inspection Services and the allegations to the initiation agreement PS/00073/2019 and the documentation that accompanies them.

2. In addition, the respondent is requested to provide or report on:

2.1- Copy of the report sent by the Head of the Local Police Service on duty of the morning of the day *** DATE.2, to the Chief Officer of the Local Police about the events that occurred in said morning shift, about ***AGENT.1.

On 02/25/2020, a copy of the report is received and what happened that morning. The head of shift service (hereinafter JS) requests information from ***AGENT.2 (hereinafter ***AGENTE.2) who together with another crew agent- called ***CROWD.1-, is-

They were carrying out the work of an ISSUER, that is, providing services at that time in the CICO asking about the whereabouts of the two agents assigned to them that morning the service at the CICO, informing the ***AGENT.2 that "They have gone down to do their average hour of rest, ("neither of the two agents entrusted with the service of

The station even informed him or asked me for permission to enjoy his des-tired together and at the same time)". The JS considers that the service that is performing the allocation ***DOTACION.1, should not be in the station (CICO) carrying out any type of re-levo since there is no car left on the street in the face of a possible emergency situation, for which he gave telephone orders to ***AGENT.2 to proceed to notify the agents who had assigned the station so that one of them joined immediately and the crew made up of ***AGENT.2 and his partner go out into the street and stand up patrol. Next, he relates how the ***AGENT.2 transfers him to the JS who contacts the ***AGENT.1 and that he told him that he is in his "omega key" (rest) and that "if he wants something that calls you that will explain it to you" "so none of them go up to their post in the station". The report goes on to say that the JS then moves into the building, the floor where ***AGENT.1 stayed next to ***AGENT.3, and maintains a dis-collision with him, orders him to return to the station immediately and this in the first instance indicates that he will go up "when his break is over", reporting that when the ***AGENTE.3, enabled to carry out head of service tasks, gives him the order once again. in their presence, to join the station service, and "when the service allows it" he had to be able to dispose of his rest", and "I give him the order for the third time". It is also indicated before finishing, that ***AGENT.4 was there, his station partner of that ma-morning, and of his own accord "he tells me that he is leaving his break and that he is going to join the station, seeing that his partner had not wanted to join, at that moment the ***AGENT.1 says I'm coming up". The report ends by indicating the alleged disobedience/lack of respect from ***AGENT.1, observed by ***AGENT.3 who was there.

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2.2 Copy of the document that on 02/02/2018 the Chief Officer of the Local Police of the City Council of Coslada, send

to the mayor-president proposing the initiation of proceedings sanctioning the ***AGENT.1.

A copy of the aforementioned letter is provided, date of entry into the personnel department of ***DATE.4, matter proposed initiation of sanctioning procedure against ***AGENT.1. I know details that the head of service that morning "perceived an irregularity when meeting the two agents who had assigned service in the CICO, in the holding room of these dependencies police reports, both taking their rest time at the same time in their day and being relieved at their own expense and without the knowledge of the Corporal Chief of Service by the agents who had They had been assigned ordinary patrol service with the indicative ***DOTACION.1, instead of be on street duty, they were in the CICO, carrying out an unscheduled relief my command statement. It shows how of the three patrols that should have been in the street, one was on duty, another was on rest, and the one that should also be on the street, the ***DOTACION.1, as an immediate response crew as it was programmed, was providing the service in CICO.

The report mentions two allegedly infringed articles of the Organic Law 4/2010 of 05/20 of the disciplinary regime of the national police force applicable to local police force. Article 8 a), which indicates the serious disregard for the superiors higher subordinate colleagues or citizens in the exercise of their functions or when cause notorious disrepute to the police institution and article 8 b) which indicates "disobedience

to hierarchical superiors or those responsible for the service due to orders or instructions

legitimate constructions given by those, unless they constitute a manifest infringement of the or-
legal order”, both considered serious offenses.

2.3 Copy of the order to initiate the file of the mayor-president dated ***FE-

CHA.1.

A copy of decree 2018/RRR signed on ***DATE.1 is provided, which resolves to initiate
disciplinary tooth to ***AGENT.1 for two serious disciplinary offenses and instruc-
procedure. He reiterates the report that as head of service for the morning shift he
noticed the irregularity that in the CICO there were personnel assigned to the
regular patrol service, and instead of being on street duty “they are doing
taking over an unscheduled or uncommunicated relief.”

2.4

Copy of statement taken to the file of 03/16/2018.

Provides a copy of the testimony in which ***AGENT.1 answered questions from the investigator.
thor. It follows that the morning of ***DATE.2 had service at the CICO along with the
***AGENT.4 and that they both enjoyed the 30-minute break at the same time.
established, being usual that both agents join the rest together at the same time, and that the
***AGENT.2 and ***AGENT.5 who were at the CICO at that time, agents who had
they had patrol work were there, as there were not enough agents in CICO, who had them
they need to take over, any other agent, indicating that even ***AGENT.4 is not
of said section.

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You are informed that tomorrow's service manager around 11:26, seeing that the agents of crew A3 were in the CICO requested the ***AGENT.2 "to notify the agents that they have assigned ISSUER with the aim that the crew could go out into the street. I know He asks if the ***AGENT.2 called him giving him the order and if he answered that he agreed rest", he said yes.

He is asked why he did not answer the calls that the head of service made moments later.

He went to the same telephone number where ***AGENT.2 had called him, indicating that he did not see the calls. madams.

He answers that when the head of service went down for the first time to the place where everyone was

He ordered the pause and gave the order to return to duty. There were three more agents that he identified, stating that when he was ordered a second time he had already gone upstairs and the

***AGENT.4

It states that there was no third order to return to service.

He is asked what happened next around 11:45 a.m., declaring that at that time he arrived

I went upstairs for a while, between five and ten minutes.

Indicates that it provides a copy of the service sheets of various dates and shifts in which

reflects that "CICO agents are not assigned an hour to enjoy their ome-

ga, which is why we are forced to seek relief from other patrols to

take the break and that as a general rule there always has to be two officers,

which indicates that the order should be given to the agents and not only to him in an authoritative way.

would."

It is also contained that the hours reflected by the corporal (head of service) in his report "are not

correspond to actual hours, Cape Report, second paragraph." "According to this, at

11:25 a call was received about a traffic accident and the reality, according to the witness, is

that the call came in " at 11:28, he points to the mobile phone number, "how can you understand

try in the call log", "this phone is one of those involved in the accident

with reference that indicates", and GESPOL, reference that indicates, "in which the hour actual call." "So it is not possible that the corporal (tomorrow's chief of duty) sur- wake up at 11:25, that there was an accident, and that the way things happened, since the CICO colleague receives the call and writes down the appropriate data and informs At least three or four more minutes pass by the head of service, but the calls that manifest they made me "and until the head of service went down to the checkpoint another 5 would have passed 6 minutes which makes a minimum of 10 minutes". Indicates the service sheet GES- POL where you see the start time.

2.5

Copy of the request of the traffic of telephone calls, incoming and outgoing, of the (CICO) requested by the instructor and copy of referral. Provide a copy of the verbatim transcript of the audio requested by the instructor.

A copy of the instructor's letter is provided, addressed to the chief officer of the local police on 03/19/2018 indicating that after the statement of ***AGENTE.1, and "from what was stated, it was in- Teresa":

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"Reports on the registration of incoming and outgoing calls of the CICO of ***DATE.2, in particular:

"Input time of a phone call reporting a traffic accident

a)

according to the file, at 11:28 a.m. and final time 11:40 a.m., specifying the number of record given by the file".

Provides response from 04/13/2018 of Local Police Chief Intendant to the instructor indicating in first place that they were able to locate the calls, "having the possibility of extracting the fi-corresponding audio les and copy them to external media."

-Refers to call 1 made on ***DATE.2 at 11:42 58, from extension that co-responds to the CICO in which it is reported that by the ***AGENT.2 who was in the CICO a notice was transferred from a traffic accident that was received by another agent who had appointed service in reports.

-Call 2, made on ***DATE.2 at 11: 43 31 from an extension that corresponds with the terminal located in the chief of service office that performed the functions of chief of morning shift service, from the office calls the CICO and the ***AGENT answers.2.

"The head of service, after noticing while listening to the radio transmissions that the CICO was being attended at that time by an agent not attached to it and after Knowing this circumstance, he asks the reason for this irregularity, answering that they had gone to eat and the head of service instructs him to contact the agents have operators to proceed with the relays."

It also asks for "hours of calls from the station that morning from ***AGENTE.2 to b)

***AGENT.1 indicating that he should join the CICO, indicating if possible number phone to which the call was made that seems to be particular to the agent on record."

- Third call made on ***DATE.2, 11:45 11, from extension ***EXT.1 located in the CIC room. In this call, ***AGENT.2 informs the head of service that one of the two operators, the ***AGENT.1 has told him to call the service manager himself. "In other fragment of that telephone conversation seems to be understood that ***AGENT.2 had just to contact the ***AGENT.1 through their respective private mobile phones.

Thus, the Corporal requests the private mobile phone number of ***AGENT.1 to try to establish that communication without delay. That number how can you hear in the pro-

pia recording is the.....” the mobile phone number is indicated. According to the JS, said

number was calling him before going down to the break room to give the order to the

***AGENT.1 in person, because ***AGENT.1 was asked about that question.

by the instructor, appearing before in the report of the head of service

c) “Time of the calls that from the office of the head of service that morning made to the

private telephone number of the ***AGENT.1, in addition, time of the call made by the head of service

zed to the same phone below from mesh network. Those calls were unsuccessful.

yes. “

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The informant adds that “as of the last hour indicated, 11 45 11 there is no record

in the aforementioned computer application that manages the body's communications switchboard

on the establishment of any call to the particular mobile number of the ***AGENT.1 both

from the office of the head of the service as well as from any other of the dependencies of the

local police” meaning that unsuccessful calls, regardless of the ex-

tensions that were made there is no record in the computer application that

have produced.

23

It also requests that you answer the question regarding, if there is a rule or custom

regarding the possibility that the two agents assigned to the CICO enjoy at the same time

the half hour of breakfast being occupied in that time by other agents who have

assigned other duties.

It is answered that the application of the internal norm of the protocol foresees that said time is

“you will enjoy guaranteeing the room service with operators”, thus “the service managers of shift must arrange when scheduling the same, that the relief of the team of agents-operators-tors of the CICO room is carried out with officials assigned to the CICO section itself”.

Also as a criterion transmitted between commands, it has been specified that the relays due to dis-cant be carried out in a staggered way, so that there is always one of the two operating agents. Finally, the service chief will exceptionally adapt another pre-depending on the services and needs”.

Regarding the performance of the CICO positions, it is indicated that only exceptionally the positions can be provided by people not assigned to the same as they can be in vacations, leaves or unforeseen absences.

They indicate to the instructor that accompanies “list of records of certain telephonic calls”. phonics, as well as a CR ROM with their audio files”.

In these proofs the content of this CD is not sent, attaching an impression in the that you see three files printed on one sheet with the title “Voice Recordings” “***FE-CHA.2 and the hour.

They also point out that there is no transcription of the audio files.

2.4

Provide a copy of the resolution issued by the disciplinary against the claimant and a copy if has filed an appeal against it and report on the procedural situation of execution or re-resolution course.

They indicate that they provide a copy of the resolution of ***DATE.3 relapse in the disciplinary, and a copy of the final judgment rejecting the contentious appeal filed against said resolution. tion.

The resolution of the disciplinary declares proven facts in the second, "that around 11:30 of said day, approximate time since none of the agents involved knows how to tell the exact time, the components and agents assigned to the CICO in said shift are in

the checkpoint plants minus 1 of the local police building enjoying his 30-minute break

utes. The CICO at that time was under the supervision of the agents of the endowment

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***EMPLOYEE.1 numbers ***AGENTE.2 and ***AGENTE.5 who stopped patrolling so that the

CICO was attended at 11:42 "

In the third fact it is contained that "at 11:42:58 from the extension ***EXT.1 corresponding to

from CICO the ***AGENT.2 transfers an accident notice to another unit that was

charge of reports and investigation prior to 11:42: 22 this ***AGENTE.2 notifies the

indicative A 5 to intervene in the indicated accident."

In the "FACT FIFTH: At 11:45 a.m., from the extension located in the CICO room, the ***AGEN-

TE.2 calls the service manager that morning and tells him that he has contacted his phone

with the private mobile phone of the ***AGENT.1 giving it on behalf of the head of service

shift the order to join the CICO and the latter's response is "I'm in my

omega code and if you want something you can call me and I'll explain it to you". "The head of services

asks ***AGENT.2 to put the call through and, given the impossibility of doing so, asks

the telephone number of the ***AGENT.1 to tell him from his office that he is joining

the service"

In fact six, it is indicated that the head of the service lowers the checkpoint, where the

resting, apart from ***AGENT.1, 3 other agents that he identifies.

Indicates the last proven fact that the patrol service was without an internal response car.

mediate more than 15 minutes. In proven facts none of the aforementioned are contained

insults or words of contempt detailed on his part by the head of service and in the re-

solution is decided based on the principle of presumption of innocence not proving proven those facts.

Analyzing the second offense, "disobedience to the hierarchical superiors responsible for the service of the orders or instructions given unless they constitute a manifest infringement of the legal system", considers proven the facts imputed to the claimant that "in reigning

On several occasions he disobeyed the verbal orders given by his hierarchical superior"

"Based on the material in the file and the statements of the filer and the

witnesses". He considers that "the first order that he disobeyed" occurred in the phone call.

phone in which the ***AGENT.2 at that time was in CICO makes the ***AGEN-

TE.1, considering that at that time "the accident was already known and that there was no

trulla free of service in the street". The service manager's instruction to ***AGENT.2 is clear.

ra, tell one of the CICO agents and have one of them go up to your post so that you can

and his partner go out on patrol" also reminds him of the instruction of the chief intendant of

police regarding staff breaks (folio 83 second call and folio 84 is a

DVD containing the audio of the same). The ***AGENT.2 on his own initiative does not follow-

Following a mandate from the head of the service, he calls the private telephone number of the filer and the

This one's response to the order is I'm in my key in omega and if he wants something, the corporal

Call me and he will explain it to you".

It is indicated that the order was called to one of the CICO agents and that the ***AGENT.2 by

own initiative, not following the order of the head of service, I call the private telephone number of the

***AGENT.1 and his response was "I'm in an omega code, if you want something, call me."

In the allegations to the proposal it appears that ***AGENT.1 invokes the use of gra-

CICO approvals for disciplinary purposes, responding to the resolution that was made in support of

I legal of article 23.4 of the Organic Law 4/2010 of the disciplinary regime of the National Corps

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of Police and brings his case from what was stated by the file in his taking of statement
ration.

The resolution ends by declaring an infringement of article 8 b of the aforementioned law 4/2010

A copy of a judgment of the contentious-administrative court no. yy of

Madrid abbreviated procedure NNN 2018 of the claimant against the City Council, of

03/29/2019 which declares the judgment of 03/18/2019 final. From his reading, it was not alleged or
assessed the access or collection of the audios in the disciplinary procedure.

2.8 If the collection of recorded data has been used in that City Council on any other occasion,
two in radio transmissions of an agent, on the occasion of the provision of the service, indicating
the circumstances and a copy of the affected party's claims.

It was not answered.

2.9 Please provide information on whether the use of the audio recordings of the
agents through the radio transmission system in the CICO, for what purposes, and if it has been in-
trained to the Agents of it, copy of the information carried out to them.

It was not answered.

SEVENTH: On 06/15/2020 the request for evidence is extended in order to clarify what
manifested and received in the tests carried out, it is requested that within ten days
provide or report:

“About the audio-recorded calls that were forwarded to the disciplinary instructor:

-Second call, made on ***DATE.2 at 11: 43 31 from an extension that corresponds-

corresponds with the terminal located in the chief of service office that performed the functions of chief
morning shift service, from the office he calls the CICO and the ***AGEN-

TE.2. “The head of service, after noticing while listening to the radio transmissions

that the CICO was being attended at that time by an agent not attached to it and unaware of this circumstance, he asks the reason for this irregularity, answering- told him that they had gone to eat and the head of service instructed him to contact the operating agents to proceed with the relays.”

-Third call made on ***DATE.2, 11:45 11, from extension ***EXT.1 located in the CIC room. In this call, ***AGENT.2 “informs the head of service that one of the two operators, ***AGENT.1 has told him to call him by the head of service”. "In other fragment of that telephone conversation seems to be understood that ***AGENT.2 had just to contact the ***AGENT.1 through their respective private mobile phones.

Thus, the Corporal requests the private mobile phone number of ***AGENT.1 to try to establish that communication without delay. That number how can you hear it on your own recording is on.....” the mobile phone number is indicated.

Requested:

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1-Preferably a pendrive copy of the audio recording (content) of the two conversions.

indicated stations, which includes the number to which the second call is made.

On 07/09/2020, a response was received, providing a report issued by Labor Relations.

les, on 07/06/2020, indicating that the audio content "is on a CD-ROM that forms

part of a file sent to the Court on 02/27/2019”, “without the department of re-

human courses would keep a copy”, “given the impossibility of making a copy by pro-technical problems”. They state that the court has been asked.

2-Answer if the conversations from the CICO room that ***AGENT.2 makes to the

***AGENT.1 (claimant) to his private telephone, it is the one contained in the recording

third, and if CICO contains the option to record these outgoing calls.

3-Use and protocol for collecting calls from CICO to private lines owned by

policemen in the development of the functions of the service.

4- Reason why the recorded conversations of ***DATE.2 are kept for more than

time that is foreseen in the protocol, since at the time of requesting and contributing it was April, and

who authorized the conservation for said period.

5-***AGENT.1 also contributed a recording to the procedure that indicates and identifies. To the

regard:

The claimant's testimonial indicates that he states "that the call came in" at 11:28, according to

Enter the mobile phone number, "as you can check in the call log", "this

telephone is one of those involved in the accident with a reference that indicates", and GESPOL re-

reference that indicates, "in which the actual time of the call is reflected." This fact accredits ac-

processes to the registry of the system for use in the procedure, in particular of the data

ownership of the claimed.

You are requested to inform if the audios, their access by the staff, and their uses, have

There are no approved written regulations on said accesses, prohibition of uses at a private level

or logs that record and identify the agent accessing the logs."

Provides Report issued by the Chief Intendant of the Local Police dated 06/29/2020 in which

it is indicated that "in the local police service", the

recordings of the two telephone calls called second and third". Those two calls

calls "were sent to the file instructor on 04/13/2018 on a CD ROM."

It consists of "the third call in which ***AGENT.2 contacts ***AGENT.1-

it is deduced that both contact through their private telephones, it is reported that "the only

and only telephone calls made between fixed terminals are recorded

located in the different rooms and offices of the headquarters of the police force"

It is recorded that "this third call corresponds to a telephone communication between the CICO room and the office of service managers, between the operating agent and the service manager shift."

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Indicates that regarding the use of call agents with their mobile terminals, the protocol CICO does not regulate any aspect, being in its case an alternative mode of communication in exceptional cases at a given time of service.

Regarding the conservation of the conversations recorded on ***DATE.2 and who authorized the conservation of calls beyond the time established in its protocol, indicates that the organic law 4/2010 of 05/20 on the disciplinary regime of the CNP foresees in its article 23.4 the obligation to provide the instructor of the procedure with the information and reports that required for the development of their actions. "It is your duty if you have knowledge of facts that could be likely to constitute possible disciplinary responsibilities of its staff, preserve and secure evidence of charge" and knowledge of the events (does not indicate the date) that gave rise to the initiation of the disciplinary file.

On the provision of data by the claimant to his disciplinary process that points to as to access to documents/data that are part of the data stored in the system CICO, states that access to the "GESPOL" application is nurtured by the members of the staff in the performance of their tasks, distinguishing different levels of access to folders and permissions, including CICO operators.

EIGHTH: By virtue of article 89.1 of Law 39 Law 39/2015, of 1/10, on Procedure Common Administrative of Public Administrations (LPACAP), no proposal was processed

of resolution by not considering that there are facts that may constitute an infraction and thus evidenced by proven facts.

NINTH: The following proven facts are accredited:

1)

The claimant association, PROFESSIONAL GROUP OF MUNICIPAL POLICE (CPPM), declares that the recordings of the radio transmissions of the INTEGRAL COMMUNICATIONS CENTER (CICO) based in the City Council of COSLADA, which contain the personal data of an agent-without mentioning or identifying him nor provide any document- in the development of their professional task, for a procedure discipline, at the request of the instructor himself. It is treated as reported by the claimed after in the claim transfer process, from the local police officer professional number ***AGENT.1, abbreviated in this procedure (...), which identifies with his name and surnames, operator assigned to said service, due to events that occurred on the morning shift on Saturday ***DATE.2.

It adds in the claim that the police unions were informed that the

The purpose of the recordings was security, organization and coordination.

two)

The CICO began operating in 2017, it is staffed by personnel with special training. specialized, in three daily shifts by two specialized local police, and works every days of the year. The work and operation of the service is regulated internally through a pro- play it As a general rule, the changeover, even during rest periods, must be carried out by "officials attached to the CICO section itself", with the presence of at least an agent in the rest relays, a head of service taking care of the needs

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and programming. Only exceptionally the positions can be provided by people not assigned to it, such as vacations, sick leave or unforeseen absences.

3)

The CICO provides services, among others, for the transmission of telephone calls to radio patrol vehicles, through individual portable mobile radios assigned to the people-walkies-, to the units of service, attention and management of all telephone calls that arrive at the local police switchboard, and coordination of communications with other emergency services or other public services. Those conversations are recorded in audio in the GESPOL application, generating a record of "voice and events". The purpose of the recording is safety and quality in the management and the execution of the police services that are provided. Audio files are preserved 30 days.

In the CICO service shift in the morning of ***DATE.2, the head of service

4)

noticed that the care of the CICO room was being temporarily performed by two agents assigned to patrol, that is, not originally attached to the CICO, while the employees assigned to the CICO were in the same building enjoying the period of break. This motivated the head of service to order ***AGENT.2 who was then in CICO service to contact one of those assigned to said service to come up to take charge of the service. This order in the form of an internal call, with its content, through the system was recorded in audio and was contributed to the procedure disciplinary, at the request of the instructor, although the ***AGENT does not intervene.1.

5)

Due to the aforementioned facts, the service chief of the local police on the morning shift of the

***DATE.2 submitted a report to the chief local police officer in which the

***AGENT.1. The chief officer, on 02/02/2018, presents a letter to the mayor, proposing to initiate

sanctioning procedure against said agent. File was opened on ***DATE.1, attributed

Going two faults, that of article 8.a and article 8.b of organic law 4/2010 of 05/20

of the disciplinary system of the CNP. The instructor, on 03/16/2018, took a statement to the file

ted, and, on 03/19/2018, requests "Reports on the registration of incoming and outgoing calls

of the CICO of ***DATE.2, in particular: telephone call traffic, incoming and outgoing-

tes of the CICO indicating the time slots:

-call 1 made on ***DATE.2 at 11:42 58, from the corresponding extension

to the CICO in which it is reported that by ***AGENT.2 who was in

the CICO transferred a notice from a traffic accident that was received

taken by another agent who had appointed service in reports.

-call 2, made on ***DATE.2 at 11: 43 31 from an extension that corresponds-

corresponds with the terminal located in the chief of service office that performed the functions

manager of the morning shift service, from the office he calls the CICO and answers

the ***AGENT.2.

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-It also asks for "hours of calls from the station that morning from ***AGENT.2 to

***AGENT.1 indicating that he should join the CICO, indicating if possible numbers

phone number to which the call was made, which seems to be private to the experienced agent.

toothed."

In relation to the latter, it follows that ***AGENT.2 called from his telephone private mobile, to the private mobile phone of ***AGENT.1 who was in the room Rest. Of the call made between their private mobile phones, not recording remains, since these calls are not recorded. The use of mobile phones among companions is used sporadically in exceptional cases, as stated by the chief quartermaster and their conversations are not recorded in the CICO system. The ***AGENT.2 indicates in a telephone call from the CICO service to the head of service, that ***AGENT.1 answered, who was on his rest period, to call him if I wanted. This internal call was contributed to the disciplinary procedure although it was not intervenes the ***AGENT.1.

In the CD ROM that was sent to the instructor by the Mayor-Chief of Local Police, on 04/13/2018, contains the content of the audio recordings of the service maintained between the head of service and the ***AGENT.2 who at that time attended the service CICO, although, between private mobile phones of the agents there is no evidence any recording because the conversations produced are not collected in said system at that level.

6)

There is no audio file recorded in the CICO system with personal data, his voice, in which some conversation of the ***AGENT.1 that ***DATE.2 is collected, so that does not influence the instructor's assessment of the facts that are related in the disciplinary file that was resolved. The only thing that exists is the story that the ***AGENT.2 when he called ***AGENT.1 to the break room, through their mobile phones individuals, and the transfer of response to the head of service by the ***AGENT.2 that ***AGENT.1 was on break and to call him if he wished. Use is not inferred of the audio recording system derived from the CICO system in said conversation. I know certifies that the conviction about the facts that affect the infraction and its qualification

come from sources other than the CICO system.

If data requested by the recording instructor is contained in the procedure,

7)

audio on service conversations between the service manager and the ***AGENT.2 that

I was attending the CICO at the time given the concern of the boss about having components

of a patrol in a service when he should be on the street. They comment on the absence of

service of agents associated with CICO on the occasion of an accident call,

but no treatment is revealed on data of the ***AGENT.1 coming from this

system. What the instructor considers proven is not derived from the audio recording in which

***AGENT.1 intervenes, since it does not exist, but among other sources, of what is

manifested by the ***AGENT.2 in the instruction, when he states that he called the

***AGENT.1, from home phone to home phone, without recording this

called, possibly because the CICO system does not have this option or those powers.

It is pointed out that ***AGENT.1 was in the official dependency rest room to which

the head of service addressed himself as he was unable to contact the ***AGENT.1 by telephone.

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FOUNDATIONS OF LAW

Yo

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 resolve this

process.

STC 292/2000 states that "... the content of the fundamental right to protection of data consists of a power of disposal and control over personal data that empowers the person to decide which of their data they provide to a third party (...) these powers of disposition and control over personal data, which constitute part of the fundamental right to data protection is legally specified in the power to consent to the collection, obtaining and access to personal data, its subsequent storage and treatment, as well as its use or possible uses, by a third party, be it the State or an individual", that is, to know who, why and what data is going to be processed. This allows the affected party, in this case, local police officers exercise control over your personal data (self-determination). The duty of prior information forms part of the essential content of the right to data protection, since it is an essential complement to the treatment of data. The duty of information on the use and destination of personal data is intimately linked to the general principle of legal authorization of the treatment and exercise of rights, because if its purpose and recipients are not known, it can hardly be exercised. You have no right to your own data.

It could be applicable by analogy what is stated in article 87 of the LOPDGDD on "Right to privacy and use of digital devices in the workplace"

- "1. Workers and public employees shall have the right to the protection of their privacy in the use of digital devices made available to you by your employer.
2. The employer may access the content derived from the use of digital media provided to workers for the sole purpose of controlling compliance with the labor or statutory obligations and to guarantee the integrity of said devices.
3. Employers must establish criteria for the use of digital devices respecting in any case the minimum standards of protection of your privacy in accordance with the social uses and constitutionally and legally recognized rights. In its

elaboration must involve the representatives of the workers.”

The access by the employer to the content of digital devices in respect of which admitted its use for private purposes will require that the uses be specified precisely. authorized and guarantees are established to preserve the privacy of the workers, such such as, where appropriate, the determination of the periods in which the devices may be used for private purposes.

Workers must be informed of the criteria for use referred to this section.”

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The same information and authorization system is established in the video surveillance and geolocation, articles 89 and 90 of said law

In this case, according to the complainant, the purpose of data processing consisting in the recordings in audio file format of the conversations between policemen lo-service lines with the agent who provided service at the CICO headquarters were: "those of security, and quality in the management and execution of the set of public services that are demand.”, elements

that without specifying can be developed in practice supposedly in a varied cast that the defendant does not detail.

Usually, before the irruption of technologies, the facts could be verified.

two by a witness, assessing his statement and length of it in the proceedings. In

Currently, technologies such as video surveillance, geolocation, use of mobile phones are configured as technological elements of great importance in the development of the relationship

labor, especially to verify the functions to be developed and as a means of controlling the obligations that correspond to the employees. Therefore, the results of using past time, after the events, systems from technology such as previous recordings of images, sounds, traces, etc. that correlate what happens previously in the procedure must be assessed considering several aspects. The use of information technologies multiplies the possibilities of labor control, and forces take into account respect for the fundamental rights of workers, to adopt measures control measures that are proportional and respect their dignity, their right to protection data and your private life. The absence of the same will determine an eventual treatment not adjusted to the data protection regulations.

The availability of technology as a means of verifying compliance with the provision in this case in the provision of public services requires as a counterweight some guarantees so that its use and purpose is not unilateral depending on what is convenient, or in contrary to expectations, and without taking into account the rights of those affected, among that also plays a certain role "legal certainty, responsibility and inter-dictation of the arbitrariness of public powers" together with the fundamental right in the use of information technology or technological measures on said control of the provision that generates the literal of article 18.4 of the Spanish constitution: "The law will limit the use of information to guarantee the honor and personal and family privacy of citizens and the full exercise of their rights."

Undoubtedly, it is not the same to verify behaviors such as labor, with non-technological, than with traditional means. To specify, for example, the version of an employee can use the images of a video surveillance camera or a system GPS, and can be considered a test that verifies the version of the administration, gaining a full conviction with one's own means contrary to that of the employee. Them and can be carried out considering in the first place that it is the employer who can impose the

means for the control of the activity, establishing the proportionality of the system and the dignity of employees.

Contrary to the allegations made by the respondent, there is no legal obligation to implement a conversation recording system in the development of the social service over the agents linked to a verification system of tasks, instructions or orders. It is not requires a law but can be established by decision of the person in charge of the police. For it It will have to be addressed in which cases the system is established, if it covers any action, if

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can be used for any type of reprimand or only those considered to be of risk to public safety, defining the situations.

Thus, in the first place, the respondent must justify the specific reasons for the introduction of the control measures that it intends to implement, and whether or not it is possible to use other less intrusive measures for said control, dealing with the balance between the interests of the employer and the right of employees to respect for their private life It must value and document that the implementation in the assumptions that it considers applicable is adequate, necessary and appropriate, in relation to the purposes.

In the implementation of the system There may be cases in which the use of the audio is more necessary if, for example, a motivation to request the audios is previously established covered by the internal regulatory protocol that may be created, when there are reasons for public security related to the actions of the agents, meaning that that the use of audio may not be necessary or proportional when there are other means

God of fact checking.

As an example, the constitutional court in its Judgment no. 98/2000 of 10/04

indicates: "business organizational faculties are limited by the rights

fundamental rights of the worker, the employer being obliged to respect those (STC

292/1993, of October 18, F.F. 4). This Court has been maintaining that, since the

prevalence of such rights, their limitation by business powers only

may derive from the fact that the very nature of the contracted work implies the

restriction of the right

Also, as indicated by the STC number 29/2013 of 11/02 in its foundation of

law VII: "In conclusion, it should not be forgotten that we have invariably established and

constant that the business faculties are limited by the rights

fundamental (among many others, SSTC 98/2000, of 04/10, F. 7, or 308/2000, of 12/18, F.

4). For this reason, just as the public interest in sanctioning administrative infractions is

insufficient for the Administration to steal from the interested party information related to the

file and its data, as provided in art. 5.1 and 2 LOPD (STC 292/2000, of 11/30, F. 18),

Nor can the private interest of the employer justify that the processing of data is

employee against the worker without prior information about the labor control placed

in practice. In the workplace, to express it in other terms, there is no reason that

tolerate the limitation of the right to information that integrates the ordinary coverage of the right

fundamental of art. 18.4 EC. Therefore, it will not be enough that the processing of data

is in principle lawful, because it is protected by the Law (arts. 6.2 LOPD and 20 LET), or that

may eventually result, in the specific case in question, proportionate to the end

pursued; business control in this way, rather, although it may occur, it must

also ensure proper prior information.

The establishment and use of the data processing system derived from the audios

records for labor control additionally leads to the establishment of technical and organizational measures

organization for the processing of data for said purposes. This would include, among others, from

protocols to keep files beyond the time originally established, until

the motivations of the requests for the recordings, or the use in particular interest of the audios by employees.

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Nor is it applicable as legal authorization of said treatment the exercise

jurisdiction of legally established powers, because until that time these were exercised normally by the claimed without the need to go to the recorded audios.

If employees are not informed of the tools used to control their

performance, if several can be used, if those that the employer considers can be used

convenient without giving a specific reason, employees have no expectation

about said use or about its consequences, being able to violate your right to protection of data.

Once the system for the use of recordings has been implemented, with the desirable inter-convention of employee representatives, and their technical and organizational measures to being informed to those affected, the system can be used for the modalities and fi-purposes established therein

III

Regarding the subjection of the administration to the applicable regulations, article 9.1

of the Spanish constitution states that "Citizens and public authorities are subject to

to the Constitution and the rest of the legal system." , and in its paragraph 3 "The Constitution

tion guarantees the principle of legality, the normative hierarchy, the publicity of the norms,

the non-retroactivity of sanctioning provisions that are not favorable or restrictive of rights

individual rights, legal certainty, responsibility and the prohibition of arbitrariness

authority of the public powers”

Recalling articles 53 and 103 of the same:

53.1: "The rights and freedoms recognized in the second Chapter of this Title

title bind all public powers”

The right to data protection in article 18.4 of the constitution is framed in

said chapter.

Article 103: "The Public Administration objectively serves the general interests

and acts in accordance with the principles of efficacy, hierarchy, decentralization, deconcentration

tion and coordination, with full submission to the law and the Right”

By this it is meant that an instructor of a disciplinary procedure is a

official designated ad hoc to carry out an administrative task that is imputed to the

competent body and that must be subject to current regulations. If the use of the treatments

data of the established data (audios collected in the CICO service) has the purpose in some

main or subordinate aspect its use in a disciplinary file, for example

contrast the version given by the affected party, the use and purpose of said

system and timely information to employees for data protection purposes, with the

compliance with the information obligations of articles 13 and 12 of the RGPD.

IV

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Regarding the alleged judgment of TC 186/00 of 07/10/2000, to justify that it must

prevail the right to security against the right to privacy, in principle it is not

similar to the assumption that is analyzed in this procedure, since the precautionary data collection in the event of presumably inappropriate behavior by a employee, but rather it is an already established and functioning system that has a its own ab initio purpose, which is to maintain quality and safety in the management of the police activity, which could have by name various concretions that are not detail.

In addition, it is feasible to reconcile security with privacy, since the implementation of the system for collecting and using audio for said purposes and disciplinary consequences contrary with legal authorization for the fulfillment of the contractual / statutory relationship with a series of requirements.

v

One of the uses of the audio recorded in the CICO systems could be for control that directly or indirectly may lead to any anomalous situation of the service (to be determined in the development of its implementation) can be verified through said audios that are preserved, the degree of compliance with the orders entrusted and professional obligations in general. It's not the same not knowing what to expect and seeing surprised with a use of this type to know previously that in the development of the work professional can be used to correct such data, which although produced in the development of professional work have the guarantees of the protection regulations of data.

It must be examined in advance whether in this case data from personal character of the ***AGENT.1 from the CICO recording system that may have served as support for the examination of the professional facts that give rise to the disciplinary sanction imposed.

If the use of these data had occurred, it would be necessary to continue analyzing in what circumstances it has been done and if it is consequently punishable.

The right to data protection is a fundamental right provided for in article 18.4 of the Spanish constitution, which states "the law will limit the use of information technology to guarantee the honor and personal and family privacy of citizens and the full exercise of your rights", which is detailed in the RGPD, article 1.1 and.2:

1. This Regulation establishes the rules relating to the protection of persons with regard to the processing of personal data and the rules relating to the free movement of such data.
2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to the protection of personal data."

As anticipated in the proven facts, no treatment is credited of data of ***AGENT.1 in the events of ***DATE.2 that are analyzed by the instructor of the disciplinary procedure. Although this asks for several records, considering

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that does not expressly demand the content of what is spoken, it is considered that it does not appear any audio file that relates to the sanctioned agent. The conversations incorporated between the head of service and the agent who attended at that time, the same produced by a punctual incidence of public safety, a reason that would justify a incorporation of the audio recording if previously the employees had been informed of such purposes, but here there is not even that specific treatment, there is no audio and there is no use channeled to the verification of the sanctioned facts. This elements must entail the declaration of non-existence of the infraction by article 5.1.a) of the GDPR.

SAW

Article 89 of Law 39/2015, of 1/10, on Administrative Procedure

Common of the Public Administrations (LPACAP), indicates: "Proposal for a resolution in the sanctioning procedures"

1. The investigating body will resolve the completion of the procedure, with a file of the actions, without the formulation of the resolution proposal being necessary, when in the instruction procedure shows that any of the following concurs circumstances:

- a) The non-existence of the facts that could constitute the infraction.
- b) When the facts are not accredited.
- c) When the proven facts do not constitute, in a manifest way, an infringement administrative.
- d) When the person or persons responsible do not exist or have not been identified. or appear exempt from liability.
- e) When it is concluded, at any time, that the infraction has prescribed.

In application of article 90.1 of the LPCAP:

"1. In the case of sanctioning procedures, in addition to the content foreseen in the two previous articles, the resolution will include the assessment of the evidence practiced, especially those that constitute the basic foundations of the decision, establish the facts and, where appropriate, the person or persons responsible, the infraction or offenses committed and the sanction or sanctions that are imposed, or the declaration of non-existence of infraction or responsibility."

It is appropriate to declare the non-existence of the infringement object of the claim

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Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: Declare the FILE of the procedure initiated to the CITY COUNCIL OF

COSLADA, with NIF P2804900E, for an infringement of Article 5.1.a) of the RGPD, in accordance with
determines its article 83.5 of the RGPD.

SECOND: NOTIFY this resolution to the COSLADA CITY COUNCIL.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with 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 period of one month from the day
following the notification of this resolution or directly contentious appeal

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

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 two months from the day following the notification of this act,

according to the provisions of article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,
may provisionally suspend the firm resolution in administrative proceedings if the interested party
states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the
Spanish Agency for Data Protection, presenting it through the Electronic Registry

of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the filing

effectiveness of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day

following the notification of this resolution, it would end the suspension

precautionary

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