

□ Procedure No.: PS/00119/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The inspection actions are initiated by the receipt of a letter of
notification of security breach of personal data sent by the
Complutense University of Madrid (UCM) in which they inform the Spanish Agency
Data Protection (hereinafter AEPD) that, on October 24,
2019, a report prepared by the Unit for
Equality of the Complutense University of Madrid in the framework of a procedure
internal investigation for harassment of a female worker.

SECOND: In view of the aforementioned notification of security bankruptcy, the
Subdirector General for Data Inspection proceeded to carry out actions
prior investigation having knowledge of the following extremes:

BACKGROUND

Date of notification of the security breach of personal data: October 25,
2019.

INVESTIGATED ENTITIES

During these proceedings, investigations have been carried out on the following
entities:

UNIVERSIDAD COMPLUTENSE DE MADRID, with NIF Q2818014I, and with address at
Government Pavilion of the UCM, C/ Isaac Peral S/N, 28015 Madrid.

RESULT OF THE INVESTIGATION ACTIONS

1. On March 9, 2020, the Data Inspection has accessed the

Web address:

<***URL.1 >

verifying the existence of an article, edited on date *** DATE.1, entitled:

“***TITLE.1....” in which he refers to a case of harassment at the University

Complutense de Madrid and that has been sent to the Prosecutor's Office.

The article refers to a woman identifying her with an initial, specifically

to “A.” and a reference to your professional position, as well as the name, first surname and

job title of the harasser within the University.

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On November 8, 2019, a written request for information was sent.

tion to the Complutense University of Madrid (hereinafter UCM) and the response re-

received on November 22, 2019, the following follows:

Regarding the chronology of events

☐ On May 29, 2019, a worker assigned to the UCM presented

filed a complaint of workplace harassment and sexual harassment before the Unit for Equal Opportunities

Gender of the University for which the protocol for the

prevention, detection and action in situations of sexual harassment, harassment

based on sex (sexist) and harassment based on sexual orientation and identity and ex-

gender pressure from the UCM, appointing an expert and once the

the investigative actions carried out by the Equality Unit,

A report was submitted to the Rector of the UCM on July 31, 2019.

☐ On September 20, 2019, the initiation of disciplinary proceedings was ordered.

plinary naming an Instructor and a Secretary of the procedure, in the

that well-founded evidence of criminality was observed and, consequently,

proceeded to suspend the processing of the file and put it into

knowledge of the Public Prosecutor dated October 1, 2019.

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☐ On ***DATE.1, the online newspaper EL MUNDO published in the section

“Stories” an article titled “***TITLE.1....” in which detailed

clearly the alleged harassment reported to the UCM.

The UCM upon learning of the publication ordered the immediate opening

of a Confidential Information, to try to determine the origin of the

filtration. The actions of this Information are being carried out in

the University Services Inspection.

The UCM states that during the intervention of the Unit for Equality and

For the preparation of the report, a handwritten document was handled

reported by the complainant in which she relates the memory of her experiences

of the reported harassment. The article published in the press narrates in a novel way

denounced the situation of harassment denounced, reproducing in numerous paragraphs

fos literally phrases included in the handwritten document.

The UCM states that they have only had access to this handwritten document

only the complainant, the expert and the Equality Unit of the University, not

being transferred from the same neither to the Rector, nor to the Services Inspection

for the opening of the disciplinary file, nor to the Public Prosecutor.

It also states that the number of pages and the number of people in-

interviewees that appear in the edited article coincide with those that appear

in the file processed by the Equality Unit of the UCM, so believe there has been a breach of sensitive data contained in the documentation generated by the Equality Unit. in con- secret, in the article published by the newspaper El Mundo the following can be read- te: "...according to the meticulous report of 67 pages and a dozen entre- views issued on July 29 by the Equality Unit of the center...".

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Regarding the causes that made possible the incidence

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The UCM states that the origin of the leak is unknown and that, pending the completion of the Inspection Report, there is no evidence evidence or indication that it was caused by improper access to the information. training. The most probable hypothesis points to a breach of the duty of confidentiality on the part of any of the persons involved in the procedure carried out by the Equality Unit of the UCM.

Regarding the affected data. Notification and indexing

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The affected data, as stated in the publication of the newspaper, co- corresponds to name and surname, profession, specialty and place of work of the alleged stalker and the reference "A." to refer to the harassed woman.

Note that the content of the document denotes disclosure of data relating to health, sexual orientation and sexual life.

The UCM has sent a note to those affected in which it is indicated: "Sorry- We inform you that today they have been published in the newspaper "El World" contents of a report from the Equality Unit that affect you".

The UCM states that it is not aware of the use by third parties of the data published by the newspaper El Mundo.

Regarding the security measures implemented prior to the incident

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The UCM has provided the following documents related to security information and processing data:

- o Report on the security measures implemented in the unit of Gender Equality of the UCM, dated October 25, 2019.
- o Information Security Policy and Security Organization information, both dated April 4, 2017.
- o Record of Treatment Activity: Gender Equality and Harassment.
- o Biennial audit report 2016 on personal data protection of the file "Gender Equality".
- o Security breach management procedures dated October bre of 2018.

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The UCM has also provided the following documents:

- o Protocol for the prevention, detection and action in situations sexual harassment, sexual harassment (sexist) and sexual harassment sexual orientation and gender identity and expression of the UCM.

Regarding the measures implemented after the incidence

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The revision of the Protocol for the prevention, detection and action before situations of sexual harassment, harassment based on sex (sexist) and harassment based on sexual orientation and gender identity and expression of the UCM.

The preparation of the risk analysis of all treatment activities
training of the UCM, including those of the Equality Unit.

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THIRD: On 06/16/2020, a sanctioning procedure was initiated against the UNIVERSIDAD COMPLUTENSE DE MADRID, with NIF Q2818014I, for the alleged infringement of article 5.1.f) of the RGPD and 5 of the LOPDGDD, typified as an infringement very serious for prescription purposes in article 72.1.i) of the LOPDGDD, granting a term of allegations of ten business days to formulate the allegations and
Submit any evidence you deem appropriate.

FOURTH: After requesting the UCM to send the documentation that is in the file, the request is accessed through the Notification Service

Electronic documents, with the date of appearance being 07/1/2020, 5:16:38 p.m., with registration number ***REGISTRATION.1

In the allegations, the person in charge of the UCM after detailing the updated chronology of the facts, provides the following,

Documentary film:

Doc 1. Agreement to open Confidential Information dated 10/24/2019, with

internal reference 87/2019 in relation to file 41/2019.

Doc 2. Complete and numbered index of the documents contained in the information previous internal reference 87/2019. It consists of 166 pages.

Doc 3. Resolution of the File of actions of the internal reference file 87/2019, unless it was possible to determine the identity of the person who carried out the leak under investigation. The content of the aforementioned file specifies the

Next:

“The expert in case 41/2019 of the Equality Unit, in her appearance at the Inspection of Services on October 28, 2019, declared that - despite being expressly prohibited – recorded the testimonies of the people interviewed (ten in total), which preserves several of those audios and with total security those of the interviews with the complainant and the accused, who also keeps copies of his report at home and in your email and that you have continued to maintain the contact with the complainant after finishing her work as an expert witness case 41/2019 in the Equality Unit”.

Doc 4. Initiation agreement, dated 02/20/2020, of disciplinary proceedings, of reference 10/2020, against the person who acted as an expert in case 41/2019, for the improper recording and conservation of the audios of the testimonies of the Interviewed people.

And the following allegations:

1º.- That the documents of the file not provided to the UCM.

2º.- That the UCM is applying technical and organizational measures proportionate to the risks identified in the treatment of those data that work in the Unit of

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Equality and which, by their nature, are particularly sensitive, and which details continuation:

- a) The files are not being kept in a physical file, only in a file electronic and cannot be accessed remotely.
- b) Documents are scanned from a printer/scanner linked to the computer of the Equality Unit.
- c) A Social Assistance Device (DAS) has been created, made up of people experts in intervention, and who have completed the course of social expertise, related to bullying. No expert opinions or reports are carried out by people outside the service.
- d) All files processed under the sexual harassment protocol of the Equality Unit are anonymous and only have knowledge of the identity of the plaintiff the persons who own the organs administrative staff of said unit.
- e) The documentation never leaves the headquarters of the Equality Unit.
- f) All documentation generated in paper format is kept in cabinets locked, in a gate with restricted access.
- g) The new Protocol on sexual harassment, which includes scrupulous personal data protection measures is in its last phase of drafting having been killed by the Equality Unit.

Adds the measures that the UCM had at the time of the incident of security, in order to guarantee the principles of integrity, confidentiality, limitation of the purpose and minimization of the data at all times:

YO.

II.

III.

IV.

v.

Security policy

Information security organization.

Treatment Activity Record.

Audit report carried out by the Unit with the proposal of the

corrective measures that have been implemented.

Protocol for the Management and Response of Security Breaches at the UCM.

Likewise, once the security incident occurred and was confirmed in October

2019, the UCM ordered an immediate internal investigation, which was

materialized in:

YO.

II.

Performance of the Services Inspection.

Report of the Information Security Unit of the UCM.

Furthermore, the UCM is working on the implementation of measures

corrective measures so that the incident does not occur again. For it:

YO.

II.

A risk analysis and impact assessment of

all treatment activities carried out by the Unit for Equality and

the UCM.

The protocol for prevention, detection and action is being reviewed

in situations of sexual harassment, harassment based on sex (sexist) and harassment based on sexual orientation and gender identity and expression.

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III.

Updating of the Management Protocol for Response to Data Gaps

security at UCM.

By virtue of all of the above, the UCM requests the "File of the proceedings, given that the data controller has done everything materially possible in the face of a risk improbable so that it does not materialize again" since "the leak to the press of personal data has not been carried out by the public authority in the exercise of its public powers, nor has it been carried out under the direct authority of this responsible, nor has it been caused by carelessness or negligence in the application of technical and organizational measures.

FIFTH: On 08/14/2020, the test practice period began for the Instruction, requiring the UCM to provide the original handwritten document provided to the Equality Unit by the affected party and which was later published by the newspaper El Mundo.

PROVEN FACTS

SOLE: Of the content of the documentation in the file - investigation prior and tests carried out in which it is stated that the content of the original document manuscript provided by the affected party to the Equality Unit of the UCM coincides with the one published in the newspaper El Mundo - it has not been possible to unequivocally identify the

person or persons responsible for the facts imputed in the agreement to initiate the present sanctioning procedure.

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.

Law 40/2015, of October 1, on the Legal Regime of the Public Sector.

II

Article 28.1. Responsibility.

"1. They may only be sanctioned for acts constituting an administrative infraction.

natural and legal persons, as well as, when a Law recognizes their capacity to act, the affected groups, the unions and entities without legal personality and the independent or autonomous estates, which are responsible for them title of fraud or guilt."

Law 39/2015, of October 1, of the Common Administrative Procedure of the Public administrations.

Article 89.1.d). Proposal for a resolution in procedures of a nature sanctioning

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"1. The investigating body will resolve the completion of the procedure, with filing 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:

a) The non-existence of the facts that could constitute the infraction.

b) When the facts are not proven.

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

d) When it does not exist or it has not been possible to identify the person or persons liable or appear exempt from liability.

e) When it is concluded, at any time, that the infraction has prescribed.”

III

In this sanctioning procedure it has not been possible to accredit the person responsible

of the facts imputed in the initial agreement, since the document leaked to the

newspaper El Mundo was in the possession of various people, including the

affected, the intervening expert and the Equality Unit of the UCM. in this same

In this sense, the actions of the internal file of the UCM of

internal reference 87/2019, unless it was possible to determine the identity of the

person who made the leak under investigation. In the content of the aforementioned

file specifies the following:

“The expert in case 41/2019 of the Equality Unit, in her appearance at the

Inspection of Services on October 28, 2019, declared that - despite being

expressly prohibited – recorded the testimonies of the people interviewed (ten

in total), which preserves several of those audios and with total security those of the

interviews with the complainant and the accused, who also keeps copies of his

report at home and in your email and that you have continued to maintain the

contact with the complainant after finishing her work as an expert witness

case 41/2019 in the Equality Unit”.

Consequently, the file of this sanctioning procedure proceeds.

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

Spanish Data Protection RESOLVES:

FIRST: FILE this sanctioning procedure.

SECOND: NOTIFY this resolution to the COMPLUTENSE UNIVERSITY

DE MADRID, with NIF Q2818014I, and domiciled in the Government Pavilion of the UCM,

C/ Isaac Peral S/N, 28015 Madrid.

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

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

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

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

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

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

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

aforementioned Law.

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

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through the
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