

□ Procedure No.: PS/00095/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and in

based on the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on October 3, 2019 filed

claim before the Spanish Data Protection Agency. The claim is directed

against CITY COUNCIL OF BURGOS with NIF P0906100C (hereinafter, the claimed).

The reasons on which the claim is based are that, together with the citation of the act of

conciliation sent by email to the parties, the Arbitration Board sent the

filed complaint and a copy of your ID. The claimant states that it has been disclosed

your email address to the person reported by not using the BCC option to carry out

the shipment.

SECOND: The present claim was transferred to the respondent on November 20,

2019, requiring you to send this Agency, within a period of one month, information

on the response given to the claimant for the facts denounced, as well as the causes

that have motivated the incidence and the measures adopted.

They respond that they have sent all the data to the parties and to the trial court, so as not to

cause helplessness.

THIRD: On June 9, 2020, the Director of the Spanish Agency for

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

alleged infringement of Article 5.1.f) of the RGPD, Article 5.1.b) of the RGPD, typified in the

Article 83.5 of the RGPD.

FOURTH: On June 10, 2020, the agreement to start this

procedure, becoming the same in resolution proposal in accordance with

Articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure

Common Administrative System of Public Administrations (LPACAP), by not carrying out claims within the specified period.

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven facts the following,

#### FACTS

FIRST: it is denounced that as a consequence of the summons of the conciliation act, the claimed, by not using the CCO option to send said complaint, has given make your email address known to the other parties to the proceeding in which is involved, without your consent.

SECOND: the claimant has not presented any allegation throughout the procedure.

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

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is

inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to

the application of the appropriate technical and organizational measures imposed by this

Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term

of conservation");

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility").”

### III

In accordance with the available evidence, it is considered that the facts denounced, that is, send the email address and the DNI of the [www.aepd.es](http://www.aepd.es)

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claimant without using the CCO option to make the shipment, supposes the violation of the principles of "purpose limitation" and "integrity and confidentiality" regulated in the art. 5.1 b) and f) of the GDPR, as well as the proactive responsibility of the data controller. treatment to demonstrate compliance.

### IV

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

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

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

The art. 83.5 of the RGPD establishes that infractions that affect:

“a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

Article 72.1.a) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe the three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

v

The LOPDGDD in its article 77, Regime applicable to certain categories of responsible or in charge of the treatment, establishes the following:

"1. The regime established in this article will be applicable to the treatment of those who are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment are

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related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous Legislative, as well as the political groups of the Corporations

Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of this

organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the conduct or correct the

effects of the infraction that had been committed.

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

on which it reports hierarchically, where appropriate, and to those affected who had the condition

interested party, if any.

3. Without prejudice to what is established in the previous section, the protection authority

of data will also propose the initiation of disciplinary actions when there are

sufficient evidence for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on disciplinary or sanctioning regime that

result of application.

Likewise, when the infractions are attributable to authorities and managers, and

proves the existence of technical reports or recommendations for treatment that are not

had been duly attended to, in the resolution in which the sanction is imposed,

will include a reprimand with the name of the responsible position and order the

publication in the corresponding Official State or Autonomous Gazette.

4. The resolutions must be communicated to the data protection authority that fall in relation to the measures and actions referred to in the sections previous.

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

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that had committed the infraction. When the competence corresponds to a regional authority for the protection of data will be, in terms of the publicity of these resolutions, to what your specific regulations”.

SAW

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each control authority may “order the person responsible or in charge of the treatment that the treatment operations comply with the

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provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE BURGOS CITY COUNCIL, with NIF P0906100C, for a infringement of article 5.1.f) of the RGPD, and article 5.1.b) of the RGPD, typified in the article 83.5 of the RGPD, a sanction of warning.

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body the fulfillment of:

☐ the adoption of all necessary measures so that the denounced entity acts in accordance with the principles of "purpose limitation" and "integrity and confidentiality» of art. 5.1 b) and f) of GDPR respectively.

THIRD

with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, in accordance

FOURTH: NOTIFY this resolution to the BURGOS CITY COUNCIL.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a 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,

the firm decision may be provisionally suspended 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 Registry

Electronic 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 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

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