

□ File No.: EXP202102132

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Dated February 15, 2021, had entry in this Spanish Agency of Data Protection a document presented by A.A.A. (hereinafter the part claimant), through which he makes a claim against the CITY COUNCIL OF OPENING, with NIF P1000200D (hereinafter, the claimed part).

SECOND: In view of the foregoing, there are indications of a possible breach of the provisions of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), which has motivated the opening of the procedure with reference E/02978/2021.

In accordance with the provisions of article 65 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (LOPDGDD hereinafter), the claim was transferred to the person in charge or to the Delegate of Data Protection that in his case would have designated, requiring him to send to this Agency the requested information and documentation. This requirement of information was not answered in time. The claim was admitted for processing date May 28, 2021.

THIRD: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of the RGPD, and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

FOURTH: Within the framework of investigation actions E/06376/2021, it was sent to the party claimed a request for information, regarding the claim outlined in the first section, so that within a period of ten business days before this Agency the information and documentation indicated therein. The request was registered as output on June 15, 2021 with number O00007128s2100042495.

The request for information, which was carried out in accordance with the rules established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), was collected by the person in charge dated June 15, 2021, as stated in the Notific@ certificate that works in the file.

FIFTH: Regarding the required information, the respondent did not submit any response to this Spanish Data Protection Agency.

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SIXTH: On September 21, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of the LPACAP, for the alleged violation of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR).

The aforementioned initial agreement was collected by the person in charge on September 22 of 2021, as stated in the Notific@ certificate that is in the file.

SEVENTH: Dated October 6, 2021 and entry registration number

O00007128e2100041303, the respondent files a brief with allegations and attached documentation that is completed on October 7, 2021, with other registered documents with entry registration number O00007128e2100041567.

With regard to this sanctioning procedure, which is followed by the lack response to the information requirements made by this Agency in the terms granted for this, states the following: "(...) the City Council, due to lack of internal lawyer, did not respond to the request for information, which is a pardonable fact given its lack of infrastructure and personnel, (...)."

In relation to the rest of the documents presented in the aforementioned entries to give response to the request for information referred to in the fourth antecedent, will be incorporated to be analyzed within the framework of the investigation actions of the procedure E/06376/2021.

EIGHTH: On October 20, 2021, a resolution proposal was formulated proposing that the Director of the Spanish Data Protection Agency imposed on the CITY COUNCIL OF OPENING, with NIF P1000200D, for an infraction of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

Likewise, the procedure was revealed so that within a period of ten days could allege whatever he considered in his defense and present the documents and information that it considers pertinent, in accordance with article 89.2 of the LPACAP.

NINTH: The motion for a resolution, which was registered as output on the 20th of October 2021 with registration number O00007128s2100070685, was collected by the responsible on October 22, 2021, as stated in the certificate of Notific@ that works in the file.

After the period of ten business days granted in the resolution proposal for the presentation of pleadings, the respondent party has not presented pleadings.

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

In this proceeding, the following are considered proven facts:

#### FACTS

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FIRST: The information requirements indicated in the second background and fourth were notified electronically, in accordance with the provisions of article 43 of the LPACAP.

SECOND: The respondent has not responded to the requests for information carried out by the Agency within the periods granted for it, within the framework of the actions referenced with code E/02978/2021, in which the deadline for to respond was one month, and with the code E/06376/2021, in which the deadline for reply was ten business days.

THIRD: The notification of the agreement to initiate this disciplinary proceeding was carried out electronically through the Notific@ system, being collected by the responsible on September 22, 2021.

FOURTH: The party complained against has presented the arguments to the agreement to initiate this sanctioning file collected in the seventh antecedent.

FIFTH: The notification of the proposed resolution was sent electronically to through the Notific@ system, being collected by the person in charge on the 22nd of October 2021. No arguments were presented to the proposed resolution.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and solve this procedure.

II

The defendant is imputed the commission of an infraction for not having tried to the Spanish Data Protection Agency the information it requested.

With the aforementioned conduct of the defendant, the power of investigation that the Article 58.1 of the RGD confers on the control authorities, in this case, the AEPD, has been hampered.

Therefore, the events described in the "Events" section are deemed to constitute an infraction, attributable to the claimed party, for violation of article 58.1 of the RGD, which provides that each control authority will have, among its powers of research:

"a) order the person in charge and the person in charge of the treatment and, where appropriate, the representative of the person in charge or the person in charge, who provide any information that it requires for the performance of its functions; b) carry out investigations in form of data protection audits; c) carry out a review of the certificates issued under article 42, paragraph 7; d) notify the responsible or in charge of the treatment the presumed infractions of the present

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Regulation; e) obtain from the person in charge and the person in charge of the treatment access to all personal data and all the information necessary for the exercise of their functions; f) obtain access to all the premises of the person in charge and of the person in charge of the processing, including any data processing equipment and means, of in accordance with the procedural law of the Union or of the Member States.”

### III

This infringement is typified in article 83.5.e) of the RGPD, which considers as such: "no facilitate access in breach of article 58, section 1”.

In the same article it is established that this infraction can be sanctioned with a fine.

twenty million euros (€20,000,000) maximum or, in the case of a company, of an amount equivalent to four percent (4%) as a maximum of the global total annual turnover of the previous financial year, opting for the of greater amount.

For the purposes of the limitation period for infringements, the infringement charged prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as very serious the following conduct:

“ñ) Not facilitating the access of the personnel of the data protection authority competent to personal data, information, premises, equipment and means of treatment that are required by the data protection authority for the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the authority of competent data protection.”

Article 83.7 of the RGPD provides the following:

### IV

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

Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.”

Likewise, the aforementioned Regulation provides in its art. 58.2 b) the possibility of directing a warning. In this sense, article 77.1 c), 77.2 and 77.5 of the LOPGDD establishes that:

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

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

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this law

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organic, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of the that depends hierarchically, where appropriate, and to those affected who had the condition interested party, if any.

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

under this article."

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As regards the arguments presented by the respondent, collected in the seventh antecedent, it is considered that it would not be justified to assess as extenuating reasons alleged.

In this regard, it should be borne in mind that the fact that the respondent party has not responded to the requests made cannot be excused for the lack of alleged infrastructure and personnel, given the time elapsed since the application effective of the RGPD and the consequent obligation to provide this Agency with the information required for the performance of its functions. Also, the LPACAP offers interested parties instruments such as the request to extend the deadlines established, which could have been requested by the interested party before the expiration of the term if it considered that the circumstances advised it and should be studied by this Agency.

Therefore, in accordance with the applicable legislation, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: IMPOSE the OPENING CITY COUNCIL, with NIF P1000200D, by an infringement of Article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to the OPENING CITY COUNCIL.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

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

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

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



Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the

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National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

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