

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

A.A.A.,

FIRST D.

filed on 06/07/2018

claim before the Spanish Data Protection Agency (AEPD) against the

Town Hall of Casarrubios del Monte, with NIF P4504100A (hereinafter, the
reclaimed).

(hereinafter, the claimant)

The reasons on which the claim is based are that the City Council claimed
has happened to the collection in your bank account, without your authorization -every time you do not
had domiciled the payment of these taxes-, both the IBI 2017 invoice and the rate
of the sewage system 2017. He also invokes as grounds for his claim a
intended transfer of your personal data by the claimed to the Provincial Council
of *** LOCALITY.1 because "the O.A.P Tax Management issues all the rates of the
City Council to the taxpayers' banks whether or not they are authorized to do so".

Provide the following documents:

- Copy of ID
- Receipt of the IBI 2016 with the mechanical impression accrediting the payment made
through a bank window. The document bears a stamp with the
date 06/29/2019 and the indication "BANKIA" "Charged into account". In the part
upper left appears a shield and the legend "Organismo Autónomo

Provincial Office of Tax Management of ***LOCATION.1". Following is the name and surname of the taxpayer (current claimant); the indication "Receipt of the Tax on real estate -Nat. Urbana", City Council of Casarrubios del Monte, Period 2016-Annual. At the bottom of the document It is reported that the voluntary payment period is from 05/01/2016 to 07/04/2016.

-Document with the heading "City Council of Casarrubios del Mount General Registry. (...) Registration/Change of Holder-Municipal Fees". In the he collect the personal data of the claimant (name, surnames, NIF and address postal) who "requests", by marking the corresponding box with a cross, a "Change of owner" "of the following Municipal Fees".

Only two options appear in the document: the "Garbage" rate and the "Passage of carriages". Both options are checked. Next is the tax domicile; the details of the bank account in which the payment is domiciled of the receipts; the name of the previous holder and the name of the new and current holder claimant. The document is signed on 09/30/2015.

SECOND: In view of the facts exposed, the AEPD, in the scope of the file number E/4147/2018, by means of a document signed on 07/20/2018, transferred the claim to the Claimed City Council and requested an explanation about its performance. This writing was notified electronically through the application notified. The date of availability was 07/20/2018 and the date of acceptance of the notification on 07/29/2018.

After the period granted -one month- without receiving a response from the respondent, reiterates the request for information on two more occasions: The first, through a written of 11/21/2018, notified electronically and made available in the notified application on that date. The notice is rejected by the respondent on

02/12/2018. The second, by means of a document signed on 12/10/2018 and notified through of the Post Office. The delivery certificate issued by S.E. post office and Telégrafos, S.A., accredits the delivery to the claimed party on 12/18/2018.

The respondent did not respond to any of the information requests that were they did to him

This Agency addresses the claimant in writing signed on 07/20/2018 in which acknowledges receipt of your claim and informs you that the person in charge has been requested notify you of the result of the measures taken.

In accordance with the provisions of article 65.2 of Organic Law 3/2018, Protection of Data and Guarantee of Digital Rights (LOPDGDD), on the date 01/25/2019 the agreement for admission to processing of this claim is signed.

B. Subsequently, in accordance with article 67 of the LOPDGDD, the Inspection of Data of the AEPD carries out preliminary investigation actions with the number of reference E/862/2019.

The Data Inspection made an information request to the claimant who responded in writing with the date of entry in this Agency on 05/28/2019 in which makes the declarations and provides the documents that are detailed:

- That he has paid the Town Council of Casarrubios del Monte, "within the voluntary period" and "in the same receipt for the year 2017" the amounts of the following taxes: IBI, sewage, passage of carriages and collection of rubbish.

However, with respect to the 2017 financial year, it has only provided one document dated 11/10/2017 referring to payment through an office of BANKIA of 104.79 euros without stating in the document which is the concept for which he makes the payment. The said document bears the impression mechanical proof of payment together with a BANKIA seal. In the

heading the legend "Collection Procedure Code:***CODE.1"

(The underlining is from the AEPD)

- Regarding the IBI 2018, it states that the claimed City Council has reused the direct debit mandate. However, the claimant substantiate these claims. The only document that provides on the IBI 2018 is not a direct debit receipt but another that justifies having made the payment at the bank office. The document bears the impression mechanical that justifies the payment by window with a charge to your account on 06/28/2018; therefore, within the voluntary payment period according to the information contained in the document itself.

- States that regarding the "Sewerage, passage of carriages and collection of garbage (in the same receipt) for the 2018 financial year, the City Council has once again use the direct debit mandate", being the Direct Debit Reference

***REFERENCE.1. In addition, he adds, these taxes were paid by the claimant in the Bank on 10/25/2018.

The claimant provides in relation to these statements the documents following for the 2018 financial year:

a. The document called "Property Tax Receipt real estate" Town Hall of Casarrubios del Monte. in your corner top left contains "Provincial autonomous body for management tax of ***LOCATION.1". As "period" appears "2018-annual".

Informs that the voluntary payment period is between 09/01/2018 and 10/31/2018.

The subconcepts on which the receipt deals are the rates of "sewerage", "carriage passage, ground level entrance Municipality of Casarrubios"; "garbage collection; living place". The amount of the debt

tax is 70.50 euros. The document incorporates the data mechanized that accredit the payment in the presentation of the document in the credit institution and bears a BANKIA stamp with the billed legend and date 10/25/2018.

a. BANKIA document of "Direct Debit", issued on 11/26/2018, in which the personal data of the claimant appears in his Right upper corner. The creditor/issuer of the receipt is the Autonomous Organism of PGT ***LOCATION.1.

C. Examination of the documents attached to the claim and those provided to the inspection of data -documents the latter that do not coincide with those that were required to the claimant- it is concluded:

1.The documentation does not offer a proof principle that, as invoked the claimant, the claimed party would have paid into his account the collection of the receipt of the IBI for the year 2017.

The claimant has not provided this Agency with his claim any document that proves it. The one he sent was from the IBI 2016 and what it reflects is the payment at the Bank over the counter by debiting the account, it bears the stamp of the credit and the mechanical printing of the payment. Neither with his answer to the requirement made in previous investigation actions has provided a document one that shows that, as stated, the defendant had domiciled in the IBI 2017 receipt counts.

The only documents in the possession of this Agency relating to the payment of the IBI are from the 2016 and 2018 financial years. Neither responds to a payment by direct debit into account by the claimed party. On the contrary, both documents have the mechanical impression that accredits the payment through your presentation at the credit institution and a BANKIA stamp with the date and legend

charged to account.

2. There are documents showing that the claimant had communicated to the City Council claimed that the payment of the fees was domiciled in its bank account of "garbage" and of "passage of carriages". We refer to the claim form, "Registration/change of owner -Municipal fees", signed by the claimant in September 2015, which he attached to his claim brief.

3. The City Council claimed domicile in the claimant's bank account, in date 10/31/2018, the 2018 sewer rate. On that date the sewer rate 2018 was already satisfied. In the file, on the one hand, is the document that makes proof of the payment through a window and charges the rate of sewer 2018 as of 10/25/2018. On the other hand, the document that proves that the Claimed City Council direct debited payment of the fee to the claimant's account on 10/31/2018.

THIRD: On 06/24/2019, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6.1 of the RGPD, typified in article 83.5.a) of the GDPR.

FOURTH: The respondent made objections to the initiation agreement in writing sent by administrative mail on 07/23/2019 that had an entry in the registry of this Agency on 07/29/2019.

The defendant requests the AEPD to file the file sanctioning To this end, it alleges that the facts are the result of "an error and in no case intentional action."

He explains that he has signed a Framework Agreement with the Autonomous Organization Provincial Department of Tax Management of ***LOCALIDAD.1 (OAPGT) for the management of municipal taxes.

It acknowledges that “by transferring the data and information of the taxpayer Mr.

[the claimant] mistakenly authorized the OAPGT to direct debit the fees for rubbish, carriage passage and sewage system” (emphasis is from the AEPD)

It adds that the OAPGT has been informed not to proceed to domicile in the claimant's bank account sewer fee.

The respondent provides a copy of these documents:

1. Copy of the Provincial Bulletin of ***LOCALITY.1 number ***NUMBER.1 of

03/11/2015, in which the Announcement of the approval of the new

Regulatory Agreement of the delegations agreed by the City Councils of the

Province in the Provincial Corporation regarding the powers, functions and

administrative activities corresponding to the application of certain taxes

premises, as well as the text of the Regulatory Agreement.

2. Document signed electronically on 07/09/2019 by the Mayor of the City Council

claimed whose recipient is the OAPGT and that bears the exit stamp of that

Local Administration dated 07/09/2019.

In this document, the respondent requests the OAPGT of ***LOCALIDAD.1 to

proceed to annul the direct debit order for the sewerage rate as it is not stated in

the City Council any document in which the interested party authorizes it.

It states that the claimant had authorized the City Council in September

2015 to domicile in your bank account the payment of garbage fees and passing of

carriages, but not the sewer; that in accordance with article 38 of the

General Collection Regulations, to proceed with the direct debit is

The consent of the interested party is necessary, consent that regarding the rate of

sewer system is not known to the City Council and that by mistake, that City Council authorized

to the OAPGT of ***LOCALIDAD.1 to pay into the claimant's account also the

sewer fee.

FIFTH: The initiation agreement of PS/222/2019, in point 3 of its operative part agreed, for purposes of evidence, to include in the sanctioning file the claim filed by the claimant and its attached documentation, as well as the documents obtained and generated by the Data Inspection Subdirectorate during the phases admission to processing and preliminary investigation.

SIXTH: On 02/25/2020, a resolution proposal was formulated in the following terms:

<<That by the Director of the Spanish Agency for Data Protection sanction the CITY COUNCIL OF CASARRUBIOS DEL MONTE, with NIF P4504100A, for an infringement of Article 6.1 of the RGD, typified in Article 83.5.a) of the RGD, with WARNING, provided for in article 58.2.b) of the Regulation (EU) 2016/679.>>

The proposal was notified electronically to the respondent, being the date of made available in the electronic office on 02/26/2020 and the date of acceptance of the notification on 03/03/2020, as evidenced by the FNMT certificate that works on the record. Consequently, the period of ten working days granted to the claimed to present arguments to the proposal had to end on 03/17/2020.

Royal Decree 463/2020, "declaring the state of alarm for the management of the health crisis caused by Covid 19", published in the BOE on 03/14/2020, in its Third Additional Provision, "Suspension of deadlines administrative", ordered:

"1. Terms are suspended and the deadlines for the processing of the procedures of public sector entities. The calculation of the deadlines will resume at the moment in which this Royal Decree loses its validity or, in its case, the extensions thereof.

2. The suspension of terms and the interruption of terms will apply to the entire

public sector defined in Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations.”

This suspension was lifted on 06/01/2020. Royal Decree 537/2020,

published in the BOE on 05/23/2020, establishes in article 9:

“Administrative deadlines suspended by virtue of Royal Decree 463/2020, of 14

of March”. “With effect from June 1, 2020, the computation of the deadlines

Administrative procedures that had been suspended will be resumed, or restarted, if so

would have foreseen in a norm with the force of law approved during the validity of the

state of alarm and its extensions” (Underlining is from the AEPD)

When the suspension of deadlines occurred by virtue of Royal Decree 463/2020,

There were two business days left before the expiration of the ten-business-day period granted to the

claimed by the LPACAP to make allegations to the proposed resolution, therefore

that the aforementioned period ended at 24 hours on 06/02/2020.

As of 06/06/2020 there is no news in this Agency of the entry of the

arguments to the resolution proposal, for which, having fulfilled the term amply

granted for the referred procedure, the procedure continues the course foreseen by the

LPACAP.

Of the actions carried out in this proceeding and of the

documentation in the file, the following have been accredited:

FACTS

1.- Mr. A.A.A., with DNI ***NIF.1 (a copy of which is in the file) states that the

City Council of Casarrubios del Monte (Toledo) has passed the payment on your account

bank, without your consent, the receipts of the IBI 2017 and the sewerage rate

2017 and has transferred your data without your consent to the Provincial Council of

***LOCATION.1, since the Provincial Autonomous Agency for Tax Management

(OAPGT) of the Diputación issues all the receipts of the taxes of the City Council to

taxpayer banks, whether or not they are authorized to do so.

2.- Work in the file, provided by the claimant, a document in which

heading figure "City Hall of Casarrubios del Monte General Registry. (...)

Registration/Change of Holder-Municipal Fees". It contains the personal data of the

claimant (name, surnames, NIF and postal address) who "requests", marking with

a cross in the corresponding box, a "Change of owner" "of the following Fees

Municipal".

The only two options that appear in the document are the "Garbage" rate and the

of "Passage of carriages". Both options are checked. Next is the

tax domicile; the details of the bank account in which the payment is domiciled

those receipts; the name of the previous holder and the name of the new holder who is the

claimant. The document is signed by the claimant on 09/30/2015.

3.- The following documents are included in the file provided by the claimant:

i.- A DEBIT receipt, issued by BANKIA, S.A., dated 11/26/2018, against the

checking account held by the claimant in that financial institution.

It appears as "ISSUER / CREDITOR" of the receipt "ORG AUT P G T ***LOCALIDAD.1"

As "CONCEPT" it states: "Casarrubios del Monte Real Estate Property Rates

2018- Annual". And as "VALUE" the reference ***REFERENCE.2

The amount owed is 70.50 euros and the owner is the claimant.

ii.- A document with the coat of arms of ***LOCALIDAD.1 and the legend Organismo

Autonomous Provincial of Tax Management of *** LOCATION.1; Provincial Council

of ***LOCATION.1". Corresponds to the "2018-annual period"

In the document, after identifying the claimant by name and surname and

identify the receipt number (***REFERENCE.2) it is indicated that the amount to

enter is 70.50 euros. The concepts for which this receipt is issued are the

following:

a.- Sewage rate, fee 24.90 euros

b.- Carriage passage rate, fee 15.60 euros

c.- Garbage/housing collection rate, fee 30 euros.

The document bears a stamp of BANKIA, S.A., with the indication charged in account and the date "OCT 25, 2018".

4.- The file provided by the claimant contains a copy of the following receipts

issued all of them by the City Council claimed that they have in common two features:

(i) bear a stamp of "BANKIA, S.A.", with the legend "LOADED IN

ACCOUNT", (ii) in the upper left corner appears the shield of ***LOCALIDAD.1

and next to it one of these two legends or both at the same time: "Diputación de

***LOCALITY.1", "Provincial Autonomous Agency for Tax Management of

***LOCATION.1:

- Receipt corresponding to the IBI 2016 of the City Council claimed. bears a stamp of BANKIA debited account dated 06/29/2016. Payment was made on time voluntary because, according to the document, it ended on 07/04/2016.

-Receipt corresponding to the IBI 2018 of the City Council claimed. bears a stamp of BANKIA debited account dated 06/26/2018. Payment was made on time voluntary because, according to the document, it ended on 07/06/2016.

-Receipt issued by the Diputación de ***LOCALIDAD.1, in which it is not specified which It is the concept by which it is issued. It bears the indication "Code Procedure of Collection: 9052180" "copy for the Financial Entity"; "Last day for payment 11/16/2017"; "Amount to deposit EUR 104.79". The document then bears the identification data of the claimant (name, two surnames and their home address).

The document incorporates the mechanical printing of the financial institution BANKIA, S.A., regarding the charge made to the claimant's bank account on 11/10/2017

of the aforementioned amount. It also incorporates the BANKIA seal with the legend "Loaded consider".

4.- The requested City Council has recognized

that, by mistake, authorized the OAPGT the direct debit in the account of the claimant of the sewage rate, despite that he had only authorized the direct debit of garbage fees and passing of carriage.

5.- The requested City Council has provided a copy of these documents:

(i) The publication in the BOP of ***LOCALIDAD.1 (number ***NUMBER.1, of 03/11/2015) of the "Regulatory Agreement of the Delegations Agreed by the City Council and the Hon. Provincial Council regarding the functions and activities administrative procedures corresponding to the application of certain local taxes..."

(ii) - Document signed electronically on 07/09/2019 by the mayor of Casarrubios del Monte, whose addressee is the OAPGT, which bears the printed exit stamp of that Local Administration on 07/09/2019, through which the City Council claimed requests the OAPGT of ***LOCALIDAD.1 to proceed to annul the order of direct debit of the sewerage rate, since the City Council does not record any document in which the interested party authorizes such direct debit.

FOUNDATIONS OF LAW

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

II

Article 58 of the RGPD, "Powers of Attorney", says:

“2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

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

warning when the processing operations have violated the provisions of

this Regulation;

(...)”

Article 83.7 of the RGPD indicates that "Without prejudice to the corrective powers

of the supervisory authorities within the meaning of Article 58(2), each Member State

may establish rules on whether and to what extent fines can be imposed

administrative authorities and public bodies established in that State

member".

Under the authorization that the RGPD (article 83.7) grants to the States

members, our LOPDGDD, in article 77, under the heading "Regime applicable to

certain categories of data controllers or processors" provides:

"1. The regime established in this article will be applicable to

treatments for which they are responsible or in charge:

(...)

c) The General Administration of the State, the Administrations of the

autonomous communities and the entities that make up the Local Administration.

(...)

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 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 on which it reports hierarchically, where appropriate, and to those affected who have the condition of interested parties, if any". (The underlining is from the AEPD)

Therefore, our legal system (see article 77 LOPDGDD) provides that when the person responsible for data processing typified in articles 72 to 74 of the LOPDGDD -which deal with very serious, serious and minor infractions- is a local entity -as it happens here- the sanction to be imposed will be a warning provided for in article 58.2.b, of the RGD, and may also adopt measures to put an end or correct the effects of the infractions in which it had incurred.

III

Article 5 of the RGD, "Principles related to treatment", refers in the Section 1.a) of "lawfulness": "Personal data will be: a) processed lawfully, loyal and transparent in relation to the interested party (<<legality, loyalty and transparency>>)

Article 6 of the RGD, "Legality of the treatment", specifies in section 1

When is the treatment of data of natural persons considered lawful:

"The treatment will only be lawful if it meets at least one of the following conditions:

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of the latter of measures pre-contractual;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or of

another natural person.

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers vested in the controller of the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that over said interests do not prevail the interests or the rights and freedoms fundamental data of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to treatment carried out by public authorities in the exercise of their functions.

The infraction for which the defendant is held responsible is provided for in article 83.5 of the RGPD that establishes:

“Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) The basic principles for the treatment, including the conditions for the consent under articles 5,6,7 and 9.”

At the same time, it should be noted that, for prescription purposes, the LOPDGDD typifies in article 72.1.b) as a very serious infraction “The processing of data without any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679”.

IV

The claimed City Council is charged with an infringement of article 6.1 of the RGPD,

precept that relates the different legal bases on which the treatment of personal data being the concurrence of any of them condition necessary to respect the principle of legality provided for in article 5.1.a of the RGD.

The treatment that the claimed City Council made of the data of the account claimant's bank account in order to domicile in it the payment of the sewage system cannot rely on any of the legitimating principles provided for in article 6.1. of the GDPR.

Recital 40 of the RGD says: "For the treatment to be lawful, the data personal information must be treated with the consent of the interested party or on any other legitimate basis established in accordance with Law, either in this Regulation or by virtue of another Law of the Union or of the Member States referred to in the this Regulation, including the need to comply with the legal obligation applicable to the responsible for the treatment or the need to execute a contract in which it is a party the interested party or in order to take measures at the request of the interested party with prior to the conclusion of a contract.

The bank account number of a natural person is a character data personnel being able to cite for this purpose the doctrine of the National High Court reflected, among others, in the SSAN of 01/30/2014, Rec. 554/2012, and of 11/3/2015, Rec. 333/2014. The account number has in this case allowed the Bank to identify the claimant as holder and make in it the charge ordered by the claimed party as payment of the sewer fee.

The legal basis that legitimizes the processing of personal data of the tax obligations that the City Council needs to carry out for the management of the own taxes is part of article 6.1.c) of the RGD: "the treatment is necessary for the fulfillment of a legal obligation applicable to the person in charge of the treatment".

Article 6.3. of the RGPD specifies that the basis of the treatment indicated in the paragraph 1, letters c) and e) must be established by Union Law or the Law of the Member States that applies to the data controller. By As far as Spanish law is concerned, such an obligation must be established in a standard with the formal status of law. Article 53.1 of the Spanish Constitution requires that the regulation of the exercise of the rights recognized in the second chapter of the Title I, including article 18.4, which includes the right to protection of personal data, is made by a rule with the force of law.

Both the provision of article 6.3 RGPD and the requirement that in the Law Spanish the obligation referred to in letter c) of article 6.1. GDPR is established in a norm with the rank of law have been transferred to the LOPDGDD whose article 8 says: "1. The processing of personal data can only be considered based on the compliance with a legal obligation required of the person in charge, in the terms provided in article 6.1.c) of Regulation (EU) 2016/679, when so provided by a standard of European Union Law or a rule with the force of law, which may determine the general conditions of the treatment and the types of data object of the same as well as well as the transfers that proceed as a result of compliance with the legal obligation.(...)".

The local estates are nourished by various resources, among others from the "tributes own" of which the fees are part (article 2.1 of the Royal Legislative Decree 2/2004, which approves the Consolidated Text of the Law Regulating the Local Treasury) The local entities have attributed by law, in addition to the regulatory power to create taxes, the competence for management, collection and inspection of their own taxes, without prejudice to the delegations that may grant in favor of local entities of superior scope or of the respective Autonomous Communities and the forms of collaboration with other entities

local authorities (see article 106 of Law 7/1985, Regulating the Bases of the Regime

Local)

Article 12 of Royal Legislative Decree 2/2004, which approves the

T.R.L.R.H.L., establishes that the management of local taxes must adjust to the

provisions of the General Tax Law and the other regulatory laws of the State

of the matter, as well as the provisions dictated in its development. Therefore, between

the rules to which the management of local taxes must submit is the

Royal Decree 939/2005, of July 29, approving the General Regulation

Collection (RGR), issued in development of Law 58/2003, General Tax.

Article 34.1 of the RGR provides that the payment of tax debts may be
do, always, through the means detailed therein, among those mentioned,
section d) "bank direct debit".

Article 38 of the RGR regulates the "Payment by direct debit" in the
following terms:

"1. The direct debit must meet the following requirements:

a) That the party obligated to pay is the holder of the account in which the payment is made by direct debit and that
said account is open in a credit institution.

In the terms and conditions in which each Administration establishes it, the payment
may be domiciled in an account that is not owned by the obligor, provided that
the holder of said account authorizes the direct debit.

b) That the person obliged to pay communicates his direct debit order to the
of the Administration according to the procedures established in each case.

2. Payments shall be understood to have been made on the date of charge to the account of said
direct debits, considering proof of income the one issued for this purpose by the
credit institution where the payment is domiciled, which will incorporate as
minimum the data established in the corresponding ministerial order.

3. (...)” (The underlining is from the AEPD)

In accordance with the transcribed precept, the treatment by a local entity of the bank account of the taxpayer in order to domicile in it the payment of a tax is subject to certain requirements, among them that the person obliged to payment “communicate” your direct debit order to the local Administration bodies according to the procedures established in each case.

An example of this communication can be found in the form that the claimant completed in 2015 (described in Proven Fact 2), in which

The header contained the name of the City Council and the legend “Registro General Registration/Change of Holder-Municipal Fees”. Form that only dealt with garbage and carriage fees. Through this form the claimant opted for the direct debit of the only two rates contemplated in the document -rubbish and carriage passage- and included the details of the bank account in which the charges should be made.

The claimed City Council did not receive any communication from the claimant ordering direct debit payment of the sewerage fee. communication that is a requirement demanded by article 38.1.b) of the RGR. Despite this, the City Council claimed paid into the claimant's account the sewerage rate.

In its allegations to the initial agreement, the claimed City Council has recognized that the claimant did not notify the direct debit order regarding the 2018 sewage rate and has provided documentation that proves the adoption of measures to put an end to the illicit treatment carried out. has been contributed copy of the document signed electronically on 07/09/2019 by the Mayor of Casarrubios del Monte, whose addressee is the OAPGT, which bears the stamp of departure from that Local Administration on 07/09/2019, through which the Claimed City Council requests the OAPGT of ***LOCALIDAD.1 to proceed to annul

the direct debit order for the sewerage rate, as it is not recorded in the Town Hall

no document in which the interested party communicates such address (Proven fact

5.ii).

The treatment that the claimed City Council made of the personal data of the account claimant's bank account in order to charge it the amount of the sewage system for the year 2018 did not meet the requirements of the RGR, standard regulation referred to in article 12 of Royal Legislative Decree 2/2004, which approves the T.R.L.R.H.L., which requires that the management of own taxes conform to the provisions of the General Tax Law and its regulations on developing.

The authorization to process the personal data of the taxpayer who, in principle, grants the letter c) of article 6.1. GDPR presupposes that the City Council responsible for data processing necessary for the management and collection of their taxes act in compliance with the rules imposed, directly or by referral to other development regulations, by the regulation with the rank of law from which the base derives law that protects the processing of personal data of taxpayers.

Thus, being accredited in the file that the City Council claimed processed the bank details of the claimant for the collection of the sewerage rate of the fiscal year 2018 without meeting the requirements that article 38 of the RGR requires for the direct debit of the payment, cannot operate as a legitimizing basis of the treatment the compliance with a legal obligation (letter c, of article 6.1 of the RGPD)

It is concluded from the foregoing that the processing of personal data of the claimant who is the object of assessment in this sanctioning file is not covered by none of the legal bases of article 6.1. GDPR. Violation of article 6.1 of the RGPD that is subsumable in the sanctioning type of article 83.5.b) of the GDPR.

The claim that gave rise to the opening of this sanctioning file also raised another issue: the alleged infringement of the protection regulations of data derived from the fact that the claimed City Council had communicated the personal data of the claimant without their consent -including bank data- to the provincial autonomous body of Tax Management, dependent on the Diputación Province of ***LOCALIDAD.1, through which the City Council had been collecting the taxes to taxpayers.

However, there is no infringement of data protection regulations in the described behavior: the communication of the personal data of the affected by the City Council to the Provincial Council in order to manage, through the aforementioned autonomous body, the collection of taxes without the consent of the tax debtor.

In accordance with article 6.1 of the RGPD, the legality of the treatment can be based in the condition described in section e): "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of powers data conferred on the data controller".

Article 7 of the Law Regulating Local Treasury, Consolidated Text approved by Royal Legislative Decree 2/2004, indicates that in accordance with article 106.3 of Law 7/1985, regulating the Local Regime Bases, local entities may delegate to other local entities in whose territory they are integrated, the faculties of management, liquidation, inspection and tax collection that this law grants. Indicates that this agreement must be adopted by the plenary session of the local corporation establishing the scope and content of the delegation and must be published in the Official Gazette from the province.

Work in the file provided by the City Council claimed a copy of the B.O.P.

of ***LOCALIDAD.1 number ***NUMBER.1, of 02/11/2015 in which the

Announcement of approval of the new "Regulatory Convention of the delegations agreed upon by the Provincial Councils in the Provincial Corporation regarding to the faculties, functions and administrative activities corresponding to the application of certain local taxes" and the text of the Regulatory Agreement.

The Regulatory Agreement specifies, among other issues, that the Diputación Provincial, in the exercise of the powers attributed to it by Law 7/1985, regulation of the Bases of Local Regime, the consolidated text of the Regulatory Law of the Local Treasury, the Regulation of Organization, Operation and Regime Law of Local Entities and the General Collection Regulations, creates the autonomous provincial tax management body (OAPGT) that has entrusted among its functions the exercise of its own powers and functions that the Provincial Council of ***LOCALIDAD.1 entrusts to it and those that the entities premises within the territorial scope of that Provincial Council delegate to the aforementioned Diputación among others, in the following matters: management and inspection and collection of taxes and other revenues of public law. (The underlining is from the AEPD)

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF CASARRUBIOS DEL MONTE, with NIF P4504100A, for a violation of article 6.1. of the RGD, typified in the article 83.5.a) of the RGD, a penalty of warning provided for in article 58.2.b) of the cited Regulation (EU) 2016/679.

SECOND: NOTIFY this resolution to the respondent.

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

FOURTH: 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 article

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

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

through the

Electronic Registration of

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency