

□ Procedure No.: PS/00174/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: CLAIMANT 1, identified for the claimed person in the GENERAL ANNEX (in hereinafter, the claimant) on 11/12/2019 filed a claim with the Agency

Spanish Data Protection Act directed against the CITY COUNCIL OF ICOD DE LOS

WINES with NIF P3802200J (hereinafter, the claimed). The reasons on which the claim are that the respondent started from July 2019 a par-

citizen participation, and the neighbors made allegations by filling out a request form.

city created by the administration itself. "Closed the first phase of the process", "it takes

The government group sent several flash drives with these allegations to the Council

of San Marcos Beach Recovery, (CR hereinafter), an entity formed by

members of the different political groups of the Municipal Plenary and of two Associations." "The

pendrive containing the data and what was stated by each citizen was delivered to

each member of said CR".

States that, among others, the data of name and surname, DNI, and address of email.

He considers that "at no time did they make me sign any document in which I

prevented the disclosure of the same and neither does any party have to find out about it.

my data".

On 12/12/2019, a claim signed by CLAIMANT 2 was received, which

declares to be Councilor for a party, and that appears in the GENERAL ANNEX, adds to the

facts, that on 09/19/2019, an extraordinary and urgent session of the CR was held, an entity

composed of representatives of all the political parties with representation in the Plenary of the City Council and by a citizen platform called "SOS PLAYA SAN MARCOS" and representatives of the "COFRADÍA DE PESCADORES DE LA PLAYA DE SAN MARCOS" and the attendees were provided with a flash drive with all the surveys carried out and a copy of "\*\*\*\*ESTUDIO.1" was also given to the study so that it could report the technical and economic feasibility of the allegations presented.

Along with the claim, provide: CLAIMANT 1:

- An email from 08/01/2019 subject "we got wet in San Marcos". "Proposal technique", "San Marcos beach recovery project", with your name and surnames, your ID, your email address and the opinion that the project deserves. Send to comunicacion@icodelosvinos and proof of electronic registration of the venue of the re-claimed indicating that it was received on 08/01/2019 through the City Council website.
- A form completed with the logo "we get wet for San Marcos. Your opinion counts yah." "We want to collect the suggestions and we ask you to make the allegations that you consider. rights" in which the data of the claimant, and his signature, and the

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literal "attached to the entry record already delivered no. XXXX of 07/29/2019" This formulario does not have an informative data collection literal. It is accompanied by another modern writing the instance, standardized with the letterhead of the Secretary General, which contains the data of the claimant filled out by hand, as an applicant, with your email, telephone number and a small box in which he expresses his disagreement with the project. Doesn't show any City Hall entry stamp and an informative literal NOTICE appears on this model

LEGAL on data that is impossible to read, reading only LOPD 15/1999.

-CLAIMAN 2:

Provide a copy:

a) In doc 1, of the Order of the day of the call for extraordinary and urgent session-

CR, as the first point, acknowledgment in agreement with the Board of Governors

government regarding the start and extension of the citizen participation procedure, and second point

second: acknowledgment of the allegations received until 09/16/2019. accompani-

Also include copies of some appointments of RC representatives.

b) From the paper form to collect handwritten data "your opinion counts" what is it

capable of collecting name, surnames and DNI and the suggestions or allegations that are

they can do that it does not carry informative literal of data collection and data processing.

c) In attached document, entry 59465/2019, scanned USB memory, itemized

in six documents identified in the procedure with said name. in a shallow

examination is appreciated:

-DOCUMENT ONE: pdf of 41 pages. Forms are contained, many of them presenting

registered in the electronic register of the City Council on different dates, for example

09/18/2019, and that according to the copy of the message, are received through the website of the City Council-

along with the shipments in email format, which is accompanied by a diligence

agency that generates, which indicates with the seal of the City Council that the "this document

regarding allegations about the technical proposal signed by the person has been received

through the website of this City Council on the day...". Forms are also included.

completed by hand in which, however, their presentation at the elected headquarters is recorded.

tronic. In the format sent via email, no information is contained

about data processing. Neither in the completed by hand

-DOCUMENT TWO: contains the same form as document one, presented to the

cried out.

-DOCUMENT THREE, 75 pages, from page 32 there are forms with data

project survey personnel.

-DOCUMENT FOUR, 61 pages, does not contain personal data. It is a document annex

document filed by a person who made allegations.

-DOCUMENT FIVE, 47 pages, begins with a list without letterhead, ordered by faith-

cha 08/15/2019, name and surnames, carrying the stamp SOS SALVAR LA PLAYA

ICOD Platform. The list occupies 27 of 47 pages. You can see another sheet of "change.org" with the

text "Support the SOS PLAYA DE SAN MARCOS alternative to the recovery project

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tion of the beach "ICOD DE LOS VINOS" CITY COUNCIL, and once again bears the seal

SOS SALVAR LA PLAYA- CITIZEN PLATFORM, indicating on another sheet that if-

wow, 577 people have signed.

-DOCUMENT SIX, 96 pages, begins in the same way as document five, this time

occupying 29 of 96 pages. It is followed by the same literal support for the alternative, informa-

tion on SOS SAVE THE BEACH- CITIZEN PLATFORM and background of the es-

state of conservation of the beach and asking citizens to share suggestions,

Below is a list collected containing handwritten signatures as well as name and

surnames and DNI for the SOS PLAYA SAN MARCOS campaign and the seal on each page of the

list of SOS PLAYA SAN MARCOS. A first list reaches 125 signatories, folio 34 to

37, followed by a second list with another 125 signatures, folio 41 to 45, different from the above.

above, a third folio 49-53, and a fourth from 56 to 60 with 67 signatures, and it can be seen that there are

more listings than listings continue.

This platform for collecting signatures seems different in origin from the one followed by the City Council.

regardless of whether they are added or sent to those of the aforementioned City Council.

unto Among the information of the collection there is no extreme that informs about the re-

collection of signatures, and that the platform was created in 2014.

SECOND: In view of the facts denounced in the claim and the documents

provided by the claimant is transferred to the CITY COUNCIL OF ICOD DE LOS VINOS on

01/16/2020 the claim by electronic means that, since it was not opened, was "expired", with

certified detail of:

Date of availability: 01/21/2020 13:44:05

Automatic rejection date: 02/01/2020 00:00:00

Automatic rejection generally occurs after ten calendar days have elapsed.

from its making available for access according to paragraph 2, article 43, of

Law 39/2015, of 1/10, of the Common Administrative Procedure of the Administrations

Public.

The shipment is reiterated, by deference by ordinary mail, the request for information being delivered.

training on 02/06/2020.

The request was not answered and the claim was admitted for processing on 06/08/2020.

THIRD: On 06/17/2020, by the Director of the Spanish Agency for Protection

tion of Data, it was agreed: "INITIATE PUNISHMENT PROCEDURE to

CITY COUNCIL OF ICOD DE LOS VINOS, for the alleged infringement of the RGPD, in its

articles:

-5.1.c)

-13

In accordance with article 83.5. a) and b) of the GDPR."

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

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allegations on 07/10/2020 in which, in summary, it requests the file, stating:

- The City Council, its representatives, are part of the CR, being one more member of dicho organ. Complainants are also part of the CR. "The shared information it is done within the RC itself, by one of its members, the City Council, never to be disclosed through any means, but to be used in the field of the purposes for which the CR was created." "When it was provided exclusively to members members of the CR the flash drive with the suggestions and proposals of the citizens, was made with the exclusive purpose that the CR knew said proposals and to be able to agree and take carry out initiatives in accordance with said proposals and suggestions made". It was not done for another purpose." The use made of the data was exclusively within the CR". "There can be no talk of committing an infraction because none of it has been disclosed. any personal data by this corporation except to provide information to members of the CR with a very specific purpose."
- “The alleged infraction cannot be deemed to have been committed since it only contained data related to tives to name, surnames, email address, never sensitive data.”
- “Regarding the sanction proposal and taking into account that it is an essential element for the formulation of the same, understands that the act notified suffers manifest lack of motivation that generates defenselessness.”
- "The text of the RGPD in which the alleged infringement committed is typified is not indicated", it is understood that "the conduct constituting an administrative infraction" is not motivated.
- No probative activity has been practiced that "allows the instructor to train a reasonable judgment of guilt. "The conduct of the respondent cannot be considered or

willfully or negligently."

FIFTH: On 02/09/2021, a resolution proposal was issued with the literal:

"That by the Director of the Spanish Agency for Data Protection, the

to the CITY COUNCIL OF ICOD DE LOS VINOS, for an infraction of article 5.1.c) of the

RGPD and another of article 13 of the RGPD, in accordance with article 83.5 a) and b) of the

RGPD, with a sanction of warning."

No claims were received within the established period.

#### PROVEN FACTS

1)

As of July 2019, the respondent began a process of citizen participation

dadana called: "We get wet for San Marcos. CITIZEN participation process",

on the technical proposal for the recovery project of the beach of San Marcos de

Icod de los Vinos, and the citizens made allegations.

The two claimants state in their claims that the respondent, in view of the

celebration of the Board of the San Marcos Beach Recovery Council (CR) ce-

held on 09/19/2019, delivered to each representative of the CR, a USB memory, con-

having the allegations made by each citizen including their personal data: name

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name and surnames, ID and email. Complainant two, who claims to be a Councilman,

representing a party, is part of the CR, and in his claim he provided a copy of

the documentation contained in the delivered USB stick.

two)

Claimant two, provided in document three a collection form

of data that made it possible to fill it in by hand, with the logo of the City Council and the campaign with space for name, surnames, DNI, signature and a paragraph to expose the allegations. There is no informative reference to the collection and processing of data personal. It is appreciated by claimant one, on the other hand, that other forms, type claimant, continue to carry the informative literal of the previous reference to the law 15/1999, LOPD. Claimant two provided a copy of these completed forms, as well as as copies of submissions of allegations to the campaign, through the website of the claimed by email: to comunicacion@icoddelosvinos.es, which was transmitted as input given at the electronic headquarters of the claimed party, filed before 09/19/2019, containing in addition to name and surnames, DNI and email, folios 19 to 230 of 461. The text generated in the sending of the email containing the allegations to the project also little informative literal portal on the treatment, purpose and use of the data collected.

3) It also appears on the copy of the USB memory provided by claimant two, a list with name and surnames, location, and date, associated with each person, including 08/14 to 08/16/019 with the stamp "SOS SALVAR LA PLAYA ICOD PLATFORMA CITIZEN" pages 231 to 257 of 461, and in change.org / page 259) reporting that 577 people have signed ma already On folio 263, it is indicated that the citizen platform "Sos La Plataforma" as member of the RC presents the alternatives supported by 1205 firms to the project on tendered to citizens by the current government group, dated 09/16/2019. In addition, fi- There are lists of the aforementioned platform with handwritten signatures with names and surnames and DNI of the people who adhere to it 312 to 372.

4) The Regulation of the Municipal Council for the recovery of the beach of San Marcos de Icod de los Vinos, as an advisory and consultative body for the defendant in matters of current tions to be carried out for the correct recovery of the beach of San Marcos (CR), determined the members that compose it, appearing among others: Vice President, the Councilor De-



legacy of the works area, a representative of each of the municipal political groups

them with presence in the Plenary, a representative of the Fishermen's Association of San

Marcos, and two representatives of the citizen platform "S.O.S. San Marco beach.

Icod.

5) The call for an extraordinary and urgent session of the CR for Thursday 09/19/2019,

fixed in the agenda: First: "acknowledgment of the agreements of the Board of

Government regarding the initiation and extension of the citizen participation procedure" and

second "acknowledgment of the allegations received until September 16 of the

2019"

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the

Spanish Data Protection Agency is competent to resolve this procedure.

unto

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II

The STC 292/2000 states that "... the content of the fundamental right of protection of

data consists of a power of disposal and control over personal data that empowers

empowers the person to decide which of their data is provided to a third party (...) these powers

disposition and control over personal data, which constitute part of the right

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 storage and treatment, as well as its possible use or uses, by a third party, be it the State or an individual", that is to say who, why and what data is going to be processed. This allows those affected, in this case citizens, to exercise control over their data. cough of a personal nature (informative self-determination). "The duty of prior information via is part of the essential content of the right to data protection, since it is an essential complement to data processing The duty to provide information on the use and destination of personal data is closely linked to the general principle general legal authorization of the treatment and exercise of rights, because if it is not known its purpose and recipients, it is difficult to exercise any right over its properties. some data."

In this case, the respondent collected personal data intended for the participation public participation in a project, without reporting the treatment of these data. In addition, the co pio in a support, USB memory, as they were collected and presented, distributing to each member of the CR a memory, containing all the allegations and the data, with so that the CR in the exercise of its powers knew the allegations to advise on the decision to be made.

### III

As established in recital 39 of the RGD, "for natural persons, you must- make it absolutely clear that they are being collected, used, consulted or processed by another way personal data that concerns them, as well as the extent to which said data are or will be treated. "

Defines the RGD in its article 4:

1) "personal data": all information about an identified or identified natural person.

ble ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity identity can be determined, directly or indirectly, in particular by means of an identifier,

such as a name, an identification number, location data, an identifier

online identifier or one or more elements of the physical, physiological, genetic identity,

ethical, mental, economic, cultural or social of said person;"

2) "processing": any operation or set of operations performed on data

personal information or sets of personal data, whether by automated procedures or

no, such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or

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any other form of authorization of access, collation or interconnection, limitation, suppression

sion or destruction;

4) "file": any structured set of personal data, accessible in accordance with

determined criteria, whether centralized, decentralized or distributed in a functional way.

nal or geographic;

7) "responsible for the treatment" or "responsible": the natural or legal person, authori-

entity, service or other body that, alone or jointly with others, determines the ends and means

of the treatment; if the law of the Union or of the Member States determines the purposes

and means of treatment, the controller or the specific criteria for

their appointment may be established by the Law of the Union or of the Member States;

Article 1 of the RGPD indicates:

"1. This Regulation establishes the rules relating to the protection of

natural persons with regard to the processing of personal data and the rules

relating to the free movement of such data."

## Article 2. Material scope of application

"1. This Regulation applies to the fully or partially automated processing

processing of personal data, as well as the non-automated processing of personal data

contained or intended to be included in a file"

The respondent is considered to have committed an infringement of article 13 of the RGPD, which indicates:

"1. When personal data relating to him is obtained from an interested party, the res-

ponsible for the treatment, at the time these are obtained, will provide you with all the

information listed below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative.

sitting;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the processing for which the personal data is intended and the legal basis

ca of treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in

Their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party.

country or international organization and the existence or absence of a decision of adequacy

Commission, or, in the case of transfers indicated in articles 46 or

47 or article 49, paragraph 1, second paragraph, reference to adequate guarantees or

appropriate and the means to obtain a copy of them or the fact that they have been

borrowed.

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2. In addition to the information mentioned in section 1, the person responsible for the treatment will provide the interested party, at the time the personal data is obtained, them, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any any time, without affecting the legality of the treatment based on consent. prior to your withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, information following significant information about the applied logic, as well as the importance and the foreseen consequences of said treatment for the interested party.

It is hereby accredited that the respondent did not offer any information on this article.

The functions of the CR according to its article 3, are:

IV

“- Supervision and monitoring of the drafting of the necessary studies and projects

until its completion, and the contracting of the same, which provide a definitive solution to the current situation of San Marcos Beach and its surroundings.

- Advice, study and consultation of the issues that, in terms of actions,

activities to be carried out on the San Marcos Beach, the City Council submits it for your consideration.

of Icod de los Vinos or any citizen.

- Advise on training and information campaigns on the San Marcos de la

City of Icod de los Vinos.

- Propose the adoption of measures leading to the enrichment and dissemination of the Beach

of San Marco.

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-Any proposal aimed at the conservation and protection of San Marcos Beach

of the City of Icod de los Vinos.”

The defendant, collected as they were presented the allegations to the project, without depu-

rar its content, with the personal data associated with the date of its presentation, in

a USB flash drive format were copied and distributed on flash drives to members.

CR bros.

In the access to information that is given to all the members belonging to the CR, it must be

be assessed if these personal data are essential for the purpose of the functions attributed

given to CR and are inseparable from the opinions of the people who carry them out, or if data is not accurate. If it is possible to implement the means that are less intrusive in the rights of people to obtain the same ends, that is, without personal data them, a more respectful solution with the privacy of its authors, would have to give value to this solution before the one made by the claimant.

For those affected, it means that their personal data will be disclosed to a third party, other than the person responsible for its collection, and that if they are not strictly necessary and the purpose can be achieved without transferring these data, it is preferable not to communicate them, since it supposes an interference in their fundamental right (18.4 Spanish Constitution).

Article 25 of the GDPR states:

"1. Taking into account the state of the art, the cost of the application and the nature nature, scope, context and purposes of the treatment, as well as the risks of different probabilities. ity and seriousness that the treatment entails for the rights and freedoms of individuals physical data, the data controller will apply, both at the time of determining the means of treatment as well as at the time of the treatment itself, technical measures and appropriate organizational arrangements, such as pseudonymization, designed to apply enforce data protection principles, such as data minimization, and integrate the necessary guarantees in the treatment, in order to comply with the requirements of this Regulation and protect the rights of the interested parties.

2. The data controller will apply the technical and organizational measures with a view to guaranteeing that, by default, only those personal data that are necessary for each of the specific purposes of the processing I lie. This obligation will apply to the amount of personal data collected, to the extension of its treatment, its conservation period and its accessibility. such measures They will guarantee in particular that, by default, personal data are not accessible, without the intervention of the person, to an indeterminate number of natural persons."

This article has the effect of considering privacy requirements from the earliest stages of the design of products and services and confers the category of legal requirement to the principle of integrating the guarantees for the protection of the rights and freedoms of citizens in relation to their personal data from the early stages of development

Understood as the need to consider privacy and the principles of protection of data from the conception of any type of treatment and for the purposes of re-  
dation of this document, the terms “data protection by design” and “privacy”  
privacy by design’ can be considered equivalent Privacy by design  
n implies using an approach oriented to risk management and pro-  
active in establishing strategies that incorporate the protection of privacy throughout

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of the entire life cycle of the object (whether it is a system, a hardware product or software).  
software, a service, or a process). By life cycle of the object we mean all the stages  
through which it passes, from its conception to its withdrawal, passing through the  
phases of development, commissioning, operation, maintenance and withdrawal. Even more,  
implies that they are taken into account, not only the application of protection measures of the first  
emptiness in the early stages of the project, but also contemplate  
all the processes and business practices involved in the processing of data associated with  
do, thus achieving true governance of the management of personal data by  
part of organizations.

The ultimate goal is for data protection to be present from the early stages  
of development and is not an added layer to a product or system. Privacy must for-



be an integral part of the nature of said product or service.

The GDPR establishes 'data protection by design' as a legal requirement for compliance.

filing. Article 83 considers it punishable not to meet this obligation, as well as its

correct application constitutes one of the criteria for assessing the seriousness of an in-

fraction. It is recommended for such purposes:

- Limit the use of personal data to the purpose(s) for which they were collected.

two and ensure that there is a legitimate basis for the treatment.

- Carry out an analysis of the risks to the rights and freedoms of individuals and, in

where appropriate, impact assessments relating to data protection, as an integral part

of the design of any new treatment initiative.

- Assume that different and legitimate interests can coexist: those of the entity and those of

the users it serves; and that it is necessary to identify, evaluate and

launch them properly

Article 5.1 c) of the RGPD is imputed as violated, which determines:

"1. The personal data will be:

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

c)

those that are processed ("data minimization");

The RGPD establishes in its article 5 the basic principles that must be taken into account when

when carrying out the treatments, so that these six principles (lawfulness, loyalty and

transparency, purpose limitation, data minimization, accuracy, limitation of

period of conservation, integrity and confidentiality) together with the proactive responsibility

tive (or accountability) become the core of the norm and the goal that every system

subject, application, service or process must guarantee in its design, in addition to the requirements

functional requirements or requirements to be met by the system itself.

Without ignoring the competencies pursued by the CR, it is not necessary for you to know the

personal data of the people who each accompanied their allegations; Name and surnames, DNI, email address, since they are not essential, they do not are relevant, adequate, or necessary for the purpose for which the information is needed. allegations. The fact of knowing the personal data does not help to achieve the purpose for which the CR exists and exercises its functions. In addition, the right to

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these people when transferring that data through a medium such as USB memories, each one a support, not encrypted and capable of being copied easily and therefore with exit of the data outside the orbit of the person in charge of the treatment with consequences indeterminate for their owners.

On the allegation that the complainants are part of the CR that obtained the data also for the functions thereof, it must be indicated that the data controller of the data in terms of its collection and the one who decided to make copies in memory rias USB is the one claimed and that this was the one that decided on the purpose of said damages. the ends, the means and the end, when they are sent to each member of the CR, as recipient, with all the data and through the delivery in USB memory, not being necessary for the function they perform.

The fact that the claimants are part of the RC does not prevent them from declaring state the facts.

It emphasizes that, with said communication, the fundamental rights of of those affected, without proportionality, in the sense that the objective proposed can be achieved without the communication of personal data, for example,

dissociating the data. The action taken to copy everything to the USB sticks is not accrued.

It is said that it is necessary, since there may be other ways to achieve the purpose

with equal effectiveness without this restriction of the right that the communication of the data supposes.

cough. The extent of communication with all personal data through memory

USB is not balanced either, as no more benefits are appreciated for the CR or the

general interest that may prevail over the rights of data owners.

In this case, it is considered that access to the allegations made by citizens,

together with the data of each author of the same by the CR should not contain the data of

personal character.

Thus, the commission of the aforementioned imputed infraction is accredited.

Article 83.5 of the RGPD indicates:

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"5. Violations of the following provisions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the turnover

overall annual total price of the previous financial year, choosing the highest amount:

a)

the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;"

b)

the rights of the interested parties under articles 12 to 22;

Article 83.7 of the RGPD indicates:

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“Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules as to whether of, and to what extent, impose administrative fines on authorities and public bodies established in that Member State”.

Article 58.2 of the RGPD provides the following: "Each control authority will have all of the following corrective powers indicated below:

a) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation.

glament;

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

The Spanish legal system has chosen not to fine entities public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: “1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

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

2. When those responsible or in charge listed in section 1 committed something any of the infractions referred to in articles 72 to 74 of this organic law, the data protection authority that is competent will dictate sanctioning resolution do to them with warning. The resolution will also establish the measures that it is appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected that it 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 those affected who had the status of interested, if any.

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

beef.

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 to the protection of this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction.”

The respondent has not provided specifics on any measure to correct this infringement, it is unknown if the USB sticks remained in the possession of the RC or if it will be tender its return, nor is it known if it has taken measures in order that infractions

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similar occur again, being able to inform about it.

Regarding the allegation of the lack of typification, the RGPD does not directly establish the con- establishes a classification of infractions, and it is the LOPDGDD that mentions them for the purposes of prescription.

Article 72 points out:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following you:

- a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679.
- h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law."

On the allegation of the lack of proof of guilt, article 28.1 of the law 40/2015, of 1/10 of the legal regime of the public sector, establishes;

"1. They may only be sanctioned for acts constituting an administrative infraction natural and legal persons, as well as, when a Law recognizes them capacity to act, affected groups, unions and entities without legal personality and estates independent or autonomous, who are responsible for them by way of fraud or fault."

From the material point of view, culpability consists in the ability of the subject obliged to act differently and, therefore, in accordance with the legal system.

Therefore, the concurrence of a deliberate intention to infringe the norm, with conscience, is not required.

ity and will to do it. Therefore, what is relevant is the diligence displayed in the action by the subject, which excludes the imposition of a sanction, solely based on the mere result do, that is to say to the principle of strict liability. The field of simple non-compliance is the classic of imprudence or negligence, in its different degrees. In this case, appreciates and is enough the lack of diligence, not demanding impossible behavior or extremely difficult, bearing in mind that fundamental rights are at stake, and do fully imputable to the claimed conduct.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ICOD DE LOS VINOS CITY COUNCIL, with NIF P3802200J,

for an infringement of article 5.1.c) of the RGPD, and another of article 13 of the RGPD, in accordance with

Article 83.5 of the RGPD points out, a sanction of warning for each infraction.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF ICOD DE LOS VI-

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US.

THIRD

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

: COMMUNICATE this resolution to the OMBUDSMAN, of

FOURTH: 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 LO-

PDGDD, 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 Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions

in article 25 and in section 5 of the fourth additional provision of Law 29/1998, of

13/07, regulating the Contentious-administrative Jurisdiction, within a period of two months to

count 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, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the interest

The party must formally communicate this fact in writing addressed to the Spanish Agency.

Data Protection Label, presenting it through the Electronic Registry of the Agency

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

others provided for in art. 16.4 of the aforementioned LPACAP. You must also transfer to the Agency the documentation proving the effective filing of the contentious-administrative appeal.

If the Agency was not aware of the filing of the contentious-administrative appeal

within a period of two months from the day following the notification of this resolution.

solution, it would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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GENERAL ANNEX

CLAIMANT 1 A.A.A.

CLAIMANT 2 B.B.B.

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