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 Procedure No.: PS/00269/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 02/18/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directs against HEALTH SERVICE OF CASTILLA-LA MANCHA with NIF Q4500146H

(hereinafter SSCM). The reasons on which the claim is based are, in summary:

- That on 01/25/2019 he submits an application to apply for a position as Medical Coordinator

for the La Solana Health Center, convened by the Integrated Care Management

of the Sanitary Area of Talavera de la Reina (Toledo), dependent on the Health Service

of Castile-La Mancha.

- That by email the Deputy Medical Director of said Management attaches

the report made by the Legal Services in which it is indicated that it does not meet the

conditions set in the call based on the fact that I have a temporary affiliation

in said health center for occupational health reasons.

- That an email identical to the corporate emails of the

La Solana and Río Tajo health centers, so that, following the established protocol,

forward to all team members, so that all workers

from the Health Center (45 people, including myself), receive an email

email from the Integrated Care Management of Talavera de la Reina

(Medical Subdirectorate), in which said information is transferred and everyone is informed

them of their work situation and that it is conditioned by health reasons.

It consists provided by the claimant:

- Copy of your ID

- Copy of the email sent by the Integrated Attention Management of the

Sanitary Area of Talavera de la Reina (Toledo), dependent on the Service of

Health of Castilla La Mancha.

Copy of the email sent by the Río Tajo health center to the

addresses of your workers.

-

SECOND: Upon receipt of the claim, the Subdirectorate General for

Data Inspection proceeded to carry out the following actions:

On 02/18/2019, reiterated on 04/12/2019, the claim was transferred to the SSCM

submitted for analysis and communication to the claimant of the decision adopted

regard. Likewise, it was required that within a month he send to the

Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that

the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the

claim.

- Report on the measures adopted to prevent the occurrence of

similar incidents.

- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the

claim and its transfer to the claimed entity.

On 05/23/2019 SSCM sent a letter in which it stated, among other things, that

in the email of 01/29/2019, professionals were informed and motivated

of the Primary Care Team of Talavera 3 Rio Tajo of the administrative situation

current and the cause of exclusion or non-admission that concurred in the candidate, the

claimant, in the regulated process for the provision and selection of the post of

Medical Coordinator of the aforementioned Team, in order to determine the cause of

exclusion.

THIRD: On 06/18/2019, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed by the claimant against the respondent.

FOURTH: On 11/22/2019, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, in accordance with the

provided in articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, sanctioned in accordance with

to the provisions of article 77.2 of the LOPDGDD.

FIFTH: Notification of the aforementioned initiation agreement, in writing of 12/10/2019, the claimed

presented a pleadings brief in which, in summary, it stated the following: that

SSCM had not violated the duty of confidentiality of the data and that all the

e-mail recipients were public employees of SESCAM; that

information contained in the email has been used within the limited

scope of statutory linkage of said professionals, so it cannot be

considered excessive information provided; that the management and access to the account

mail is done by the administrative staff of the health center and is accessed

always with a specific profile and, in the same way, the rest of the professionals receive

said information subject to an encrypted system where they can only access

by password; that the mail claimed by the claimant is reported within the

scope of the Talavera 3 Rio Tajo Primary Care Team to professionals

assigned to said team of the cause of exclusion and non-admission of the candidate in

matter within the regulated procedure convened on 01/14/2019; that the

professionals of said team are the only recipients of the email; that

analyzed the documentation available in the processing of this claim, the

treatment of the same is adapted to the normative support in the exercise of the

functions of participation of the professionals and public employees of the aforementioned team

primary care; that there has been no violation of the privacy protection regulations

personal data, since no information has been provided on clinical aspects

of the state of health of the claimant, the fact that this person was destined for

provisionally for health reasons was appropriate and relevant within the aforementioned

provision procedure because their enrollment in the Talavera Health Center

Río Tajo was subject to scheduled occupational health check-ups and

recipients of the information were the professionals involved in the participation and

resolution proposal of the provision procedure.

SIXTH: On 02/11/2020, the opening of a practice period of

tests, remembering the following:

Consider reproduced for evidentiary purposes the claim filed by the

claimant and his documentation, the documents obtained and generated by the

Inspection Services that are part of file E/02128/2019.

Consider reproduced for evidentiary purposes, the allegations to the initial agreement

presented by the claimed party and the documentation that accompanies them.

Request the claimant a copy of all the documentation that was in his possession.

power relative to the sanctioning procedure that for any reason does not

had been provided at the time of the complaint or any other

statement in relation to the facts denounced.

SEVENTH: On 06/04/2020, a Resolution Proposal was issued in the sense of

that the defendant be sanctioned with a warning for violation of article 5.1.f)

of the RGPD, typified in article 85.5.a) of the aforementioned RGPD, in accordance with the

Article 77.2 of the LOPDGDD.

After the period established for this purpose, the respondent did not present a written

allegations at the time of issuing this resolution.

EIGHTH: Of the actions carried out in this proceeding, they have been

accredited the following

PROVEN FACTS

FIRST. On 02/12/2019 there is an entry in the AEPD written by the claimant

stating that on 01/25/2019 I submitted an application to apply for a position in

Medical Coordinator at the Health Center of La Solana and Rio Tajo, convened by the

Management of Integrated Care of the Health Area of Talavera de la Reina (Toledo),

dependent on the Health Service of Castilla La Mancha; via email

the Medical Deputy Director of said Management attached a report made by the Services

Legal in which it was indicated that it did not meet the conditions set out in the

call motivated by their situation of temporary affiliation in said center of

health for occupational health reasons; Subsequently, an identical mail has been sent to the

rest of the professionals who are members of the health center, in which said

information and all of them are informed of their employment situation and that it is

conditioned for health reasons.

SECOND. The claimant provides a copy of his DNI in ***NIF.1.

THIRD. A copy of the email sent on 01/29/2019 to

claimant by the Medical Deputy Director of the Area Integrated Care Management

Health of Talavera de la Reina (Toledo), and of content identical to that which has received the

rest of the professionals of the Health Center:

From: “B.B.B.” <***EMAIL.1>

To: “A.A.A.” ***EMAIL.2

CC: “C.C.C.” ***EMAIL.3

Sent: Tuesday, January 29, 2019 11:45

Attach: Resolution ADAPTATION A.A.A..pdf; A.A.A. - REVISION ***DATE.1-

INTERNAL NOTE. PDF

Subject: RV: RIVER TAJO COORDINATION PROCEDURE

“Regarding the request submitted on January 25 by the claimant, to

participate in the procedure for the election of medical coordinator, I will inform:

The aforementioned professional is attached to the Talavera Rio Tajo health center for

occupational health reasons (I enclose a copy of the resolution) with effect date of 26

January 2018. The claimant's affiliation is temporary, and his job position is

origin corresponding to the CIAS XXXXXXXXXXX, Talavera-La Team square

Algodonera, in which it maintains its right to reserve.

Assignment for occupational health reasons is temporary, while

maintain the recommendations of adaptation established by the service of

Prevention of Occupational Risks by virtue of the corresponding revisions (or in case of

incorporation of permanent staff to the square).

The last revision was made on September 25, 2018, establishing the

next review after six months, without any evidence that the review has been carried out.

The following is indicated in the selection bases:

(…)

FOUNDATIONS OF LAW

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 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate

and to solve this procedure.

Yo

The facts denounced are specified in the sending by the claimed mail

emails from the ***EMAIL.4 account to the email addresses of the

professionals of the aforementioned Health Center containing the causes of exclusion and not

admission of the claimant within the procedure convened on 01/14/2019 of

II

selection and provision of Medical Coordinator of your Team, violating the duty of

confidentiality.

Such treatment could constitute an infringement of article 5,

Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(…)

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

personal data, including protection against unauthorized or unlawful processing and

against its loss, destruction or accidental damage, through the application of measures

appropriate technical or organizational ("integrity and confidentiality").

(…)”

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all

people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary

of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain

even when the relationship of the obligor with the person in charge or person in charge had ended

of the treatment”.

III

The documentation in the file offers evidence that the

claimed, violated article 5 of the RGPD, principles related to treatment, in

relation to article 5 of the LOPGDD, duty of confidentiality, when revealing the

reasons for the job assignment as well as the causes of exclusion and non-admission of the

claimant in the procedure for choosing a medical coordinator, considering

excessive.

This duty of confidentiality, previously the duty of secrecy, must

understood that its purpose is to prevent leaks of data not

consented to by their owners.

Therefore, this duty of confidentiality is an obligation that falls not

only to the person in charge and in charge of the treatment but to everyone who intervenes in

any phase of the treatment and complementary to the duty of professional secrecy.

In accordance with what was stated above, the processing of personal data

requires the existence of a legal basis that legitimizes it, as a guarantee of security

adequate for the integrity and confidentiality of the data through measures

adequate.

The claim that we examine is caused by the content of the email

email that informed the professionals of the Primary Care Team of

Talavera 3 Rio Tajo of the administrative situation and cause of exclusion or non-admission

that concurred in the claimant, in the regulated process for the provision and selection of the

position of Medical Coordinator of the aforementioned Team, dated 01/29/2019 that reproduces

some fragments in the third proven fact. The aforementioned email was sent by the

Deputy Medical Director who initially attaches the report made by the

Legal Services indicating that it does not meet the conditions set out in the call

motivated by a temporary affiliation in said health center for health reasons

labor. Subsequently, identical mail is sent to the rest of the corporate emails of

so that all the workers of the Health Center (45 people, including

I find myself), they receive an e-mail from the Service Management

Integrated Hospital of Talavera de la Reina (Medical Subdirectorate), in which said

information and all of them are informed of their employment situation and that it is

conditioned for health reasons.

Pursuant to article 5.1.f) the processing of personal data must guarantee

adequate security of the data, including protection against unlawful processing

authorized or unlawful and against loss, destruction or accidental damage, through the

application of appropriate technical or organizational measures.

In short, the processing of personal data of the claimant that is carried out

by the Medical Subdirectorate by sending the email that was forwarded to all

professionals of the center on 01/29/2019, it will be lawful if there is a legal basis that legitimizes it.

In the first place, that the treatment is necessary to satisfy an interest

legitimate pursued by the data controller; what transferred to the assumption

that concerns us implies that the processing of personal data carried out through

of the email of 01/29/2019 pursued to satisfy the legitimate interest of the person in charge of the

treatment, although such treatment would require that “the interests pursued are not

prevail over the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data”.

Determine if the treatment that the claimed person made of the claimant's data

through the email that you sent to the professionals of the health center is or

not adjusted to law requires weighing the interests at stake to conclude whether it should

prevail or not over the right to freedom of association the right of the claimant to his

privacy.

Regarding legitimate interest as a legal basis for data processing

of third parties, Recital 47 of the RGPD says:

<<The legitimate interest of a data controller, including that of a

responsible to which personal data may be communicated, or of a third party, may

constitute a legal basis for the treatment, provided that the

interests or the rights and freedoms of the interested party, taking into account the

reasonable expectations of data subjects based on their relationship with the

responsible. Such legitimate interest could occur, for example, when there is a relationship

relevant and appropriate relationship between the data subject and the controller, such as in situations where

which the interested party is a client or is at the service of the person in charge. In any case,

the existence of a legitimate interest would require careful assessment, even if

a data subject can reasonably foresee, at the time and in the context of the

collection of personal data, which may be processed for this purpose. In

particular, the interests and fundamental rights of the data subject could

prevail over the interests of the data controller when proceeding to the

processing of personal data in circumstances in which the interested party does not

reasonably expect further treatment to take place. Since it corresponds

the legislator to establish by law the legal basis for the processing of personal data

by public authorities, this legal basis should not apply to

treatment carried out by public authorities in the exercise of their functions. The

processing of personal data strictly necessary for the prevention

of fraud also constitutes a legitimate interest of the data controller.

that it is Processing of personal data for direct marketing purposes

can be considered carried out for legitimate interest.>>

Transferred to the facts that concern us, it must be concluded that the Deputy Director

Medical, through the email sent to forty-five professionals from the Center for

Health, provided information that was not pertinent to the purposes pursued but, by

On the contrary, the data provided must be qualified as excessive in relation to

such purpose as it was to report the result of the call. The treatment

of some data concerning the claimant is not lawful because he did not find

protection in article 6.1.f of the RGPD.

This treatment constitutes a violation of the principle of confidentiality.

that presides over the processing of personal data of third parties (article 5.1.f, of the RGPD)

The debate in which the examined facts take place justifies the participation

and exchange information between professionals, and this is established in the bases of

the summons.

And while it is true that the call established that the group of

professionals from the team to whom it was addressed, the Primary Care Team, have

right to participate and to be heard in the selection procedure and provision of

Medical Coordinator of your team, giving them a certain weight or assessment to

the proposal that can be made by the professionals assigned to the Team, being

heard before proceeding with the appointment of the Coordinator, it is no less true that

this does not imply that the reasons why a product is excluded should be disclosed.

candidate, especially if said reasons are related to health.

In addition, in the development of the selection process it is pointed out that the Commission

submit to Management the proposal of the person it deems most appropriate once

carried out the procedure and that the Directorate of the Management issued a resolution that

published on the intranet of the Management in which the scores obtained will appear

by the candidates and, where appropriate, those excluded.

Now, what is considered relevant is the disclosure of information that

can be considered excessive in light of the aforementioned bases, such as the fact that the

participant/applicant is assigned to the center for occupational health reasons, which

their affiliation is temporary as long as the recommendations of

adaptation established by the Occupational Risk Prevention service under

of the revisions coming, etc.

In consideration of the foregoing, given that the email addressed

illicitly certain personal data of the claimant that were alien to the

interests at stake and revealed them to forty-five people, recipients of the mail

email sent on 01/29/2019, it is concluded that the claimed party is responsible for

an infringement of article 5.1.f), in relation to article 6.1, of the RGPD.

The violation of article 5.1.f) of the RGPD is typified in article 83.5.a)

of the GDPR. The LOPDGDD, for prescription purposes, in its article 72.1.a) qualifies this

very serious offense.

IV

Article 83.5 a) of the RGPD, considers that the infringement of “the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned RGPD.

On the other hand, the LOPDGDD in its article 71, Violations, establishes that:

“The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that

are contrary to this organic law.

The LOPDGDD in its article 72 indicates, for purposes of prescription: "Infringements

considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(…)”

However, the LOPDGDD in its article 77,

Regime applicable to

certain categories of controllers or processors, establishes the

Next:

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

of which they are responsible or entrusted:

a) The constitutional bodies or those with constitutional relevance and the

institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

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

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

d) Public bodies and public law entities linked or

dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment

related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

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

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

Local.

2. When the managers or managers listed in section 1

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

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

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the 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 on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

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

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

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

and the existence of technical reports or recommendations for treatment is proven

that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or Autonomous Gazette that

correspond.

4. The data protection authority must be informed of the

resolutions that fall in relation to the measures and actions referred to

the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions

analogous of the autonomous communities the actions carried out and the

resolutions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of

Data, it will publish on its website with due separation the resolutions

referred to the entities of section 1 of this article, with express indication of the

identity of the person in charge or in charge of the treatment that would have committed the

infringement.

When the competence corresponds to a regional protection authority

of data will be, in terms of the publicity of these resolutions, to what is available

its specific regulations.

The conduct of the defendant constitutes an infringement of the provisions of article

5.1.f) of the RGPD.

However, the RGPD, without prejudice to the provisions of article 83,

contemplates in the transcribed article the possibility of resorting to the sanction of

warning to correct the processing of personal data that is not appropriate

to its forecasts, when those responsible or in charge listed in the section

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

this organic law.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE HEALTH SERVICE OF CASTILLA LA MANCHA.

INTEGRATED ATTENTION MANAGEMENT OF TALAVERA DE REINA, with NIF Q4500146H,

for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the

RGPD, a sanction of warning.

SECOND: REQUEST CASTILLA LA MANCHA HEALTH SERVICE.

INTEGRATED ATTENTION MANAGEMENT OF TALAVERA DE REINA, with NIF Q4500146H,

so that within a month from the notification of this resolution, prove: the

adoption of the appropriate technical and organizational measures to guarantee the

processing of data to the regulations on the protection of personal data

staff in order to prevent future incidents such as those

have given rise to the formulation of the claim object of the procedure and its

adaptation to the requirements contemplated in article 5.1.f) of the RGPD.

THIRD: NOTIFY this resolution to the HEALTH SERVICE OF

CASTILLA LA MANCHA. INTEGRATED ATTENTION MANAGEMENT OF TALAVERA DE

QUEEN, with NIF Q4500146H.

FOURTH

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

: COMMUNICATE this resolution to the Ombudsman,

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

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

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

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

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

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

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

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

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

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

Electronic Registration of

through the

C/ Jorge Juan, 6

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www.aepd.es

sedeagpd.gob.es

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

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