

□ File No.: PS/00527/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the CLAIMANT party) dated February 15,
2021 filed a claim with the AEPD. The claim is directed against the AYUN-
OPENING PROCESS with NIF P1000200D (hereinafter, TOWN HALL).

The grounds on which the claim is based are as follows:

The complaining party states that the ***PUESTO.1 of that CITY COUNCIL has revealed
hand your personal data (name, surname and email address) to third parties through
by WhatsApp.

The events took place on January 20, 2021.

Along with the claim, an image of a WhatsApp screen is provided in which
the mail sent to the CITY HALL on January 20, 2021 by the RE-
CLAIMANT denouncing a problem that occurred on his property.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred to the CITY COUNCIL, to
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements set forth in the regulations of
Data Protection.

The transfer was sent on March 16 through the Notification Service
Electronic and Enabled Electronic Address, being notified that same day.

Currently, no response to this letter has been received.

THIRD: On May 15, 2021, and in accordance with the provisions of the

art. 65.5 of the LOPDGDD, the claim filed was admitted for processing.

ta by the CLAIMANT party.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of con-

control in article 57.1 of Regulation (EU) 2016/679 (General Protection Regulation)

tion of Data, hereinafter RGPD), and in accordance with the provisions of the Title

VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following

extreme tips:

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The CLAIMING party provides, together with the claim letter, an image of a

WhatsApp screen from which it appears that it has been shared through di-

cha application the image of an email sent by the claimant to AYUN-

TAMIENTO (ayuntamientoabertura@hotmail.com) requesting the intermediation of the

City Hall in a matter.

In this image you can clearly see the name, surnames and email address

email of the CLAIMING PARTY. It is also appreciated the name of the contact of

WhatsApp (B.B.B.) that coincides with the name of the ***PUESTO.1 of the municipality.

On June 15, 2021, the data inspection is requested, by writing

addressed to the CITY COUNCIL, which within 10 days provides certain information

tion and documentation in relation to the facts denounced.

Said letter was withdrawn by the addressee on June 15, 2021, as certified by the Support service of the Electronic Notifications Service and Electronic Address Enabled, without receiving a response to it, which gave rise to the opening sanctioning procedure PS/00461/2021, within the framework of which the representative City Council submits a letter of allegations, dated October 6, 2021, in which he makes the following statements in relation to the facts here reported:

- In relation to the email sent by the complainant to the City Council-

***PUESTO.1 acted with all good faith upon being ad-

made by the denouncer of the danger that some children of the low quality as they are mounted on the wall adjoining your property, whose wall is not It was completely closed, and in the presence of a mastiff dog.

- The same complainant sent an email to the City Council, requesting asking (...) to act, before which the *** POSITION.1, using a mobile to name-man of the City Council, warned the mothers of the children via WhatsApp, without in-any attempt to violate the right to privacy or data processing of third parties.

FIFTH: On January 3, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for alleged infringement of articles 5.1.f) and 32 of the RGPD, typified in the articles 83.5 and 83.4 of the RGPD.

SIXTH: On March 11, 2022, a resolution proposal was formulated, proposing that, due to the infringement of articles 5.1.f) and 32 of the RGPD, typified in articles 83.5 and 83.4 of the RGPD, the CITY COUNCIL OF ABERTURA is sanctioned with a WARNING for each of them.

SEVENTH: The proposed resolution was made available to the CITY COUNCIL

OF OPENING, through the Electronic Notifications Service and Address

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Electronic Enabled, on March 11, 2022, producing the rejection

automatically, on March 22 of that same year, after ten days had elapsed

natural from its availability for access according to paragraph 2, article

43, of Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public administrations.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: On January 20, 2021, it was shared through the application of

WhatsApp the image of an email sent by the CLAIMANT party to

TOWN HALL

the

mediation of the same in a matter that affected his right to property

private.

(town hallabertura@hotmail.com)

requesting

SECOND: The claimed entity acknowledges, in relation to the email in-

sent to the part RECLAMOUSLY, that the CITY COUNCIL would have sent it, although

states that he acted in good faith, warning him of the danger that the children of

the locality to be uploaded to the adjoining wall of the property of the RECLAIM-

MANTE, whose wall was not completely closed, and in the presence of a

mastiff dog

It was the CLAIMING party who sent the email to the CITY COUNCIL,

requesting (...) to act, to which the *** POSITION.1, using a mobile in the name

of the CITY HALL, warned by WhatsApp to the mothers of the children, without attempting al-

none of violating the right to privacy or the processing of data of third parties.

FOUNDATIONS OF LAW

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Competition

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the

European Parliament and of the Council of 04/27/2016 regarding the protection of

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

circulation of these data (hereinafter GDPR); recognizes each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5/12, of

Protection of Personal Data and guarantee of digital rights (hereinafter,

LOPDGDD), the director of the Spanish Data Protection Agency is

competent to initiate and resolve this procedure.

II

Article 5.1.f) of the RGPD

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In accordance with the evidence available at the present time of the

sanctioning procedure, it is considered that the proven facts constitute

of infraction.

The defendant is accused of committing an infraction for violation of the

Article 5.1.f) of the RGPD, which states that:

"1. The personal data will be:

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

including protection against unauthorized or unlawful processing and against

your transcript.

The infringement is typified in Article 83.5.a) of the RGPD, which considers as such:

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

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

In the present case, it is stated that the personal data of the CLAIMING party,

contained in the CITY COUNCIL database, were unduly disseminated

when revealing personal data (name, surnames and email address) to third parties through

see WhatsApp, violating the principle of confidentiality.

Classification of the infringement of article 5.1.f) of the RGPD

III

The aforementioned infringement of article 5.1.f) of the RGPD could lead to the commission of the in-

fractions typified in article 83.5 of the RGPD that under the heading "Conditions

rules for the imposition of administrative fines" provides:

"The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-

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

Total annual global business of the previous financial year, opting for the one with the highest

amount:

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

lien pursuant to articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that:

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to

ries to this organic law".

For the purposes of the limitation period, article 72 "Infringements considered very serious"

you see" of the LOPDGDD indicates:

"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

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a substantial violation of the articles mentioned therein and, in particular, the

following:

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

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

IV

Article 32 of the GDPR

In accordance with the evidence available at the present time of the

sanctioning procedure, it is considered that the proven facts constitute

of infraction.

The defendant is accused of committing an infraction for violation of the

Article 32 of the RGPD, which states that:

"1. Taking into account the state of the art, the application costs, and the nature

nature, scope, context and purposes of the treatment, as well as risks of probability

variable and seriousness for the rights and freedoms of natural persons, the responsible

The controller and the data processor will apply appropriate technical and organizational measures.

to guarantee a level of security appropriate to the risk, which, where appropriate, includes

yeah, among others:

a) pseudonymization and encryption of personal data;

b) the ability to guarantee the confidentiality, integrity, availability and re-

permanent silence of treatment systems and services;

c) the ability to restore the availability and access to personal data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the treatment

I lie.

2. When evaluating the adequacy of the security level, particular account shall be taken

ta the risks that the treatment of data presents, in particular as a consequence

of the accidental or unlawful destruction, loss or alteration of personal data transmitted

stored, stored or otherwise processed, or unauthorized communication or access

two to said data.

3. Adherence to a code of conduct approved under article 40 or to a mechanism

certification body approved under article 42 may serve as an element for

demonstrate compliance with the requirements established in section 1 of this

Article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that

Any person acting under the authority of the person in charge or the person in charge and having

access to personal data can only process said data following instructions

of the person in charge, unless it is obliged to do so by virtue of Union Law or

the Member States”.

In the present case, at the time of the security breach, there is no evidence that the CITY COUNCIL had reasonable security measures in place of the possible estimated risks.

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Disseminate by WhatsApp, through a corporate mobile phone, an email sent to the CITY COUNCIL by the CLAIMING party denouncing a problem occurred on your property, without anonymizing your personal data, does not guarantee the confidentiality, integrity and availability of treatment systems and services.

Classification of the infringement of article 32 of the RGPD

v

The aforementioned infringement of article 32 of the RGPD could lead to the commission of the infringements typified in article 83.4 of the RGPD that under the heading “General conditions rules for the imposition of administrative fines” provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 10,000,000 or, treating- of a company, of an amount equivalent to a maximum of 2% of the volume of Total annual global business of the previous financial year, opting for the one with the highest amount:

5)

the obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43; (...)”

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that "Consti-

The acts and behaviors referred to in sections 4, 5 and 6 are infractions of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law”.

For the purposes of the limitation period, article 73 “Infringements considered serious” of the LOPDGDD indicates:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, it is considered that they are considered serious and the infractions that suppose a vulnerability will prescribe after two years. A substantial portion of the items mentioned therein and, in particular, the following:

...

f) The lack of adoption of those technical and organizational measures that result in being appropriate to ensure a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of the Regulation (EU) 2016/679...

Article 83 “General conditions for the imposition of administrative fines” of the RGPD section 7 establishes:

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“Without prejudice to the corrective powers of the control authorities by virtue of art.

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

Likewise, article 77 “Regime applicable to certain categories of liability” responsible or in charge of the treatment” of the LOPDGDD provides the following:

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

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

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this organic law nica, the competent data protection authority will issue a resolution sanctioning them with a warning. The resolution will also establish the measures to be taken to stop the conduct or correct the effects of the offense that had been committed.

(...)

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

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 OPENING CITY COUNCIL, with NIF P1000200D, by an infringement of articles 5.1.f) and 32 of the RGPD, typified in articles 83.5 and 83.4 of the RGPD respectively, a sanction of warning.

SECOND: NOTIFY this resolution to the OPENING CITY COUNCIL.

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

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGD, and in accordance with the provisions of article 123 of the LPACAP, the Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from counting from the day following the notification of this resolution or directly contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

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If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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