



Procedure No.: PS/00147/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 06/12/2018, the Director of the AEPD resolved the complaint with entry date of 04/03 and 05/17/2017 presented by A.A.A., in the procedure AP/00010/2018.

SECOND: In proven facts it was arranged:

“1) The complainant makes it clear that in executing the summons by ORDER of 01/15/2016, promotion shift for labor personnel at the service of the Administration of the Autonomous Community of Extremadura. DOE nº XX of \*\*\*DATE.1, was published on the web of the denounced a LIST OF APPLICANTS DEFINITELY ADMITTED – PROMOTION SHIFT 2016 of the JUNTA DE EXTREMADURA, group III, category: commissioned-internal promotion with a list of “99” people with the following information: number of or-den, NIF, name and surnames, appearing the complainant with the order number YY, although it is not appreciate the date. The summons provided in base 1. 3 that “The bases of the present con-call, as well as all its annexes can be consulted through the internet at the address gobex.es. In addition, for information purposes, they will be made public at the same address of internet the list of applicants admitted and excluded, provisionally and definitively the re-Approved ratings for each exercise and the score of the merit contest phase.”

In base 4: "Admission of applicants", point 2 it was reported that "The provisional lists and definitive must be revealed, in any case, in the Ministry, in the Centers of Administrative Attention of the Junta de Extremadura and in the Personal Response Offices.

finished. The publication of the Resolution approving the definitive lists in the Official newspaper of Extremadura (...)"

2) The complainant also denounces that on the website of the Junta de Extremadura [ciudad.gobex.es](http://ciudad.gobex.es), portal of the citizen of the Junta de Extremadura, section "employment public", "my situation" tab, entering the number of the DNI that has been known.

due to the previous publication of the admission of students, it is possible to see the name and surname two, and the applications for calls for places that it has presented, in this case, for the denouncer is seen those of civil servant, technical assistant, with the call, and as labor ral the same with the category "warehouse manager" - free shift, group IV, admitted. At the same How long does your degree appear and the number it occupies on waiting lists in various locations? ities. Access to said information is credited on 05/22/2017.

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3) The Junta de Extremadura recognized in previous proceedings that the final list of admitted and excluded related to the aforementioned ORDER of 01/15/2016, was published in the internet address [gobex.es](http://gobex.es) with the NIF and full name and surnames.

4) It was accredited by inspection diligence on 01/15/2018 that consulting GOOGLE with the DNI of the complainant leads to a web page in which a document appears indexed in pdf entitled GROUP IV, which corresponds to the web page of [ciudad.gobex](http://ciudad.gobex.es) and appears the list of definitively admitted applicants, group IV in charge of Warehouse, free shift name, ordered by surname and first name with the data of the complainant: surname and first name and DNI except the letter.

5) During the processing of this file, it has not been proven that the defendant has changed

changed or eliminated the way to access the citizen portal / public employment / my situation  
tion/ with respect to the DNI data. Nor does the defendant have and put into practice  
rules for deleting data from participants in calls already made and completed  
long time.

THIRD: The operative part indicated:

FIRST: DECLARE that the GENERAL DIRECTORATE OF THE PUBLIC FUNCTION  
(MINISTRY OF FINANCE AND PUBLIC ADMINISTRATION) has violated the provisions  
in articles 9.1 and 4.1 of the LOPD, typified as serious in articles 44.3.h) and  
44.3.c) of the aforementioned Organic Law.

SECOND: REQUEST the GENERAL DIRECTORATE OF THE PUBLIC FUNCTION  
(MINISTRY OF FINANCE AND PUBLIC ADMINISTRATION), in accordance with the  
established in section 3 of article 46 of the LOPD to prove within a period of  
month from this act of notification the measures of internal order that prevent that in the  
future there may be a new infringement of articles 9.1 and 10 of the LOPD, for which  
that file of previous actions E/03206/2018 is opened.

FOURTH: Article 46 of the LOPD provided, "Infringements of the Public Administrations  
case":

"1. When the infractions referred to in article 44 were committed in file-  
ros of public ownership or in relation to treatments whose controllers would be fi-  
files of this nature, the sanctioning body will issue a resolution establishing the  
measures to be taken to stop or correct the effects of the infringement. Is  
resolution will be notified to the person in charge of the file, to the body on which it depends hierarchically  
mind and those affected if any.

2. The sanctioning body may also propose the initiation of disciplinary actions  
plinaries, if applicable. The procedure and the sanctions to be applied will be those established  
in the legislation on the disciplinary regime of the Public Administrations.

3. The sanctioning body must be notified of the resolutions that fall under re-relationship with the measures and actions referred to in the preceding sections.»

4. The Director of the Agency will inform the Ombudsman of the actions that carried out and the resolutions that it dictates under the protection of the previous sections”.

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On 07/03/2018, a letter was received from the Ombudsman requesting to be informed-  
rá of the actions carried out by the accused. A letter was sent to the defendant  
07/23/2018 to inform them of the compliance situation, warning that “it is understood  
proof that the infringement that was declared continues to occur as deduced from the consultation  
ta on the website of the Junta de Extremadura [ciudad.gobex.es](http://ciudad.gobex.es), citizen portal  
of the Junta de Extremadura, "public employment" section, "my situation" tab. in it  
Enter the DNI of the complainant and you have access to your data, being able to consult  
also lists of provisional or definitive admissions of applicants for procedures of  
years ago, 2009, 2010 etc. in which their DNIs also appear "

The shipment was collected on 07/26/2018, without receiving a response.

Again, a letter was sent to the defendant in 2019 without being attended to, observing  
that the declared infraction continues.

FIFTH: It is verified on 06/15/2020 that on the page of the Junta de Extremadura: <https://ciudadano.gobex.es/mi-situacion> through the DNI, in the box, PUBLIC EMPLOYMENT, MY SITUACION (DNI that is referred to in different types of listings of that headquarters, can be  
access with the claimant's DNI) and name and surnames and participation history are displayed.

Participation in selective processes. In addition, from this option you can consult the con-

calls in which there are new lists of personal data with complete DNI and processes that could already be completed, as is the case of the Administrative Body, especially auxiliary technical specialty definitely admitted applicants, being a call for 2009 including the qualification of that signed process.

In the "data protection" section of said page, there is

22. File 'SELECTIVE TESTS AND WAITING LISTS'.

IDENTIFICATION AND PURPOSE OF THE FILE:

- Description of the purpose and intended uses: Manage the selection processes of the candidates who intend to access professional bodies or categories or specialties des in which jobs are classified in the field of General Administration of the Junta de Extremadura.
- Classification of purposes: Human Resources.
- Name of the office or dependency before which to exercise the A.R.C.O rights: Address General of Public Function, Human Resources and Inspection. Avda. Valhondo, s/n. Building III Millennium. 06800-Merida (Badajoz).

The communication to the administrative body can be made by the usual means (Official Mailboxes, General Registries and Telematic Registry). For information on the use electronic signature can consult the Electronic Headquarters of the Administration of the Co-Autonomous Community of Extremadura.

The page <https://ciudadano.gobex.es/web/guest/protecciondatos> also has a search engine of calls for public employment with, among others and by way of example, the option "shift disability", a call for "civil servants", "higher graduates" and graduates is selected.

len complete lists with DNI data, of admitted or the qualification note of 2015.

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The same result occurs if another Body or Scale is introduced, such as administrative, obtaining lists with personal data of names, surnames and DNI, from presumably already completed some time ago, in this case processes of a call for riots of 2013.

A screenshot is made of those queries that are incorporated into the file without detriment of the fact that the situation of conserving personal data of processes already finalized zados seems common on that page.

SIXTH; On 07/10/2020, the Director of the AEPD agreed:

“ START SANCTION PROCEDURE to the GENERAL DIRECTORATE OF THE PUBLIC FUNCTION (FIRST VICE PRESIDENCY AND DEPARTMENT OF FINANCE AND AD-PUBLIC MINISTRY-JUNTA DE EXTREMADURA), for the presumed infraction of the articles 58.2.d) and 5.1.e) of the RGPD, being punishable in accordance with article 58.2.b) of the RGPD, considered very serious, for the purposes of prescription in the article 72.1 m) and 72.1 a) of the LOPDGDD, and in accordance with article 83.5 e) and 83.5 a) of the RGPD.”

No allegations were made.

SEVENTH: On 02/22/2021, a resolution proposal is issued with the literal:

“That by the Director of the Spanish Agency for Data Protection, the with warning to GRAL DIRECTION. OF THE PUBLIC SERVICE (Vice Presidency First and Ministry of Finance and Public Administration), with NIF S0611001L, for a infringement of article 58.2 d) and another of article 5.1.e) of the RGPD, in accordance with the article 83.5 e) and a) of the RGPD,

Compliance with measures is required, in application of article 58.2.d) “order the responsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and

within a specified period”

Against the proposal, no arguments were received.

## PROVEN FACTS

1) The defendant did not comply with the requirement that was made regarding the infractions

declared in procedure AP10/2018 of 06/12/2018 regarding articles 9.1 and 4.1

of the LOPD. Requested later on the requirement, did not give any answer.

2) Ex officio, it was proceeded to review whether compliance with the declaration had been carried out.

do initiating this procedure for not complying with the resolution previously issued.

3) Likewise, it is accredited in this procedure that typing the data of the claim

(name and surname) in search engines such as GOOGLE result in

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Doing several pages with your data and complete DNI, having as reference [sgtex.es](http://sgtex.es), or [\[bex.es\]\(http://bex.es\) Extremadura Health Service.](http://go-</a></p></div><div data-bbox=)

4) It is also proven that the public employment page [gobex.ex](http://gobex.ex) contains DNI data

full names, names and surnames, and health data (disability), in reference to processes

already finished, for example from 2015, in lists of admitted or qualifications. The shape

of carrying out the search allows by type of personnel, type of call, such as shift

of disability, Body, Group and specialty, including personal data in the list provi-

sional of admitted, the provisional list of excluded or the definitive list of admitted, as well

like grades.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the Parliament European and Council of 04/27/2016 regarding the protection of natural persons in the regarding the processing of personal data and the free circulation of these data (as far hereinafter, RGD); recognizes each control authority, and according to what is established in the Articles 47 and 48 of Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

## II

Failure to comply with the measures ordered in the previous resolution, AP procedure 10/2018, supposes on the part of the GENERAL DIRECTORATE OF THE PUBLIC FUNCTION, the commission of the infringement provided for in article 83.5 e) of the RGD that states:

"5. Violations of the following provisions will be sanctioned, in accordance with 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 global annual total of the previous financial year, choosing the highest amount:

"and. non-compliance with a resolution or a temporary or definitive limitation of the treatment or suspension of data flows by the control authority with under Article 58(2) or failing to provide access in breach of Article 58, Paragraph 1."

Non-compliance with the resolution is deduced from not carrying out what is stated in it. resolved, specifically:

What is related to the possibility of accessing through the DNI in the tab "my

a)  
situation" of gobex.es, and reach personal data. It continues in the same situation.

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That the acts of processing calls processes, such as lists of admitted,

a)

or the publication of listings, cannot survive over time, as stated

in the AP/10/2018 “by inspection diligence of 01/15/2018 that consulting GOOGLE

with the DNI of the complainant leads to a web page in which a document appears indexed.

document in pdf entitled GROUP IV, which corresponds to the web page of ciudad.go-

bex and contains the list of definitively admitted applicants, group IV in charge of Alma-

cén, free shift, ordered by surnames and name with the data of the complainant: surnames and

name and ID except the letter.”

This breach has been maintained over time, without giving a reason for its correction.

III

In addition, the other infringement charged is for the maintenance of personal data

contained in lists related to competitive bidding procedures (lists

of provisional and definitive admissions as well as those excluded and qualifications) which means

part of the GENERAL DIRECTORATE OF THE PUBLIC FUNCTION, the commission of the infraction

provided for in article 5.1.e) of the RGPD that indicates:

“Personal data will be:

“kept in a way that allows the identification of the interested parties for no more

time necessary for the purposes of the processing of personal data; the data

Personal data may be kept for longer periods as long as they are treated

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to

the application of the appropriate technical and organizational measures imposed by this

Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");"

It must be indicated that these data have not been generated after the entry into force of the RGPD but that come from before, and correspond to acts of procedure of processes of calls already completed, so there is no reason for them to continue to exist, having fulfilled their purpose, and noting that a profile of the convened continues to be exposed, composed for disability, full ID, name and surname, which violates the regulations of Data Protection,

The infringement is included in article 83.5.a of the RGPD as:

"The processing of personal data violating the principles and guarantees established

a)

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

Among the lists that are kept there are also data on disabled people who fully identify themselves. These are considered a category of special data, enjoying of a reinforced protection in its treatment, and the treatment of the same is qualified-mind more serious because they contain health data.

The specification of the purpose is an essential first step in the application of the operations.

treatment purposes and in the design of data protection safeguards for any

treatment operation carried out. In fact, the specification of the purpose must

contemplate the completion cycle of the same and the consequent conservation of the data

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only until they are necessary, establishing a policy of requirements related to the data retention period. All this for the sake of legal certainty, predictability, in order to protect the interested parties by pre-establishing limits on the way in which that data controllers can use your data.

Thus, the respondent should justify documentaryally for how long they will be maintain the data in relation to the purpose of the treatment. In this case, notwithstanding the internal effects of processing records of public calls processes, that can be saved and kept in compatible formats for the purposes of accreditation of compliance with procedures, it is not necessary to maintain the web for the purpose of consulta universal, because its ends have already been fulfilled. In the present case, the publication is accredited open publication on the web of selective processes with data that allow to fully identify mind the participants of already finished processes, either through the appearance of data in lists of different types (admitted), with health data, which goes against the principle of limited data retention.

#### IV

Regarding infractions, article 72.1 of the LOPDGDD indicates: "Depending on what established in article 83.5 of Regulation (EU) 2016/679 are considered very serious and The infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

m) Failure to comply with the resolutions issued by the authority for the protection of competent data in exercise of the powers conferred by article 58.2 of the RGPD."

"a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

Article 77.1. c) and 2. 3. 4. 5. and 6. of the LOPDDGG:

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

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

autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this organic law, the

competent data protection authority will issue a resolution sanctioning

the same with warning. The resolution will also establish the measures that

appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which

depends hierarchically, where appropriate, and those affected who had the status of

interested, if any.

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

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of data will also propose the initiation of disciplinary actions when there are

sufficient evidence for it. In this case, the procedure and the sanctions to be applied will be

those established in the legislation on the disciplinary or sanctioning regime resulting from

app.

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

proves the existence of technical reports or recommendations for treatment that are not

had been duly attended to, in the resolution in which the sanction is imposed,

will include a reprimand with the name of the responsible position and order the

publication in the corresponding Official State or Autonomous Gazette

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

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.”

v

Proving that the measures declared in the procedure were not complied with

prior AP/00010/2018, to which is added that special category data survive and in the

No allegations have been made at this time nor has the correctness of the statements been verified.

infractions of the website of the claimed party, it is urged that in accordance with the

resolved, review the sections "my situation" and the public job search engine of

“ciudadanogobex.es”, deleting lists that contain personal data from processes already

finalized and determine a conservation and purification policy for said type of data.

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

of the sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the GENERAL DIRECTORATE OF THE PUBLIC FUNCTION, with NIF

S0611001I, for a violation of article 5.1.e) of the RGPD, and of article 58.2 of the RGPD, of

in accordance with article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the GENERAL DIRECTORATE OF THE

PUBLIC FUNCTION.

### THIRD

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

: COMMUNICATE this resolution to the OMBUDSMAN, of

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FOURTH: In application of article 58.2.d) of the RGPD that empowers the control authority

a: “order the data controller that the processing operations comply with

the provisions of this Regulation, where appropriate, in a certain way and

within a specified period”, the respondent is urged to contribute within a

month upon receipt of this resolution, detail of the measures adopted to correct the

the infractions indicated and the protocol established in relation to the conservation of data

related to selection processes.

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

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

Interested parties may optionally file an appeal for reconsideration before the Director of

the Spanish Agency for Data Protection within a period of one month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, as

provided for 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

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

Spanish Data Protection, presenting it through the Electronic Registry of the

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

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. Also

must transfer to the Agency the documentation that accredits the effective filing of the

Sponsored links. If the Agency was not aware of the filing

contentious-administrative appeal within two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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