

□ Procedure No.: PS/00130/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 01/14/2019

before the Spanish Agency for Data Protection. The claim is directed against

CITY COUNCIL OF ***LOCALITY.1, (hereinafter, the claimed).

The claimant indicates that the respondent, on the occasion of the celebration of his patron saint festivities in August, he published a program of parties on paper, which he distributed through the mailboxes for all local residents, and visitors, with two photos in which their images are represented without her consent ("up to two photographs of the complainant appear on the first page").

He adds that his photos also appear together with those of his deceased brother (indicating the past 04/24).

He states that after conducting inquiries, he has been able to notice that the photographs were obtained of the social network FACEBOOK and that it was not informed of the rights that assist it, such as that of the information in its collection and treatment.

It indicates that, although it can be argued that the photos were on FACEBOOK, it provides as reference a judgment of the Supreme Court, civil chamber of 02/15/2017 without further identification.

you, about the use of photos in the social network or in a blog, in a public profile, related to the use, publication and disclosure in a different way does not carry the authorization of any

use. It could be Judgment no. 90/2017, of February 15 RJ/2017/302, "XXXXXXXXX",

as the paragraphs reproduced in the claim coincide with the legal basis

FIFTH, 3.

On 02/13/2019, file E/1745/2019, the Director of the AEPD agreed to inadvertisise

mission pending, and the claimant, dated 03/21/2019, filed an appeal for reconsideration

RR/211/2019 in which it is indicated that "in consideration of the fact that together with his deceased brother

your image, which is why the regulations on Data Protection are applicable, since

indicated that his image was collected without consent", "in the document provided together with the

claim which had apparently been distributed by the City Council together with the program of

celebrations include several photographs including two in which the deceased appears accompanied

of a young woman, in view of the allegations it could be deduced that the treatment of the damages

would not be legally protected by the Data Protection regulations", estimating the

appeal dated 04/29/2019.

Along with the claim, he provided:

-Copy of the party program ***LOCALIDAD.1, from August 9 to 12, 2018 and in one of

the sheets are in color, (folios 10 et seq.) perfectly identifiable, a waist photograph

up of a girl next to another boy; another full body photograph apparently of the

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same boy, with a girl, without knowing or deducing from the distance if it is the same as before-

river; a third portrait photograph of a boy with sunglasses, which may be the same as the ones

two other images. Two photos below, one of them with a boy riding a tractor-cart.

Ila and another of a group next to a concrete mixer in a work without being able to distinguish very well their

members Along with this, the literal "you are here in your town as you liked with us".

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

reported by the claimant, the General Subdirectorate for Data Inspection proceeded on

03/12/2020 to make a request for information to the respondent about the images of the fo-

lletó, more specifically of the claimant and:

On 06/05/2020, the claimant indicates the following:

1.

Reason for preparing and disseminating the brochure including the aforementioned photographs.

It is a population of 229 inhabitants and they edited 150 programs, in paper format, without electronic transmission, circulating exclusively among its neighbors who constitute a community to which the complainant belongs since her birth. The images appeared in order to honor the deceased neighbor B.B.B. whose family has strong roots in the community and whose company carried out public works for the City Council.

two.

Origin of the photographs used in said brochure.

It states that it is related to the fact that they have "appeared and appear on social networks, and even one of them is the image of the WhatsApp profile that corresponds to his mother. "Are images that do not refer to the private sphere of the complainant since they are taken in public spaces clearly with their consent since they pose expressly for the capturing the images. Said photographs do not circulate by electronic means, remaining reduced its dissemination to brochures delivered to the residents of the City Council, all of them perfect knowledgeable about the personal life of the complainant, who is closely linked with her family to the location."

Proof of obtaining the consent of the claimant for the inclusion of

3.

your photos in the brochure.

He points out that the image was obtained from "the deceased's FACEBOOK account," not from the deceased's complainant, leaving the issue outside the scope of the Data Protection regulations

According to article 3 of the LOPDGDD.

It indicates that the basis of the treatment is not consent, but that "its treatment is necessary.

ary for the fulfillment of a mission carried out in the public interest or the exercise of powers

data conferred on the person responsible for the treatment of article 6.1 e) of the RGD.

Indicates that the City Council has generic powers attributed to it by Law to carry out

carry out actions of homage to their neighbors such as those derived from article 4. 1 a. of the law

7/85 of the bases of the local regime, and Royal Decree 2568/86 of 28/11 that approves the regulations

organization and operation of the legal regime of local entities, where there is a

section in the fifth section of honors and distinctions.

Indicates that the two photographs in the header of the claimant cannot be isolated from the rest of the

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images and expressions of affection of the community that appears in the informative pamphlet and its

inclusion is not disproportionate without being considered to undermine privacy.

It mentions that interpreting the judgment of the second chamber of the TCo, No. 27/2020, of

02/24/2020, would ratify the action of the defendant, since in that case he agrees that it is

of obtaining images of journalistic investigation, being different because it had a public

broad and undifferentiated, whereas here we speak of a reduced community of which

On the other hand, the interested party, and only her image was provided, which would reduce the intensity of the interference.

Zion.

4. Any other information that you consider relevant.

For upcoming, similar assumptions, the City Council has determined that "when

If personal data of citizens in similar situations is to be used, a hearing must be given.

information to the interested parties so that they can inform the City Council about the advisability or not

of diffusion and inclusion"

THIRD: On 06/17/2020, the Director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE against the CITY COUNCIL OF ***LOCALITY.1, for the alleged infringement of article 6.1 of the RGPD, in accordance with article 83.5 a) of the GDPR.”

FOURTH: On 07/03/2020, a written statement of allegations from the respondent is received, in which states:

-It was not processed in the estimation of the appeal for reconsideration that opened the way for admission of the claim and after this procedure, damaging its procedural position.

When the claim was forwarded, this information was not indicated.

-Eventual prescription of the infraction, the facts date from August 9 to 12,

2018 and the first request for information was made on 03/12/2020. According to the article 78 of the Organic Law 3/2018 of 5/12.

-The imputation of the infringement situation of article 6.1 of the RGPD is “too broad and general”.
neric”.

FIFTH: On 01/29/2021, the resolution proposal is issued with the literal:

“That by the Director of the Spanish Agency for Data Protection, a sanction is made for CITY COUNCIL OF ***LOCALIDAD.1, with NIF P5011700A, for an infraction of article 6.1 of the RGPD, in accordance with article 83.5 a) of the RGPD, with a warning. “

No claims were received.

PROVEN FACTS

1) The claimant indicates that the respondent published on paper a party program for the locality to celebrate from 08/9 to 12/2018 and was distributed through the mailboxes and to the visitors of the

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locality, which according to the defendant has 229 inhabitants, and, for the occasion, published 150 programs.

The claimant stated that two photographs appear in the aforementioned program in which appears next to his brother who died on 04/24/2018 and who worked at ***LOCALIDAD.1.

two)

The program carries on the back cover the review of the organizer of the events, the re-cried out. In one of the sheets there is a color figure, (folios 10 et seq.) perfectly identifiable, a portrait mode photography of a girl with another boy, another full-length, apparently of the same boy, with a girl, a third portrait photograph of a boy with sunglasses, and two photos below, one of them with the boy mounted on a tractor-wheelbarrow. Along with this, the literal "you are here in your town as you liked with us". The claimant states that the two photographs cited are of her with her deceased brother and that the images were taken from social networks, FACEBOOK exposing your data without your consent.

According to the respondent, the claimant was born in ***LOCALIDAD.1 and the image shows "at

3)

deceased neighbor who belonged to a family with roots in the town and appreciated by the herself" and that the purpose of using the images "was to honor her brother."

The defendant stated that the photos were taken from the deceased's FACEBOOK, adding

4)

Given that the exposure of the data of the claimant in the photos is inseparable from the purpose sought, and that is covered by current regulations of its powers to agree on the creation of medals, emblems, decorations or other honorary distinctions, in order to reward special special merits or extraordinary services, RD 2568/1986 of 28/11.

FOUNDATIONS OF LAW

Yo

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

The Data Protection Office is competent to initiate and resolve this procedure.

II

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

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

na to decide which of your data you provide to a third party (...) these disposition powers

and control over personal data, which constitute part of the fundamental right to pro-

Data protection is legally specified in the power to consent to the collection, obtaining

and access to personal data, their subsequent storage and treatment, as well as their

possible use or uses, by a third party, be it the State or an individual", that is to say who, why

what and what data will be processed. This allows the affected party, in this case the claimant, to exercise

control over your personal data (informative self-determination).

The idea from which one must start when determining the essential content of the right that enshrines

article 18.4 of the Spanish Constitution is that if the legislation recognizes certain

You give guarantees linked to the fundamental right to the protection of personal data,

In this case, the identification data of the image of the claimant that is used must be respected.

lized with his brother, in the same photos. Although the respondent indicates that the data of

deceased do not fall within the scope of protection of personal data, in this case it is identified

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fully certifies the claimant and the claimed party must prove that the use of their data obeys

ce to a legitimating base determined in the RGPD. Similarly, if there is such authorization

should be accompanied by the rights and guarantees associated with said treatment, as can be may be, by way of example, information on the origin of the data, the purpose, and the right to oppose such use, as part of the content of the informative self-determination.

III

The RGPD defines as personal data in its article 4.1 "Any information about a person an identified or identifiable physical person ("the interested party"); shall be considered an identifiable natural person any person whose identity can be determined, directly or indirectly, in particular by by an identifier, such as a name, an identification number, user data, identification, an online identifier or one or more elements of the physical identity, fi- physiological, genetic, psychic, economic, cultural or social of said person;"

The data of the claimant contained in the photographs of the party program of the claimed party They are personal data since they allow the identity of said person to be identified without great efforts.

Regarding the allegation that the issue is regulated by image rights, it should be noted that the use of the image of a person without their authorization may violate the right to privacy, the right to one's own image includes the right to control the dissemination of the image and is an essential part of the individual. The protection of one's own image in the Organic Law 1/1982 recognizes the person the power to exclude the capture, reproduction or publication of their image. generated by any means or procedure, considering the specific use of the image without its consent an illegitimate interference in that fundamental right. The protection of the image gene of the people intends to safeguard the intimacy and the power of decision on the ends to those that have to be applied of the manifestations of the person through his image. It is autonomously regulated in article 18.1 of the Constitution. However, the article 18.4 of the Constitution extends protection to the rights of citizens in what is re- refers to the processing of your personal data, and in that case the images of the fo- tography allow the claimant to be identified by what is within the scope of application of

the Data Protection regulations. The fundamental right to personal data protection

personal character, recognized legislatively and by the jurisprudence of the Constitutional Court,

It is the right that any person has to decide the use of their personal data.

personal data, understanding personal data to be any information concerning identifiable natural persons.

identified or identifiable.

It is mentioned that here the photos that appear of his brother are not discussed, the interest

in emphasizing his already deceased person, which is what the claimed person focuses a large part of his

allegations in the transfer of the claim, largely ignoring the rights of the re-

crying, also owner of part of the image used, from FACEBOOK.

The claimant is the one who claims for the use of her image and it is about her that she must

prove that the legitimating bases and the principles and guarantees provided for by the

data protection regulations.

In article 4.2, processing is defined as “any operation or set of operations

operations carried out on personal data or sets of personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring, conservation

vation, adaptation or modification, extraction, consultation, use, communication by transmission

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release, dissemination or any other form of authorization of access, collation or interconnection, limitation

tion, deletion or destruction;”

Regarding the consideration made by the respondent that the data on social networks have

the character of public, it must be taken into account that the data protection regulations do not

makes a distinction between public and private data, allowing, without further ado, the use of data

that those affected have made public, but generally grants protection to

personal data, determining those cases in which said treatment is in accordance with

me to the same

Thus, as far as personal data processed within the framework of social networks is concerned, the Group

Article 29 Working Group, independent advisory body of the EU on the protection of

data and private life, created by virtue of the provisions of the aforementioned article of the Directive

95/46/EC on the protection of natural persons with regard to the processing of

personal data and the free circulation of these data, in its Opinion 5/2009 regarding the

online social networks points out that when a person becomes a user of a social network,

cially, they have “a legitimate expectation that the personal data they disclose will be treated in a

in accordance with European and national legislation regarding data protection and privacy.

dad”

In this sense, the Rome Memorandum, adopted in March 2008 by the Working Group

under the Berlin international law on data protection in telecommunications highlights

I declare that the personal data contained in social networks do not constitute freely

use when pointing out that “Social Networks sites are not –while the term “social” may suggest otherwi-

se-public utilities.”

In Opinion 5/2009, the Working Group of 29 shows its concern for the dissemination and

use of information available on social networking services for secondary purposes,

hence, social networking services are recommended to set default

privacy-friendly parameters. However, this is not always the case, so

On many occasions, users do not have effective knowledge of the implications that

carries no restrictions on access to your data. This issue is especially relevant

regarding minors who, even if they are over 14 years of age, may have different

difficulties in understanding the terms in which the privacy policies are formulated in the

social networks and the risks that the dissemination of certain information may entail

for them in the future.

To this must be added that it is common for information or fo-

non-user third-party photographs placed online without their consent by a re-

social networks, which in no case can be considered a data made public by the interested party.

do.

Therefore, as there is no such distinction in the data protection regulatory framework

between public and private data, the processing of data voluntarily provided to

a social network that are accessible to all its members for a different purpose.

ink of those for which the user has given his informed consent must find

have a foundation in the RGPD, being contrary to it in another case.

In this case, the photograph of the claimant was collected without her consent, according to

the claimed, from the FACEBOOK profile of his deceased brother, and exposed in a program of

parties, paper format in which it was perfectly identifiable.

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Responsibility for these facts corresponds to the person claimed as responsible for the treatment.

procedure that is defined in article 4.7 of the RGPD that indicates

“responsible for the treatment” or “responsible”: the natural or legal person, authority

public, 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 ends and means

of the treatment, the person in charge of the treatment or the specific criteria for their appointment

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

According to the defendant, when the image came from a social network, from the account of the brother already fa-

died, and being the shared image since the claimant and her brother appear, they cannot be separate, the claim is outside the scope of the Data Protection regulations, according to indicates, article 3 of the LOPDGDD is applicable, which determines: "Data of deceased persons you give"

1. People linked to the deceased for family reasons or in fact, as well as their heirs may contact the person responsible or in charge of the treatment in order to request the access to the personal data of that and, where appropriate, its rectification or deletion.

As an exception, the people referred to in the previous paragraph will not be able to access data of the deceased, nor request its rectification or deletion, when the deceased person

It would have been expressly prohibited or so established by law. This prohibition does not affect rá to the right of the heirs to access the data of a patrimonial nature of the deceased.

2. The persons or institutions to which the deceased had expressly designated

for this they may also request, in accordance with the instructions received, access to the data personal data of this and, where appropriate, its rectification or deletion.

By royal decree, the requirements and conditions to accredit the validity will be established.

validity and validity of these mandates and instructions and, if applicable, their registration.

3. In the event of the death of minors, these powers may also be exercised by

their legal representatives or, within the framework of their powers, by the Public Prosecutor, which may act ex officio or at the request of any interested natural or legal person."

In the event of the death of persons with disabilities, these faculties may also

They may be exercised, in addition to those indicated in the preceding paragraph, by those who have been designated for the exercise of support functions, if such powers were understood to include caught in the support measures provided by the designated."

However, it is accredited that next to the photo of the deceased appears that of the claimant, and the statement statement that one cannot be separated from the other, in addition to not being proportional or necessary the fact that for the purpose of honoring a person, the data must come out

of another, a third party, who, although he is a family member, is the owner of his individual rights, and is not protagonist of the intended action of homage or remembrance of said person. In this case the photo that appears would be in its day with the consent of the claimant, but the constancy presence in said social network does not allow the use of their image as personal data without a legitimate basis. gilds The claimed could have achieved his goal in the same way, without taking the image of the claimant, pixelating the image, for example, with a result similar to the effects of anonymize personal data of a resolution, which are indicated in a way that is not identifiable.

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The basis alleged by the respondent is that of article 6.1.e) of the RGPD.

IV

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

It is understood that this reference includes paying homage to people or personalities of special significance for the municipality. With this, the respondent refers to a legitimate basis for a type of treatment, that of the deceased, in order to pay homage to a person for being significant in the municipality, with an established legitimizing basis for cases in which personal data is processed, which are governed by the scope of application regulation, and that of the claimant's deceased brother is not personal data.

in the sense that the defendant intends, nor is that data valued here but that of the claimant-te, for which it does not provide a legitimate basis for processing.

It is considered that, if the data of the deceased appear excluded from the scope of application of the

RGPD, but not those of the complainant, and without deeply assessing whether or not the same legitimizing basis, at first glance it can be seen that the claimant, not being the person who it is recalled, said basis that the respondent considers to be inferred would not be applicable. of their powers and public functions.

To this end, it should be remembered that any data processing requires a legal basis. ca, together with a specification of a legitimate purpose in all circumstances in which it is process personal data, both in the private and public sectors.

For this reason, the commission of the imputed infringement of article 6.1 of the RGPD is accredited, which indicates AC:

1. The processing will only be lawful if at least one of the following conditions is met:

nes:

a) the interested party gave their consent for the processing of their personal data

for one or more specific purposes;

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

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

d) the treatment is necessary to protect the vital interests of the interested party or another Physical person;

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

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

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

Each legitimizing base depends on its purpose and its relation to the individual. by not existing in this case a legitimate basis for the treatment, is why the infringement is declared.

v

Regarding the judgment mentioned by the claimant, it could be Judgment no. 90/2017 of 02/15 RJ/2017/302, “XXXXXXXX” exposition when the paragraphs that it reproduces in the claim. Among other extremes, the sentence indicates in the FIFTH foundation of law,

3:

“This room has repeatedly declared (sentences 1225/2003, of December 24 (RJ 2004, 138), 1024/2004, of October 18 (RJ 2004, 6571), 1184/2008, of December 3 (RJ 2008, 6942) , 311/2010, of June 2 (RJ 2010, 2666)) that the consent given to publish an image for a specific purpose (in this case, as a profile image of Facebook) does not legitimize its publication for a different purpose (in this case, to illustrate graphics-mind the report on the violent event in which the plaintiff was involved). In the sen-judgment 746/2016, of December 21 (RJ 2016, 5997), we affirm that, even if it had been true that the photograph published by the information medium had been "uploaded" to Face-book by the person who appears in it, «[...] this would not be equivalent to a consent that [...] must be express and, moreover, revocable at any time'. The ruling keeps the statement that declares the interference in the right to the plaintiff's own image, including the reproduction of your image obtained from a social network without your express consent. prisoner.

Precisely one point of the defendant's arguments mentions the review by the TCO of this sentence, number 27/2020, which dismissed the amparo filed promoted by the mercantil The Opinion of Zamora, S.A. to focus on the intensity of the effects of using the private photo of the claimant

In relation to this, it is not a question of measuring the intensity of the damages of one type or another, nor the degree of intensity of the "intimacy" manifested by the respondent is presumed to be low given the area in which the program was distributed, but respect for the fundamental right and its guarantee. For example, a different question would have arisen if permission had been requested to the claimant who appears in the photo used. Obviously, even if it is used in a field that the claimant is known, her right not to have her photo appear is being stolen, and not together with his brother and to that end, both for personal and other reasons, This being indifferent for the purposes of protecting your right.

On the prescription of the infraction counting on the fact that it was committed on the dates indicated-the claimed, the initiation agreement was signed on 06/17/2020, so from the date of commission of the infraction 9 to 08/12/2018 until the date on which the initial agreement was notified cio, adding the period of suspension of confinement due to COVID-19, there would have been no trans- Not even two years have elapsed since the commission of the infraction, without in any case, as

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The defendant states that the limitation period is one year, since article 78 to which it alludes of is that of the sanctions imposed, that is, the period in which they can be demanded in case of being imposed. It should be added that in this case there is no economic sanction, but warning. The prescription of infractions and their degree is collected for

this case in article 72.1 b), which determines:

"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 violation

substantial alteration of the articles mentioned therein and, in particular, the following:

b) The processing of personal data without the concurrence of any of the license conditions

treatment established in article 6 of Regulation (EU) 2016/679."

As to not being made aware when the claim was transferred from the estimate

of the appeal for reversal on admission for processing, to point out that this admission only had the

effect of admitting the claim that continued its course with the transfer to the affected party, fulfilling the

literal of the processing of the claims that is indicated in the LOPDGDD, article 64.2 LO-

PDGDD and has not had effects of helplessness for the claimed.

SAW

The RGPD, states in its article 5.2: "The data controller will be responsible for the

compliance with the provisions of section 1 (principles of treatment, among which are

finds the way in which the data must be processed, "lawfully, loyally and transparently")

and able to demonstrate it ("proactive responsibility").

In compliance with said precept, and without containing a specific list of activities

specific details to be carried out on the tasks to certify compliance, under the principle

proactivity principle, the person in charge must deploy appropriate technical and organizational measures.

in order to comply with said principle (article 24 of the RGPD), being within the same

In addition, and among others, to take measures to be able to demonstrate compliance

compliance with the RGPD and the measures that guarantee respect for the privacy protection regulations.

data for which it is responsible. Among the tasks that can be cited, one can find

include, that the processing of data that it carries out is in accordance with the law, is lawful,

to, and because it is the basis of legitimation. These bases are referred to in article 6.1 of the RGPD.

In this case, the defendant is accused of committing the violation of article 6.1

of the RGPD by not accrediting that any basis of those indicated as a legitimizing title concurs of the exposure of the claimant's image.

7th

Article 83.5 a) of the RGPD indicates: "Infringements of the following provisions will be sanctioned will be charged, in accordance with paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the greater amount:

the basic principles for treatment, including the conditions for consent

a)

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

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Article 58.2 of the RGPD indicates: "Each control authority will have all the following

You have corrective powers indicated below:

a) sanction any person responsible or in charge of the treatment with a warning when

where the treatment operations have infringed the provisions of this Regulation;

d) order the controller or processor that the processing operations

compliance with the provisions of this Regulation, where appropriate, of a de-

completed manner and within a specified time.

Article 83.7 of the RGPD indicates:

"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 it can, and where

to what extent, impose administrative fines on authorities and public bodies established two in that Member State”

The Spanish legal system has chosen not to penalize public entities with a fine.

cas, but with a warning, as indicated in article 77. 2., of the LOPDDGG.

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

competent data protection authority will issue a resolution sanctioning the

themselves with warning. The resolution will also establish the appropriate measures

adopt to stop the behavior or correct the effects of the infraction that had occurred.

task.

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 interest.

sorry, in your case.

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

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

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

established in the legislation on the disciplinary or sanctioning regime that is applicable.

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

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

should have 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 the publication will be ordered.

tion in the corresponding Official State or Autonomous Gazette.

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.

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

the autonomous communities the actions carried out and the resolutions issued under 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 en-

entities of section 1 of this article, with express indication of the identity of the responsible

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responsible or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority,

It will be, in terms of the publicity of these resolutions, to what its regulations have

specific.”

Regarding the measure indicated by the respondent that he would adopt for similar assumptions of

“Give a hearing to the interested parties so that they can inform the City Council about the con-

venience or not of diffusion and inclusion” although giving an audience can be connected with the con-

sentiment, the requirements and information to be provided for the loan must be specified.

tion of the same, and it is anticipated that it could contain difficulties if the person or his or her

address to request, only the image, considering that the photographs appear on the network

for a specific purpose that may not coincide with the one that as a public authority based on

tion of the powers and applicable legitimizing basis could concur.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE TO TOWN HALL OF ***LOCALITY.1, with NIF

P5011700A, for a violation of article 6.1 of the RGPD, in accordance with the

article 83.5 a) of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF ***LOCALI-

DAD.1.

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, 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 month from

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

contentious-administrative course 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 13/07, regulating the Jurisdiction

contentious-administrative action, within a period of two months from the day following

Following the notification of this act, as provided in article 46.1 of the reference

give 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 interest

sado expresses its intention to file a contentious-administrative appeal. Of

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Data Protection Agency, submitting it through

through the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registers provided for in art. 16.4 of the city

www.aepd.es

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All Law 39/2015, of 1/10. You must also transfer to the Agency the documentation that proves 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 the presence resolution, it would terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

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