

□ Procedure No.: PS/00216/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 06/26/2020, it was entered into the Spanish Protection Agency
(AEPD), sent by the Civil Guard Company of Sanlúcar la Mayor,
Citizen Security Unit (hereinafter, the claimant), the Act of complaint
dated 05/05/2020 instructed for an alleged violation of the regulations of
Personal data protection. The Act of complaint was drawn up during the
inspection carried out by agents of the claimant in the establishment
<<*** ESTABLISHMENT.1>>, located on street ***ADDRESS.1, ***LOCATION.1
*** PROVINCE.1, in which it is stated that she is the owner of the establishment Mrs.
A.A.A., with NIF ****NIF.1 (hereinafter, the claimed one)

The claim is based on the fact that the establishment <<*** ESTABLISHMENT.1">>
has video surveillance cameras installed and does not have a sign or forms
informative. The Minutes state that, when interviewed, the person who in that
moment is in charge of the establishment, acknowledges that they continue to carry out
recordings inside the premises and that lack an informative poster of
video surveillance.

The claimant has provided as a document annexed to the Report of complaint the so-called
"Report of Fact 91238170" occurred in ***LOCATION.1 ***PROVINCE.1 on
03/07/2019 in which the events that occurred during the inspection that the
agents carried out on that date in the "Quiosco" establishment, located in
street "*****ADDRESS.2", ***TOWN.1 ***PROVINCE.1 In this document,

indicates that the people questioned stated that there were surveillance cameras in the premises.

recording and that "authorization is required for the installation of said cameras for the recording inside the establishment states that it lacks such authorization, as well as posters that report such activity.

SECOND: Within the framework of file E/05838/2020 and in accordance with the provided for in article 65 of Organic Law 3/2018, of December 5, on Protection of Data and Guarantees of Digital Rights (LOPDGDD), the Director of the AEPD, on 07/14/2020, agrees to accept the claim for processing.

The agreement for admission to processing was notified to the claimant by mail. The document issued by the Sociedad Estatal Correos y Telégrafos, S.A., (hereinafter, Correos) called "Proof of Delivery", which is in the file, certifies that the shipment was delivered to the claimant on 07/29/2020.

The claim was not transferred to the respondent because it was estimated that the

The person allegedly responsible for the events was not the person claimed but Mrs. B.B.B.. This was

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/5

because one year earlier, on 03/22/2019, the claimant filed a claim

before this Agency with which he sent the Report of complaint raised on 03/07/2019 in the

establishment located on street ***ADDRESS.2, ***TOWN.1 ***PROVINCE, in the

which identified Mrs. B.B.B. as the defendant and owner of the establishment. Such

The claim generated file E/3884/2019, in which the AEPD transferred the

claim to Mrs. B.B.B. on two occasions. The first, by postal mail from

dated 04/10/2019, which was returned to origin on 05/10/2019 after two attempts to

unsuccessful notification with missing result. The second, by postal mail dated 05/21/2019, which is delivered on 05/22/2019. It is to this claim to the that the document that the claimant has provided as an annex refers and that described in the Act first. However, the claim before us has a object more restricted than the one that was presented in 2019 and in it was identified as owner of the premises to a person other than the current claimant.

THIRD: On 12/02/2020, the Director of the AEPD agreed to initiate sanctioning procedure to the claimed for an alleged infringement of article 13 of Regulation (EU) 2016/679, of April 27, of the European Parliament and of the Council, protection of natural persons with regard to data processing data and the free movement of these data and by which the Directive is repealed 95/46/EC (GDPR); infraction typified in article 83.5.b. of the RGPD and qualified in Article 74.a) of the LOPDGDD, for prescription purposes, as a minor infraction

FOURTH: On 02/17/2021, the AEPD registers the allegations to the initial agreement formulated by the respondent, presented through administrative mail dated 02/12/2021.

The respondent states in her brief that she is not the owner of any business or activity related to the establishment *** ESTABLISHMENT.1. declare that it is a local worker who follows the instructions of the owner, Mrs. B.B.B., who hired her during the period between 02/19/2019 and 06/22/2019, reason why she was in the establishment when the investigation was carried out. inspection.

The respondent provides as an attached document a copy of the Work Life Report linked to your person, issued by the General Treasury of the Social Security (TGSS) The document contains your personal data (name, two surnames and NIF) and it appears in "registration situation with the company" "**** COMPANY.1" with date of registration

02/19/2019 and withdrawal date 06/22/2019.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGD recognizes to the authorities of control and as established in articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

II

3/5

The Spanish Constitution (C.E.) guarantees in its article 9.3, among other principles, the of legal certainty and responsibility. In turn, article 24.2 of the C.E. recognizes everyone the right to the presumption of innocence, a presumption that encompasses both the imputation of the facts and the demand for responsibility of the subject offender.

According to settled jurisprudence, there is no doubt of the application to the Law

Administrative penalty, with certain nuances, of the principles that inspire the order penal, as both are manifestations of the State's punitive system, and

Among them, the principle of culpability takes on special virtuality. The presumption of innocence has to do with proof of responsibility for the acts and guilt

attributable to the person who, where appropriate, performs them (STC 76/1990, of April 26, F.J. 8, B), and that any sanctioning resolution, whether criminal or administrative, requires at the same time certainty of the imputed facts, obtained by means of proof of charge, and certainty of the judgment of

guilt on those same facts.

In this sense, and limited to the scope of the sanctioning administrative procedure, it is cite the STS, Third Chamber, of 06/24/1998 (Rec. 1776/1994), Legal Basis 2, stating that "Personal responsibility becomes the basis on which establishes the punitive system since no one can be convicted or punished except by acts that, either by way of intent or guilt, can be directly imputed to him." (The underlining is ours)

Article 28 of Law 40/2015, of October 1, on the Legal Regime of the Sector Public (LRJSP), under the heading "Responsibility" provides in section 1 that "Only those that constitute an administrative infraction may be sanctioned individuals and legal entities, [...], who are responsible for them by way of fraud or guilt."

III

Law 39/2015, of October 1, on the common administrative procedure of the Public Administrations (LPACAP) regulates in article 64 the content of the agreement initiation of the sanctioning administrative procedure and indicates that it must contain, at least, the "a) Identification of the person or persons allegedly responsible."

Well, the agreement to initiate this sanctioning procedure, PS/216/2020, identified Mrs.

A.A.A., with NIF ****NIF.1.

In determining the identity of the person responsible for the alleged violation of the RGPD that gave rise to the opening of the sanctioning procedure that concerns us is took into consideration that in the Report of the complaint sent by the respondent, indicated that establishment

“***ESTABLISHMENT.1”.

the claimed was

the owner of

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/5

However, based on the allegations made by the respondent and the documentation provided with it is accredited that, despite what is indicated in the Record of complaint dated 05/05/2019 that the respondent sent to this Agency, she did not have the status of owner of the establishment “*** ESTABLISHMENT.1” in the date the inspection was performed. The work life report provided leaves proof that between 02/19/2019 and 06/21/2019 she was a self-employed worker outside of Doña B.B.B.

At this point, it should be remembered that the agreement to open the procedure sanctioning dealt with the existence of video surveillance cameras installed in the local reference, in which there was no informative poster of the capture of images nor was it provided to those affected, through other means additional information, the information that must be provided under the terms of the article 13 of the RGPD. Likewise, it should be taken into consideration that the obligation to reporting provided for in article 13 of the RGPD is imposed on the data controller, which is defined in article 4.7 of the RGPD as “the natural or legal person, [...] who, alone or jointly with others, determine the purposes and means of processing; [...]”.

Given that the respondent has proven that she was a self-employed worker outside the owner of the establishment on the date on which the Agents of the authority

inspected the premises, it cannot be attributed the status of data controller.

Therefore, article 89 of the LPACAP is applicable to the case, according to which “[...] will resolve the completion of the procedure, with filing of the proceedings, without it being necessary the formulation of the resolution proposal, when in the instruction of the procedure it becomes clear that any of the following concurs circumstances:

[...]

d) When it does not exist or it has not been possible to identify the person or persons liable or appear exempt from liability. [...]”. (The underline is our)

Thus, in accordance with the aforementioned regulations, the filing of the file must be agreed sanctioning PS/002016/2020, open to the defendant, as they are not attributable to her the facts object of the claim that determined the opening of this penalty procedure.

Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: AGREE to FILE the sanctioning procedure PS/00216/2020,
open to A.A.A., with NIF ****NIF.1, as it is proven in the file that it is not the Responsible for data processing allegedly contrary to the RGPD that motivated the opening of the sanctioning procedure.

SECOND: NOTIFY this resolution to the claimed party.

THIRD: 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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

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

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

938-131120

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es