

938-0419

Procedure No.: PS/00393/2018

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 05/17 and 06/4/2018, two claims were received from

CLAIMANT 1 AND 2 as stated in the GENERAL ANNEX, against the UNIVERSITY

POLITECNICA DE VALENCIA, (Public University) when sending an e-mail on 05/9/2018

without blind copying identifying their recipients as people who seconded a
strike:

Both state that they are associate professors at the Polytechnic University

From Valencia. They provide the email that indicates:

-From "HR. Contests, oppositions and PDI templates rrhh.coppdi@upv.es" in the
foot of signature consists Directed by the director of human resources.

-Subject: Communication interested salary discount "

- More than 30 email addresses appear as recipients with the domain

upv, es and others with full name and surname. Although they do not indicate their own

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addresses

***EMAIL.2@csa.upv.es. Before upv, and after the @ symbol there are different
components in the emails, some are csa, arq, dib, urb to mention a few.

***EMAIL.1@upvnet.upv.es

they look like

these

be:

-In the literal it states:

"I inform you that, by the person in charge of your School, and at the request of this

Human Resources Service, the staff informed us that from the 16th of

April 2018 has not attended his job, without any justification,

considering for this reason that he has supported the strike of associate professors.

Likewise, as of today, you have not communicated to this Resource Service

Humans their participation in the strike of associate professors.

For this reason, I inform you that, if you do not indicate otherwise due to lack of

assistance to your job without justification, in accordance with the provisions of

current regulations, this service will proceed to the discount on the

payroll for the month of May of the salaries corresponding to this period, in

strike concept.

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The claimants understand that "... attendance or not at work, as well as whether

a person has or has not supported the strike, it is labor information

especially sensitive and therefore specially protected data according to the

Article 7.2 of Organic Law 15/1999, of 12/13, on the Protection of Character Data

Staff. In addition, these data have been communicated to a plurality of people

without any consent on my part."

SECOND: In view of the facts and the documents provided by the

claimants, the respondent was notified

-Dated 08/01/2018 regarding claimant 1, the director of human resources states

of the University:

a) From the human resources service, all emails that are sent are addressed only to the interested party, usually with a "carbon copy hidden" "CCo", and here by human error it was sent as "CC", "carbon copy".

As soon as they were sent, "we realized the error" that could no longer be corrected.

b) The emails are the corporate work of the University.

c) Respect for the claimant, it does not affect the scope of her work confidentiality or sensitive when the interested party is part of the teaching platform associate from where he has publicly manifested "both in the field university as in the meetings held with the different organs of Management, trading desk as well as in the press, for example el Diario.es with inclusion of a photograph with the registered strike call, its adherence and active participation in the indefinite strike called within the scope of this University."

-Dated 01/29/2018, a letter is received from the respondent, for both claims, of the Secretary General, indicating that the events occurred due to the call for an indefinite strike since 04/19/2018, adding.

4. They have regulations for the use of computer services and resources (not indicates the date) in which it is indicated that it is not a means of mass dissemination and indiscriminate information and if it is sent to multiple recipients, it has been to use CCO so that each receiver does not know the addresses or content of the other message receivers.

5. A meeting was held on 11/15/2018 with the claimants to inform them of the actions carried out offering institutional apologies, verifying and explaining the human error They were informed that the incident was recorded, a note was sent to the service that in a convened meeting the care in

emails with several recipients, They provide a note of the meeting in which the
"complainants specify that what was disseminated was the list of associate professor
who exercised his right to strike in the last indefinite strike called by that
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group at the UPV" and that from this point of view "it is not proven that
It is an incident attributable to human error. It is emphasized that when
should produce administrative effects, the notifications are sent attaching to
what is indicated by Law 39/2015. The complainants stated that no
repaired the damage done, and that you know that the emails have been "forwarded".

As commitments, it is indicated that a comprehensive protocol of
management of communications and management of shared disk space regarding
of the GDPR provisions. An attempt was made to comply with those affected,
but these refused.

6. Letters of apology were sent to the two claimants, provide a copy of
email addressed to the addresses of 05/09/2018 with BCC.

7. Provide a copy of an internal note from the HR director to the Secretary General
of 11/28/2018 in which I attach the minutes of the staff meeting where it is reflected how
the recommendations requested by the protection delegate were carried out
data of the UPV and communicated by the Secretary General. The minutes of the meeting
held on 11/20/2018 informs of the correct procedure in the use of data
personal information, especially in the case of e-mail and, where appropriate, the
necessity of use.

THIRD: On 02/19/2019, the director of the AEPD agreed: "to start
sanction procedure to UNIVERSITAT POLITÈCNICA DE VALÈNCIA (AREA OF
HUMAN RESOURCES), for the alleged infringement of article 5.1 f) of the RGPD of
in accordance with article 83.5 of the RGPD.

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be a warning."

FOURTH: On 03/14/2019 the respondent reiterates what was stated.

FIFTH: On 05/29/2019, a resolution proposal is issued with the literal:

"That by the Director of the Spanish Data Protection Agency, sanction UNIVERSIDAD POLITECNICA DE VALENCIA, with NIF Q4618002B, for an infringement of Article 5.1 f) of the RGPD, typified in Article 83.5 of the RGPD, with warning, in accordance with article 58.2.b) and 77 LOPDDG."

No claims were received.

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PROVEN FACTS

1 The associate professors of the Polytechnic University of Valencia have professional emails with the upv.es address owned by the Polytechnic university of Valencia. These emails are used among others functions, to communicate information to its members.

2 On 04/19/2018, the group of associate professors who provide services for the UPV called an indefinite strike. According to the UPV, 05/09/2018, a large number of employees had not yet communicated the reasons for absence from work.

3 The HR Service sent an email to a number of teachers on 05/09/2018 associates, with literal "Communication interested discount of salaries", which Although addressed to the interested party, to a person, it is sent by email to

more than 30 upv addresses. es (corporate work email of teachers associates of the UPV) revealing the addresses of all recipients with the subject: "Communication interested discount of salaries", with the literal: "I inform you that, by the person in charge of your School, and at the request of this Human Resources Service, the staff informed us that from the 16th of April 2018 has not attended his job, without any justification, considering for this reason that he has supported the strike of associate professors. Likewise, as of today, you have not communicated to this Resources Service Humans their participation in the strike of associate professors. For this reason, I inform you that, if you do not indicate otherwise due to lack of assistance to your job without justification, in accordance with the provisions of current regulations, this service will proceed to the discount on the payroll for the month of May of the salaries corresponding to this period, in concept of strike

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The respondent held a meeting with the claimants on 11/15/2018 to Apologize and detail action taken. It was recorded as incidence of compliance on 11/6/2018 and a face-to-face meeting was held with all the service personnel who signed their attendance composed of the different areas of human resources in which the use of the BCC email was explained, as well as such as using other means in related notifications or when they have administrative effects. The creation of a protocol of communications management. The same recipients of the emails are send with CCO on 11/22/2018 a detail with the apologies and the measures that they take.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Regarding the exercise of a constitutional right such as strike, in the

There is jurisprudence in the workplace indicating that as it is a right to exercise individual does not have to notify that the strike is seconded. A different question is justification of absences possibly related to it, even if it is

Whatever the reason, since the lack of attendance is not justified or not justified, it will mean the equivalent salary reduction (judgment of the social court of Figueres appeal no. 207/2018 of 07/16/2018.).

Together with said salary reduction, it would also be necessary to know the situation of the employee to be able to have repercussions the lack of assistance due to strike in the contributions, which entails a situation of registration with suspension of contributions, and the fact that during the strike it is not possible to replace the employees who exercise the right by others, based on said circumstance The employment contract is suspended for the duration of the strike. Like the contract, it is also suspended during the strike the obligation to contribute to Social Security by the employer and worker. Workers on strike, for the purposes of Security Social, they do not cause leave, but, while the strike lasts, they are in a situation "special high".

In the present case, the period of absence of the employees is ignored when referred to the email sent. The strike is called in the middle of

April, and the mail is from 9 of the following month. It may be assumed that no employee would have stated that he was on strike, not being logical that those who had communicated that they were on strike were the addressees of the aforementioned mail.

Regarding the content of the mail, on the one hand, it presumes that the absence corresponds to the fact that they are exercising the right to strike, given that when called has missed work, and it is reported that in the absence of justification for absence from said call, unless otherwise indicated, the discounts will be applied in May payroll, corresponding to the strike situation. This can be used to that those who have not supported the strike provide the justification in their case. The content of the message makes it known that the people to whom the mail is addressed they have not justified their absence that they may have exercised their right to strike, although there is a possibility that the opposite was indicated. The fact is that being corporate email addresses, anyone who receives the mail knows the lack of justified assistance of others, which gives rise to the infraction.

Knowledge by other people who are part of the address group of corporate emails from the UPV that on 05/09/2018 gives information about

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the circumstance that since 04/19/2018 they did not go to work, coinciding with the strike call, all of them with unjustified absences since said date, and the information that the salary discount will be made as if you had gone to the same, supposes a violation of the duty of confidentiality of those affected by part of the person responsible for processing your data to which the infringement is attributed.

Article 7.2 of the repealed LOPD indicated: "Only with the consent expressly and in writing from the affected party, the personal data may be processed. personal character that reveal ideology, union affiliation, religion and beliefs. I know except files maintained by political parties, unions, churches, religious denominations or communities and associations, foundations and other entities non-profit, whose purpose is political, philosophical, religious or trade union, as to the data related to its associates or members, notwithstanding that the transfer of said data will always require the prior consent of the affected party." Front of statement by the claimant that sensitive data was being processed and violated, It should be noted that the fact of going to a strike or not does not fall into the category of account of sensitive data by not correlating the fact with "ideology, union affiliation, religion and beliefs, and at no point in the mail sent is there any aspect invite you to consider it.

III

Article 4.2 of the RGPD defines: "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;"

Sending a message to email addresses that are know their identities because they are assigned to them, and that they know each other them, is a data treatment, in this case used for work purposes. The Infraction is contemplated in article 5.1.f) of the GDPR, which indicates:

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 its loss, destruction or accidental damage, through the application of technical measures or appropriate organizational ("integrity and confidentiality"), related to the Article 5 of the LOPDGDD, which indicates:

"1. Those responsible and in charge of data processing, as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679."

The holders of the data that identify them have a reasonable expectation that no data leaks are made along with the associated information. Of

The duty to keep the data and the information related to it secret is only faculty of disposition of the affected subject, unless the Law provides for its transfer, since the right to privacy is an individual and not a collective right. That is why it is equally unlawful communication to any third party, regardless of the relationship maintained with him by the person to whom the information refers.

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"This fundamental right to data protection seeks to guarantee people a power of control over their personal data, over its use and destination" (STC 292/2000) that prevents the occurrence of situations that violate dignity of the person, "that is, the power to protect their private life from publicity not Dear".

The infringement is punishable in accordance with article 83.5 of the RGPD, which indicates:

"Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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 largest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;"

The LOPDGDD refers to this infraction, in its article 72.1.a) with the following tenor:

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

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

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period of time.

Article 83.7 of the RGPD adds: "each Member State may establish rules on whether and to what extent administrative fines can be imposed on public authorities and bodies established in that Member State.

To this end, article 77 of the LOPDGDD indicates:

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

i) Public Universities.

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

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

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

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 the institutions

analogous of the autonomous communities the actions carried out and the

resolutions issued under this article.”

Regarding the measures adopted, the respondent has become aware that the

Emails can bring conflicts if they are used to notify circumstances

that only concern the interested party and that either uses the hidden copy and reviews before its

sent or it is preferable to use other means to communicate facts to a group

related to your personal circumstances. In these cases, the result

produced by an oversight or lack of diligence on the part of a person is multiplied by

be sent instantly to several people, without being deduced in this case

intentionality in its use and shipment. It is agreed that in the present case, the measures

implemented by the respondent have been varied, can be effective and are

they consider adequate.

Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE UNIVERSITAT POLITÈCNICA DE VALÈNCIA (AREA OF HUMAN RESOURCES), with NIF Q4618002B, for an infraction of Article 5 of the RGD, typified in Article 83.5 of the RGD, a sanction of warning.

SECOND: NOTIFY this resolution to UNIVERSITAT POLITÈCNICA DE VALÈNCIA (HUMAN RESOURCES AREA) with the sending of the GENERAL ANNEX, and the OMBUDSMAN.

THIRD: In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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.

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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

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GENERAL ANNEX

CLAIMANT 1- A.A.A.

CLAIMANT 2- B.B.B.