

□ Procedure No.: PS/00088/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 10/9/2018 filed

claim before the Spanish Agency for Data Protection that is directed against the

MANCOMUNIDAD GUADALQUIVIR (hereinafter, the claimed one). The reasons in which

The claim is based on the fact that she is an employee of the Commonwealth of Guadalquivir,
performing tasks of ***POSITION.1 in the organization, and states that:

- "I have never communicated my personal telephone number to the organization (not
corporate), as it is privately owned and used, and not at all necessary for
the maintenance or fulfillment of the employment contract."

- "I have been on sick leave due to IT since ***DATE.1."

- "During this period of sick leave I have suffered telephone harassment on my personal mobile.
by the ***POSITION.2 of the Commonwealth in order to give me instructions
tions of work to execute even in my situation of medical leave.

The harassment materializes on 09/24, 25, 26, and 27, and 10/2 with the reiteration of
phone calls to my personal number, as well as sending Whats-
App."

- "As of 10/01/18, and in the absence of a DPO or data controller,
of the data in the Entity, I notify via email to ***CHARGO.2 my denial
going to have the company use my personal mobile phone number."

- "Despite said disavowal, the company (through its ***CARGO.2) continued

continues to use this data (personal mobile phone) on successive days with the
in order to send me more work instructions.”

It considers that there is no legitimizing basis for the treatment” (refer-
work instructions during my medical leave with my mobile phone number
staff”.

Provides:

-

Copy of corporate email exchange sheet, sent
by the claimant to ***CHARGE.2 of the Commonwealth on 10/1/2018, 9:29 p.m.,
subject “new user manguadalquivir.com” In it, it informs you of the re-
Mail requirements to be met by a person to be authorized. to ren-
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Glón often insists on: “remind him that I am on sick leave due to medical indication and
that the permanent bombardment to which I am subjected by different ways
that they discharged me has been intensified... even reaching the
unauthorized access to my personal mobile phone to pressure me into
to carry out different jobs and ask for their cessation.

Copy of mail dated 09/25/2018, sent from the email address of the re-
claimant to presidency, matter "new user manguadalquivir.com" referred to
the digital security of the Commonwealth, of which she declares is “responsibility
ble and administrator” “for enabling a new role to another user in our admi-
web content provider, being said user unknown to me, I am

opening the door to the vulnerability of said page, so before doing certain conditions must be met" "Because it is a designation unrelated to this area headquarters and therefore not knowing said user, your employment or contractual relationship with the community... I will not be held responsible liable for the errors or infractions that this person may commit, since the decision and election of this has been carried out exclusively by the presidency of the community. "I enclose a file that you must send due-mind completed and signed, upon receipt of which I will proceed to register the new user, as well as to send him directly and through a secure channel his access password".

Printing on paper of "personal mobile calls", with the printed sheet of "calls calls to the personal mobile number ***TELEFONO.1 from the telephone of ***POSITION.2 of the Commonwealth Guadalupe" ***TELEFONO.2 of 24, 25/09 (two), and 2/10. in all-das of them figure "has rung" oscillating between 43 and 46 seconds.

-

-Printing on paper of "WhatsApp messages to the personal mobile number ***TELEPHONE.1 from telephone of ***POSITION.2 of the Commonwealth of Guadalupe." This is the line ***TELEFONO.2, excerpts from text messages from the 24 and 26/09/2018. In the first "A.A.A., I'm B.B.B. the ***CARGO.2 of Manguadalupe I need to talk to you urgently, call me please"

-I'm in the hospital.

-I need to post on the page. W and I need the keys

On 09/25:

-Sorry to bother you but I need to publish please send me the keys-you see.

-I'm in the hospital. I will try to answer via email throughout the morning

09/26/2018

-Good morning, C.C.C. It will send you an email with an announcement so that you can post on the w. of the commonwealth. Thanks.

09/27/2018

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-Please publish the announcement that C.C.C. has sent you, it is urgent I ask you please.

SECOND: In view of the facts stated in the claim on 11/28/2018,

moved the respondent to report:

1. Clear specification of the causes that have motivated the incidence that has gave rise to the claim.

2. Detail of the measures adopted by the person in charge to solve the problem.

incidence and to prevent new incidents from occurring, such as the ex-put.

3. Documentation proving that the right of the claimant has been met-you to be informed of the course and outcome of this claim.

It is verified that on 12/11/2018 the respondent received the document, without responding give those requested.

An agreement to process the claim is issued on 02/11/2019.

THIRD: On 09/19/2019, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE against the COMMONWEALTH OF THE

GUADALQUIVIR, with NIF P9104001D, for the alleged infringement of article 5.1.a) of the

RGPD, sanctionable in accordance with the provisions of art. 83.5 of the aforementioned GDPR.”

In the certificate of delivery of the start agreement to the claimed one, there is one of

10/13/2019 with the following literal:

The Support Service of the Electronic Notifications Service and Address

Electronic Enabled CERTIFIES:

- That the Ministry of Territorial Policy and Public Administration (through the Secretariat

General of Digital Administration) is currently the holder of the

Electronic Notification Service (SNE) and Authorized Electronic Address (DEH)

in accordance with Order PRE/878/2010 and Royal Decree 769/2017, of July 28. The

provider of said service since June 26, 2015 is the National Factory of La

Currency and Stamp-Royal Mint (FNMT-RCM), according to Encomienda de Ges-

tion in force of the Ministry of Finance and Public Administrations.

-That the notification was sent through said service:

Reference: 63878995d946bbbf0f6f

Acting Administration: Spanish Data Protection Agency (AEPD)

Holder: - P9104001D

Subject: "Notification available in the Folder or DEH of the indicated holder"

with the following result:

Availability date: 10/02/2019 11:20:03

Automatic rejection date: 10/13/2019 00:00:00

Automatic rejection generally occurs after ten days have elapsed.

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

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43, of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public administrations. And in particular, after the term established by the Administration acting in accordance with the specific legal regulations that are applicable cation.”

There are no objections to the initial agreement.

FOURTH: A resolution proposal was issued for literal

“That by the Director of the Spanish Data Protection Agency, penalize GUADALQUIVIR ASSOCIATION with a WARNING, with NIF P9104001D, for an infringement of Article 5.1.a) of the RGPD, as indicated in the article 83.5 of the RGPD. “

Faced with said proposal, since it was not opened in its telematic delivery, considering itself notified, it was exceptionally sent by ordinary mail, achieving its delivery on 06/16/2020, without receiving allegations.

PROVEN FACTS

1)

According to information on the Internet, the Commonwealth of Guadalquivir is a public management entity for urban waste comprehensive collection services transport and disposal of waste and cleaning services for public roads that groups different municipalities of the province of Seville. Constituted by agreement adopted by the Governing Council of the Junta de Andalucía, on 03/9/1983, published in the Official Gazette of the Junta de Andalucía no. 24, of 03/22, of that year. I re- knows the Spanish legislation of Local Regime, and in particular the Law 5/2010, of 06/11, of Local Autonomy of Andalusia recognizes the constitution in Mancomunidad of a voluntary nature for the joint provision of services that are indicated in articles Article 6 of the Statutes, indicating its article 28 that "The personnel that is necessary

for the development of the activities of the Commonwealth will be civil servant, career or temporary, and contracted in labor regime.

two)

The claimant, an employee of the Commonwealth of Guadalquivir, and ***POSITION.1, claims dated 10/9/2018 against the entity for which it provides services, because has not provided the data of his mobile phone line for private use, ***TELE-FONO.1, which also states that it is not necessary for the maintenance or compliance with the employment contract, and has been used, even despite manifesting once and to be on medical leave since ***DATE.1, according to a copy of it.

3)

Accredit said use, providing:

copy of corporate email exchange sheet, sent

a)

by the claimant to ***CHARGE.2 of the Commonwealth on 10/1/2018, 9:29 p.m., subject “new user manguadalquivir.com” indicating the email requirements that must be meet a person to be authorized. Next, it tells you:

“remind you that I am on medical leave and that the bombing

permanent to which I am subjected in different ways since they gave me

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low has been intensified ... even reaching by means not

authorized my personal mobile phone to pressure me into doing

different jobs” and asks for their cessation.

printout on paper of “calls to personal mobile”, telephone

b)

***TELEPHONE.1, from the phone of ***POSITION.2 of the Commonwealth of Guadalquivir” ***TELEFONO.2 of 24, 25/09 (two), and 2/10. In all of them it appears “has sounded-do” ranging between 43 and 46 seconds.

c) Printed copy on paper of “WhatsApp messages” to the personal mobile number of the claimant ***PHONE.1, from the phone of ***POSITION.2 of the Commonwealth Guadalquivir, line ***TELEFONO.2, excerpts from text messages from 24 and 09/26/2018. In the first “A.A.A., I’m B.B.B. the ***CARGO.2 of Manguadalquivir I need to talk to you urgently, call me please”

-I’m in the hospital.

-I need to post on the page. W and I need the keys

On 09/25:

-Sorry to bother you but I need to publish please send me the keys-you see.

-I’m in the hospital. I will try to answer via email throughout the morning

09/26/2018

-Good morning, C.C.C. It will send you an email with an announcement so that you can post on the w. of the commonwealth. Thanks.

09/27/2018

-Please publish the announcement that C.C.C. has sent you, it is urgent I ask you please

-There is also a printed copy of the incoming call to the claimant’s line, from the ***TELEFONO.2 line on two occasions on 10/2/2018.

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 for Data Protection is competent to initiate and to solve this procedure.

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The RGPD defines in its article 4:

II

"personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;"

The right to privacy is applicable to the field of labor relations, as revealed by STC 98/2000, of April 10 (FFJJ 6 to 9). The number of mobile phone for private use by which the claimant is identified and contacted, being its owner, it should, before being used, have been obtained in a manner legitimate for a specific, legitimate and suitable purpose by the claimed party, and the claimant should have been informed of its use, purpose and exercise of rights of said treatment.

Previously, the need to treat the private mobile lines of employees in connection with the execution of work

performed by the claimant within the entity, although in this case, the

The claimant was also on medical leave known by the person responsible for the

entity. As the defendant has not proven that it has any legitimate basis

for its collection and use, it is considered that the claimed infringed article 5.1.a) of the

RGPD that indicates:

1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

The legitimizing bases for the treatment are contained in article 6 of the

RGPD, and in this case none of them concurs as the origin of the treatment of the

data of the mobile line of the claimant, that the ***CHARGE.2 of the Commonwealth

used to make work-related calls, making use of a line

individual of the claimant.

III

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles

costs for treatment, including the conditions for consent under the

articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article.

Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 as

maximum or, in the case of a company, an amount equivalent to 4% maximum

amount of the global total annual turnover of the previous financial year, opting-

I know for the highest amount."

Article 83.7 of the RGPD indicates:

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Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.

Article 58.2 of the RGPD indicates: "Each control authority will have all of the following corrective powers indicated below:

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

The Spanish legal system has chosen not to sanction with a fine those public entities, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDG: "1. The regime established in this article will be applicable to treatments for which they 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 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.

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 to those affected who had the condition interested party, if any.

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 under this article.

6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that would have committed the infringement."

No action measure related to the infraction is imposed except the one that it clearly follows from not continuing to use the claimant's mobile line.

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Regarding prescription, article 72.1.a) of the LOPGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose 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.”

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE MANCOMUNIDAD GUADALQUIVIR, with NIF P9104001D,

for an infringement of Article 5.1.a) of the RGD, in accordance with article 83.5 of the RGD, a sanction of warning, as established in article 58.2.d) of the RGD.

SECOND:

GUADALQUIVIR.

NOTIFY

the present

resolution to

COMMONWEALTH

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to

the agency

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

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing

Electronic Registration of
through the

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of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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