

□ File No.: PS/00454/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 05/28/2021, it had entry in this Spanish Agency of

Data Protection a document presented by the Provincial Police of

***LOCALIDAD.1 (hereinafter, the complaining party), through which it formulates

claim against A.A.A. with NIE ***NIE.1 (hereinafter, the claimed party).

The following is indicated in the letter of remission of the Minutes, in relation to the matter of
Data Protection:

“The Unit against Immigration Networks and Falsehoods attached to the Brigade

Provincial of Immigration and Borders of ***LOCATION.1 of the Superior Headquarters of

Valencia Police has detected, as a result of receiving multiple claims and

complaints both from users and related agencies and law firms

with the documentary procedures of foreigners, that this saturation, in addition to the

exposed causes, is also motivated by the practices that have been carried out

those responsible for various establishments open to the public, mainly

booths, and/or individuals who advertise themselves to obtain appointments prior to

exchange of different economic amounts and that, to achieve greater profit,

saturate the computing platform in a way that causes users to have

very difficult to obtain a free appointment with the administration and they are forced

to require their services.

By going to these places, users have been forced to provide their data

personal information, both in writing and by providing a copy of your documentation

identification, to the employees or people who offer this service so that, with said data, they can book the appointment with the administration, since said Appointments are nominal and it is not possible to appear at the documentation offices police officers with proof of appointments that do not correspond to the person who is going to perform the requested procedure.

This transfer of your personal data is made without any guarantee or identification of the person in charge of the treatment of the same, as well as without informing or obtaining the consent of the users in accordance with the provisions of Organic Law 3/2018, Protection of Personal Data and Guarantee of Digital Rights, and the Regulation (EU) 2016/679, on your rights of access to your personal data, rectification, deletion or limitation of its treatment incurring for it, in the opinion of this Police Unit, in a slight infringement of article 74.a of the aforementioned L.O. 3/2018, without prejudice to the fact that with these behaviors they may also be infringing some another of the precepts of the L.O. 3/2018.

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On 04/30/2021, by police officers attached to this Unit, it was carried out an administrative inspection in the call center called “XXXXX CALL SHOP”, located at STREET ***ADDRESS.1 (***TOWN.1), in which confirmed the existence of numerous client files (handwritten papers, copies of documentation, prior appointment receipts, NIE), which were stored in said establishment with the alleged purpose of obtaining prior appointments for the carrying out different procedures, extending in the place the mandatory act of

inspection whose copy is attached to this document.

Inside the establishment, a precautionary intervention was carried out on one (1) prior appointment request with receipt number XXXXXXXXX in the name of B.B.B., together with a photocopy of the Romanian Identity card thereof, one (1) application prior appointment with receipt number XXXXXXXXX in the name of C.C.C., along with a photocopy of the Romanian Identity card of the same, and three (3) sheets of a prior appointment list of ***LOCALIDAD.1 on 06/27/2017, with the purpose of carry out the corresponding police procedures with the holders of that documentation.

[...]

Likewise, the corresponding procedures have been carried out in order to proceed with the Summons and subsequent taking of statements from the people whose data appears in a intervened documentation, they have been unsuccessful, so no has been able to locate the affected people.

Based on the foregoing, in the opinion of the interveners, the owner of the establishment, both personally or through its employees, would be infringing one or various precepts of Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights, as well as the Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding to the protection of natural persons with regard to data processing therefore, on 05/24/2021, previously mentioned, he appears in these dependencies, the owner of the establishment, called A.A.A., with NIE ***NIE.1 whose remaining data of filiation already consists.

[...]

SECOND: Prior to admitting this claim for processing, the

The Agency transferred it to the person claimed on 06/24/2021, in accordance with the

Article 65.4 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD). The

notification was delivered on 07/02/2021 to the respondent, as stated in the Notice of

Post receipt, without receiving any response from you.

THIRD: On 09/07/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 10/04/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the

alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

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FIFTH: On 10/14/2021 the claimant is notified of the start agreement of this

sanctioning procedure and a hearing period of TEN DAYS is granted

SKILLFUL to formulate the allegations and present the evidence that it considers

convenient, in accordance with the provisions of articles 73 and 76 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter, LPACAP).

SIXTH: After the term granted for the formulation of allegations to the agreement

of the beginning of the procedure, it has been verified that no allegation has been received

by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to initiate the procedure agreed in the fourth point of the part dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirector General for Data Inspection in the phase of information prior to the agreement of admission to processing of the claim."

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The respondent collects data from the natural persons who come to his booth to request an appointment for administrative procedures, without providing the precise information to interested parties in accordance with current regulations on the protection of personal information.

SECOND: The Spanish Agency for Data Protection has notified the claimed the agreement to initiate this sanctioning procedure, but it has not presented allegations or evidence that contradicts the facts denounced.

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

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.

II

Article 4 of the GDPR, under the heading "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

- 1) "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;
- 2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"

Therefore, in accordance with these definitions, the collection of personal data personal on the occasion of the request for an appointment to carry out procedures administrative constitutes a treatment of data, for which the person in charge of the treatment must comply with the provisions of article 13 of the RGPD, providing the interested parties with all the information indicated in said precept.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

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Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, indicates that:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide

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personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the data controller plans further data processing

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other

medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at

less:

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the

Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of

profiles, the basic information will also include this circumstance. In this

In this case, the affected party must be informed of their right to oppose the adoption of

automated individual decisions that produce legal effects on him or her

significantly affect in a similar way, when this right concurs in accordance

with the provisions of article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of

corrective powers in the event of an infraction of the precepts of the

GDPR.

Article 58.2 of the RGPD provides the following:

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"two. Each supervisory authority will have all of the following corrective powers

listed below:

a) (...)

b) send a warning to all controllers and processors when the treatment operations have violated the provisions of this Regulation;

(...)

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

(...)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case".

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 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:

b) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law."

In this case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

This Agency has confirmed that the actions of the defendant are not in accordance with the data protection regulations, since it does not inform customers of all the issues listed in article 13 of the RGPD indicated in the foundation of right III.

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Thus, in accordance with the facts exposed, we are faced with a infringement of the provisions of article 13 of the RGPD, by the claimed party.

SAW

In accordance with article 58.2 b), for the commission of this infraction, it is appropriate address a warning when collecting personal data from customers and consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5 b) of the RGPD would constitute a disproportionate burden for the claimed, since there is no record of the commission of any previous infringement in terms of Data Protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution is required to the claimed, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from the themselves to the requirements contemplated in article 13 of the RGPD, as well as the provision of supporting evidence of compliance with the requirements.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS A.A.A., with NIE ***NIE.1, for a violation of article 13 of the RGD, typified in article 83.5 of the RGD, a warning.

SECOND: REQUEST A.A.A., with NIE ***NIE.1, under the provisions of the article 58.2 d) of the RGD, so that within ten business days from this act of notification accredits before this body the adoption of measures to facilitate information to the people whose personal data it collects, in accordance with the provisions of the article 13 of the RGD.

THIRD: NOTIFY this resolution to A.A.A.

In accordance with the provisions of article 50 of the LOPDGD, 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 LOPDGD, 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

Director of the Spanish Data Protection Agency

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