

□ File No.: PS/00327/2022

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: On June 28, 2021, by the Director of the Spanish Agency for  
Data Protection resolution was issued in sanctioning procedure number  
PS/00384/2020, filed against the GENERAL DIRECTORATE OF THE CIVIL GUARD (in  
below, the claimed party). In said resolution, in addition to sanctioning with a  
warning, the adoption of the following measures was required:  
"SECOND: REQUEST the entity GENERAL DIRECTORATE OF THE GUARD  
CIVIL, so that, within a month, counted from the notification of this  
resolution, adapt to the personal data protection regulations the operations  
processing of personal data that it carries out, with the scope expressed in the  
Foundation of Law VII. Within the indicated period, the GENERAL DIRECTORATE OF THE  
CIVIL GUARD must justify before this Spanish Data Protection Agency  
the attention of this requirement."

In accordance with what is indicated in the aforementioned Legal Basis VII of the Resolution,  
this requirement includes "the adoption of the necessary measures to carry out  
that adaptation to the personal data protection regulations, preventing  
the administrative actions that you carry out can be accessed by people who do not  
directly intervene in its formalization. Specifically, in the case of  
administrative notifications, it was warned that such notifications are delivered  
directly to the interested party, without the intermediation of other unrelated units to which  
are entrusted with the action in question; or, to try that

notification with the collaboration of some other unit, always preventing it from  
can access the content of the act that is notified".

In the same Fundamentals of Law, it was also expressly warned that  
may admit "the delivery of documentation through the" direct command "of the  
interested party or the sending of documents "in open" to be signed by the  
concerned and returned to the sending unit", and that practices  
inadequate, such as printing or keeping a copy of the documentation sent for its  
delivery to the interested party.

SECOND: The resolution of the disciplinary procedure was notified  
reliably on June 29, 2021 to the claimed party, granting him the  
period of one month for the adoption of the imposed measures, as stated  
certified in the file.

THIRD: On 07/09/2021, this Agency received a document presented by  
the Data Protection Delegate (DPO) of the claimed party, who does not give  
response on the measures adopted, limiting itself to stating that users who

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2/9

involved in the treatment are obliged to keep confidentiality, which has been  
established an internal procedure for notification of breaches and that this DPO is  
deals with raising awareness and training all personnel involved in the treatment of  
personal data, noting in this regard that, however, the human factor can  
produce data leaks, highlighting in this regard the number of people who  
are part of that institution.

FOURTH: On November 10, 2021, a new request was made to the claimed party so that, within a month, they accredit before this Agency have adopted the appropriate corrective measures, in accordance with what was agreed in the aforementioned Resolution, modifying the processes followed for the delivery of notifications so that its content cannot be accessed by third parties outside the units in charge of processing the procedure in question. This requirement was collected by the person in charge on November 10, 2021, as stated in the Notific@ certificate that is in the file.

FIFTH: On December 7, 2021, a letter was received in response to the new requirement, in which the claimed party insists on what was previously provided, noting its conviction that it has adopted the appropriate measures to give compliance with the resolution.

In this new response, the defendant states, with regard to the communications on the cessation of weapons licences, that it is essential that members of the Corps participate who at least know the ultimate goal of such an act and who are authorized to carry arms. Thus, it is clear to both parties who is from that moment the custodian of the same. Therefore, it is indicated, the delivery of these communications is made by the immediate superior of the interested party. In addition, when, as in the present case, the addressee of the communication resides in a location other than the destination, it is necessary to entrust the action to the personnel of the nearest Civil Guard Post.

It is also reported that in this case the problem derived from sending the communications without encrypting the attached documents, and it was this that could allow third parties access your content. For this reason, Circular 1-2020 was issued, on confidentiality, provided with their allegations to the resolution proposal, in which

it is indicated that these documents must be encrypted when they contain personal data, facilitating access only to the processing unit; that confidentiality be guaranteed in the delivery of the same, and that when it is necessary to have confirmation of delivery to the interested party, this confirmation is obtained guaranteeing respect for the privacy.

SIXTH: On May 12, 2022, the claimed party is required again so that, within ten business days, prove to this Agency that they have adopted measures to modify the processes that follow for the delivery of notifications to the interested parties so that their content cannot be accessed by third parties to the units in charge of processing the procedure in question, paying special attention to the sending of documents "in open".

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3/9

This requirement was collected by the person in charge on May 12, 2022, as stated in the Notific@ certificate that is in the file.

SEVENTH: On May 24, 2022, a letter was received in response to the new requirement, in which the claimed party states the following: that the procedure established by Circular 1/2020 of the DPD is sufficient and guarantees the confidentiality of personal data in accordance with current legislation; that he Article 43 of Law 39/2015 of October 1 on the Common Administrative Procedure of the Public Administrations allows the direct delivery of notifications by a public employee of the notifying Administration, in this case the direct command of the unit, when it is necessary to ensure the effectiveness of the action

administrative; that the Circular states that all notifications that include data messages are sent to password-encrypted folders; that even the agreements initiation of proceedings may contain the adoption of precautionary measures that imply executive actions by the command, so it is essential to knowledge by the command of the unit of such agreements; that the case

The specific object of this procedure occurred due to a breach of the procedure provided for in the Circular when the notification of the agreement is sent without encrypt.

EIGHTH: Against the aforementioned resolution, in which the adoption of measures is required, There is no ordinary administrative appeal due to the expiration of the deadlines established for it. Likewise, the interested party has not expressed his intention to file a contentious-administrative appeal, nor is this Agency aware that the same has been filed and a precautionary suspension of the resolution.

NINTH: On July 21, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (in hereafter, LPACAP), for the alleged infringement of Article 58.2 of the GDPR, typified in Article 83.6 of the GDPR Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter GDPR).

TENTH: The aforementioned initiation agreement was collected by the person in charge on the 21st of July 2022, as stated in the Notific@ certificate that is in the file.

ELEVENTH: Dated August 2, 2022 and entry registration number REGAGE22e00034110370, the claimed party files a response to the initiation agreement in which it states that actions have been carried out again

aimed at raising awareness and advising those responsible for the treatment of the importance of adopting measures to guarantee the confidentiality of the communications to be made within the framework of administrative procedures in which appear as interested Civil Guards. The result of this has been the development and dissemination of Circular 3/2022, which accompanies it, which details a procedure for the delivery to the interested party of communications or resolutions that contain data personal information that, on the one hand, seeks to guarantee that only he or she has access to their content and on the other that the procedural requirements that

Allow proof of delivery.

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4/9

TWELFTH: On August 18, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency impose a warning sanction on the claimed party.

THIRTEENTH: Dated August 25, 2022 and entry registration number REGAGE22e00036615027, the defendant submits a written statement of allegations to the motion for a resolution stating that it is not possible to estimate the non-compliance or inactivity of the claimed party with respect to the requirement of adoption of measures formulated in its day by this Agency since the part claimed has adopted or proposed the adoption of regulations that pursue the adequacy of processing operations to the applicable legal framework in matters of data protection, including surveillance measures and follow-up of the compliance with said regulations.

Thus, Royal Decree 176/2022, of March 4, was published, which approves the code of conduct for Civil Guard personnel. In addition, there is a project Ministerial Order and General Order calls to regulate the withdrawal of firearms. In short, these norms and normative projects pursue an adequate treatment of personal data in the Institution and allow the necessary regulatory compliance of a technical nature, such as Circular 3/2022, of the Data Protection Officer. In addition, the Data Protection Delegate of the Corps has carried out a intense activity of training and awareness of personnel in those of their functions that include the processing of personal data, creating a specific area on the Civil Guard Corporate Intranet. Similarly, the regulations dealing with the protection of personal data in the Civil Guard has been addressed historically by the Institution in a transversal way, granting it the maximum normative level in each moment, as seen, for example, in the Organic Law 2/1986, of Forces and Security Forces and in Organic Law 11/2007, of October 22, regulating the rights and duties of the members of the Civil Guard.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: The resolution of the disciplinary procedure and the requirements for the compliance with the measures imposed therein indicated in the background first, fourth and sixth were notified electronically, in accordance with the provisions in article 43 of the LPACAP. Said resolution became firm and executive by the expiration of the terms established for the filing of appeals in it indicated.

SECOND: The claimed party has not sent a response to this Agency that proves compliance with the measures imposed prior to the issuance of the

agreement to initiate this disciplinary procedure.

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5/9

THIRD: Notification of the agreement to start this procedure

disciplinary action was carried out electronically through the Notific@ system, being collected by the person in charge on July 21, 2022.

FOURTH: The claimed party has submitted a document, included in the antecedent eleventh, in response to what is referred to in the agreement to initiate this procedure sanctioning. Circular 3/2022 is attached to said document, detailing a procedure for the delivery to the interested party of communications or resolutions that contain personal data, whose objective is to guarantee the confidentiality of the Communications to be made within the framework of administrative procedures.

FIFTH: The notification of the resolution proposal was made electronically to through the Notific@ system, being collected by the person in charge on August 18 of 2022.

SIXTH: The claimed party has submitted a written statement of allegations to the proposal for resolution of this disciplinary procedure included in the antecedent thirteenth.

## FUNDAMENTALS OF LAW

Yo

Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each



control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

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

Arguments to the second requirement

II

In response to the allegations presented by the claimed party prior to the agreement to start this procedure, the following should be noted.

The claim refers to the notification of an administrative procedure (opening of procedure), and not to an arms withdrawal agreement.

The requirement of measures is directly related to the practice of administrative notifications, in general, and warned that such notifications should be delivered directly to the interested party, without the intermediation of other external units

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6/9

to those who are entrusted with the action in question; or, to try that notification with the collaboration of some other unit, always preventing it from

can access the content of the act that is notified.

Circular 1-2020, on confidentiality, issued by the DPD, contemplates the sending of communications with encrypted attachments; but also collects others instructions regarding the delivery of documentation through the "direct command" of the interested party or the sending of documents "in open" to be signed by the concerned and returned to the sending unit. In this regard, the requirement contained in the resolution of this Agency already warned that this cannot be accepted delivery of open administrative notifications through the direct command of the interested.

The foregoing is independent of the fact that the superior of the interested party must know arms withdrawal agreements, among other things to proceed to make executive the agreement and custody of said weapons, an issue that has not been the subject of the proceedings and on which this Agency has not ruled. Even in case of that the communication of this agreement to the superior of the interested party has a legitimate basis, it would be necessary to determine if this legitimation reaches all the data and personal circumstances (eg, complaints of gender violence) that come to light manifest in the resolution adopting the arms withdrawal agreement or only in this decision, in which case it may be necessary to consider the advisability of carrying out a differentiated communication addressed to the superior of the interested party, informing simply from repeated agreement.

## II

### Arguments to the Commencement Agreement

Regarding the brief presented by the claimed party in response to the agreement of commencement of this proceeding, included in the eleventh precedent, in which certifies the implementation of new measures, the following should be noted.

This Agency acknowledges receipt of the measures communicated, without this

declaration implies no pronouncement on the regularity or legality of said measures.

Notice of the provisions of article 5.2 of the GDPR, which establishes the principle of proactive responsibility when it states that "The person responsible for the treatment will be responsible for compliance with the provisions of article 1 and capable of demonstrating it".

This principle refers to the obligation that falls on the person responsible for the treatment not only of designing, implementing and observing legal, technical and organizational processes so that the data processing is in accordance with the regulations, but to remain actively vigilant throughout the entire life cycle of the treatment so that this compliance is correct, being also able to prove it.

Allegations to the resolution proposal

IV.

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7/9

In response to the allegations to the resolution proposal, presented by the party claimed, the following should be noted.

The resolution of the disciplinary procedure PS/00384/2020, which required the adoption of measures and their justification before this Agency, for which a response period of one month, was notified on June 29, 2021. Likewise, twice again required the adoption of corrective measures and finally agreed to start this sanctioning procedure on July 21, 2022, without until that date the claimed party, despite the allegations and responses to the

requirements submitted, would have proven to this Agency compliance with the concrete measures imposed on it.

The accreditation of having responded to the imposed measures has not been carried out until the presentation of the allegations to the agreement to initiate this procedure, by means of the instructions incorporated in Circular 3/2022, of 4 August 2022. Therefore, the communication of the measures adopted during the instruction of this procedure does not affect the existence of the proven facts constitutive of infringement.

V

unfulfilled mandate

Based on the available evidence, it is considered that the party claimed breached the resolution of the Spanish Data Protection Agency with regarding the measures that were imposed.

Therefore, the facts described in the "Proven Facts" section are considered constituting an infringement, attributable to the claimed party, for violation of the Article 58.2.d) of the GDPR, which provides the following:

"2. Each control authority will have all the following corrective powers indicated below:

(...)

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

Classification and classification of the offense

SAW

This infringement is typified in article 83.6 of the GDPR, which stipulates the following:

"Failure to comply with the resolutions of the control authority under article

58, section 2, will be penalized in accordance with section 2 of this article with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount.”

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8/9

For the purposes of the limitation period for infringements, the alleged infringement prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as the following behavior is very serious:

"m) Failure to comply with the resolutions issued by the authority for the protection of competent data in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679.”

VII

sanction imputed

Article 83.7 of the GDPR provides the following:

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

Likewise, article 77 “Regime applicable to certain categories of responsible or in charge of the treatment” of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

(...)

c) The General State Administration, the Administrations of the communities autonomous entities and the entities that make up the Local Administration.

(...)

2. When the managers or managers listed in section 1 commit

any of the offenses 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

likewise, the measures that should be adopted to cease the conduct or to correct it.

the effects of the offense 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, if any.

(...)

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.”

Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE the GENERAL DIRECTORATE OF THE CIVIL GUARD, with NIF

S2816003D, for a violation of Article 58.2 of the GDPR, typified in Article

83.6 of the GDPR, a warning sanction.

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SECOND: NOTIFY this resolution to the GENERAL DIRECTORATE OF THE CIVIL GUARD.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

In accordance with the provisions of article 50 of the LOPDGDD, this Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

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