

□ File No.: PS/00217/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 02/06/2020, filed a claim before the Spanish Agency for Data Protection. The claim is directed against B.B.B. (hereinafter the claimed) with NIF ***NIF.1. The grounds on which the claim is based are that she is employed at the City Council of ***LOCALIDAD.1, Zaragoza, and "the XXXX made some claims echoed by XXXXXXXXXX. Mr. B.B.B. placed in the board of the town bar some documents presented by me a few years ago, I I imagine that with the intention of defending himself against XXXX's claims, but he has exposed my documents, without my consent, without deleting my personal data and other private data, in a bar where anyone can access and use them."

It provided a photograph of an open bulletin board, indicating that it is a space public, in which various sheets were exposed. The photo shows the image from far.

Provide two close-up photographs, on two sheets, with the annotation handwritten in red pen, doc 1 and doc 2. The first is a document with a stamp entered in the Town Hall of ***LOCATION.1 03/13/2017, and it is a category reclassification claim professional of the claimant, containing her request and detailing her employment situation

Also see your address.

Document 2, is another registered professional category change claim document in the same City Hall on 09/26/2018, containing the personal data and address of the claimant, NIF number, and details of his professional history, indicating that the above

request of 03/13/2017, was not answered

On 03/06/2020, the Director of the AEPD agreed to reject the claim,

E/02294/2020, appearing notified to the claimant on 03/11/2020.

SECOND: The claimant filed an appeal for reconsideration on 05/27/2020, file

RR/0202/2020 making the following statements together with documents provided:

1- Your data was published in the Cafeteria bar ***BAR.1 of ***LOCALIDAD.1, as a personal action dXXXXXXXX, not agreed upon or taken by the majority of the Corporation.

“The Councilors of the City Council were not aware of the action carried out by

XXXXXXXX.”. The Town Hall has its own notice boards, which is not the

from the bar

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/17

2- Photographs are provided. A first one that the claimant says, is from 02/03/2020, with the view general bulletin board without closing, or glass. Both documents appreciated.

indicated doc 1 and doc 2 in the upper right part, and another sheet to its left, a written

called "explanatory note" signed by XXXXXXXX: which begins: "The XXXX Union does not

tells the truth..." "The City Council approved in plenary on 12/30/2019 the modification of the

current template for the reclassification of the job administrative assistant position..." Refers

the reclassification of the position due to the request of the current assistant advo, "which appears in the

doc 1 and doc 2" exposed to the side, and the need to cover the positions by officials.

In addition, there are four other photos with dates referenced by newspapers included in the photo.

They are photos with shots closer to the documents, dated 12, 18, 25 and 02/27/2020.

On the board, there are also statements from the City Council related to irrigation,

private advertisements for the sale of land, courses, books, etc.

At the bottom of doc 1 and 2, a report from the Zaragoza Provincial Council on conversion administrative assistant position without containing personal data but being able to do identifiable to its occupant, which is referred to as a part-time employment contract of determined duration for a determined work or service, signed on 11/1/XXXX "by the person who is occupying the square.

3- Provides a video in which it is seen that he enters what could be a bar-cafeteria and in the left side, as soon as you enter, there is a bulletin board without glass and the two exposed documents 1 and 2 in the area on the right and on the left the "explanatory note".

Images match the board seen in the photo you submitted on your claim showing an open bulletin board with exposed sheets.

4-A photograph of a later date is provided, as stated, of a plank with a wardrobe glazed with a key, unlike the previous photographs, and where the documents 1 and 2 referred. If the written "explanatory note" is maintained, what could I do? identifiable to the claimant.

5- Provide a copy of the reply from the City Council of ***LOCALIDAD.1 (Zaragoza), of 02/26/2020, to the request to withdraw your data exposed in the bar of ***ADDRESS.1 of ***LOCATION.1 (Zaragoza). It states "direct instructions have been given to the responsible for the center so that no information can be posted on the bulletin board. information that is not authorized by XXXXXXXXX or the Secretary of the City Council".

Likewise, it is reported that in "near dates a closure will be put glass that prevents the placement of unauthorized information on the bulletin board."

The appeal for reconsideration, dated 06/04/2020, indicated in the legal basis second:

"In the present case, along with the motion for reconsideration, new documentation has been provided relevant to the purposes of the above. Consequently, the Director of the Agency

Spanish Data Protection RESOLVES:

UPGRADE the motion for reconsideration filed against the Resolution of this Agency”.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/17

THIRD: In previous actions E/08534/2020, dated 03/02/2021, the Inspector of Data sends a letter to the CITY COUNCIL OF ***LOCALITY.1 requesting information on the claim filed by the claimant, and specifically respond to the following questions:

- "1. Identification and contact data, including ID number and postal address of the person who had access to the documents referred to with data of the claimant prior to being hanging on the bar board.
2. Actions that have been carried out to determine the authorship of the facts.
3. Report on the causes that gave rise to the incident that gave rise to the claim.
4. Report on the measures adopted to prevent similar incidents from occurring, dates of implementation and controls carried out to verify its effectiveness.
5. Any other that you consider relevant."

A-Dated 03/31/2021, the CITY COUNCIL OF ***LOCALITY.1, sends this Agency the following information and statements:

"1. That on December 30, 2019 in the plenary session of the City Council, it was subject to debate and adoption of agreements in relation to the official and labor staff of this municipality. That the agreement was adopted to amortize the position of administrative assistant employment, replacing it with a newly created civil servant of the subscale of General Administration, with the category of administrative part-time. With this

agreement, the corresponding process of reconfiguring the template began as a result of the demands of the only person who works in the City Council as administrative assistant (the claimant). after the celebration mentioned plenary session, appeared placed in the space dedicated to the functions of bulletin board of the Civic Center of the locality a news of the XXXXXXXXXX of Aragon dated January 23, 2020 under the headline "XXXX accuses XXXXXXXX of "pressuring" an employee of the City Council" in which what happened in the session was misrepresented plenary.

In a municipality of 384 neighbors, no one could be unaware that such journalistic information was

It referred to the only administrative worker of the City Council, that is, the claimant. In

In this context, a note explaining the reality of what happened was placed next to the news in the plenary session and the different reports and documents existing in the file that had been dealt with in the aforementioned plenary and public session.

The members of the Corporation (including D. B.B.B.) due to their status as Councillors, you had at your disposal the files submitted to the plenary session.

From the moment the issue was dealt with in plenary, the file was considered public.

On 02/06/2020, the claimant raised the withdrawal of what could be personal information. That on 02/26/2020, the claimant was informed that

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/17

The person in charge of the Civic Center had been informed that he would not allow the placement of information on the board that was not authorized by XXXXXXXXXX or the Secretary of the

City Hall, and all that did not comply with such indications must be withdrawn. That

In addition, a glass closure was placed that prevents access to the plank.”

-A copy of the answer given to the claimant dated 02/26/2020 is provided.

-A copy of the instructions given to the Civic Center of *** LOCATION.1 dated

02/26/2020.

-A copy of the “REPORT RELATIVE TO THE PUBLICATION OF DATA ON THE BOARD

OF ADVERTISEMENTS IN THE TOWN OF ***LOCALIDAD.1 (ZARAGOZA)” signed by the

Data Protection Delegate and dated 08/19/2020, concluding “That the treatment

of data outlined cannot fully adhere to regional or national regulations of

transparency, since even though it would be possible to make public the information related to the

procedure must respect the limits of data protection regulations. “

B-Dated 04/03/2021, the claimant sends to this Agency, a copy of the order of the Court of

First Instance and Instruction of ***LOCALIDAD.2 dated 03/29/2021 regarding the

abbreviated procedure *** PROCEDURE.1/2020 where the Prosecutor "has presented

writing requesting the dismissal of the proceedings”, although the judge agrees to open

oral trial against B.B.B. by XXXXXXXXX

of ***ARTICLE.1 of the Criminal Code

(investigated the claimed).

C-Dated 04/05/2021, the CITY COUNCIL OF ***LOCALITY.1 sends this Agency

the following information and statements:

Provides a copy of the document dated 03/17/2021 sent by the Zaragoza Provincial Prosecutor's Office to

Court of First Instance and Instruction of ***LOCALIDAD.2, in the proceeding

abbreviated number ***PROCEDURE.1/20 where it is stated:

“[...]

THE PROSECUTION MINISTRY, ... is interested, under the protection of article 641.1, in issuing an order

agreeing the PROVISIONAL DISMISSAL of the proceedings, for not being

duly justified the perpetration of the crimes that have given rise to the formation of

this cause in attention to the following considerations:

FIRST.- The claimant is indicated as the initiator of the actions by complaint, indicating that B.B.B. on 02/03/2020, XXXXXXXX of ***LOCALIDAD.1, “had placed in the bulletin board of the ***BAR.1” of said locality some documents that she had presented on labor matters, providing a photograph of the documents and the notice board announcements in which they were placed, also stating that he had filed a complaint in the AEPD.

[...]

For his part, the investigated B.B.B., in his statement in court, stated that when events occurred suffered a campaign of harassment and were placed in the three bars of the locality false news related to it and before that campaign against him, proceeded to place the documents of the administrative file, which was public, of the Plenary of 12-30-2019 of approval of budgets, which consisted of requests for professional promotion, of the report of the DPZ (fourth space), the minutes of the plenary session of that date, and an explanatory note of

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/17

that what XXXXXXXX said about him was not true. He acknowledged having placed the documents relating to the complainant in the administrative file, which was public and I thought there were no problems in posting it publicly. that after requesting the complainant to withdraw, contacted the DPZ where they have delegated the data protection and the file was removed from the bulletin board. He claims that maybe should have crossed out the name and surnames, but there was a brutal campaign

against him. He maintains that the problems with Ms. ...come because she applied for the promotion professional from administrative assistant to administrative assistant, and everything is an act of revenge for the career advancement theme. He denies having threatened or pressured her, [...]

SECOND.-

[...]

On the contrary, it has been fully accredited, since it has been recognized as such the investigated Mr. B.B.B. himself, who, acting irregularly, placed on the bulletin board announcements of the Civic Center ***CENTRO.1 of the town of ***LOCALIDAD.1 various documents that contained personal data of Mrs. AAA. However, from the joint analysis of the proceedings carried out has not been accredited the element subjective that the criminal type of revealing secrets requires, that is, it has not been accredited that the purpose of the investigated was to access said data or make them known with the purpose of violating the privacy of its legitimate owner; and on the other hand, neither A complaint or accusation has been made for this crime. All this, without prejudice to the penalty that in your case may be imposed by the Data Protection Agency after the appropriate and legitimate complaint filed by Ms. AAA.

[...]"

The document indicates that at the same time there are some preliminary procedures ***PROCEDURE.2/19 followed in the Court of ***LOCATION.2 against the same person for a crime of XXXXXXXXX XXXXXXXXXX.

D-According to the diligence carried out by the Inspector on 03/02/2021, in which he reflects that access some of the pages of the website www.ayto-***LOCALIDAD.1.com obtained from through the Internet, in the case of the contracting party's profile page, which includes the conditions published on 05/10/2016 for the operation of the bar-cafeteria in the ***BAR.1" and municipal swimming pool of ***LOCALIDAD.1, which belongs to the City Council of said location.

FOURTH: On 05/20/2021, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against B.B.B., in accordance with the provisions of the articles 63 and 64 of the Law ***PROCEDURE.2/2015, of 1/10, of the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), by the alleged infringement of article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, typified in article 83.5 a) of the RGPD and in article 72.1.a) of the LOPDGDD.

"For the purposes specified in the art. 64.2 b) of the law ***PROCEDURE.2/2015, of 1/10, of Common Administrative Procedure of Public Administrations, (hereinafter, LPACAP) the sanction that could correspond would be a warning, without prejudice to what that results from the instruction."

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/17

Once notified of the aforementioned initiation agreement, the respondent submitted a written statement of allegations 06/7/2021 in which it states:

1) Request that the processing of the procedure be suspended, because there is a procedure criminal proceedings in progress requested by the claimant, in order not to punish twice the same fact while the criminal matter is resolved, since it considers that the facts are directly related to this procedure. This is the crime of XXXXXXXX, in preliminary proceedings ***PROCEDURE.1/2020. Provide a copy of the document dated 03/11/2021, of the claimant's lawyer, addressing the Court of First Instance and Instruction sole of ***LOCATION.2, in relation to previous proceedings ***PROCEDURE.1/2020 in which he requests the opening of the oral trial for a crime of XXXXXXXX against the defendant.

Mention the abbreviated procedure ***PROCEDIMIENTO.2/2019 in which they were involved claimant and claimed by an alleged signature of a document that the claimant has always denied having signed. Also mentioned among other extremes display of data on the bulletin board. The respondent states that in this procedure, the public prosecutor has not formulated accusation.

2) States that the claimant joined in year XXXX for a "determined time", and since then it has been in "XXXXXXXXXX situation", detailing the extension of functions assumed over time. The claimant demanded financial recognition and of improvement. Provide a copy of document 1 of 03/13/2017, in which you request your right to professional promotion in application of the agreement of offices and offices of the province of Zaragoza, article 20, which provides for the transition to a higher category upon reaching five years of seniority in case of vacancy or six years if there is none. Attach a copy of the letter document 2, with record 09/26/2018 in which the claimant reiterates her request. Understands the claimed that the claimant was the one that caused the reclassification.

It was requested by the City Council, and it provides a copy of document 3, report of the Diputación de Zaragoza, of 10/28/2018, which responds to the following: "XXXXXXXXX President of the City Council in consultation requests the issuance of a report on the position of administrative assistant of said City Hall and more specifically on the steps to follow to convert that square of administrative assistant and the qualifications required to exercise the functions of said square". It is alluded to that the positions in the local administration must be carried out with general character by official personnel, and only exceptionally when one of the the legal assumptions by labor personnel. Indicate the steps to convert that square of administrative assistant depending on the needs of the City Council.

The City Council, by mayoral decree 9/2018, dated 11/28/2018, responded to the petition of the claimant filed on 09/26/2018, for a change of category, sending as content, part of the Zaragoza Provincial Council report. Contribute in

correlation, copy of the claimant's document, entry to City Hall 01/25/2019 making

clarifications on the reception of Mayoral Decree 9/2018, and adds that the

The claimant did not appeal decree 9/2018.

Following the iter related to the matter, provides a copy of document 6, draft minutes

session of the ordinary plenary session of the City Council dated 12/30/2019. At the point of order

second day refers to the approval of the budgets of the staff for

2020, and to the modification of the workforce and civil servants, amortizing that of auxiliary

admvo. labor with an administrative official. No data mentioned

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/17

of the claimant. These modifications were reflected in its publication in the BOP of

Zaragoza on 01/15/2020, of "initial approval of the 2020 budget" in plenary

from 12/30/2019.

3) Reiterates that the data was used in response to the declarations of the XXXX union, defamatory

of XXXXXXXXX and that "appeared exposed on boards of the civic center of ***LOCALIDAD.1

copy of an article published in the XXXXXXXXXX of Aragon on 01/23/2020. Is for this that I know

placed in the civic center of this municipality in the place that has been used as a board

to make sure that all the people saw it and did so when in plenary session

City Hall had discussed the administrative reorganization of the staff

municipal administration placing documents that had been the subject of public debate

in the plenary session of the City Council, coping with the disinformation caused by the

plaintiff's union. No secret was revealed with the information in the file

public administrative debated publicly in plenary and regarding which they were

misinforming by the interested party or her union for her exclusive benefit. “

It accompanies the news that appeared in the XXXXXXXXXX of Aragón of XXXXXX with the headline "the XXXX accuses XXXXXXXXXX of (...)".“ (...)”. The news alludes to the fact that the worker “(...)”. The news indicates that the “(...)”.

The criminal matter of the XXXXXXXXXX, as identified by the respondent, would be the PD

***PROCEDURE.2/2019, complaint dated 01/09/2019. Provides a copy of document 10 of the

responses given within said process, on 04/01/2019 by the claimant to questions

of the complainant, on acknowledgment of signature on a document, which states “(...)”, and that

“(...)”.

In addition, it ends by indicating that the claimant has filed a complaint against him that

filed on 02/20/2020, and then another by XXXXXXXXXX before the Court, no date determined.

4) The information in the file was not only available to the Councilors but

of citizenship itself. Being part of the file publicly debated in plenary

considers that no type of information has been violated that could be considered

confidential.

5) Finally, it provides a report dated 04/05/2021 on employment stabilization processes

temporary public for the case of labor workers who were hired many years ago

years - indefinite not fixed - which concludes by pointing out that the laws currently in force

“allow during this exercise of 2021 to include the positions of a structural nature that,

being endowed budgetarily have been occupied temporarily and

uninterruptedly for several years.

FIFTH: On 01/10/2022, a resolution proposal is issued for the literal:

"That by the Director of the Spanish Agency for Data Protection, B.B.B. is sanctioned,

with NIF ***NIF.1 for an infringement of article 5.1.f) of the RGPD, typified in article 83.5

a) of the RGPD, and for prescription purposes in article 72.1.a) of the LOPDGDD, with a

warning sanction.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/17

It is delivered on 01/21/2022, presenting allegations on 02/09/2022 in which:

-Reiterates the request for suspension of the procedure based on the same arguments already previously presented, considering it a strategy of the complainant "whose purpose is not the safeguard your data but use your resolutions for purposes of a different nature, interfering in the course of the criminal case".

-Reiterates that it was a public administrative file in a municipality of barely 300 inhabitants, in which the claimant held the only administrative position.

-He reiterates that the newspaper article was defaming him, which was the reason why exposed the documents and therefore their defense corresponds to said person, including said defamation that of the City Council itself, being XXXXXXXX the one that holds its representation and who corresponds to its defense in court and administrative. Considers erroneous based on this, the statement that makes the proposal, to the indicate that the respondent "does not act in the exercise of any type of function or competence attributed".

- Contrary to what is contained in the proposal, if it is relevant that the matter was debated in plenary, given that it was not a question of modifying templates and amortization of posts without allusion to the claimant, but understanding that the municipality has about 300 inhabitants, and the claimant is the only administrative assistant. For this reason, "it is considered an assessment wrong when it is pointed out: it is not relevant that the matter was debated in plenary, comma since it was about changes to the template and amortization of posts, without reference to the claimant". The matter when dealt with in plenary was public information. The fact that

claimant's name appeared on the two documents, no information added to

the neighbors

-Requests subsidiarily to the suspension, the file of the procedure.

SIXTH Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

PROVEN FACTS

1) About the person claimed, in the XXXXXXXXXX of Aragón of XXXXXX, the news appeared: "the XXXX accuses XXXXXXXXX of (...)". The claimed "(...)".

2) According to the defendant, in addition, on the bulletin board of the bar, civic center, of the

locality, a copy of the news of the XXXXXXXXXX of Aragón was exposed circumstance that

does not prove, and reason why he decided to expose some documents. In the photos and video

provided by the claimant in her complaint of 02/03/2020, and in her appeal for reconsideration

(RR) of 05/27/2020 the news exposure does not appear on the board. In the claim,

refers to the fact that the respondent whom he identifies with his name and surnames and his position, when he feels

referred to "placed" some documents containing personal data of the claimant

referring to applications submitted previously to the Consistory, on the petition

XXXXXXXXXXXX professional of your position.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/17

3) They were displayed on the aforementioned open board, according to the photos and video provided by the

claimant, with the handwritten annotation in red pen, doc 1 and doc 2 and other annotations to

hand and underlining. The first, with entry stamp in the Town Hall of ***LOCATION.1

03/13/2017, is a claim of XXXXXXXX of professional category of the claimant,

containing your request and detailing your employment situation, also seeing your address. The

second, it is another written claim in which the claimant reiterates the change of

professional category registered in the same City Council on 09/26/2018, containing the

personal data and address of the claimant, NIF number, and data of his history

professional, indicating that the previous request of 03/13/2017 was not answered.

Along with these two documents, it appears on the board, according to one of the photographs provided

by the claimant in the RR, the writing: "explanatory note" signed by XXXXXXXX: that

begins: "The XXXX Union does not tell the truth..." and refers to his explanation on the matter

of the approval in plenary session on 12/30/2019 of the current staff. Refers to the reclassification of

position due to the request of the current "which appears in doc 1 and doc 2", and the need to

fill the positions by civil servants.

On the board, there are also statements from the City Council related to other

various town affairs.

At the bottom of doc 1 and 2, there is a report from the Zaragoza Provincial Council

on the conversion of an administrative assistant position in which it refers to occupation data

of the position, which being only one in the locality, can identify it.

4) It can be proven that the placement of the documents remains at least until

02/27/2020, since the claimant provides diaries that appear in the photo next to the date of the

themselves, including other references, all from February 2020, adding: "afterwards it was

closet" and the documents with your data are no longer displayed according to the photo you provide.

5) Before the presentation of the claim, the claimant requested the withdrawal of the

documents with your data from the board, on 02/06/2020, and provide a copy of the answer of 26

of the same, of the City Council of ***LOCALIDAD.1 (Zaragoza).

6) The claimant, in February 2020, filed a lawsuit against the defendant for

XXXXXXX of article ***ARTICLE.1 of the Criminal Code, which is substantiated in the procedure

abbreviated ***PROCEDURE.1/2020.

Within said procedure, as stated in the letter from the Prosecutor's Office to the court, 03/17/2021, it is deduced that the statements of the claimant are transcribed at the headquarters following judicial proceedings, which he understands to be fully accredited, according to the Prosecutor's Office: -explained in the bar of the civic center, the requests for professional promotion, as well as the rest of the documentation, because he considered that "the file was public", and because suffered a campaign of harassment against him, which does not meet the subjective element of the type of disclosure of secrets (and on the other hand, no complaint or accusation has been made by this crime. The Prosecutor's Office requests the provisional dismissal of proceedings for not being justified the perpetration of "the crimes that have given rise to the formation of this case", although the judge opened an oral trial on 03/29/2021.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/17

7) Other criminal proceedings, those of the PA ***PROCEDURE.2/2019 have been followed by a matter of XXXXX XXXXXXXXXXXX against the defendant, within which was resolved among other questions if the signature of a document corresponded to the claimant, denying this is the question.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each authority of control and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of 5/12, Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the

Spanish Data Protection Agency.

Likewise, 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

Taking into account the Law ***PROCEDURE.2/2015, of 1/10 of the Procedure Common Administrative Law of Public Administrations (LPACAP), its article 77.4 indicates: "In sanctioning procedures, the facts declared proven by firm criminal judicial resolutions will bind the Public Administrations with respect to of the sanctioning procedures that they substantiate. On the other hand, in the same standard indicated in article 22.1.g):" 1. The expiration of the maximum legal term to resolve a procedure and notification of the resolution may be suspended in the following cases: g) When for the resolution of the procedure it is essential to obtain a prior pronouncement by a court, from the moment it is requested, what will have to be communicated to the interested parties, until the Administration has proof of it, which must also be communicated to them."

Law 40/2015, on the Legal Regime of the Public Sector (LRJSP) that in its article 31 indicates: "Concurrence of sanctions":

"1. The facts that have been penalized or administratively may not be sanctioned, in the cases in which the identity of the subject, fact and basis are appreciated."

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

As for the suspension of this proceeding because it is related to the one being aired at instance of the claimant by XXXXXXXX against the claimed, it must be taken into account that an oral trial was opened in April 2021 and without knowing if it has been resolved. The defendant contributes copy of the request for provisional dismissal of the matter by the Prosecutor's Office, and there is copy of the opening of oral proceedings with a later date provided by the claimant. It reflects in the documentation of the Prosecutor's Office that the claimant mentions the exposure of the documents on the board and that he has filed a complaint with the AEPD, adding other facts by which she understands that the XXXXXXXX may come, such as the statements that she has done in another judicial process, from 2019 on "XXXXXXXX XXXXXXXX" in which it was decided, among other issues, if she had signed a document, which she denied receiving then as indicated harassment of the claimant, and other matters and issues that are also part of the alleged XXXXXXXX, that is, it is not the only document to consider. Not by mentioning these circumstances can it be presumed that there is identity of subject, fact and foundation that derives in the suspension of the procedure by itself.

This alludes to the principle of legality in sanctioning matters enshrined in article 25 of the Constitution that since the ruling of the Constitutional Court 2/1981 is called non bis in idem principle, which advocates the impossibility of imposing two sanctions different administrative and criminal charges for the same facts. For there to be a violation of non bis in idem principle it is necessary that the two sanctions fall on the same subject and have the same object and the same foundation. , the duality of foundation is identified not only with the normative duality. For the duality of sanctions to be constitutionally admissible, it is also necessary that the regulations that impose it can be justified because it contemplates the same facts from the perspective of a legally protected that is not the same as the one that the first sanction tries to

safeguard or, if you will, from the perspective of a different legal relationship between sanctioning and sanctioned.

The crime is classified "against the freedom of the people", according to the description of the type, includes violence or compelling to do what is not wanted. The right to protection

data safeguards the fundamental rights and freedoms of natural persons and, in

In particular, your right to the protection of personal data. referred to in the article

18.4 of the Spanish Constitution, corresponding to different protected legal assets.

In addition, the idea that the respondent has that the claim before the AEPD has been used

as a strategy against him, unknown if the claim is made first to this

AEPD and then the judicial demand for XXXXXXXX, cannot suppose the suspension of the

this procedure for what has already been mentioned and because to contribute or mention the exposition of

the data is only one element among those that may be considered by the Judge, in the legitimate

exercise of their right to effective judicial protection.

It is estimated, therefore, that the fact that is analyzed here about exposure of

data on the bar's bulletin board, with the qualification of behaviors of the claimed person as

XXXXXXX, since they are totally different facts and fundamentals that have nothing to do

Therefore, it is not appropriate to suspend the procedure, so it must continue.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

12/17

III

Some peculiarities and characteristics of the right to data protection are mentioned

in ruling 292/2000 of 11/30 of the Constitutional Court, indicating:

“The fundamental right to which we are referring guarantees the person a

power of control and disposal over your personal data. For it confers upon its owner a beam of faculties that are essential elements of the fundamental right to the protection of personal data, integrated by the rights that correspond to the affected party to consent to the collection and use of your personal data and to know them. and to make cash that content, the right to be informed of who owns your personal data and with what purpose, as well as the right to oppose that possession and use, demanding whoever appropriate to put an end to the possession and use of such data.”

The RGPD defines in its article 4:

1) "personal data": any information about an identified or identifiable natural person

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

2) “processing”: any operation or set of operations performed on data

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, suppression or destruction;

7) “controller” or “controller”: the natural or legal person, authority

public, service or other body that, alone or jointly with others, determines the ends and means of the treatment; if the Law of ***CENTER.1 or of the Member States determines the purposes and means of the treatment, the person in charge of the treatment or the specific criteria for their appointment may be established by the Law of ***CENTRO.1 or of the States members;

Considering *** PROCEDURE.2 of the RGD:

“Personal data must be processed in a way that guarantees security and appropriate confidentiality of personal data, including to prevent access or use unauthorized access to said data and the equipment used in the treatment.”

Article 29 of the RGD states: “Processing under the authority of the person in charge or the person in charge. course of treatment:

The person in charge of the treatment and any person acting under the authority of the responsible or of the person in charge and has access to personal data may only treat said

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

13/17

data following the instructions of the person in charge, unless they are obliged to do so by virtue of of the Law of ***CENTER.1 or of the Member States.”

The respondent, who is also XXXXXXXX of the local Corporation, and as such has access to his documents for the performance of his position and functions, exposes on a bulletin board announcements, of a cafeteria bar, different from the official headquarters of the City Council, with functions of civic center and swimming pool, data of the claimant.

Public entities act with full submission to the Law and the Law, in accordance with the principle of legality, objectively serving the general interest. It is proven that the claimed party was part as XXXXXXXXXX of the City Council, having access to the data of the claimed. Likewise, what was debated in plenary session dealt with modifications of templates and amortization of positions, without reference to the claimant, there is no file itself as such, according to the claimant, but rather an accumulation of actions over time, related to a request for reclassification in application of an agreement, and a

XXXXXXX's decision to reconvert the position into another of a higher category of civil servant, amortizing the one occupied by the claimant, along with some legal incidents.

As for job stabilization, it would also be the same position, so the allegations of the respondent that they would allow him to expose data of the claimant did not have a place in this case.

Regarding the publicity of the plenary session, it is not the same as the publication of its agreements or access to the documentation of what had been approved in it, or to their antecedents, corresponding to different areas.

From the point of view of data protection, the publication of the minutes of the plenary sessions premises is a data treatment, which should comply with the requirements indicated in the article 5.1.a) of the RGPD and be protected by a legitimate basis for the treatment.

The (LBRL) within its Title V "common provisions to local entities" dedicates the Chapter IV to "citizen information and participation", being able to stand out within the itself, article 70.2 when it provides:

“a) The agreements adopted by the local corporations are published or notified in the form provided for by law.”

The regulation referred to by the LBRL can be found in its development rule, the Real Decree 2568/1986, of 11/28, approving the Organization Regulations, Functioning and Legal Regime of Local Entities (ROF).

"Article 229.2

The calls and agendas of the plenary sessions will be transmitted to the media of social communication of the locality and will be made public on the bulletin board of the entity.

2. Without prejudice to the provisions of article 70.2 of Law 7/1985, of 2/04I, the Corporation will give summarized publicity of the content of the plenary sessions and of all the agreements of the Plenary and of the Government Commission, as well as the resolutions of XXXXXXXX and the

that the Delegates dictate by their delegation.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/17

Therefore, there is sufficient legal authorization in the local regulations for the publication of the minutes of the sessions. However, another of the basic principles of the fundamental right is the data quality referred to in article 5.2.b) and c) of the RGD, by precepting:

"1. The personal data will be:

b) collected for specific, explicit and legitimate purposes, and will not be processed further in a manner incompatible with said purposes; according to article 89, paragraph 1, the treat-

Further processing of personal data for archiving purposes in the public interest, information purposes, scientific and historical research or statistical purposes shall not be considered incompatible with the initial purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which are processed ("data minimization");"

The application of this principle to the processing of information would make it possible to reconcile our case the right to data protection with the right to participate in life

local. However, in this case, the plenary session did not approve any specific agreement in the that the claimant was mentioned by name, nor is it related to the power
ity of posting two requests from the claimant on a bulletin board, which is not the official
tial of the city council.

It should be noted that the change of template in plenary, for the purposes of approving the budgets, did not need to mention the occupant of the position, much less the history of their submitted applications, hence stating that access to the data of the

claimant, without specifying what data, exists because the matter was debated in plenary is not true, because what is being examined is data and information associated with that data embodied in the requests that he once presented to the town hall for a question personal in relation to his employer, the City Council. In any case, this does not authorize the access to documents in the form of an exhibition on the bulletin board.

The intended informative purpose cannot be at the expense of literally exposing the professional pretensions of the claimant reflected in two registered writings in his day in the City Hall, one almost four years before, another the previous year, and used to private title by the claimant in what he considered an attack against him. the claimant, with a XXXXX XXXXXX from XXXX, which does not request the creation of a position of official, but what she understands applicable to her case, a reclassification, derived with the management carried out, of the declaration of amortization of his post and the creation of a senior civil servant position.

The facts constitute an infraction, attributable to the defendant, B.B.B., for Violation of article 5.1.f) of the RGD that indicates:

The personal data will be:

“processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational structures (“integrity and confidentiality”).”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

15/17

In relation to article 5 of the LOPDGDD:

"1. Those responsible and in charge of data processing as well as all persons

that intervene in any phase of this will be subject to the duty of confidentiality to the

referred to in article 5.1.f) of Regulation (EU) 2016/679

2. The general obligation indicated in the previous section will be complementary to the

duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when

the relationship of the obligor with the person responsible or in charge of the treatment had ended.

When a citizen presents writings before an administration, in the exercise of their

rights, about their professional situation, there is a legal link so that the process and

resolution of the matter is channeled by what is predetermined in the management regulations

applicable. The LPCAP, a basic rule in all administrative procedures, contemplates

for people who are related to the Public Administrations as one of their

rights: (art 13.h): "To the protection of personal data, and in particular to the

security and confidentiality of the data contained in the files, systems and

Public Administration applications. Article 16.3 of the ROF establishes that "The

Members of corporations have the duty to keep confidentiality in relation to the

information that is provided to them to make possible the development of their function. So,

The use or misuse that could have been made of said information and documentation is

liability of the claimant.

By file we must understand the physical support in which the information is stored and processed,

in this case, the entry register of the City Council in which the data of the

documents that the claimant presented at the time and that were displayed on the bulletin board

object of the complaint, copies were presumably made, taking notes by hand

explanatory.

On these documents, the defendant makes a use exposing them on the board, according to

indicates, to respond to statements made by an XXXXX, but such a circumstance

does not endorse the provision of data and documents for expository purposes of the aforementioned documents.

The claimant's data was in open access to the general public on the board of announcements, approximately one month, February 2020, after the news appeared on XXXXX.

Not only can the 300 residents of the town access this public space, it is understood that can be accessed by anyone, not just from the locality. On the other hand, contrary to exposed by the claimed, it is not about knowing the name, that being a small locality can be known, it is about some writings that contain the story of its development employment in the City Council.

According to the defendant, he intended to inform the population of the XXXXX demonstrations, if well, it does not prove that the exposure of data and consequent disclosure of documents of past years of the claimant are necessary, nor proportionate to that purpose. Must remember that it was a matter of internal administrative management, entrusted to a local entity, which for the defense in a declaration of a union, the claimant goes

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

16/17

to the exposition of the data and documents of the claimant whose custody corresponds to the City Council, informing third parties, in a broad sense, not only the residents of the locality, in general anyone who passes through the place where they were placed, not only your basic data but your DNI, address, professional career and administrative request, without any relation to the transparency of the action. As a result, it is possible to know the data violating the confidentiality that with respect to management had submitted by the claimant, proving the infringement

Article 83.5 of the RGPD indicates:

"5. Violations of the following provisions 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, of an amount equivalent to a maximum of 4% of the total turnover annual global of the previous financial year, opting for the highest amount:

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

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

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have infringed the provisions of this Regulation"

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 case particular;

It can be seen that on the same day that the claim was filed with this AEPD, he had completed the claimant request for deletion of data and had received a response, not having news that they remained beyond the last date that the claimant accredited. The data is-

They had scarcely a month, deciding on the corrective power of the warning to the natural person against whom the claim is made, and it is proven that without any agreement and by its own decision before the announcement of the XXXXXXXXXX decided to expose the data, and recognized the facts guys.

v

Determines article 72 of the LOPDGDD on its typification

"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.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

17/17

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS B.B.B., with NIF ***NIF.1, a warning for an infraction of the article 5.1.f) of the RGPD, typified in article 83.5 a) of the RGPD, and 72.1 a) of the LOPDGDD.

SECOND: NOTIFY this resolution to B.B.B..

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.

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 one month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, as

provided for 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, it may be precautionary suspension of the firm decision in administrative proceedings if the interested party expresses its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

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

remaining records provided for in art. 16.4 of the aforementioned Law ***PROCEDURE.2/2015, of

1/10. You must also transfer to the Agency the documentation that proves the filing

effectiveness 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 suspension

precautionary

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-190122

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es