

□ File No.: PS/00406/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated May 26, 2021

filed a claim with the Spanish Data Protection Agency. The

claim is directed against SOTOSERRANO CITY COUNCIL with NIF

P3731500I (hereinafter, the TOWN HALL). The reasons on which the

claim are as follows:

The municipality of Sotoserrano has disclosed your personal data, without your  
consent, by allowing a councilor of the same to re-send a message via whatsapp  
written document that the claimant party had filed with said city council, requesting  
the removal of earth that had been deposited around his father's grave.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD), said claim was transferred to the CITY COUNCIL, to  
to proceed with its analysis and inform this Agency within a month of the  
actions carried out to adapt to the requirements set forth in the regulations of  
Data Protection.

On 07/28/2021, a written response was presented to this Agency indicating  
that, the claimant, is a first cousin of both B.B.B. (person who commissioned the  
grave, as a result of which earth was deposited in the grave of the father of the  
claimant), as well as C.C.C. (person who carried out the burial), and that to avoid a  
family conflict, the councilor of the City Council D.D.D. contacted C.C.C.

to inform him that a complaint had been lodged against him for his actions in the municipal cemetery (action that is also illegal).

The CITY COUNCIL adds that:

“considers that there has been no infringement of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

for the following reasons:

1.- No personal data of the claimant has been disclosed at any time.

2.- The transfer of the claimant's complaint document against the company that

carried out the burial of the owner of said company does not constitute an infraction

any of any provision of the Data Protection Law, since the purposes in which

that the transfer between interested parties took place are legitimately protected by the

municipal function. 3.- The transfer of documents by the City Council has been

produced solely and exclusively between parties with the condition of interested parties.”

THIRD: On August 2, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

claimant.

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FOURTH: On October 4, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the CITY COUNCIL,

for the alleged infringement of Article 5.1.f) of the RGPD and Article 32 of the RGPD,

typified in Article 83.5 and 83.4, respectively, of the RGPD.

FIFTH: On 10/27/2021, the CITY COUNCIL submitted a brief of allegations

to the initial agreement, in which, in summary, it stated that:

-There has been no violation of personal data since the information has been only known by parties interested in the procedure.

-The transfer of the complaint document of the complaining party, against the company that carried out the burial, to the owner of said company, does not constitute any infraction of any precept of the Data Protection Law, since the purposes for which it is produced the transfer between interested parties are legitimately protected by the function municipal.

-The transfer of documents by the CITY COUNCIL has occurred only and exclusively to the accused party. The absence of responsibility and the absence of guilt of the TOWN HALL in the facts is evident.

-Compliance with current legislation obliges the CITY COUNCIL to transfer the the allegations made by the complainant to the accused, without being able to be held responsible the City Council of the illicit treatment or not that the accused makes of the complaint case filed against him. The CITY COUNCIL is obliged by law to notify the defendant part of the complaint made against him. This was done, according to media electronic, without the CITY COUNCIL ever being responsible for what the denounced with the complaint from which it is transferred.

-In no case has the CITY COUNCIL made it possible to know the data personal information to unauthorized persons, since it has only been transferred to the denounced of the complaint made against him, without being able to be responsible CITY COUNCIL of what the defendant does upon receiving the complaint that is formulated against him.

SIXTH: On January 12, 2022, a resolution proposal was formulated, proposing that, due to the infringement of articles 5.1.f) of the RGPD, typified in the article 83.5 of the RGPD and 32 of the RGPD, typified in Article 83.4 of the RGPD, is

sanction the CITY COUNCIL OF SOTOSERRANO with a WARNING to

each of them.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: It is accredited that the CITY COUNCIL has disseminated personal data

of the complaining party without legitimation, given that a councilor has sent by whatsapp

a document presented by the complaining party before said CITY COUNCIL, without its

consent.

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SECOND: It is accredited, as stated by the CITY COUNCIL, that the dissemination

of the personal data that appear in the writing was due to an attempt to avoid a

family conflict between the claimant and his cousins.

#### 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

control authority and as established in articles 47 and 48.1 of the Law

Organic 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 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 in 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.”

The CITY COUNCIL is charged with the commission of an infraction for violation of the Article 5.1.f) of the RGD and Article 32 of the RGD.

II

Article 5.1.f) RGD states that:

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized processing or against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")."

The aforementioned infringement of article 5.1.f) of the RGD could lead to the commission of the offenses typified in article 83.5 of the RGD that under the heading "Conditions rules for the imposition of administrative fines" provides:

"Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as a maximum of the overall annual total turnover of the financial year above, opting for the highest amount:

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

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that:

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"The acts and behaviors referred to in the regulations constitute infractions.

paragraphs 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as the  
that are contrary to this organic law.

For the purposes of the statute of limitations, article 72 "Infringements considered  
very serious" of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are 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. (...)"

Throughout the investigation of this proceeding, it has been shown that  
there has been a breach of confidentiality, given that the CITY COUNCIL  
has disclosed personal data of the complaining party, such as his ID and his  
address, when transferring your complaint to the responsible person, C.C.C., data that is not  
are essential for the processing of said complaint, since the complaint may  
processed without the respondent knowing the details of the complainant.

It is also considered that the transfer of the claim has not been made through the  
adequate, since whatsapp is not the means of processing a file  
administrative, as established in article 70 of the LPACAP. Also, it is not about  
a complaint filed by the complaining party, but rather a complaint.

Therefore, the infringement of article 5.1.f) of the RGPD is accredited.

Article 83 section 7 of the RGPD, provides the following:

III

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

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 Administration of the State, the Administrations of the autonomous communities and the entities that make up the Local Administration.

(...)

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this law

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organic, the data protection authority that is competent will dictate resolution sanctioning them with a warning. The resolution will establish also the measures that should be adopted to stop the behavior or correct it. the effects of the infraction that had been committed.

(...)

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. (...)"

Article 32 "Security of treatment" of the RGPD establishes:

IV

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which in your case includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore availability and access to data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and evaluation of the effectiveness technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a



certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the person in charge or the person in charge and has access to personal data can only process said data following instructions of the person in charge, unless it is obliged to do so by virtue of the Right of the Union or the Member States.

The violation of article 32 of the RGPD could lead to the commission of the infractions typified in article 83.4 of the RGPD that under the heading "General conditions for the imposition of administrative fines" provides:

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"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

"The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

For the purposes of the limitation period, article 73 “Infringements considered serious” of the LOPDGDD indicates:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

f) The lack of adoption of those technical and organizational measures that are appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of the Regulation (EU) 2016/679.

(...)

It has been shown that the CITY COUNCIL allowed the sending, through whatsapp, of a document submitted by the claimant, containing data personal information not necessary for its purpose, and without prior anonymization, therefore that it is proven that it lacked adequate organizational and technical measures to have avoided it, and therefore, an infringement of article 32 of the RGPD has been incurred.

Article 83 section 7 of the RGPD, provides the following:

v

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

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:

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

(...)

2. When those responsible or in charge listed in section 1 committed  
any of the infractions referred to in articles 72 to 74 of this law  
organic, the data protection authority that is competent will dictate  
resolution sanctioning them with a warning. The resolution will establish  
also the measures that should be adopted to stop the behavior or correct it.  
the effects of the infraction that had been committed.

(...)

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 and having assessed the criteria for  
graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE SOTOSERRANO CITY COUNCIL, with NIF P3731500I,

for an infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD,

a warning sanction.

IMPOSE SOTOSERRANO CITY COUNCIL, with NIF P3731500I, for a  
infringement of Article 32 of the RGPD, typified in Article 83.4 of the RGPD, a  
warning sanction.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF  
SOTOSERRANO.

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 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 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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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.

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