

□ File No.: PS/00624/2021

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 November 30,
2020 filed a claim with the Spanish Data Protection Agency.

The claim is directed against NESTARES, A MINOR LOCAL ENTITY with NIF
P3900262A (hereinafter the claimed party).

The grounds on which the claim is based are as follows.

The claimant states that he exercised the right to limit the treatment of his
personal data having been sent a letter with your personal data to another
person, without receiving the legally established response. Likewise,
states that the entity claimed has not appointed a Data Protection Delegate
Data.

Relevant documentation provided by the complaining party:

Email exercising the right to limit your personal data with
dated March 6, 2019 addressed to the Nestares Neighborhood Board.

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), on January 29, 2021, said claim was transferred to
the party claimed, so that it proceeded to its analysis and inform this Agency in the
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period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

No response to this letter has been received.

THIRD: On March 11, 2021, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party claimant.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 58.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following ends:

Requested to the claimant to present in this Agency the document that states has been delivered to a third party and identifying data of the person who received said document, dated September 1, 2021 is received at this Agency, written sent by the claimant attaching a letter dated June 12, 2018 in the that there is a disagreement between the claimant and the person claimed for a local matter and in which your personal data actually appears.

Requested information from the respondent about the causes that motivated the delivery of the communication referred to a third person, dated December 21, 2021 is received in this Agency, written of allegations sent by the Delegate of Data Protection (hereinafter, DPD) stating the fact of sending the letter mentioned in the claim to a third party, due to a specific error of the person

that he was enveloping the communications to the neighbors.

They add that they have taken measures to prevent events such as the one claimed from being can return to produce giving instructions so that communications are not doubled and inserted into the envelope until verifying that the communication and the envelope are They refer to the same person.

In relation to the request for limitation of treatment, this DPD informs that it does not can ensure the reason why the right of limitation was not met since the facts are prior to the election of the current President of the Neighborhood Board and also to the appointment of CONSULTANCY X3 S.L. as Protection Delegate

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of City Council Data of *** TOWN HALL.1 and, until it has received this communication, they had no knowledge of what happened.

It has been confirmed that the City Council of ***AYUNTAMIENTO.1 did not have any knowledge of the facts.

On the other hand, it is not observed that any of the requirements established in article 18.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 regarding the protection of natural persons in relation to regarding the processing of personal data and the free circulation of these data, on the conditions to obtain from the person in charge of the treatment the limitation of the data processing.

FIFTH: On February 1, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure 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 the Public Administrations (in
hereinafter, LPACAP), for the alleged infringement of Article 5.1.f) of the RGPD, typified
in Article 83.5 of the RGPD.

SIXTH: On March 31, 2022, a resolution proposal is addressed to the
Director of the Spanish Agency for Data Protection, so that the
FILE of this sanctioning procedure against NESTARES, LOCAL ENTITY
MINOR, with NIF P3900262A, due to the facts that are the object of this
sanctioning procedure prescribed, in accordance with current legislation.

PROVEN FACTS

FIRST: The respondent has sent a letter on June 13, 2018 with the
personal data of the claimant to a third party without their consent and without cause
legitimacy for said communication.

SECOND On February 9, 2022, the agreement to initiate this
sanctioning procedure, giving the claimed party a period of ten days to
submit claims to it.

THIRD: The receipt of the letter object of this appeal is dated June 13,
2018, and the agreement to initiate this sanctioning procedure was notified on 9
February 2022.

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Therefore, more than three years have elapsed since the receipt of the letter and the
notification of the agreement to initiate this procedure.

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In accordance with article 5.1.f) of the RGPD and as established in articles 47, 48.1, 64.2 and 68.1 of 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 Agency Spanish Data Protection.

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."

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that "personal data will be:

"a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

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

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the

interested party ("limitation of the retention period");

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the provisions of

section 1 and able to demonstrate it ("proactive responsibility")."

III

In the present case, the claimant states that he exercised the right of limitation of

processing of your personal data after a letter was sent with your data

to another person by the claimed entity.

The data protection delegate of the claimed entity responds that the facts

denounced must have been the consequence of a punctual error.

It is also indicated that measures have been taken to prevent events such as the claimed cannot be produced again by giving instructions so that the communications are not folded and inserted into the envelope until verifying that the communication and the envelope refer to the same person.

In relation to the request for limitation of treatment, the protection delegate of data of the claimed entity states that it cannot ensure the reason why the right of limitation was not heeded since the facts are prior to the election of the current President of the Neighborhood Board and also to the appointment of CONSULTANCY X3 S.L. as Data Protection Delegate.

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IV

Article 72.1 a) of the LOPDGDD states that “according to what is established in the article 83.5 of 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”.

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Thus, it must be taken into account that, in this case, the initial agreement dates from February 1, 2022, this being notified on February 9, 2022.

Therefore, since the object of the claim is the receipt of a letter dated June 13

of 2018, such facts are prescribed according to article 72.1 a) of the

LOPDGDD, indicated in the foundation of law IV.

Therefore, after learning of these facts, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: PROCEED TO FILE these proceedings.

SECOND: NOTIFY this resolution to the claimant and claimed.

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations, and in accordance with the provisions of the

art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may

file, optionally, an appeal for reconsideration before the Director of the Agency

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Spanish Data Protection Authority within a month from the day

following the notification of this resolution or directly contentious appeal

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

in accordance with the provisions of article 25 and paragraph 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within two months from the day after

to the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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