

□ Procedure No.: PS/00347/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00347/2019, instructed by the Spanish Agency for Data Protection to the City Council of SANT LLUIS (Balearic Islands), (hereinafter, "the entity claimed"), in view of the complaint filed by D. A.A.A."), (hereinafter, "the claimant"), and based on the following,

FIRST: On 08/10/18, you had a written entry to this Agency, submitted by the claimant, in which he stated, among others, the following:

BACKGROUND

"The Sant Lluís City Council has contracted the services of the company Rodríguez y Viñals S.L. for the elaboration of a List of Jobs, where this must make an inventory of jobs with description of tasks and their assessment, which will end in a collective bargaining. The City Council writes and delivers to each and every one of the workers of the administration, a document that they must fill in, in which, in addition to the characteristics of their job, must enter their personal data: Name, surnames, job, area or unit to which it belongs, etc. This document has been delivered to the aforementioned company, without the consent of the interested party regarding their data personal.

Access to said data has been requested to know the people who have had access to them and this refers us to the contracted company. The company states that with the application of the new RGDP the obligation to register files in the Spanish Data Protection Agency.

It is considered that, in the document provided by the Sant Lluís City Council, there is no

the information related to the consent of the interested party where it is stated that the Data of Personal Character may be offered to a third party (in this case the company hired Rodríguez y Viñals S.L.). Nor has the necessary information been provided to exercise the rights of access, rectification, cancellation and opposition. Besides, the company Rodríguez y Viñals S.L., has obtained from the City Council of Sant Lluís, data of a personal nature concerning identified natural persons, registered in a physical support and therefore, susceptible to treatment, so that said data should be registered in the General Registry of Data Protection". is attached to the complaint, the following documentation:

- a). Job questionnaire. Data collection of the positions, of the functions and tasks, working hours, equipment and materials used, ownership of the official who performs the position and level of studies.
- b). Claimant's request for the questionnaires to the consultant.
- c). Consultant response.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

2/8

investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes, dated 10/04/18, an information request is addressed to the claimed City Council.

THIRD: On 10/30/18, the Sant Lluís City Council sends this Agency,

among others, the following information:

1. That the claimant was sent a written statement of allegations to the claim transferred by this Agency with proof of delivery.

2. The claimant's request and response were verbal, there is no document written that has arrived through official channels, however, there is evidence of the delivery of the report responding to the allegations presented by the claimant by way of personnel and a copy of the complete document evaluating the work made by the company for the review, assessment and preparation of the RPT.

3. That, regarding the claimed C.C.C., identified in the complaint made by the claimant, shows that at no time acted as a natural person, since he belongs to the staff of THE CITY COUNCIL as temporary staff (occupation official), and therefore acted as a municipal worker and in representation and interlocutor of the Government Team, for which it is considered that in At no time should your personal data appear in the claim.

4. That THE CONSULTANT, through a letter addressed to THE CITY COUNCIL, makes the following clarifications:

a. From the beginning of the work, all the actors involved were transferred two, and also in the meeting held with the staff representatives, the voluntary nature of participation in all phases.

b. In the explanatory legend of the information collection questionnaire in connection with the "Name of the owner" field (eighth point of the claim letter) mation), it is obviously an instruction to fill in the said field in case you voluntarily decide to fill it in, that is, it simply indicates what information must be reflected in the aforementioned section. do.

c. That in the document "General Informative Note" that was sent to all

officials, “not only does it reiterate the voluntary nature of the participation training of the employees (...), but the purpose of the said collection of information.

d. That the only personal data has been the name of the employee, in those cases in which it has been seen fit to complete it, “and that its treatment has been solely for the purposes of the contracted work of preparation of the RPT, and more specifically with the sole purpose of facilitating the development of those phases in which the knowledge of said names could suppose an additional facility or greater agility (...), since the final documentation delivered from the RPT and assessment of Job Positions Labor does not collect information from current job holders.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/8

5. That they have adopted the measure of including in the next questionnaires a written of informative clauses adjusted to comply with the RGPD and attaches the following documentation:

- Letter of allegations from the data protection delegate of THE TOWN HALL-

I LIE to the claim transferred by this Agency addressed to the claimant

with proof of delivery, in which it states, among others, the following as-

aspects: - That the claimed C.C.C. he is a worker of THE CITY COUNCIL

who at all times acted as an interlocutor and on behalf of the team

government so it is not appropriate to identify him as a natural person. - that in the

time of data collection (delivery of the forms in 2017) the consent

ment was contemplated by Organic Law 15/1999 (hereinafter, LOPD)

on Data Protection, as tacit. o That THE CONSULTANT commits

According to current law, once his employment relationship with THE

CITY COUNCIL, would destroy and eliminate both the data and the information

that they could collect. - That at the time of delivery of the forms

mularios indicated verbally that it was to gather information on the place

of work and send the aforementioned forms to the company contracted to

conduct a job review and develop an RPT, therefore

that it is considered that at the time of submitting the form it was implicit

the authorization that your data could be provided to the company in charge

to perform the aforementioned RPT. - That with the entry into force of the obligor

compliance with the RGPD on May 25, 2018, registration of the user is not necessary.

data file in the Spanish Agency for Data Protection.

- Informative clause that will incorporate the next questionnaires adapted to the

RGPD that must be signed when completing the questionnaires.

- General informative note sent by THE CONSULTANT to the workers at

beginning of the work of the technical assistance for the evaluation of the positions

cough of work and elaboration of the RPT.

-

Proof of delivery of the complete work evaluation document to Mr. A.A.A. What

(...), received by another member of the Committee of Officials.

- Written, from THE CONSULTANT, detailing the process of allegations

to follow the job evaluation document and proof of

delivery.

-

Proof of delivery sent by the CONSULTANT to the claimant in res-

attached to your pleadings brief.

FOURTH: On 10/02/19, the Director of the Spanish Agency for the Protection of Data agreed to initiate Procedure for Declaration of Infraction of Administrations Public to the City Council of Sant Lluís, for the alleged infringement of article 13 of the RGPD, typified as "very serious", for prescription purposes, in article 72.1.h) of LOPDGDD, being, for the purposes provided in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond to a WARNING.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/8

FIFTH: Once the initiation agreement has been notified, the entity claimed, by means of a written dated 11/05/19, made, in summary, the following allegations:

“The second section of article 6 of Law 15/1999, of December 13, of Protection of Personal Data, applicable at the moment in which the denounced fact, established that “Consent will not be necessary when the personal data is collected for the exercise of the functions of the Public administrations within the scope of their powers; when they refer to the parties to a contract or pre-contract of a business, labor or administrative relationship and are necessary for its maintenance or fulfillment...”

In the case that concerns us, we are, on the one hand, before an employment relationship, and on the other before the exercise of functions of the Administration in the scope of its competencies. Thus, RDL 5/2015, of October 30, approving the text

Consolidation of the Law of the Basic Statute of the Public Employee - TREBEP - regulates, in

your art 74, the organization of jobs as follows: "The Administrations

Public companies will structure their organization through job relationships or

other similar organizational instruments that will include, at least, the

job titles, professional classification groups, bodies or

scales, if any, to which they are assigned, the provision systems and the

complementary payments.

These instruments will be public. For its part, art. 15 of Law 30/1984, of 2

of August, of measures for the Reform of the Public Function, which continues to be

application in this area by virtue of the provisions of Final Provision 4 of the EBEP:

"1. (P) the technical instrument through which the management of the

personnel, according to the needs of the services and the

requirements for the performance of each position (P).

3. Job listings will be public". In view of the

previous considerations, it is proven that it is not necessary to

consent of the interested party for the processing of their personal data.

Second.- On the other hand, article 11 of the same regulatory body establishes that:

"The personal data object of the treatment can only be communicated to

a third party for the fulfillment of the purposes directly related to the

legitimate functions of the assignor and the assignee with the prior consent of the

interested." However, in its second section, art. 11 states that the

Consent will not be required in certain cases. But it is more, the art. 12

points out that "1. The access of a third party to the

data when said access is necessary for the provision of a service to the

data controller".

The case that does not occupy, we understand, can be framed in the case of a regulated fact

in the last precept transcribed insofar as it effectively refers to the

conducting a study for the purposes of a possible reorganization of the staff of the

City hall; a study that is carried out by a third party contracted to such

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/8

effects by the City Council and whose elaboration requires access, by the

contractor to personal data of current municipal employees.

Indeed, the City Council signed a minor contract with the company

“Rodríguez y Viñals” and although it does not contain in writing the regulation of the

processing of personal data, if the assumption provided for in section

second of art. 12: “...it must be regulated in a contract that must be stated by

written or in some other form that allows to prove its celebration and content...”.

Well, as the City Council pointed out at the time and the company itself

contracted, before the start of the works, both the representatives of the

workers (let's not forget that A.A.A. is one of the representatives) as well as

all the workers voluntarily participated and a meeting was held

explanation with said representatives; moreover, the document “Informative note

general”, which was provided in a previous document before this Agency and which was distributed in

his moment to all employees at the beginning of the works clearly indicated the

voluntary nature of their participation and, therefore, the consent

granted by all those who came to take the questionnaire.

On the other hand, both the City Council and the company verbally informed the

representation of the workers that the treatment of the data (name and

surnames) would be only for the purposes of the contracted work of clothing

of the RPT, and that once the work is finished, it would destroy and eliminate the data facilitated.

Third.- Let us not forget on the other hand that the only personal data contained in the questionnaires are the name and surnames, since the rest of the information requested in the questionnaire (job title, area or unit belonging, tasks performed, etc.) is information related to the jobs of the organization and outside its holders, since it will be the same whoever is the holder in every moment and cannot be considered as personal information.

In view of all of the above and considering:

- That under art. 6 of Law 15/99, of December 13, the consent for the exercise of the functions of the City Council in the scope of its powers.
- That under art. 12.1 access is not considered data communication of a third party to the data when such access is necessary for the provision of a service to the data controller.
- That the performance of the treatment on behalf of a third party (B.B.B.) was not carried out in writing but verbally (art. 12.2 "...in some other way than allows to prove its celebration").

IT IS REQUESTED to proceed with the filing of the infringement declaration procedure of Public Administrations

SIXTH: On 11/25/19, the testing period began, agreeing:

- a).- consider reproduced for evidentiary purposes the complaint filed by the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

complainant and his documentation, the documents obtained and generated that form part of file E/1820/2019 and b).- consider reproduced for evidentiary purposes, the allegations to the initiation agreement of PS/00347/2019, presented by the entity reported.

SEVENTH: On 02/24/19, the respondent is notified of the proposed resolution in which is proposed that, by the Director of the Spanish Agency for Data Protection, cough is sanctioned with "warning" 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 (LPACAP), for the alleged infringement of article 13 of the RGPD, typified as serious, for prescription purposes, in article 72.1.h) of the LO-PDGD, granting him a term of ten business days to allege what he considers in its defense and present the documents and information that it considers pertinent, according to article 89.2 in relation to art. 82.2 of the LPACAP.

SEVENTH: Once the resolution proposal has been notified, the entity complained against does not present allegations to the proposal in the period granted for this purpose.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

1.- The information provided to officials on the collection of data for the elaboration of the RPT came from a "General Informative Note", sent by the consultant and verbally, in a meeting with the staff representatives of the that there is no record.

2.- In the "General Informative Note", which the consultant sent to the officials, it was indicates that the participation of the employees in the phases was voluntary, although, in In case of not participating, the information would be provided by the technical managers

and/or politicians.

3.- In the contract signed by the City Council with the consultant, in the section "II Applicable Regulations", only reference is made to the Public Sector Contract Law, as well as Royal Decree 1098/2001, of October 12, which approves the General Regulations of the Public Administration Contract Law. I know notes that no reference is made to the current regulations on the Protection of Data nor the obligation of its fulfillment by the consultant in a contract where there is personal data processing.

4.- Regarding the information in the forms on the exercise of rights of those interested in data protection, it is verified that in the forms does not appear any information in this regard.

FOUNDATIONS OF LAW

Yo

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/8

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

II

In the present case, it has been verified that the information provided to the officials comments on the collection of data for the elaboration of the RPT came from a "Note General Informative", sent by the consultant and in a meeting with the representatives personnel of which there is no record. Although the City Council has been asked if

issued any official informative communication in this sense, it has not been received in this Agency no document about it.

In the "General Informative Note", which the consultant sent to the officials, it was indicates that the participation of the employees in the phases was voluntary, although, in case of not participating, the necessary information in this regard for the execution of the works would be provided by the technical and/or political managers".

In the contract signed by the City Council with the consultant, in the section "II Norma-Applicable Policy", only reference is made to the Law on Public Sector Contracts, as well such as Royal Decree 1098/2001, of October 12, which approves the Regulations General Regulation of the Public Administration Contract Law. It is noted that no reference is made to the current regulations on Data Protection or the obligation of compliance by the consultant in a contract where there is you treatment of personal data. Regarding the lack of information on the forms on the exercise of rights of the interested parties, it is verified that in The forms do not contain any information in this regard.

III

The known facts constitute an infraction, attributable to the City Council de Sant Lluís, for violation of article 13 of the RGPD, regarding the lack of Information information that was provided to City Hall workers and officials when Your personal data was obtained for the preparation of the list of positions of work (RPT).

For its part, article 72.1.h) of the LOPDGDD considers a very serious infraction sees, for prescription purposes: "The omission of the duty to inform the affected party about the processing of your personal data, in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Law".

This infraction can be sanctioned with a maximum fine of €20,000,000 or, alternatively,

being from a company, of an amount equivalent to a maximum of 4% of the volume

overall annual total turnover of the previous financial year, opting for the

greater amount, in accordance with article 83.5.b) of the RGPD.

However, art. 83.7 of the RGPD, indicates that: "Without prejudice to the corrective powers

control authorities... each Member State may establish rules

on whether it is possible, and to what extent, to impose administrative fines on authorities and

public bodies established in said Member State", thus establishing, in

the art. 77 of the LOPDGDD the regime applicable to the "entities that make up the Admi-

Local administration (section 1.c.), indicating in this regard that: "When those responsible

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

8/8

or managers listed in section 1 commit any of the offenses to

referred to in articles 72 to 74 of this organic law, the production authorities

data protection that is competent will issue a resolution sanctioning them

with warning. The resolution will also establish the appropriate measures

adopt to stop the behavior or correct the effects of the infraction that occurred.

well committed".

In view of the aforementioned precepts and others of general application, the Director of the Agency

Spanish Data Protection

RESOLVES:

NOTICE: the City Council of SANT LLUIS (Balearic Islands) for infringement of article

that of article 13 of the RGPD, classified as serious, for the purposes of prescription, in art.

72.1.h) of the LOPDGDD.

SECOND: NOTIFY this resolution to the City Council of SANT LLUIS (Islands Balearics).

Against this resolution, which puts an end to the administrative process and in accordance with the established in article 123 of the LPACAP, the interested parties may file, appeal for reconsideration before the Director of the Spanish Agency for Protection of Data within a period of one month from the day following the notification of this resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National Court, in accordance with the provisions of the Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of July 13, regulatory of the Contentious-administrative Jurisdiction, in the term of two months from the day following the notification of this act, as prescribed seen in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es