

Procedure No.: PS/00002/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before NOBELIS, SOCIEDAD COOPERATIVA MADRILEÑA, by virtue of a claim presented by VALDEMORO CITY COUNCIL - LOCAL POLICE (hereinafter, the claimant) on its own initiative and based on the following:

BACKGROUND

FIRST: The VALDEMORO CITY COUNCIL - LOCAL POLICE (hereinafter, the claimant) dated July 11, 2018 filed a claim with the Agency Spanish Data Protection Agency submitting a report on the intervention carried out. The claim refers to the fact that on June 26, 2018 they received a call at the police station, by a local resident, informing that the afternoon of the previous day, he had seen some cleaning service workers of the Nobelis school, as they threw in the organic waste container located in Emilia Earhart Street, documents from said center and that many of those were exams that names, surnames, courses and grades could be observed and that also the same, had not been destroyed as was required by the normative.

It is manifested in the report, that the agents appeared in the place verified the veracity of the information received. Attaching a copy of the documentation found.

The claim is directed against NOBELIS, SOCIEDAD COOPERATIVA MADRILEÑA with NIF F85086627 (hereinafter, the claimed).

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, as well as the facts and documents that

had knowledge of this Agency, the Subdirector General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, in accordance with the provisions of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD, requiring the claimed the following information.

Copy of the communications and the decision adopted

1.

sent to the claimant in connection with the transfer of this claim.

two.

originated the claim.

Report on the causes that have motivated the incidence that has

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Report on the measures adopted to prevent the occurrence of

3.

similar incidents.

Four.

Any other that you consider relevant.

The file shows that the respondent was notified on August 30,

September 10 and December 10, 2018.

On December 17, 2018, it answers the request received by the claimed on December 13, 2018, requesting information about the file.

THIRD: On January 30, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the infringement of article 5.1. f) of the RGPD, in relation to article 5 of the LOPDGDD; typified in art. 83.5 section a) of the RGPD and qualified as very serious in art. 72.1.i) of the LOPDGDD.

FOURTH: On February 6, 2019, NOBELIS, SOCIEDAD COOPERATIVA MADRILEÑA, makes allegations to the initial agreement stating that it has taken the following corrective measures:

- Resignation of the Director of the Center.
- Revocation of all the positions of the Governing Council of the Center.
- Completion of the course for adaptation to the new RGPD regulations by part of all the staff of the center.
- Hiring a document removal and destruction company.

Various documentation is attached:

Training provision contract by RAPINFORMES ONLINE, S.L. on advice and training on the protection of personal data.

Agreement on Confidential Document Removal and Destruction

Recoveries Aguado e Hijos S.L.

Certificate of resignation from managerial positions.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

PROVEN FACTS

FIRST: On June 26, 2018, the local police received a call, in which they stated that some workers from the cleaning service of the Nobelis school, threw in the organic waste container located on Emilia Earhart Street, documents of said center and that many of those were exams that could be

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observe names, surnames, courses and notes and that equally the same, had not been destroyed as required by law.

SECOND:

sanctioning party the measures that it has adopted, among them it consists:

The Nobelis College has contributed in this proceeding
Training provision contract by RAPINFORMES ONLINE, S.L. on
advice and training on the protection of personal data.
Agreement on Confidential Document Removal and Destruction
Recoveries Aguado e Hijos S.L.
Certificate of resignation from managerial positions.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

Article 5, section 1, letter f) RGPD "Principles related to treatment"

provides that the personal data will be:

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and

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

appropriate technical or organizational (<<integrity and confidentiality>>).

Article 32 of the RGPD "Security of treatment" provides that:

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 the availability and access to personal data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and evaluation of the effectiveness of the 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

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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 controller or the manager and has access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States.

Article 5 of the LOPDGDD "Duty of confidentiality" provides that:

1. Those responsible and in charge of data processing as well as all the people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.
2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.
3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment.

III

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following powers
corrections listed below:

- b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;
- d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period.
- i) impose an administrative fine under article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

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In the present case, it is taken into account that the appearance on public roads of documentation with personal data may imply an omission of the duty to adopt or observe the technical and organizational measures that guarantee the security of said data, avoiding its theft, loss or improper access; done which gave rise to the initiation of this sanctioning proceeding.

In this specific case, it has been accredited by virtue of the documents provided with his allegations to the initial agreement that the respondent has adopted a series of adequate measures to guarantee the security and confidentiality of the data.

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: PROCEED TO NOTICE NOBELIS, SOCIEDAD COOPERATIVA

MADRILEÑA, with NIF F85086627, for the infringement of article 5.1. f) of the RGPD, in relation to article 5 of the LOPDGDD; typified in art. 83.5 section a) of RGPD, ordering that it proceed by virtue of the provisions of article 58.2 letter b) GDPR.

SECOND: NOTIFY

NOBELIS, COMPANY

COOPERATIVA MADRILEÑA and, in accordance with art. 77.2 of the RGPD, INFORM the claimant on the outcome of the claim.

this resolution to

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. 114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the LPACAP,

Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of 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 in article 25 and in section 5 of the fourth additional provision of the Law

29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, 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.

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-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-

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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