Procedure No.: PS/00374/2018

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and in

based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 08/01/2018

before the Spanish Data Protection Agency against the JUNTA DE ANDALUCIA

(MINISTRY OF EDUCATION) (hereinafter, the respondent).

The reasons on which the claim is based are that “After carrying out the tests of

access to the body of teachers of secondary education in the call made in the

Order of 04/05/2018. The publication of the corresponding qualifications obtained by the

candidates, in both parts of the opposition, were carried out physically at the headquarters of

specialties and on the portal of the Ministry digitally.

In the physical publication of the qualifications, the name, surnames and DNI were detailed.

completed for each of the applicants. And in the digital consultation the

same data of each of the applicants.

In addition, both in the opposition phase and in the competition phase, the queries

individualized that could be made already, outside, of the qualifications or file of the

applicant did not require any security or person verification, showing that

information merits and private and personal data about the working life and training of each

one of the applicants.

accompanies;

-On a cork board there is a sheet of the Junta de Andalucía/Ministry

Education, with a list of applicants who have not passed the first test, in the

tests for secondary school teachers, vocational training technicians, EOI...,

of 07/03/2018, p. 2 of 2, including DNI, surnames and names and grades from part A

and part b.

-Another sheet with the publication, as stated, physical, of the second test in the

that the data of the claimant appear in the "list of applicants who have passed the

second test."

-A third sheet of 07/20/2018, with the same data, referring to those who have

passed the opposition phase, on a cork board, stating the claimant.



-Copy of the impression of the digital publication of the qualifications obtained,

extracted from:

***URL.1, of qualifications of the first and second phase, specialty systems

electronic, with the qualification of the test 1 in its practical part and topic, and of the two, and the

Opposition note with the data headquarters nif, name and surnames and number of applicant.

-Copy the menu that allows the individualized query option existing on the website of the

Board, extracted from:

***URL.2, in which the title “individualized query” appears, and expressly in the box

puts "NIF", as a means of entering the data for the query. Introducing the same, and

having exposed in the different phases the complete DNIS of the participants,

You can view the individualized consultation of the merits.

SECOND: The Order of 04/05/2018, by which the call for

selective procedures for admission to the Teaching Teaching Corps

Secondary, Vocational Training Technical Teachers, School Teachers

Language Officers, Plastic Arts and Design Teachers, Arts Workshop Teachers

Plastics and Design and access to the Body of Teachers of Secondary Education and to the Body

of Professors of Plastic Arts and Design appears in BOJA 13-04).

In point 8.1.1 it is indicated:

“By resolution of each court, the qualifications of the first test will be published in the

bulletin board of the headquarters of the same, in that of the Territorial Delegation of Education in

whose area the court is located and, for merely informative purposes, on the web portal of the

Department of Education, and a copy of said qualifications must be sent to the

corresponding selection commission.”

And in 8.1.3.” Final qualification of the opposition phase.”

“The qualification of the opposition phase will be the arithmetic mean of the scores

obtained in the two tests passed, both valued from 0 to 10 points.

By resolution of each court, they will be published on the bulletin board of its headquarters,

in that of the Territorial Delegation of Education in whose area the court is located and,

merely informative purposes, on the web portal of the Ministry of Education, the

qualifications of the different parts of the test, sending a copy to the corresponding

selection commission.”

THIRD: On 11/6/2018, the director of the AEPD admitted for processing the

claim.

FOURTH: On 05/23/2019, the director of the AEPD agreed

“INITIATE PUNISHMENT PROCEDURE of WARNING to

DEPARTMENT OF EDUCATION (JUNTA DE ANDALUCIA), for the alleged

infringement of article 5.1.c) and article 5.1.f) of the RGPD in accordance with the

article 83.5 of the same.”

FIFTH On 06/24/2019 the respondent made allegations, indicating:

1)

On the date the data was published, the LOPDDGD was not in force.

2) It is a process of competitive bidding in which it is necessary to ensure the

publicity of the call and its bases, and transparency of the same, as indicated

the basic principles of access to the public function and are contained in the Constitution

Spanish and in the Basic Statute of the Civil Service.

As an example of the prevalence of these principles of transparency and publicity over that of

data protection, refers to the report of the Legal Office of the AEPD 358/2015 and the

judgment of the National Court (Chamber of Contentious-Administrative, Section 1) of

04/26/2012 dealing with: factual background first: “Dated on 09/15/2008, the

complaint by Pablo on the basis that the Qualifying Court of the Selective Tests

for Social Educators of Group II of Labor Personnel, published in ORDER 22-12-

2006 convened by the Ministry of the Presidency of the Junta de Extremadura has facilitated

to the FSP-UGT the personal data with the notes (from the second exercise) of the opponents

(both approved and suspended). The FSP-UGT uses said data to

inform the opponents by telephone about the grade obtained, providing it to whomever

request, just by giving the name of the person”, reproducing as it is considered of interest

the second legal basis that indicates:

SECOND

“ This room has ruled in appeal 215/2010 in relation to these facts with

occasion of the sanction imposed on the union that allegedly leaked the information

to the result of the opposition and in relation to the one that the Agency considered had been

committed an infringement related to data processing without consent.

The court understood in said ruling that we were facing a situation in which

consent was not required for the processing of personal data on the basis

of the following reasoning:

<<Therefore, one of the exceptions to the requirement of consent for the

data processing is that of the collision with general interests or with other rights of

superior value that make data protection decline due to the preference that should be

be granted to that other interest.

In the present case, since it is a competitive bidding procedure

we must attend to what article 103 of the Constitution states when it states that the

Public Administration objectively serves the general interests and acts in accordance with

the principles of effectiveness, hierarchy, decentralization, deconcentration and coordination, with

full submission to the Law and the Right. (paragraph 1) and when it states in paragraph 3 that

"The Law will regulate the status of public officials, access to the public function of

in accordance with the principles of merit and capacity..." (all in relation to the provisions of

article 23 C.E. which we will refer to later)

Obviously, the guarantees required by the processing of personal data cannot serve

to tarnish or annul these general requirements that force the processes to be

drive in compliance with the minimum requirements of transparency and publicity. The

superiority of these other values advises that in this case it be understood that it was not

The consent of the interested party is required for the treatment of the data of the consistent note

in his communication by the union now recurring.

From this point of view, we must conclude that the consent of the

those persons who participate in a competitive bidding procedure for the

treatment of the qualifications obtained in said procedure and this as a guarantee and

requirement of the other participants to ensure the cleanliness and impartiality of the

procedure in which they attend. (...)

It is true that Organic Law 15/1999 does not expressly include exemptions or

exceptions to the personal data processing regime contained therein with

based on the guarantees of transparency of the competitive processes, for which it will be

It is necessary to weigh the conflicting interests in order to determine which of them should

prevail. Once said weighting has been carried out, and assessing the circumstances that here

concur, it is clear to this Court that the guarantee of

publicity and transparency of the competitive process on the right to protection of

data. (It is not uncommon for this Chamber to carry out this type of weighting or

appraisals; it suffices to refer to the judgment of appeal 331/205; DF 2/2010 or 862/2009).

Therefore, the estimation of the appeal and the annulment of the resolution will be appropriate.

appealed on the basis of the prevalence of the general interest, taking into consideration that,

As is natural, said use will only be protected within the purposes related to it.

competitive bidding procedure in application of the limits indicated in article

4 of the LOPD (...)>>

If the data processing in question (the one carried out by the Syndicate when allowing advertising

of the qualifications of one of the exercises of the selective process) has been considered

In accordance with the requirements of the LOPD, it is evident that the

compliance with security measures in relation to data whose disclosure has been

declared as legitimate because it is not linked to the guarantees of data protection

personal.

The priority of rights that was mentioned in the legal reasoning of the

dictated sentence obliges to understand that the security measures are not applicable and that

would have prevented the disclosure that, already in that sentence, it was affirmed that it was not contrary to

the LOPD.

SIXTH: The content of report 358/2015 is incorporated into the procedure, which is transcribed:

N/REF: 359710/2015

Examined your request for a report, sent to this Legal Office, regarding the consultation

raised by the SUB-DIRECTORATE GENERAL OF RESOURCE PLANNING

HUMAN AND REMUNERATION OF THE MINISTRY OF FINANCE AND ADMINISTRATIONS

PUBLIC, please inform me of the following:

It is consulted if, in accordance with the provisions of Organic Law 15/1999, of 13

December, Protection of Personal Data, you can exercise the right to

opposition recognized in article 17 of said rule to the publication of the name and

surnames of candidates in the development of a selective process for admission to a Corps



of the Public Administration, based on the fact that participation in it can give

result in retaliation by the applicants current employer.

The question raised has been studied in a report by this Agency dated July 21

of 2012, whose conclusions may be applicable to this case, therefore,

the same is transcribed below:

“This consultation raises what is the criterion of this Agency on the request for

a candidate for a selective procedure to have his name excluded from the lists
admitted and excluded, and assessment of the merits of said procedure, published in the
electronic headquarters of the consulting body.

The query refers to personal data within the framework of a
“public employment procedure”. Not specific, therefore, if it involves procedures
that affect civil servants or labor personnel, nor does it determine if it is being questioned about
procedures for access to public employment or internal promotion. In any case, yes
It is indicated that “the information includes lists of admitted, excluded and evaluations of
merits with identification of the candidates”. We understand, therefore, that in the lists of
admitted, excluded and evaluation of merits appear the names and surnames of the
candidates, not knowing if other information appears.

Thus, we consider, first of all, that the lists referred to in the query include
undoubtedly personal data, as they refer to the name and surnames,
It could be that the DNI or the personal registration number, as well as the circumstance of
participate in a selective public employment procedure, being admitted or not, as well as
the results of the different phases of the selection process, including the assessment of
merits of the contest phase, if any. Predictably they will also refer to the
definitive results of the selective procedure. It is, therefore, data that falls
Within the definition of personal data enshrined in art. 3.a) LOPD as
“any information concerning identified or identifiable natural persons”.

It is considered whether it is possible to attend to the right of opposition of the affected party. The right to
opposition results from article 6.4 LOPD that establishes: "In cases in which it is not
The consent of the affected party is necessary for the processing of personal data.
personal, and provided that a law does not provide otherwise, he may oppose his
treatment when there are well-founded and legitimate reasons related to a specific situation
staff. In such a case, the person responsible for the file will exclude the data

relating to the affected party".

Article 6.4 LOPD appears developed by articles 34 to 36 RDLOPD. The art. 3. 4

RDLOPD defines the right of opposition in the following terms:

"The right of opposition is the right of the affected party not to carry out the treatment

of your personal data or ceases in the same in the following cases:

a) When your consent is not necessary for the treatment, as a consequence of

the concurrence of a legitimate and well-founded reason, referring to their specific personal situation,

that justifies it, provided that a law does not provide otherwise.



b) In the case of files whose purpose is to carry out activities of

advertising and commercial prospecting, in the terms provided in article 51 of this

Regulation, whatever the company responsible for its creation.

c) When the purpose of the treatment is to adopt a decision regarding the affected party

and based solely on an automated processing of your personal data, in

the terms provided for in article 36 of this Regulation".

Considering that sections b) and c) of this article are totally unrelated to the alleged

raised, we will delve into the study of the first assumption.

In addition, we want to specify that the right of opposition must be exercised in the

terms of article 35 RDLOPD, by means of a request addressed to the data controller,

stating the well-founded and legitimate reasons related to the specific personal situation,

the request must be resolved within a period of ten days; after said period has elapsed without

expressly responds to the request, the guardianship may be interested before this Agency in the

terms of art. 18 LOPD.

II

In this sense, it is appropriate to study whether all the requirements to meet the exercise of the right to oppose data processing. First of all, we will start by indicating that the publication of lists of admitted and excluded and the evaluation of merits constitutes a true transfer, in accordance with the definition of article 3.i) LOPD as "all disclosure of data made to a person other than the interested party". And the transfer remains included within the concept of data processing in accordance with article 3.c) LOPD and art. 5.1.t) of the Development Regulation of the LOPD approved by Royal Decree 1720/2007 of December 21 (RDLOPD).

For the art. 6.4 LOPD and art. 34.a) RDLOPD are applicable is necessary, first, that there is a legitimate and well-founded reason, referring to the specific personal situation of the affected. It is, therefore, an eminently casuistic element, as it comes maintaining this Agency, as in the report of September 18, 2006, which must be studied in each case of concrete fact, without being able to offer an answer abstract. In the consultation it is mentioned that the interested party could see his future damaged professional through the publications in question. Well, it will be necessary to analyze what is his profession, and if the damage invoked may occur in it. In this sense, This Agency does not have sufficient data to assess the specific situation being prosecuted.

But it is that, secondly, it is required that a law does not provide otherwise. The matter of selective procedures appears presided over by the principles of transparency and publicity. Based on article 103 of the Spanish Constitution, article 55 of the Basic Statute of the Public Employee approved by Law 7/2007 of April 12 indicates in its second section: "2. The Public Administrations, entities and organizations to which referred to in article 2 of this Statute will select their official staff and through procedures in which the constitutional principles are guaranteed

previously expressed, as well as those established below:

a) Publicity of the calls and their bases.

b) Transparency.

c) Impartiality and professionalism of the members of the selection bodies.

d) Independence and technical discretion in the actions of the selection bodies.



e) Adequacy between the content of the selection processes and the functions or tasks to be develop.

f) Agility, without prejudice to objectivity, in the selection processes".

Regarding the provision of jobs, article 78 of the EBEP also establishes the principle of publicity in the following terms: "1. The Administrations Public companies will provide the jobs through procedures based on the principles of equality, merit, ability and publicity".

In its development, Royal Decree 364/1995 of April 10, on Entry of personnel to the service of the AGE, provision of jobs and professional promotion, points out in its article 5 the application of the principle of publicity; and thus applies it throughout its articles, like art. 15 relative to the publication of the announcements of entry of civil servants and its bases in the BOE, as well as art. 20 regarding the publication in the BOE of the resolution approving the list of admitted and excluded and indicating the place where they will be Official lists posted. In this sense the art. 20.2 prescribes: "2. When the selective procedure allows it, the exhibition to the public of the lists will not be mandatory of admitted applicants, and must be specified in the corresponding call. In

In these cases, the resolution, which must be published in the "Official State Gazette", must collect the place and the start date of the exercises, as well as the list of the applicants excluded with an indication of the causes and the term of rectification of defects".

Article 22 also refers to the publication of the approved list.

As far as professional promotion procedures are concerned, it is also enshrined the principle of publicity, both of the call and of the resolution, in article 38 of RD 364/1995, as well as particularized in articles 42 and 52 of the same Regulation.

In addition, as the query was raised by a State Agency, we want to highlight that these principles, including that of publicity, are fully applicable to procedures for the provision of jobs of said agencies, in accordance with Article 20 of Law 28/2006 of July 18 on State Agencies. Furthermore, article 19 of the same provides in its section 1: "The selection of personnel referred to in the Article 18.1.c) is carried out by public call and in accordance with the principles of equality, merit and ability, as well as access to public employment for people with disability". Principles also applicable to labor personnel according to art. 19.2 of the same Law.

For its part, article 33 of Royal Decree 1403/2007, of October 26, by which the AECID Statute is approved determines the applicability to said Agency of article 55 EBEP cited above, and therefore the oft-repeated principles of publicity and transparency.

Thus, we see that in selection procedures, the principle of publicity and Transparency becomes essential, as a guarantor of the principle of equality. The The National Court has weighed the principle of publicity with the protection of personal data. personal nature, reaching the conclusion that during the processing of the selective process the former must prevail. Thus, in the recent judgment of April 26, 2012 of the First Section of the Administrative Litigation Chamber of the National High Court, which cites in turn the relapse in resource 215/2010, he pointed out (emphasis is ours): "For

Therefore, one of the exceptions to the requirement of consent for data processing



is that of the collision with general interests or with other rights of greater value than

make data protection decline due to the preference that should be granted to that other

interest.

In the present case, since it is a competitive bidding procedure

we must attend to what article 103 of the Constitution states when it states that the

Public Administration objectively serves the general interests and acts in accordance with

the principles of effectiveness, hierarchy, decentralization, deconcentration and coordination, with

full submission to the Law and the Right. (paragraph 1) and when it states in paragraph 3 that

"The Law will regulate the status of public officials, access to the public function of

in accordance with the principles of merit and capacity..." (all in relation to the provisions of

article 23 C.E. which we will refer to later.

Obviously, the guarantees required by the processing of personal data cannot

serve to tarnish or annul these general requirements that force processes to be

drive in compliance with the minimum requirements of transparency and publicity. The

superiority of these other values advises that in this case it be understood that it was not

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in his communication by the union now recurring.

From this point of view, we must conclude that the consent of the

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treatment of the qualifications obtained in said procedure and this as a guarantee and

requirement of the other participants to ensure the cleanliness and impartiality of the

procedure in which they attend. (...)

It is true that Organic Law 15/1999 did not expressly include exemptions or

exceptions to the personal data processing regime contained therein with

based on the guarantees of transparency of the competitive processes, for which it will be

It is necessary to weigh the conflicting interests in order to determine which of them should

prevail. Once said weighting has been carried out, and assessing the circumstances that here

concur, it is clear to this Court that the guarantee of

publicity and transparency of the competitive process on the right to protection of

data. (It is not uncommon for this Chamber to carry out this type of weighting or

appraisals; it suffices to refer to the judgment of appeal 331/205; DF 2/2010 or 862/2009).

Therefore, the estimation of the appeal and the annulment of the resolution will be appropriate.

appealed on the basis of the prevalence of the general interest, taking into consideration that,

As is natural, said use will only be protected within the purposes related to it.

competitive bidding procedure in application of the limits indicated in article

4 of the LOPD (...)".

All this, of course, provided that data is being published whose treatment is not

excessive, since art. 4 LOPD states in its first section that: "the data of

personal character can only be collected for treatment, as well as subjecting them to said

treatment, when they are adequate, pertinent and not excessive in relation to the scope and

the specific, explicit and legitimate purposes for which they were obtained". In this

sense, it would never be possible to exercise the right of opposition with respect to those data of

personal character that are necessary for compliance with the principle of publicity and

transparency of the selection process. For this they would have to be examined by the entity

consultant what data is being published and to what extent it is necessary

for compliance with these principles. Since this Agency does not know in this

specific data point, can not pronounce. But in any case we consider that

To comply with the principle of publicity, the interested party must be identified, as well as the

circumstance of being or not admitted to the call; if applicable, the reason for exclusion; So

how to offer the data of the evaluation of the merits. Regarding the valuation

individualized of each merit, it is also a subject subject to a wide casuistry.

But it is that, thirdly, it could be that the basic premise of the

right of opposition that consent is not necessary for the treatment of personal data

Personal data. The bases of the convocation of the

selective procedure in question, but if they contain the form in which

will carry out the publication of the different phases of the call – indicating, by

example, the publication of all of them in the electronic headquarters, without prejudice to the fact that, when the

regulations provide for it, they must also be published in the BOE – it can be understood that the

The interested party is implicitly granting his consent for said publication, and by

both for said assignment.

In other words, the processing of these personal data is based on the consent of the

affected, which has signed an instance to participate in the selective procedure that

is processed, including your personal data; and participation implies acceptance of the

bases of the call, which become law for the selective procedure. Therefore, the

The transfer that the publication of the data implies may be covered by the bases themselves.

of the announcement of the selective procedure in relation to article 59.6.b) of the Law

30/1992. This is how this Agency has been pronouncing itself, as in reports of April 18,

2011, which in turn cites that of April 9, 2008. In this second we affirm:

"However, the communication of data raised, contained in the notification of the resolution of the admitted procedure, must be considered as transfer of data of personal nature, since article 3 i) of the Organic Law defines it as "all disclosure of data made to a person other than the interested party". If what they want is the publication of the aforementioned lists on bulletin boards of the dependencies of the …, it supposes a transfer of personal data, defined in article 3 i) of Organic Law 15/1999, as "Any disclosure of data made to a person other than Of the interested".

In relation to the transfer of data, article 11.1 of the Law provides that "the data of a personal nature subject to treatment may only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the transferor and of the assignee with the prior consent of the interested party". This consent is only will be excepted in the cases contemplated in article 11.2, whose section a) provides the possible transfer without consent of the data when a norm with the rank of Law so dispose.

In the event that arises, if the bases of the call for admission to the …, provide for the publication of the lists of those admitted and excluded, including the causes of exclusion, the participants in them will have given their consent prior to the aforementioned transfer of their data when they accepted the bases and made their request to participate in the same. In that case, consent could be implicitly understood.

with the acceptance of the bases of the call and the publication of the

aforementioned data as it has been reflected in the same call.

However, the above provisions must be connected with the obligation

to notify the interested parties of the administrative resolutions that affect their rights and

interests, established in article 58 of Law 30/1992, of November 26, on the Regime

Legal of the Public Administrations and the Common Administrative Procedure.

Said precept and the following article (article 59) strictly regulate the

assumptions in which such notification will occur in a different way from the personal notification,

either by publishing the resolutions, or by posting them on the bulletin board

of edicts or announcements. Therefore, it is appropriate to analyze whether, in accordance with the Organic Law

15/1999, the provision contained in article 59.- 6 of Law 30/1992, of November 26,

can be considered an enabling rule for the transfer, through publication, of the data

to which the consulting Corporation refers in its writing.

In accordance with the aforementioned precept, referring to the “Notification Practice”:

“Article 59. Practice of notification. (...)6. The publication, in the terms of the article

following, will replace the notification having the same effects in the following cases:

a) When the act is addressed to an indeterminate plurality of people or

when the Administration considers that the notification made to a single interested party is

insufficient to guarantee the notification to all, being, in this last case, additional to the

notification made. b) In the case of acts that are part of a procedure

selective or competitive concurrence of any kind. In this case, the call for

procedure must indicate the bulletin board or media where the

successive publications will be made, lacking validity those that are carried out in

different places”.

However, Law 30/1992, of November 26, in its article 61, relative to

the "Indication of notifications and publications", provides that: "If the competent body

appreciated that the notification by means of announcements or the publication of an act harms legitimate rights or interests, it will be limited to publishing in the corresponding official gazette a brief indication of the content of the act and the place where the interested parties may appear, within the period established, to learn the full content of the mentioned act and evidence of such knowledge.

In conclusion, the publication of the causes of exclusion will be appropriate to the Law Organic 15/1999, if in the bases of the call it had been established how it would be done public those admitted and excluded, making reference to the causes of exclusion. Nope However, if the consulting body considers that the publication of the causes of exclusion injures rights and legitimate interests may choose to apply the provisions of article 61 of Law 30/1992, previously transcribed"

Therefore, if in the selective procedures we understand that it has been provided, even if it is Implicitly, consent to the processing of personal data will not be the application of article 6.4 LOPD.

III



From the previous section of this report it can be deduced that while advertising is necessary for the correct development of the selection process, it must remain the same, without it being possible to attend to the exercise of the right of opposition based on article 6.4 LOPD, for the reasons stated above. That is, at this point there is a law that, at enshrine the principle of publicity, expressly provides for the processing of personal data personal, without being able to stop the treatment to achieve the good end of the process

selective. And it is understood implicitly granted the consent for the treatment of

data for the publication in the selective procedure.

However, the law does not specify, to ensure compliance with the principle of publicity,

no specific medium, limiting itself to pointing out cases in which the publication will be made in the

BOE (fundamentally, call with the bases, list of excluded and the cause of

exclusion, list of approved and appointment in the selective admission procedure;

and call and resolution for the procedures for the provision of jobs). By

Therefore, there may be cases in which the form of publication that has been chosen may

be considered excessive. Thus, we can distinguish two cases:

a)

Phases of the call in which the legislation provides for some form of

specific post. We have already indicated specific cases in which the regulations provide for

publication in the Official State Gazette. In other words, in these cases, the regulations themselves

foresees phases of the selective procedures that must be published

in a certain medium. If, for example, the call, the bases, the list of excluded

and the list of approved are published in the BOE, there will be no obstacle for its

publication on the website of the convening body, since they already have a

top advertising.

b)

Phases of the call in which the legislation does not expressly provide for publication

in a specific medium. For example, the assessment of merits. In this case, it will be

application of article 59.6 of Law 30/1992 of November 26 on the Legal Regime of

Public Administrations and the Common Administrative Procedure that establishes: "The

publication, under the terms of the following article, will replace the notification supplying its

same effects in the following cases: (...) b) When it comes to acts that are part of a

selective procedure or competitive concurrence of any kind. In this case, the

call for the procedure must indicate the notice board or means of

communication where the successive publications will be made, lacking validity the

take place in different places.

In other words, it is expressly provided that it is the call for the procedure that

Indicate the means of communication to be used. Furthermore, in this case it will be possible to

publication in the electronic office, either substituting or complementing the publication

on bulletin boards, since article 12 of Law 11/2007 of June 22,

Electronic Access of Citizens to Public Services states: "The publication of

acts and communications that, by legal or regulatory provision, must be published in

bulletin board or edicts may be replaced or complemented by its publication in the

electronic headquarters of the corresponding body.

However, the availability and accessibility of the electronic headquarters referred to in article

10.3 of Law 11/2007 cited does not imply that indexing can be universally accepted

of all personal data by search engines.



In its Report of 04/04/2008, the Working Group of Article 29 of Directive 95/46/CE, of

October 25, 1995, of the European Parliament and of the Council, on the protection of

individuals with regard to the processing of personal data and the free

circulation of these, has analyzed the legal situation in relation to data protection

personal and Internet search engines, reaching the conclusion that the period of

conservation of personal data by said search engines should not exceed,

In general, the six-month term.

But it is that, even more so, in a report of this Agency of November 5, 2010 it was already indicated that it was possible to limit the indexing by search engines of personal data, since advertising "does not prevent the system from [not] should establish mechanisms that prevent or hinder indiscriminate access to information for purposes other than the knowledge by the interested party of the notification that is practice through the edictal board".

Thus, the possibility of prohibiting the indexing of information could be considered. contained in the electronic headquarters related to personal data by motors search. In this way, only those who directly access the edictal board or the electronic headquarters will have knowledge of the information contained in them, without a simple search of the data through a search engine may be enough to access to the content of the personal data of those affected. And this does not imply that the electronic office is not available or accessible, since we are limiting ourselves to indicating that non-indexing by search engines can be considered, regardless of that the data does appear published in the electronic headquarters that will act as a bulletin board advertisements. In other words, we are referring to the use of technical tools and non-robot type computer or any other type of technical and computer measures that are appropriate aimed at avoiding said indexing of content with data of a personal nature staff. This Agency has already ruled in this regard, as in the reports of 28 October and November 5, 2010 and February 17, 2011. In the second of them We indicate: "Consequently, the exercise of the right of opposition obliges the Administration acting to make an assessment of the personal situation of the affected, considering whether it is appropriate to exempt said treatment. Although, in general, the right of opposition will not exclude the publication of the act if it is legally required, This Agency has been pointing out, as a solution in those cases in which it is exercised the right to oppose the publication of an act in the Official State Gazette, the

adoption of technological measures to prevent indexing by search services".

IV

Thirdly, the query asks if the eventual estimation of the right of opposition

could be resolved by publishing the candidates' DNI. On the one hand, we have already

affirmed that the right of opposition cannot be estimated for the sake of publicity and

transparency of the selection processes and of having lent, although

be

implicitly, the consent for the treatment. But it is also what I know

would seek through the estimation of the right of opposition would be the suppression of the data of

the identity. The identity data is through the name and surnames, either through the

DNI, will always be essential to determine which candidate they are referring to

certain parameters (admission or not in the procedure, results...), so

It can never be considered as excessive data. And if the way of



publish the data, all mispublished data should be removed, not just the

identification of the interested party.

On the other hand, we consider whether, in general, substitution is possible, in the different

phases of the selective procedure that are going to be published, of the name and surnames by the

DNI.

In general, the name and surnames may be replaced by the DIN since

it has enough value, by itself, to prove the identity of the people. The

The question now raised was already resolved in a report dated June 30, 2009 in the

following terms: ""…the [principle] of proportionality is especially relevant,

provided for in article 4.1 of the Organic Law, according to which "Personal data

They can only be collected for treatment, as well as subjecting them to said treatment,

when they are adequate, relevant and not excessive in relation to the scope and

specific, explicit and legitimate purposes for which they were obtained".

From the application of this principle follows the need for the advertising of

the information just referred to extends only to the data

necessary to guarantee transparency in the selection process, without incorporating those that

could be excessive for the achievement of such purpose.

Article 1 of Royal Decree 1553/2005, of December 23, after indicating in its

section 1 that "the National Identity Document is a personal document and

non-transferable issued by the Ministry of the Interior that enjoys the protection that the

public and official documents grant the laws. Its holder will be obliged to the custody and

preservation of the same", it adds in its section 2 that "said Document has sufficient

value, by itself, to prove the identity and personal data of its owner that is contained in it.

consign, as well as the Spanish nationality of the same".

Consequently, the indication of the number of the national identity document by

itself sufficiently identifies its owner, without the indication of the data being precise

of a personal nature contained therein, such as your name and surnames, so

the use of said number in the publication made by the consultant on its page

website would be respectful of the provisions of Organic Law 15/1999, to which it refers

Royal Decree 248/2009.

In any case, it must be indicated, following what has been established in this matter by the Chamber of the

Contentious-Administrative of the National High Court, which does not mean that said

publication does not contain personal data, given that the number of the document,

given its character of unique identifier of the interested party, it has such character, but when included

said number without indication of the name and surnames of its owner is being given adequate

compliance with the principle of proportionality and submission to Organic Law 15/1999

advertising carried out, which is covered by article 11.2 a) of the Law

Organic 15/1999, in connection with article 55.2 of the Basic Employee Statute

public and the regulatory standards governing the selection processes.

Therefore, it would be possible to meet the request of the candidate who only wants to see

published the number of his DNI".



SEVENTH: On 12/10/2019, a resolution proposal is issued with the literal:

“That by the Director of the Spanish Agency for Data Protection, the

with WARNING to the JUNTA DE ANDALUCIA (MINISTRY OF EDUCATION), with

NIF S4111001F, for a violation of article 5.1.c) and 5.1.f) of the RGPD, in accordance with

Article 83.5 and 58.2.b) of the RGPD.

REPORT on the measures adopted to adapt the processing of data in the

internal selective processes in order not to violate article 5.1.c) and 5.1.f) of the

GDPR.”

EIGHTH: On 01/03/2019, allegations were received from the respondent indicating:

-

They will be adjusted when they publish personal data in selective processes throughout

provided in the seventh additional provision of the LOPDGDD and the instructions for

interim application for notifications through announcements and publications of

administrative acts. “The processes developed in 2019 have already been subjected to these

directions." In addition, they will implement measures for access to information on

data in the treatment so that only the participating personnel access the information of

each selection process.

PROVEN FACTS

1) The claimant participated in the public announcement of the selection procedure

convened by the Junta de Andalucía by Order of 04/05/2018 for entry into the Corps

of Secondary School Teachers, Vocational Training Technical Teachers,

Teachers of Official Language Schools, Teachers of Plastic Arts and Design,

Masters of the Plastic Arts and Design Workshop and access to the Faculty of Professors of

Secondary Education and the Body of Teachers of Plastic Arts and Design, published in

the BOJA of 04-13-2018. In the same it was indicated in point 8.1.1 that "By resolution of

each court will publish the scores of the first test on the bulletin board

of the headquarters of the same, in that of the Territorial Delegation of Education in whose scope

locate the court and, for informational purposes only, on the web portal of the Ministry of

Education, and a copy of said qualifications must be sent to the corresponding

selection commission." , and in 8.1.3 that in the same spaces and subjects,

scores for the different parts of the test.

two)

The way to carry it out, in terms of publication, is implemented through

the publication of full DNI and name and surnames (appearing among others those of the

claimant) and the qualifications of the different parts of the exercises.

Thus, the exhibition of the physical headquarters of Court 1 of Seville is accredited:

On paper (07/03/2018 applicants who have not passed the first test, with the notes of

On paper, list of those who "have passed the second test" with the notes of part A

part A and part B

and part B, and

Paper list of “applicants who have passed the opposition phase of 07/20/2018”

with test notes 1, test 2 and OPPOSITION PHASE.

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28001 – Madrid

www.aepd.es

sedeagpd.gob.es

15/24

The same lists were posted on the website of the Board's Education Department

from Andalusia.

It is unknown if the paper listings were in a room with specific access

for consultation or in another place of possible access for any person.

3) The page ***URL.2 offered, as of 08/01/2018, the possibility of being configured in this way,

enter the NIF, press send and have access by anyone to the query

individualized scale of merits, in this case for oppositions 2018, "Teaching

secondary, vocational training, official language schools and art schools,

provisional scale resolution”. Featured previously published listings with numbers

of complete DNis, you can consult all the merits alleged and valued by their

holder, but also by any person other than the affected party, upon knowing through

the website of the claimed DNI data through the qualification lists

of the participants.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the

Spanish Agency for Data Protection is competent to resolve this procedure.

Law 39/2015 establishes in article 40.5

II

“Public Administrations may adopt the measures they consider

necessary for the protection of the personal data that appear in the resolutions and

administrative acts, when these are addressed to more than one interested party.”

Article 45 of the same rule highlights:

"1. The administrative acts will be published when so established by the

regulations governing each procedure or when advised by reasons of interest

public appreciated by the competent body.

In any case, the administrative acts will be published, supplying the

effects of the notification, in the following cases:

b) In the case of acts that are part of a selective procedure or

competitive competition of any kind. In this case, the call for the procedure

must indicate the medium where the successive publications will be made, lacking

validity those carried out in different places.

3. The publication of the acts will be carried out in the corresponding official gazette, according to which

be the Administration from which the act to be notified proceeds.



4. Without prejudice to the provisions of article 44, the publication of acts and communications

that, by legal or regulatory provision, must be practiced on a bulletin board or

edicts, shall be understood to have been fulfilled by their publication in the corresponding Official Gazette.”

In accordance with the principle of data limitation in the treatment to the

merely indispensable, it is possible, in the first place, that the publication of each

result of the exercises that are being held, is limited to those affected with

for example, specific queries with attribution of keys and passwords that can be

generated with the presentation of the application, or through confirmation in mailings

electronic, among others. In this way, the publication, which concerns those who

participate and serves as a notification, it really fulfills the function of going to the specific

person/participant in the process, only interested in the transparent development of the

process.

Secondly, in the event that it were published on the web in open for any

person, it would not be necessary to include the double identifier DNI complete / name and

surnames.

The data minimization design has been embodied in the LOPDGDD, (BOE

12/6/2018) that in its “Seventh Additional Provision: on Identification of

interested in notifications through announcements and publications of acts

administrative” indicates:

1. When it is necessary to publish an administrative act that contains data

data of the affected party, he will be identified by his name and surnames,

adding four random numerical figures of the national identity document,

foreign identity number, passport or equivalent document. When the

publication refers to a plurality of affected parties, these random figures must

alternate.

When it comes to notification through advertisements, particularly in the

assumptions referred to in article 44 of Law 39/2015, of 1/10, of the

Common Administrative Procedure of the Public Administrations, the

affected exclusively by means of the complete number of your national identification document.

identity, foreign identity number, passport or equivalent document.

When the affected party lacks any of the documents mentioned in the

two preceding paragraphs, the affected party will be identified only by name and

surnames. In no case should the name and surnames be published jointly with

the complete number of the national identity document, identity number of

foreigner, passport or equivalent document.

2. In order to prevent risks for victims of gender violence, the Government will promote

the development of a collaboration protocol that defines safe procedures for

publication and notification of administrative acts, with the participation of the

competent in the matter."

The provision has been the subject of a provisional recommendation until

moment in which the governing bodies and the competent public administrations

approve provisions for the application of the aforementioned Additional Provision



seventh. Its objective is to try to prevent the adoption of different formulas in

application of the aforementioned provision may give rise to the publication of numerical figures of

identification documents in different positions in each case, making it possible to

full recomposition of said documents.

For your interest, the aforementioned recommendation of 03/04/2019 is transcribed, entitled:

"GUIDANCE FOR THE PROVISIONAL APPLICATION OF THE PROVISION

ADDITIONAL SEVENTH OF THE LOPDGDD"

"In the Spanish Agency for Data Protection, the Catalan Authority for

Data Protection, the Basque Data Protection Agency and the Council of

Transparency and Data Protection of Andalusia, multiple queries have been received

on the application of the provisions of the first paragraph of the first section of the Seventh additional provision “Identification of the interested parties in the notifications by means of announcements and publications of administrative acts” of the Organic Law 3/2018, of 5/12, Protection of Personal Data and guarantee of digital rights.

This circumstance has advised that, in order to facilitate a practical criterion, said authorities propose guidelines for the provisional application of guarantees of protection of the disclosure of the national identity document, number of identity of foreigner, passport or equivalent document of the interested parties.

To do this, they have randomly selected the group of four numerical figures to be published for the identification of those interested in the publications of administrative acts. The procedure for the random determination of the four numerical figures to be published of the identification code of an interested party through the process of random selection in an opaque bag of a ball from among five balls numbered from 1 to 5, held on 02/27/2019 at the AEPD.

The resulting ball was number 4, therefore:

The publication of national identity document, identity number of foreigner, passport or equivalent document may be made in the following way:

• Given a DNI with format 12345678X, the digits will be published in the format occupy the fourth, fifth, sixth and seventh positions. In the example: ***4567**.

• Given a NIE with format L1234567X, the digits will be published in the format occupy the positions, avoiding the first alphabetic character, fourth, fifth, sixth and seventh. In the example: ****4567*.

• Given a passport with ABC123456 format, having only six figures, the numbers will be published. digits that occupy the positions in the format, avoiding the three alphabetic characters, third, fourth, fifth and sixth. In the example: *****3456.

• Given another type of identification, as long as that identification contains at least 7

numeric digits, these digits will be numbered from left to right, avoiding all

alphabetic characters, and the procedure of publishing those characters will be followed.

numbers that occupy the fourth, fifth, sixth and seventh positions.

For example, in the case of an ID like XY12345678AB, the post

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would be: *****4567***.

• If that type of identification is different from a passport and has less than 7 digits

numeric, all characters, including alphabets, will be numbered with the same number.

previous procedure and those who occupy the last four will be selected.

positions. For example, in the case of an ID such as ABCD123XY, the

publication would be: *****23XY.

• Alphabetic characters, and those numeric characters not selected for publication,

will be replaced by an asterisk for each position."

Therefore, in addition to introducing the aforementioned measures in general, depending on

whether it should affect only one group, whether any act should be published or notified, and whether

considers that it will affect only a closed group of the collective, it must be taken into account

account in addition to these references, a special diligence for the possible identification or

identifiability through direct or indirect references other than name and

surnames or NIF and that allow the person to be identified.

Pretend, as the defendant states, that transparency and

general publicity exhibiting in open with full identifiability of listings of

admitted/excluded, or results of parts of the tests or exercises that are

rushing,

at all times and open phase is not admissible. Result

disproportionate and collides with the principle of data minimization, given the purpose that

is intended, which is basically to serve as a notification system for those affected who

participate in the procedure, and contribute between them to transparency in the development

of the exercises. That access can be produced by any person outside the

applicants is an overexposure of data to third parties that lacks justification and

exceeds the purpose of the purpose of data processing of those affected.

Therefore, the rest of the public, those who do not participate in these tests,

they lack a legitimate basis for access to the surname and name data together with the NIF

of each applicant and of each of the results of each test that forms the

selective process.

The way of proceeding of the accused should be modified in the sense exposed

in future actions together with the withdrawal of the data if they are published in

open/universal of the listings so that they do not remain for more than an adequate period and

Reasonable to the intended purpose that was in relation to processes of 2018.

The facts consisting of the exhibition and publication of all the joint data,

DNI, name and surnames and all qualifications on the physical boards of the venues and on the

website of the Board, by the data controller, MINISTRY OF EDUCATION

(JUNTA DE ANDALUCIA), suppose a violation of article 5.1.c) of the RGPD that provides:

“Personal data will be:

b) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are

processed (“data minimization”);

This principle is not new, since the LOPD contained similar wording

pointing out:

Article 4.1: “Personal data may only be collected for

treatment, as well as subjecting them to said treatment, when appropriate, pertinent and not excessive in relation to the scope and purposes determined, explicit and legitimate for which they have been obtained."

In selection procedures, the principles of publicity and transparency are essential because they are the basis of equality, merit and ability in access to posts. The norm refers to advertising on procedures and development of exercises.

Publicity means, in the first place, that of the call, which is published in the BOE, Official Gazette or corresponding electronic headquarters, for general knowledge and access public to its content and bases.

Regarding the object of the matter itself denounced, once the call and received the applications for participation in it, the process would begin of competitive concurrence, which as the word says, must be predicated of and for all members of the group who aspire to pass the tests convened, who compete in merits and ability against each other.

In the call and in the bases the detail of what is going to be exposed is not reflected on the web in terms of the lists of admitted, excluded etc., if it is going to be only the NIF, this with the name and surname etc., or if the publication will be produced only for those affected, only indicates that it will be published. In this sense, it is always necessary to opt for the data minimum necessary to achieve its goal, and for the group affected.

Bearing in mind that once the announcement and the bases have been published, the procedures following are going to affect a specific, determined and qualified circle that are the

applicants, being the exposure of data within and for the members of said circle

adequate, proportionate and consistent with its purpose, becomes disproportionate

when said data is visible to everyone, since it is not necessary for the

purpose of publicity and transparency that they know it. Although they are obtained from

in accordance with the provisions of the call, for the management of the process, among which is

applicable transparency for the participants or the right of access to the data for the

interested, it must be assessed that the call, although it does not indicate the form and manner in which

that the data were published, it would be necessary in any case to affect only the participants in

the process and to publish as little data as possible. Not because the call

establish publication on boards or web is authorized to any extent of exposure

of data and in any condition of generalized access.

The exposure of the data begins in June 2018 and from that date during the

During the process, there was no news of the accredited date on which the listings were removed.

of the web and of the physical spaces, being able to remain the infraction during all that

period. Although the information presented by the respondent was prior to the entry into

force that modifies the system of publication of announcements in official newspapers by the

LOPDDGG, the truth

Although the commented judgment indicates that "the consent of the

those persons who participate in a competitive bidding procedure for the

treatment of the qualifications obtained in said procedure and this as a guarantee and

requirement of the other participants to ensure the cleanliness and impartiality of the

procedure in which they attend. (...) what is being safeguarded is for a circle

well predefined of participants, so not any way to publish the data as

has happened in this claim can be considered appropriate to the principles of the regulation

of the data minimization principle. It is not in the public interest to know the

qualifications of each test that forms the selective process relating name and

surnames and full ID. If it were proportionate that only those affected had said

access, given also that it is not the final qualification, but the process procedures.

It should be noted that consent does not play a decisive role in the treatment

of data when it is the public administration, which holds the management of interests

general, calls selective processes. Furthermore, the Regulation itself

general data protection policy shows that the consent of the affected party does not

must constitute the legal basis of the treatment in certain cases. Thus, the

Recital 42 states in its last sentence that "Consent should not be considered

freely provided when the interested party does not enjoy true or free choice or cannot

refuse or withdraw their consent without prejudice" and recital 43 adds

that "To ensure that consent has been freely given, it should not constitute

a valid legal basis for the processing of personal data in a case

in which there is a clear imbalance between the interested party and the person responsible for the

treatment, in particular when said controller is a public authority and is therefore

so unlikely that consent was freely given in all the circumstances

of that particular situation. The legitimate basis for the treatment of qualifications would not be

The consent.

Regarding the justification that the data are from a selective process of

competitive concurrence, to which the principle of transparency is applied, being able to

deduce a conflict with the data protection of its owners, due to the superiority of the

constitutional principle of transparency and objectivity, it must be indicated:

-Given the technical situation in which the data is being processed, it could be deduced that the

requirement to reproduce all these data at any stage of the process to others

participants to ensure the fairness and impartiality of the procedure in which

concur is not given only for these, but they are communicated to any person outside the

procedure that wants to enter said website or circulate through the space of the advertisements and

carry out a complete tracking of identification and tests and qualifications obtained. Yes to

This is added to the fact that each year the process has been repeated, data could be obtained that

they are not really necessary for non-participants in the concurrency process.

- Although transparency would be desirable for the group of participants in the process, in

any case, especially provisional admissions, also listings should be removed

when they have had their effects, stating that they are pure formal acts, they must not

continue to appear indefinitely

-Another possibility is that if it is going to be for the knowledge of any person, they will reduce

the data, not putting the complete DNI.

The guarantee of publicity and transparency of the competitive process on the right to

data protection is not achieved by the general publication of all data

in each open process, because technology can also allow only those affected

be those who in any case can know the identity, with the appropriate data and

necessary for the purpose in question.



If, in addition, someone who is not interested in not participating in the process would like to access some

aspect of the procedure, would be covered by the right of access, prior accreditation

that it holds an interest worthy of protection.

The knowledge in each exercise that forms the process of all the data with the DNI whole and the notes of the phases that make up the procedure to any person is excessive and disproportionate, when transparency is related to the participants in the process, with the process itself and with the result of the final phase. It is not being valued publication of the final results, is the internal process of developing the exercises, in which the data appears in each and every one of the phases for the entire public full name and surnames and NIF.

Since the publication of the grades obtained is lawful, it is necessary to find a way that minimize the data according to the proportionality and necessity of the purpose in accordance with the indicated. One could think of a virtual classroom only accessible to the participants in the process, not with access to all the data but to the necessary ones. It must, on the other hand, The principles contained in article 5 of the RGPD must be respected in any case, especially those of limitation of the purpose, minimization of data, limitation of the term of conservation, integrity and confidentiality, making the publication in a way that supposes the least interference in the rights and freedoms of the interested parties, which excludes the possibility of a widespread knowledge of qualifications, as might occur in the event that proceed to publication on the internet.

Regarding the exhibition on the notice boards of the center, it can be done provided that they are not in common areas of the centers, that it is guaranteed that the access to them is restricted to said persons and measures are adopted necessary to prevent its public knowledge by those who lack interest in it.

III

The facts consisting of the configuration on the web page of the claimed party consultation of the merits through the DNI, by the data controller, MINISTRY OF EDUCATION (JUNTA DE ANDALUCIA), suppose an infraction of the

article 5.1.f) of the RGPD that provides:

“Personal data will be:

“processed in such a way as to ensure adequate security of personal data,

including protection against unauthorized or unlawful processing and against loss,

accidental destruction or damage, through the application of technical or organizational measures

appropriate ("integrity and confidentiality").

Starting from the exposure of the data of the participants in the selection process

with the complete NIF, it does not seem appropriate to create a

box to consult the scale of merits based on the introduction of the NIF data.

The configuration of the access menu to the "merits scale" box was as follows. To the

know the NIF, anyone can find out and access the scale of the

participant points. It is not that those affected or participants in the process

can see the scale, which would be lawful, but any person, who, as has been



observed can previously access to consult in the lists of admitted and

qualifications the complete DNIS.

Since the initial agreement it is unknown if the claim has changed that

configuration to suit the confidential treatment that requires that only those by whom

holders of their DNI consult their own data, and it is not possible to collect data

information about people.

The information does not appear secure if the DNI is imposed as a query criterion,

when they have previously been published, allowing third parties to consult the

be the DNI data a weak means of access, also considering that the claimed party has

been publishing in different selective processes.

The NIF query data in said box does not offer security as it can be a data

that today can be known with not much difficulty.

IV

Article 83.7 of the RGPD indicates:

“Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether it can,

and to what extent, impose administrative fines on authorities and public bodies

established in that Member State.

Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

a)

sanction any person responsible or in charge of the treatment with a warning

when the treatment 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 accordance with

a certain way and within a specified period;

In this sense, there is a change in the way of publishing the data by

of the one claimed and that the scale consultation box does not allow to consult by DNI the

data.

Article 72.1.a) of the LOPDGDD indicates: “Infringements considered very serious

"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:

The processing of personal data violating the principles and guarantees

a)

established in article 5 of Regulation (EU) 2016/679".



In this sense, article 77.2 of the LOPGDD, indicates:

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 organic law,

the data protection authority that is competent will issue a resolution sanctioning

to them with warning. The resolution will also establish the measures that

appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which

depends hierarchically, where appropriate, and those affected who had the status of

interested, if any.

3. Without prejudice to what is established in the previous section, the data protection authority

data will also propose the initiation of disciplinary actions when there are indications

enough for it. In this case, the procedure and the sanctions to be applied will be the

established in the legislation on the disciplinary or sanctioning regime resulting from

app.

Likewise, when the infractions are attributable to authorities and managers, and

proves the existence of technical reports or recommendations for treatment that are not

had been duly attended to, in the resolution in which the sanction is imposed,

will include a reprimand with the name of the responsible position and order the

publication in the corresponding Official State or Autonomous Gazette.

4. The data protection authority must be notified of the resolutions that

fall in relation to the measures and actions referred to in the sections

previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of

the autonomous communities the actions carried out and the resolutions issued to the

protection of this article.

6. When the competent authority is the Spanish Data Protection Agency,

this will publish on its website with due separation the resolutions referring to the

entities of section 1 of this article, with express indication of the identity of the

responsible or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority

it will be, in terms of the publicity of these resolutions, to what its regulations have

specific."

Therefore, in accordance with the applicable legislation and accredited the

existence of violations

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a sanction of WARNING to the JUNTA DE ANDALUCIA

(MINISTRY OF EDUCATION), with NIF S4111001F, for an infraction of article 5.1.c)

of the RGPD, and another infringement of article 5.1.f) of the RGPD, in accordance with article 83.5 a) of the GDPR.

SECOND: NOTIFY this resolution to the JUNTA DE ANDALUCIA (MINISTRY OF EDUCATION).

THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the OMBUDSMAN, of

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 July 13, regulating the Contentious-administrative Jurisdiction, within two months from the day following the notification of this act, according to the provisions of 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 interested party states its intention to file a contentious-administrative appeal. If this is the In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Electronic Registry of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

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

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