

□ Procedure No.: PS/00401/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The Superior Police Headquarters of the Basque Country (hereinafter, the
claimant), dated 05/27/2021, sent the Notification Act of an alleged
infringement of data protection regulations to the Spanish Protection Agency
of data.

The following is indicated in the letter of remission of the Minutes, in relation to the matter of
Data Protection:

“Group II of the Bilbao Provincial Immigration and Border Brigade of the Headquarters
Police Superior of the Basque Country has detected, as a result of receiving multiple
claims and complaints both from users and agencies and offices of
lawyers related to the documentary procedures of foreigners, which this
saturation, in addition to the causes exposed, is also motivated by the
practices that are being carried out by those responsible for various establishments
open to the public, mainly booths, and/or individuals who advertise for the
obtaining previous appointments in exchange for different economic amounts and that, in order to
achieve greater profit, saturate the computer platform in such a way that they cause
that users find it very difficult to obtain a free appointment before the
administration and are forced to require their services.

By going to these places, users have been forced to provide their data
personal information, both in writing and by providing a copy of your documentation
identification, to the employees or people who offer this service so that, with

said data, they can book the appointment with the administration, since said

Appointments are nominal and it is not possible to appear at the documentation offices

police officers with proof of appointments that do not correspond to the person who is going to perform the requested procedure.

This transfer of your personal data is made without any guarantee or identification

of the person in charge of the treatment of the same, as well as without informing or obtaining the

consent of the users in accordance with the provisions of Organic Law 3/2018,

Protection of Personal Data and Guarantee of Digital Rights, and the

Regulation (EU) 2016/679, on your rights of access to your personal data,

rectification, deletion or limitation of its treatment incurring for it, in the opinion of

this Police Unit, in a slight infringement of article 74.a of the aforementioned L.O. 3/2018,

without prejudice to the fact that with these behaviors they may also be infringing some

another of the precepts of the L.O. 3/2018.

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On 5/10/2021, by police officers attached to this Unit, it was

carried out an administrative inspection in the company called "****LOCUTORIO.1",

located at ***ADDRESS.1 (Vizcaya), in which the existence of

numerous client files (handwritten papers, copies of documentation,

receipts of prior appointment, NIE), which were stored in said establishment with

the supposed purpose of obtaining prior appointments to carry out different

procedures, extending in the place the mandatory inspection record whose copy is

attached to this letter.

Inside the establishment, it was verified that in various papers there were handwritten annotations/photocopies of documentation containing data personal and receipts of previous appointments obtained in the name of as many others citizens, in order to carry out the corresponding police procedures with the holders of that documentation.

[...]

Once the corresponding procedures were carried out, the summons and subsequent taking of statements from various people whose details appear in the intervened documentation, which have expressed that they were not informed or gave any express or tacit consent to the provisions of the Article 6.1.a of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, when providing your personal data to those in charge of the establishment to obtain an appointment.

In the same way, these people have stated that due to these procedures they have been charged different amounts of money, when the completion of said step prior to the processing of your documentation before the corresponding administrative unit of the National Police is free.

Based on the foregoing, in the opinion of the interveners, the owner of the establishment, both personally or through its employees, would be infringing one or various precepts of Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights, as well as the Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding to the protection of natural persons with regard to data processing so, on 05/19/2021, he appears in these dependencies, the owner of the establishment, called A.A.A., whose remaining affiliation data is already consist.

SECOND: Prior to admitting this claim for processing, the

The Agency transferred it to the respondent on 06/07/2021, in accordance with the

Article 65.4 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD). In a

At first, the request for information on the facts revealed did not

could be notified to the claimed person through postal mail after two

attempts on 06/22/2021 and 06/23/2021. Finally, the notification was delivered in

office to the one claimed on 06/28/2021, as stated in the Notice of receipt of

Post.

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On 07/28/2021, the respondent submitted a brief of allegations in which it indicates,

among others, the following issues:

"FIRST. - That the appointments prior to the immigration office that I requested from my

personal mobile phones were requested for people with whom I maintain a friendship,

immigrant people who lack internet, telephone, email and were made

as a favor that they personally requested of me due to the unfavorable situation in the

that they were

That the appointments were made outside of my working hours, with my personal telephone and

with my personal email and not with my work email or phone number.

That they were requested outside of my commercial activity and that I did not obtain any

benefit.

That the veracity of my allegations can be verified with statements

responsible for all the people to whom I requested the prior appointment since they are my personal circle of family and friends, close to the neighborhood where I live.

That this party has always complied with the required data protection regulations.

[...]

SECOND. - That according to article 2.2 of the new LOPD it establishes that

“This organic law will not apply

a) To treatments excluded from the scope of application of the General Regulation of Data Protection by its article 2.2

For its part, article 2.2 c) RGPD excludes from its scope of application all

treatment “carried out by a natural person in the exercise of activities exclusively personal or domestic

Therefore, the processing of own or third-party personal data carried out by a natural person will not be subject to the requirements of the RGPD and the LOPDGDD when is carried out in the course of exclusively personal or domestic activities. In this case, I did a favor for my friends who only benefited from obtaining the date.

[...]”

THIRD: On 08/05/2021 the Director of the Spanish Agency for the Protection of Data agreed to admit the claim for processing.

FOURTH: On 09/07/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: On 09/14/2021 the respondent is notified of the agreement to initiate this sanctioning procedure and a hearing period of TEN DAYS is granted

SKILLFUL to formulate the allegations and present the evidence that it considers

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convenient, in accordance with the provisions of articles 73 and 76 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter, LPACAP).

SIXTH: The respondent did not make any objections to the agreement to initiate the procedure.

Article 64.2 f) of the LPACAP - provision of which the respondent was informed in the

agreement to open the procedure- establishes that if no allegations are made

within the term established on the content of the initiation agreement, when it

contains a precise statement about the imputed responsibility, it may

be considered a motion for a resolution.

In the present case, the agreement to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infringement of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the respondent has not made allegations to the agreement to initiate the file and in

attention to what is established in article 64.2.f LPACAP, the aforementioned initial agreement is

considered in this case proposed resolution.

SEVENTH: The agreement to initiate the procedure agreed in the fourth point of the part

dispositive "INCORPORATE to the disciplinary file, for the purposes of evidence, the

claims submitted by claimants and the information and documentation

obtained by the Subdirector General for Data Inspection in the phase of

information prior to the agreement of admission to processing of the claim."

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The respondent collects data from natural persons who come to its booth to request an appointment for administrative procedures, without providing the precise information to interested parties in accordance with current regulations on the protection of personal information.

SECOND: It is stated by the respondent that the previous appointments were made outside of his working day and as a favor to people with whom he maintains a friendship. It indicates that the RGPD would not be applicable as it is an activity exclusively personal and be expressly excluded from its scope of application.

THIRD: It is verified that the defendant does not provide evidence that allows verify if the circumstances that it shows in your pleadings.

FOURTH: The Spanish Data Protection Agency has notified the respondent the agreement to initiate this sanctioning procedure, but this has not presented allegations or evidence that contradicts the facts denounced.

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FOUNDATIONS OF LAW

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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 process.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.

II

Article 4 of the GDPR, under the heading "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

- 1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;
- 2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"

Therefore, in accordance with these definitions, the collection of personal data personal on the occasion of the request for an appointment to carry out procedures administrative constitutes a treatment of data, for which the person in charge of the treatment must comply with the provisions of article 13 of the RGPD, providing the interested parties with all the information indicated in said precept.

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of duty

to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and,

in case of carrying out low-risk data processing, the free tool

Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

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III

Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, indicates that:

"1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative.

tant;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests swindles of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision of adequacy

Commission, or, in the case of transfers indicated in articles

46 or 47 or article 49, section 1, second paragraph, reference to the adequate guarantees

adequate or appropriate and the means to obtain a copy of them or the fact of

that have been borrowed.

2. In addition to the information mentioned in section 1, the data controller

will provide the interested party, at the time the personal data is obtained,

them, the following information necessary to guarantee fair data processing and

transparent:

a) the period during which the personal data will be kept or, when this is not possible,

ble, the criteria used to determine this term;

b) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article

9, paragraph 2, letter a), the existence of the right to withdraw consent in any

any time, without affecting the legality of the treatment based on consent.

lien prior to withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a re-

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necessary requirement to sign a contract, and if the interested party is obliged to provide

personal data and is informed of the possible consequences of not providing

such data;

f) the existence of automated decisions, including profiling, to which

referred to in article 22, sections 1 and 4, and, at least in such cases, significant information

on the applied logic, as well as the importance and the foreseen consequences

of said treatment for the interested party.

3. When the data controller plans the further processing of personal data

personal data for a purpose other than that for which they were collected, will provide the

received, prior to such further processing, information about that other purpose and

any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent

measure in which the interested party already has the information.”

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the data controller

must comply with the duty of information established in article 13

of Regulation (EU) 2016/679, providing the affected party with the basic information to which

refers to the following section and indicating an electronic address or other means

that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at

least:

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Re-

regulation (EU) 2016/679.

If the data obtained from the affected person were to be processed for the elaboration of

them, the basic information will also include this circumstance. In this case, the

concerned shall be informed of their right to oppose the adoption of decisions automated individuals that produce legal effects on him or affect him significantly. similarly, when this right concurs in accordance with the pre- seen in article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

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"two. Each supervisory authority will have all of the following corrective powers listed below:

a) (...)

b) send a warning to any person responsible or in charge of treatment when the treatment operations have violated the provisions of this Regulation;

c) (...)

d) order the person responsible or in charge of 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 in accordance with article 83, in addition to or instead of the

measures mentioned in this section, according to the circumstances of each case particular".

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

b) the rights of the interested parties pursuant to articles 12 to 22;"

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

"They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

h) The omission of the duty to inform the affected party about the processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law."

v

In this case, the respondent has not presented arguments or evidence that contradict the facts denounced within the period given for it.

This Agency has confirmed that the actions of the respondent are not in accordance with the data protection regulations, since it does not inform customers about the treatment of the personal data provided by them, as required in article 13 of the RGPD, indicated in the legal basis III.

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Thus, in accordance with the facts exposed, we are faced with a
infringement of the provisions of article 13 of the RGPD, by the claimed party.

SAW

In accordance with article 58.2 b), for the commission of this infraction, it is appropriate
address a warning when collecting personal data from customers and
consider that the administrative fine that could be levied in accordance with the provisions of
Article 83.5 b) of the RGPD would constitute a disproportionate burden for the
claimed, since there is no record of the commission of any previous infringement in terms of
Data Protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the
resolution is required to the claimed, as responsible for the treatment, the
adequacy of the information offered to users whose personal data is
collect from them the requirements contemplated in article 13 of the RGPD, as well as
such as the provision of means of proof accrediting compliance with the
required

Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS A.A.A., with NIF ***NIF.1, for an infraction of article 13 of the
RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUIRE A.A.A., with NIF ***NIF.1, under the provisions of the
article 58.2 d) of the RGPD, so that within ten business days from this act
of notification accredits before this body the adoption of measures to facilitate
information to the people whose personal data it collects, in accordance with the provisions of the

article 13 of the RGPD.

THIRD: NOTIFY this resolution to A.A.A. with NIF ***NIF.1.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

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

Contentious-administrative jurisdiction, within a period of two months from the

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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-
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 AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuán, Resolution 4/10/2021

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