

□ File No.: EXP202101321

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Mrs. A.A.A. (hereinafter, the claimant) on July 13,
2021 filed a claim with the Spanish Data Protection Agency. The
The claim is directed against the MINISTRY OF EDUCATION of the Junta de Castilla and
León with NIF S4711001J (hereinafter, EDUCATION). The reasons on which the
claim are as follows:

The claimant works in a secondary school and states that the
The Ministry of Health of the Junta de Castilla y León has provided the center with
where you work your health data regarding Covid vaccination.
In turn, it indicates that the data was published on the bulletin board in the meeting room.
teachers of his educational center, stating in the controversial document the
name, surname and D.N.I. of teachers who did not attend to be vaccinated on the date
in which they were offered.

The claimant informed the management of the center that she did not consider the
publication of the data and they answered that the exposure was legal when published in
a place where only teachers access.

Along with the claim, provide the photographs that prove the exposure of the data
on a plank.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
LOPDGDD), the claim was transferred to EDUCATION and the

Ministry of Health, so that they can proceed with their analysis and inform this

Agency within a month, of the actions carried out to adapt to the

requirements set forth in the data protection regulations.

The transfer to EDUCATION, which was carried out in accordance with the norms established in the

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

Public Administrations (hereinafter, LPACAP) by means of electronic notification,

was accepted on August 23, 2021 as stated in the certificate that works

on the record.

On September 20 of that same year, this Agency received a letter of

answer.

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The transfer to the Ministry of Health, which was carried out in accordance with the regulations

established in Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter, LPACAP) by notification

electronic, was accepted on August 23, 2021, as stated in the

certificate that is in the file.

The Ministry of Health of the Junta de Castilla y León sends a response

dated July 8, 2022, after a repeated request for information.

THIRD: On November 23, 2021, in accordance with article 65 of

the LOPDGDD, the claim presented by the complaining party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

In the context of procedure E/08873/2021 and as a consequence of the transfer carried out by the Data Inspection Sub-directorate, dated 09/20/2021

MINISTRY OF EDUCATION of the Junta de Castilla y León refers to this Agency the following information and representations:

1.

Manifest:

"The claimant expresses a complaint about the inclusion of her name and surname in a vaccination list for teachers of an educational center in Castilla y León, exhibited inside a room with restricted access to staff teacher of the same, considering this fact an undue exposure of his health data. Beyond the aforementioned complaint, it does not appear that the claimant seek the exercise of any of the rights in terms of protection of data related in the arts. 15 to 22 of Regulation (EU) 2016/679 of European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons with regard to data processing personal (GDPR).

In response to this complaint, it can be argued in the first place that even though It is true that health data enjoy special protection, it would be raise the question of whether calls for a process are of such a nature overall collective vaccination of the teaching staff of a center that does not exclude no teacher, and therefore does not single out in terms of health to

one of them against the others.

Likewise, this reflection could be extended, not only to the first call,
but to the successive calls for second chances, which try to

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achieve universal vaccination of all teachers, to the extent that their

High responsibility when dealing with minors requires special attention and

care on your part to avoid any possibility of contagion to

students, who in turn could probably infect the rest of the members

of the family unit.

[...]

Based on all of the above, it is the opinion of this Delegate that, beyond the

Doubts expressed about the classification as health data alleged by the

claimant, concur to appreciate in this case some of the

circumstances indicated in art. 9.2 of the GDPR, which except the rigorous

prohibition of the processing of personal data of this nature, together with

revealers of ethnic origin, religious or political conviction, affiliation

union, etc., contained in the first section of the aforementioned article.

In this sense, art. 9.2g),

understanding the treatment necessary for reasons of a public interest

essential, on the basis of Union law, in this case both the

RD of alarm as the Laws on Public Health currently in

vigor.

Likewise, art. 9.2 h), as it is the necessary treatment for purposes of preventive or occupational medicine, evaluation of the labor capacity of the worker, medical diagnosis, provision of care or treatment of a health or social nature, or management of health systems and services health and social assistance.

And likewise, art. 9.2 i), as the treatment is necessary for reasons of public interest in the field of public health, such as the protection against serious cross-border threats to health, or to guarantee high levels of quality and safety of care health and medicines or health products

Finally, to the extent that exposure through the center of a list of its teaching staff for information on places and dates of vaccination against Covid-19, in the premises for the exclusive use of said personnel, could be assimilated to a publication or an advertisement, they could be considered applicable to the case the guidelines provided by the Spanish Agency of Data Protection for the application of the seventh Additional Provision of the LOPDGDD, which in none of the cases excludes the inclusion in the same of the name and surname of the interested parties.

[...]"

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As a consequence of the request for information made by the inspection, with date 07/08/2022 DEPARTMENT OF HEALTH of the Junta de Castilla y León sends to

this Agency the following information and statements:

1.

Manifest:

“[...]”

I contacted the person in charge of treatment, he informed me that he did not send any information or data of the claimant to the educational center in which he works.

What is known to the data controller is that from the Directorate General of Centers, Educational Planning and Management of the Ministry of Education were sent, by email dated February 24 of 2021, data of the claimant, together with the data of other teachers, to whom sole effects of organizing the vaccination groups according to what established in the COVID-19 Vaccination Strategy of February 9, 2021, current at that time.

Said referral has, in my opinion, a legitimating basis in the need to the fulfillment of a mission of public interest in the field of health under the terms of articles 6.1.e) and 9.2.i) of the General Regulations of Data Protection, as well as in the vital interest of the owner of the data and of third parties, in the terms of articles 6.1.d) and 9.2.c) of the aforementioned Regulation. All this in accordance with Report 0017/2020 on the treatment of data in relation to the Covid-19 of the Legal Office of the AEPD.”

2.

It provides documentation where it also states:

“[...]”

In order to be able to be summoned to be vaccinated, they were sent to this Directorate General from the Ministry of Education in Excel documents, the lists

by province and, in the case of Valladolid and León by Health Area, with the data of early childhood education teachers and staff, educational needs special education, primary, secondary and high school education, both in Education Public as arranged, regardless of the type of contract (workers and temporary workers), among which were the data of the person claimant. These data were sent, solely and to no one else, to the Area managements corresponding to the purpose of organizing your appeal for vaccination as already indicated above.”

FIFTH: On August 26, 2022, a new request for information to the Ministry of Health to clarify the information sent.

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The notification is delivered on 08/29/2022; although it has not been received reply.

SIXTH: On September 26, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of article 5.1.f) of the GDPR and article 32 of the GDPR, typified in articles 83.5 and 83.4 of the GDPR, respectively.

SEVENTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations in which he stated:

"Brief account of the facts

The claimant expresses a complaint in July 2021 for the inclusion of her name and surname in a vaccination list for teachers of a center public school in Castilla y León, exhibited inside a room with restricted access to the teaching staff of the same, considering this fact improper exposure of your health data. Beyond the mentioned complaint, the claimant does not appear to be seeking to exercise any of the rights regarding data protection related in arts. 15 to 22 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 of April 2016, regarding the protection of natural persons in what regarding the processing of personal data (RGPD). After the allegations made by the Ministries of Education and Health, and to the In view of these facts, the Spanish Data Protection Agency agrees the commencement of a disciplinary proceeding against the Department of Education of Castilla y León that is notified on the date specified in paragraph former."

In response to said allegation, this Spanish Data Protection Agency refers to the facts set forth in the initiation agreement, as well as the background and proven facts of this motion for a resolution.

"A universal vaccination list does NOT contain health data

In response to the complaint that gives rise to the procedure, it can be alleged in

Firstly, even though it is true that health data enjoys a

special protection, the question could be raised as to whether the

calls for a global process of collective vaccination of high school teachers

a center that does not exclude any teacher, and therefore does not

distinguishes none of them from the others in terms of health. That is to say,

does not uncover any underlying pathology or in any way classify

those affected in terms of health. He does not reveal any information about his ailments, but rather calls for widespread and global vaccination against an epidemic that, in the case of certain groups, such as doctors, nurses, workers in nursing homes or teachers of underage students, rather than abide by their own convictions should be considered a genuine moral duty related to the exercise of your profession. For this very reason, this reflection could be extended, not only to the first call, but to the successive calls of the second

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opportunity, trying to achieve universal vaccination of a collective as the teacher, to the extent that his high responsibility when dealing with minors, requires special attention and care on their part when it comes to avoiding any possibility of contagion to students, who in turn could infect probably to the rest of the members of the family unit.”

In response to said allegation, it should be noted that in light of the proven facts is proposing a sanction for the publication on the bulletin board of the meeting room teachers of the educational center in which the COMPLAINT party provides its services, of a document containing the names, surnames and ID of the teachers who did not come to get vaccinated, ready in full view of all teachers and center employees.

Given the above, it is important to influence the concept of health data, the GDPR defines in its article 4.15 data related to health as "personal data

relating to the physical or mental health of a natural person, including the provision of health care services, that reveal information about your state of health.”

Recital 35 of the GDPR clarifies this definition by stating that "Among the data

Personal data relating to health must include all data relating to the state of

health of the interested party that provide information about their state of physical or mental health

past, present or future. Information about the natural person collected is included.

on the occasion of their registration for health care purposes, or on the occasion of the

provision of such assistance, in accordance with Directive 2011/24/EU of the

European Parliament and of the Council; any number, symbol or data assigned to a

physical person who uniquely identifies them for health purposes; information

obtained from testing or examination of a body part or bodily substance,

including that from genetic data and biological samples, and any

information relating, by way of example, to a disease, a disability, the

disease risk, medical history, clinical treatment, or condition

physiological or biomedical of the data subject, regardless of its source, for example

a doctor or other healthcare professional, a hospital, a medical device, or a test

in vitro diagnostic.”

It is evident and leaves no room for doubt that the publication of a document of the

teachers who did not go to get vaccinated with name, surname and D.N.I. supposes the

publication of personal data relating to and within the sphere of health and, in

Consequently, they are subject to special protection.

“The special nature of the public function

In this sense, it is convenient to analyze the special nature of the data

personal information of a teaching official of a public center, which is governed by

codes of conduct that require you to perform your duties diligently, and

ensure the general interests subject to and observance of the Constitution

and the rest of the legal system. As established by an acquaintance

monograph on the matter: "the performance of the work of public employees

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is indebted to the principles that support public work: transparency and

democratic control.

That is why we must ask ourselves if, depending on the purpose sought by the

standard, the right of public employees to data protection

Personal data can and should be assigned in favor of those other purposes or more important assets.

valuable". Not only because, in effect, the data of public employees

can be demanded from the angle of other laws such as the one related to the

reuse of public data (Law 37/2007, of November 16, on

Reuse of Public Sector Information), the transparency law (Ley

19/2013, of December 9, of

Transparency, Access to Public Information and Good Governance), or the Law on

administrative procedure, but especially in this case the Organic Law

3/1986, of April 14, on Special Measures in Public Health Matters,

its development regulations, and those dictated precisely by the state of alarm

and the eradication of the Covid-19 pandemic.

Regarding the allegation made, indeed public employees must

diligently carry out the tasks assigned to them and look out for the interests

general subject to and observance of the Constitution and the rest of the legal system

legal, as stated in Royal Legislative Decree 5/2015, of October 30,

approving the revised text of the Basic Employee Statute Law

Public when regulating the rights and duties that make up the code of conduct of the

Public employees; although, in no case, this duty can imply a

violation of the fundamental right to the protection of personal data.

Regarding the mention of Law 37/2007, of November 16, on the Reuse of

Public Sector Information, it should be noted that the reuse regime

guarantees full respect of the principles that enshrine data protection

personal data, as stated in the preamble of the same.

Regarding Law 19/2013, of December 9, on Transparency, Access to

Public Information and Good Governance, it should be remembered that the right of access to

This type of data can only be authorized with the express consent.

Lastly, remember that Organic Law 3/1986, of April 14, on Measures

Special Regulations on Public Health, its development regulations, and those issued

precisely because of the state of alarm and the eradication of the Covid-19 pandemic,

authorize the health authorities to adopt the measures they deem necessary

in case of risk of a communicable nature; without, in any case, implying a

unnecessary violation of fundamental rights such as the fundamental right

to the protection of personal data.

In fact, the regulations on data protection contemplate the exceptions and

conditions in which the data of special protection can be treated,

considering, as reasoned in this proposal, that the treatment carried out is not

adjusted to such conditions.

For the rest, it is not guessed, nor does the defendant justify it, what the interests with

basis on which the health data of public employees merited a

less protection than the rest of the citizenry.

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“State of alarm due to the Covid-19 pandemic

Indeed, the very serious situation caused by the Covid-19 epidemic has required the proclamation of a state of alarm, which has only been declared in a very exceptional way in the almost 44 years of validity of the Constitution.

State of alarm on the other hand, which proclaimed by RD 463/2020, of 14 March, it was necessary to extend it given the persistence of the health crisis without precedents caused by the coronavirus pandemic, with very serious social, economic, health and educational consequences. And situation whose severity due to the multiple waves and variants of the virus, did not cease over time. throughout the academic years 19/20 and 20/21, making it extremely difficult to maintenance of the quality of education throughout Spain and specifically in Castile and Leon.

A maintenance of educational tasks that has only been possible with the enormous effort of teachers, parents and students, who together with the extraordinary investment of the educational administration, has kept teaching standing, making it difficult to understand the lack of responsibility of any member of his faculty."

From this Agency, the effort made by teachers, parents and students, as well as by the educational administration for the maintenance of quality education during the very serious situation caused by the Covid-19 epidemic.

Said consideration; in no case, justifies a violation of current regulations in terms of data protection, which, as previously stated, reconciles the

conditions in which the treatments must take place with the guarantee of objectives

such as public health or vital interest.

“Justification of essential public interest in the field of public health

Based on all of the above, it is the opinion of this Delegate that, beyond the

Doubts expressed about the classification as health data alleged by the

claimant, concur to appreciate in this case some of the

circumstances indicated in art. 9.2 of the GDPR, which except the rigorous

prohibition of the processing of personal data of this nature, together with

revealers of ethnic origin, religious or political conviction, affiliation

union, etc., contained in the first section of the aforementioned article.

□ In this sense, art. 9.2g),

understanding the treatment necessary for reasons of a public interest

essential, on the basis of Union law, in this case both the

RD of alarm as the Laws on Public Health currently in

vigor.

□ Likewise, art. 9.2 h), as it is the necessary treatment for purposes of

preventive or occupational medicine, evaluation of the labor capacity of the

worker, medical diagnosis, provision of care or treatment

of a health or social nature, or management of health systems and services

health and social assistance.

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□ And likewise, art. 9.2 i), as the treatment is necessary for reasons

of public interest in the field of public health, such as the protection against serious cross-border threats to health, or to guarantee high levels of quality and safety of care health and medicines or health products.

All of this, apart from the fact that in the public educational sphere, based on the Additional Provision 23 of Organic Law 2/2006, of May 3, of Education, in connection with art. 6.1 of the GDPR the legitimation or legal basis for the processing of personal data is covered by the function educational, always arising from a legal obligation or a mission carried out in the public interest in the exercise of public powers in the field of teaching. Legal bases that in the present case are reinforced by the arts. 6.1 c) and 6.1 d) of the GDPR, since the treatment derives from the obligations that the educational administration is imposed by the norms regarding safety and health, as well as necessary to protect interests of the interested party or of other natural persons, such as students and their families.”

In this sense, this Agency should mention that the exception to the prohibition of treatment of, among others, health, public health and care management health, for purposes of public interest, always requires that the guarantees of data protection and other fundamental rights.

In addition, reference should be made to Recital 54 of the GDPR "The treatment of special categories of personal data, without the consent of the data subject, it may be necessary for reasons of public interest in the field of public health.

Such processing must be subject to appropriate and specific measures in order to protect the rights and freedoms of natural persons. In this context, « health public" must be interpreted in the definition of Regulation (EC) No 1338/2008 of the

European Parliament and of the Council (1), i.e. all items relating to health, specifically the state of health, including morbidity and disability, the determinants that influence said state of health, the healthcare needs, resources allocated to healthcare, the provision of health care and universal access to it, as well as health care spending and financing; and causes of death. This processing of data relating to health for reasons of public interest should not give where third parties, such as businessmen, insurance companies or entities banks, process personal data for other purposes.

Consequently, the data protection regulations allow adopting the measures and measures that are necessary to safeguard the vital interests of the natural persons, the essential public interest in the field of health, the performance of medical diagnoses, or compliance with legal obligations in the workplace, including the processing of health data without the need for the explicit consent of the affected party.

However, and despite the fact that it is not necessary to obtain the consent of the interested party

In certain cases, never and in no case, should they fail to comply with the rest of the obligations imposed on data controllers, summarized and

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Inspired by the principles that should govern the processing of personal data, art. 5 of the GDPR as well as to adopt the appropriate security measures, art. 32 of GDPR.

In this case, the publication was being carried out, even in a restricted way, of a health data. Regardless of the possibility that any of the exceptions, an analysis should have been carried out as to whether the publication was accurate, or the appeal or summons could have been made through methods, such as the individual communication, which avoided the public exposure of health data.

"Legal report of the Spanish Data Protection Agency against the Covid-19

The seriousness of the situation described, which made it necessary to carry out a enormous collective effort of social responsibility, especially outstanding in the case of teachers responsible for avoiding contagion of students minors and their families, determined the need for the Spanish Data Protection Agency establishes certain guidelines regarding the possible collision between the right to data protection and the public health, among which we can highlight the report regarding its Legal Office, 0017/2020, accessible from the Agency's website "www.aepd.es".

In this sense, the aforementioned report begins by stating that Considering (46) of the GDPR already recognizes that in exceptional situations, such as a epidemic, the legal basis of the treatments can be based both on the public interest, such as in the vital interest of the data subject or another natural person. Of In this way, the processing of personal data should also be considered lawful when necessary to protect an interest essential to the life of the interested party or that of another natural person, so that certain types of processing may respond both to important reasons of public interest as well as the vital interests of the interested party, such as when the processing is necessary for humanitarian purposes, including control of

epidemics and their spread, or in situations of humanitarian emergencies, especially in the event of natural or man-made disasters.

The art. 6.1, letter d) GDPR considers not only that vital interest is sufficient legal basis of the treatment to protect the "interested party", but that said basis can be used to protect the vital interests "of another person physical", aimed at protecting all those people susceptible to being infected in the spread of an epidemic, which would justify, from the point of view of personal data processing, in the broadest sense possible, the measures adopted to that end.

On the other hand, as has already been argued, the inclusion of a person on a vaccination list a specially protected health data, when the call for this vaccination is universal and affects everyone for the same, regardless of the order in which it is performed. Consequently, it does not seem necessary to argue, although one could perfectly well, the numerous legal reasons that oblige the teaching staff of an educational center to ensure your own safety and health and that of those who may be affected their professional activity, due to their acts and omissions at work, accordance with their training."

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For the processing of health data, it is not enough that there is a legal basis for the art. 6 GDPR, but in accordance with article 9.1 and 9.2 of the GDPR there is a circumstance that lifts the prohibition of treatment of said special category of

data.

In an emergency situation, within the exclusive scope of protection regulations of personal data, the application of the personal data protection regulations would allow the person responsible for the treatment to adopt those decisions that are necessary to safeguard the vital interests of natural persons, the compliance with legal obligations or the safeguarding of essential interests in the field of public health, always within the respect of the obligations imposed on data controllers in relation to technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk as well as as the principles that should govern the processing of personal data.

And it is the breach of these obligations and principles that is being proposed for your sanction on this proposal.

It should also be noted that this is not just the first call for vaccination, Rather, the claim focuses on the fact that appeals were published aimed at those who have not been vaccinated, thus revealing such a circumstance.

"Data protection in health emergency situations

Consequently, the legal report of the Spanish Agency for Data Protection," in a health emergency situation such as the one refers to the request for this report, it must be taken into account that, in the exclusive scope of the personal data protection regulations, the application of the regulation would allow adopting the data controller those decisions that are necessary to safeguard the interests of natural persons, compliance with legal obligations or the safeguarding essential interests in the field of public health, within of what is established by the applicable material regulations.

The Spanish legislator has provided itself with the necessary legal measures

appropriate measures to deal with health risk situations, such as the Law Organic 3/1986, of April 14, on Special Health Measures Public (modified by Royal Decree-Law 6/2020, of March 10, by the that certain urgent measures are adopted in the economic and for the protection of public health, published in the Official State Gazette of March 11, 2020) or Law 33/2011, of October 4, General Health public. Consequently, from a data processing point of view personal, the safeguarding of essential interests in the field of health corresponds to the different health authorities of the different public administrations, who may adopt the necessary measures to safeguard such essential public interests in situations of public health health emergency. Will these health authorities authorities of the different public administrations who must take the necessary decisions, and the different people in charge of the processing of personal data must follow these instructions, even when this involves the processing of personal health data of persons physical. The foregoing refers, expressly, to the possibility of treating the

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personal health data of certain natural persons for which responsible for processing personal data, when, by indication of the competent health authorities, it is necessary to notify other persons with whom said natural person has been in contact the

circumstance of contagion of this, to safeguard both said people of the possibility of contagion (vital interests of the same) as long as to prevent said natural persons, due to ignorance of their contact with an infected person can spread the disease to other third parties (interests of third parties and essential and/or qualified public interest in the field of public health)".

This Spanish Data Protection Agency insists that, in a situation of emergency, within the exclusive scope of personal data protection regulations, the application of the personal data protection regulations would allow the adoption of responsible for the treatment those decisions that are necessary to safeguard the vital interests of natural persons, compliance with legal obligations or the safeguarding of essential interests in the field of health public, always respecting the obligations imposed on those responsible of data processing in connection with technical and organizational measures appropriate to guarantee a level of security appropriate to the risk as well as the principles that should govern the processing of personal data.

The publication on the bulletin boards of the teachers' rooms of the centers educational, lists in which the name, surname and D.N.I. of teachers who did not come to be vaccinated, without anonymizing their personal data, does not guarantee the confidentiality, integrity and availability of treatment systems and services nor the purpose of the treatment, violating the obligations imposed on the responsible, as well as the principles of data processing.

Said publication has involved the exposure of health data, which could have been avoided through individualized and private communication.

"Teleological assessment of data protection

As one of the greatest Spanish specialists in the field of

data protection, "The risk to the vital interest of articles 6 and 9 is not exclusively individual. The exact expression admits the treatment when "It is necessary to protect the vital interests of the data subject or of another person physical". In the case of infectious-contagious diseases, that other person Physics is the community. On the other hand, vital interest does not depend on our perception as lawyers, is a technical concept that will be defined by the staff sanitary". And concludes the article by the aforementioned specialist clearly that "from a teleological approach, a viral disease that leads to pandemic, makes collective health care prevail, so that, within highly regulated public health systems and with guarantees at all levels, the impact on privacy could only be limited. Additionally, a certain dimension must be taken into account axiological. The ultimate reason for the protection of special categories of data from Convention 108/1981, is none other than avoiding discrimination.

Treat health data with the function of preventing and fighting in a scenario

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epidemic or pandemic does not pursue a discriminatory purpose. On the contrary, it aligns with the fundamental constitutional value the guarantee of life, health and human dignity". Conclusion and request for dismissal of the sanctioning procedure. The very serious and exceptional situation caused due to the global pandemic of Covid-19, has been decreasing in intensity thanks to the global process of vaccination, but it has not disappeared for

complete. The director of the Alert and Emergency Coordination Center Sanitary, has recently predicted a notable increase in transmission of the Covid, but thanks to the fact that almost the entire population is vaccinated, it will be less serious than in previous waves. A new variant has just been detected new variant BQ.1.1 of Covid that could bring a new wave of infections.

The Community of Castilla y León, and specifically the Ministry of Education, along with Health, have acquired sufficient experience to more confidently face the challenges posed by new waves of Covid or even new pandemics that occur in the near future.

And they will try to guarantee, as they have already done with notable success in the difficult previous courses, a teaching quality that international evaluations such as PISA rank year after year as one of the best in the Spanish state. AND

For this reason, they will not neglect compliance with the regulations for the protection of data. The very small number of claims that have been filed is very significant.

produced in this regard, especially in the educational field of the Community of Castilla y León. In any case, this Protection Delegate of Data has issued the corresponding instructions to the bodies authorities of the Ministry of Education and especially the Inspection Educational, so that they respect the privacy of the members of the educational community of Castilla y León even in emergency situations national.

In this sense, together with the existing protocols in terms of security and health and the numerous instructions and technical means established during the pandemic to guarantee the quality of teaching and avoid the loss of school year in Castilla y León, this Ministry of Education shows its total disposition to follow the instructions of the Spanish Agency of

Data Protection, reiterating through the Educational Inspection the precautions to adopt in the processing of personal data, requesting without understanding of the situation in order to avoid that the gigantic effort of parents, teachers and students in the midst of a pandemic that has infected 900,000 of its citizens and cost 9,000 human lives just in this Community, is marred by the unfortunate display of a list of vaccination of a professional teacher in the staff room of a public educational center of Castilla y León.

This Agency refers to the previously answered regarding the legal basis of the treatment and the need for consent, in accordance with the provisions of the Articles 6 and 9 of the GDPR, in an emergency situation such as the pandemic world of Covid -19 and insists that all this does not exempt from compliance with the Obligations imposed on data controllers in relation to the appropriate technical and organizational measures to ensure a level of security

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appropriate to the risk as well as the principles that should govern the treatment of personal information.

On the other hand, to highlight, given what happened, the need for the instructions sent to the competent bodies of the Ministry of Education and especially the Educational Inspection, so that they respect the privacy of the members of the educational community of Castilla y León even in emergency situations national; since, said situations do not exempt from compliance with the regulations of

data protection in its entirety.

EIGHTH: On October 26, 2022, a resolution proposal was formulated, proposing to sanction the MINISTRY OF EDUCATION and MINISTRY OF SANIDAD, with NIF S4711001J, for a violation of article 5.1.f) of the GDPR and for a violation of article 32 of the GDPR, typified in article 83.5 and in article 83.4 of the GDPR respectively, with a warning sanction for each of the infractions.

Said proposed resolution was notified to EDUCATION on that same date.

NINTH: In said resolution proposal the MINISTRY OF HEALTH.

Once the error has been detected and in accordance with the provisions of article 109.2 of the Law 39/2015, of October 1, Common Administrative Procedure of the Administrations, on November 25, 2022, a new proposal for resolution, proposing to sanction the MINISTRY OF EDUCATION, with NIF S4711001J, for a violation of article 5.1.f) of the GDPR and for a violation of the Article 32 of the GDPR, typified in Article 83.5 and Article 83.4 of the GDPR respectively, with a warning sanction for each of the infractions, and granting a new term to formulate allegations.

Notified of the resolution proposal, no allegations have been presented by the MINISTRY OF EDUCATION.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: It is accredited in the file that the Ministry of Health of the Junta de Castilla y León provided, to the educational center in which it provides its services the complaining party, their health data regarding the Covid vaccination.

SECOND: It is proven in the file that said data was published

on the bulletin board in the teachers' room of the aforementioned educational center.

THIRD: It is proven in the file that in the document object of

posting on the bulletin board in the staff room included name,

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surnames and D.N.I of the teachers who did not go to be vaccinated on the date on which they were offered.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

Article 5.1.f) of the GDPR

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of personal data;

personal information, including protection against unauthorized or unlawful processing and against its accidental loss, destruction or damage, through the application of technical or appropriate organizational procedures ("integrity and confidentiality")."

In this case, it is clear that the personal data of the COMPLAINT, in the EDUCATION database, were unduly exposed to ter-zeros, violating the principle of confidentiality.

According to the record, the Ministry of Health sent the General Directorate ral of the Department of Education in Excel documents, the lists by province and, in the case of Valladolid and León by Health Area, with data from teachers and early childhood education personnel, special educational needs, primary education ria, secondary and baccalaureate, both public and subsidized education, independent depending on the type of contract (workers and interim), among which are- Ban the data of the claimant.

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Although these data were sent, solely and to no one else, to the Management of Area corresponding to the purpose of organizing your appeal for vaccination.

Having these data to organize calls for vaccination, in no

case, justifies the publication on the bulletin board of the teacher's room of the center educational center in which the COMPLAINT party provides its services, of a document in which the name, surnames and ID of the teachers who did not attend get vaccinated, ready in full view of all the teachers and employees of the center.

The Ministry of Education has not respected the principle of confidentiality, since that, instead of making the call for vaccination and its communication in a individualized and private, indiscriminately exposed health data, categorized as special categories of personal data whatever the purpose of their treatment, on the bulletin board in the staff room.

Classification of the infringement of article 5.1.f) of the GDPR

II

The aforementioned violation of article 5.1.f) of the GDPR could lead to the commission of the infractions typified in article 83.5 of the GDPR that under the heading "Conditions rules for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of 20 000 000 EUR maximum or, treating- of a company, of an amount equivalent to a maximum of 4% of the volume of overall annual total business of the previous financial year, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the consent lien under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to rias to the present organic law".

For the purposes of the limitation period, article 72 "Infringements considered very serious"

you see" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data in violation of the principles and guarantees established two in article 5 of Regulation (EU) 2016/679. (...)"

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Penalty for violation of article 5.1.f) of the GDPR

IV.

Article 83 "General conditions for the imposition of administrative fines" of the GDPR section 7 establishes:

"Without prejudice to the corrective powers of the control authorities under art.

Article 58(2), each Member State may lay down rules on whether of, and to what extent, imposing administrative fines on public authorities and bodies public establishments established in that Member State."

Likewise, article 77 "Regime applicable to certain categories of liability" responsible or responsible for the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge: ...

c) The General State Administration, the Administrations of the autonomous entities and the entities that make up the Local Administration...

2. When the managers or managers listed in section 1 commit

any of the offenses referred to in articles 72 to 74 of this organic law

only, the data protection authority that is competent will issue a resolution

sanctioning them with warning. The resolution will also establish the

measures that should be adopted to cease the conduct or to correct the effects of the

offense that was committed.

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

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

will be those established in the legislation on the disciplinary or sanctioning regime that

be applicable.

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

accredit the existence of technical reports or recommendations for the treatment that

had not been duly attended to, in the resolution in which the

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

will order the publication in the Official State or regional Gazette that

corresponds.

4. The data protection authority must be informed 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 similar institutions

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

under this article. (...)”

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Article 32 "Security of treatment" of the GDPR establishes:

GDPR Article 32

"1. Taking into account the state of the art, the application costs, and the nature of nature, scope, context and purposes of processing, as well as probability risks and variable severity for the rights and freedoms of natural persons, the responsibility responsible and the person in charge of the treatment will apply appropriate technical and organizational measures. measures to guarantee a level of security appropriate to the risk, which, where appropriate, will include yeah, among others:

- a) the pseudonymization and encryption of personal data;
- b) the ability to guarantee the confidentiality, integrity, availability and re-permanent silence of treatment systems and services;
- c) the ability to restore the availability and access to personal data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of effectiveness technical and organizational measures to guarantee the security of processing I lie.

2. When assessing the adequacy of the security level, particular account shall be taken of

The risks presented by the data processing, in particular as a consequence of the destruction, loss or accidental or illegal alteration of personal data transmitted collected, preserved or processed in another way, or the unauthorized communication or access two to said data.

3. Adherence to a code of conduct approved under article 40 or to a mecha-certification document approved in accordance with article 42 may serve as an element to

demonstrate compliance with the requirements established in section 1 of this article.

4. The controller and the processor shall take measures to ensure that any person acting under the authority of the controller or processor and having access to personal data can only process such data following instructions of the controller, unless it is required to do so by Union law or by the Member States”.

In the present case, at the time of the security breach, there is no record that EDUCATION had reasonable security measures based on the estimated possible risks.

Disseminate by posting on the bulletin boards of the teachers' rooms of the educational centers, lists in which the name, surname and D.N.I. of the teachers who did not come to be vaccinated, without anonymizing their personal data, does not guarantee the confidentiality, integrity and availability of systems and services of the treatment nor the purpose of the treatment.

The Ministry of Education, as responsible, should have given instructions precise instructions for the processing of said data, in order to organize new your calls to vacation, individually and privately, respecting the

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principles of purpose, proportionality and confidentiality of health data proportioned.

Classification of the infringement of article 32 of the GDPR

SAW

The aforementioned infringement of article 32 of the GDPR could lead to the commission of the infringements conditions typified in article 83.4 of the GDPR that under the heading "General conditions" regulations for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of 10,000,000 EUR or, in the case of of a company, of an amount equivalent to a maximum of 2% of the volume of overall annual total business of the previous financial year, opting for the one with the highest amount:

5)

the obligations of the controller and the person in charge under articles 8, 11, 25 to 39, 42 and 43; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that "Consti-

The acts and behaviors referred to in sections 4, 5 and 6 have infractions of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

For the purposes of the limitation period, article 73 "Infractions considered serious" of the LOPDGDD indicates:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, the

They are considered serious and will prescribe after two years the infractions that suppose a vulnerability. substantial portion of the articles mentioned therein and, in particular, the following:

...

g) The breach, as a consequence of the lack of due diligence,

of the technical and organizational measures that have been implemented in accordance with to what is required by article 32.1 of Regulation (EU) 2016/679". (...)

Penalty for violation of article 32 of the GDPR

Article 83 "General conditions for the imposition of administrative fines" of the GDPR section 7 establishes:

"Without prejudice to the corrective powers of the control authorities under art.

Article 58(2), each Member State may lay down rules on whether of, and to what extent, imposing administrative fines on public authorities and bodies public establishments established in that Member State."

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Likewise, article 77 "Regime applicable to certain categories of liability" responsible or responsible for the treatment" of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge: ...

c) The General State Administration, the Administrations of the autonomous entities and the entities that make up the Local Administration...

2. When the managers or managers listed in section 1 commit any of the offenses referred to in articles 72 to 74 of this organic law only, the data protection authority that is competent will issue a resolution sanctioning them with warning. The resolution will also establish the measures that should be adopted to cease the conduct or to correct the effects of the offense that was committed.

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

enough evidence for it. In this case, the procedure and the sanctions to be applied will be those established in the legislation on the disciplinary or sanctioning regime that be applicable.

Likewise, when the infractions are attributable to authorities and executives, and accredit the existence of technical reports or recommendations for the treatment that had not been duly attended to, in the resolution in which the sanction will include a reprimand with the name of the responsible position and will order the publication in the Official State or regional Gazette that corresponds.

4. The data protection authority must be informed 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 similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article.”

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE on the MINISTRY OF EDUCATION, with NIF S4711001J, a penalty of warning for an infringement of Article 5.1.f) of the GDPR typified in Article 83.5 of the GDPR.

IMPOSE on the MINISTRY OF EDUCATION, with NIF S4711001J, a sanction of warning for a violation of Article 32 of the GDPR typified in Article 83.4 of the GDPR.

SECOND: NOTIFY this resolution to the MINISTRY OF EDUCATION.

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THIRD: COMMUNICATE this resolution to the Ombudsman, in

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

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

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

count 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

day following the notification of this act, as provided for in article 46.1 of the

referred Law.

Finally, it is noted 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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registries 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 proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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