

RESOLUTION OF PUNISHMENT PROCEDURE

□ Procedure No.: PS/00366/2019

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 05/20/2019 filed claim before the Spanish Data Protection Agency. The claim is directed against the STATE AGENCY OF TAX ADMINISTRATION, with NIF Q2826000H (hereinafter, the claimed one). The grounds on which the claim is based are

In summary: that the claimant, when registering a female worker with Social Security On 04/06/2018, he requested a reduction in his contribution. The request was denied by the TGSS, requesting the claimant to present a certificate of being at the current of their tax obligations. Upon presentation of two certificates positives issued by the AEAT, the TGSS denies the bonus informing the claimant that the entry "tax crime" appears in the AEAT files. The The claimant addressed the DPD of the AEAT on 02/08/2019 requesting explanations timely, as inaccurate and contradictory data are recorded in their files. the dpd responds on 04/01/2019 stating that the data in the AEAT file are correct, however, in the Legal Assistance application, a field, motivating the issuance of the erroneous certificate with a negative result requested by the TGSS.

SECOND: Upon receipt of the claim, the Subdirector General for Data Inspection proceeded to carry out the following actions:

On 06/12/2019, the brief submitted for his review was transferred to the defendant. analysis and communication to the affected party of the decision adopted in this regard. Equally,

he was required so that within a month he sent to the determined Agency

information:

- Report on the impact assessment carried out before the implementation of improvements in the Legal Assistance application.
- The decision taken to provide for this claim.
- Report on the measures adopted to prevent the occurrence of similar incidents.
- Any other that you consider relevant.

The claim in writing dated 07/12/2019 refers, firstly, to the system of issuance of certificates of being up to date with payment of tax obligations and the channels through which it is possible to make requests, as well as access by part of other organizations to the services of request of certificates to be to the current payment of tax obligations and the incidence that occurred in the case of claimant.

In relation to the issues raised, the respondent does not consider it necessary carry out an impact assessment since the complaint is not about a

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certain treatment but with a recording error of the status of a file.

That the situation of the DNI of the claimed person is corrected and reviewed. that the data used in the generation of the claimant's certificate had been registered in the year 2012 and due to an error the status of the file had not been updated properly. Regarding the measures adopted, they can be summarized in three lines:

of action:

1. That since 2015 the Legal Assistance application has integrated different controls to help employees who use this application and improve the quality of the data; all controls are in place and there is no record of similar errors.

2. That the files prior to 2015 are in the process of being reviewed and gradually making and

3. That as a result of the case under study, the DPD sent the Administration Group Electronics of the AET proposing a general review of the issuance procedure of tax certificates in order to identify improvements in the management and information provided to interested parties.

THIRD: On 10/09/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: There is a document from the claimant dated 10/22/2019 in which he stated that based on article 77.2 and 78.3 of the RGPD that indicate “2. the authority of control before which the claim has been filed will inform the claimant about the course and outcome of the claim, including the possibility of accessing the judicial protection under article 78” and “3. Actions against an authority

Control must be exercised before the courts of the Member State in which it is located.

established the control authority”, was going to resort to the Contentious Jurisdiction

Administrative for what required the AEPD to provide the information to be

refers to article 77.2 of the RGPD, as well as the corresponding claim

before the European Data Protection Supervisor given the lack of interest shown by the AEPD by not deigning to answer your claim.

FIFTH: On 03/12/2020, the Director of the Spanish Agency for the Protection of

Data agreed to initiate a sanctioning procedure against the person claimed for the alleged infraction of article 5.1.d) of the RGPD.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on 06/12/2020 stating, in summary: that as a consequence of the claim, the circumstances that allowed issuing the certificates were reviewed, way that currently the conditions in the application have been modified of the AEAT, so that a negative certificate is issued and that the DPD sent a proposal to the Electronic Administration Group of the Tax Agency, proposing a general review of this procedure; what happened in the case of claimant is not a consequence of a breach of the principle of accuracy of the data, but precisely the technical and organizational measures adopted to minimize and correct errors in the automated processing of personal data to the issuance of certificates of being up to date with tax obligations; that although it could be considered that the data of the claimant were inaccurate, for not the field in the Legal Assistance application has been incorporated into your file, The truth is that article 5.1.d) of the RGPD, in relation to the update, does not impose www.aepd.es

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take disproportionate measures to update the data, but the reasonable ones, taking into account the means available and the purpose for which the data is used; the Unnecessary to process sanctioning procedure for having solved the claim; that although it is considered that there was non-compliance by the AEAT of the principle of accuracy of the data, the corrective measures have been adopted

opportune, taking care of the demanded claim.

SEVENTH: On 08/18/2020 it was agreed to open a testing period, remembering the following:

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services before the AEAT that are part of the file E/05725/2019.
- Consider reproduced for evidentiary purposes, the allegations to the agreement of start PS/00366/2019 filed by the respondent.

EIGHTH: On 11/16/2020, a Proposed Resolution was notified in the sense that by the Director of the AEPD, the person claimed for an infraction of article 5.1.d) of the RGPD, typified in article 83.5.a) of the RGPD, with a warning. After the period established by the claimant, at the time of this Resolution, He had not submitted any brief of allegation.

NINTH: Of the actions carried out in this proceeding, they have been accredited the following

PROVEN FACTS

FIRST. On 05/20/2019 it has entry in the Spanish Agency for the Protection of Written data filed by the claimant; the claim is directed against the AEAT motivated by registering a worker with Social Security and requesting the reduction of his contribution, was denied by the TGSS, informing the claimant that was not aware of its tax obligations since in the files of the AEAT the annotation "fiscal crime" is recorded. The claimant went on 02/08/2019 to the DPD of the AEAT requesting the appropriate explanations, as it is recorded in its data files inaccurate and contradictory. The DPD responds on 04/01/2019 stating that the data that appear in the AEAT file are correct, however, in the application

Legal Assistance A field was not completed, motivating the issuance of the certificate erroneous with the negative result of the application before the TGSS.

SECOND. Evidence provided by the claimant diligence of appearance in the special delegation of the AEAT in Madrid dated 03/22/2019 in which it is requested explanation of the situation created by the issued certificate and identification of the acting official.

THIRD. There is a written contribution addressed to the DPD of the AEAT on 02/08/2029 in the that the claimant requests explanations about the incident that occurred and that it is the subject of this claim.

FOURTH. There is a response from the DPD dated 05/20/2019, in which it is stated that "When you have requested it from the TGSS, although the meaning of the certificate is NEGATIVE, has been provided as a reason for the refusal: "M. Fiscal Crime", for its transfer and that could request a review before the Tax Agency. It must be recognized that the term Fiscal Crime is unfortunate and a message of the type would have been preferable www.aepd.es

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"Go to your tax office to review the situation" and that "Once analyzed your case and having identified the causes that have caused the situation you have described, has proceeded to update the Legal Assistance application. In this way, from now and as long as the circumstances do not change, the meaning of the tax certificate will be the same, regardless of whether it is requested before the Tax Agency or through a body integrated into the information supply system where Certificates of being up to date with payment of tax obligations are offered.

This modification has been in effect since March 26, 2019.

It is also pointed out, in light of what happened, a series of modifications in order to prevent situations such as the one that gave rise to the claim.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

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Article 5, Principles relating to processing, of the GDPR states that:

II

"1. The personal data will be:

(...)

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the personal data to be erased or rectified without delay

that are inaccurate with respect to the purposes for which they are processed

("accuracy");

(...)

Also article 4, Accuracy of the data, of the new Organic Law 3/2018,

of December 5, Protection of Personal Data and guarantee of the rights

(hereinafter LOPDGDD), states:

"1. In accordance with article 5.1.d) of Regulation (EU) 2016/679, the data will be accurate and, if necessary, updated.

2. For the purposes provided in article 5.1.d) of Regulation (EU) 2016/679, shall not be attributable to the data controller, provided that the latter has adopted all reasonable steps to have it promptly removed or rectified, the inaccuracy of the personal data, with respect to the purposes for which they are processed, when the inaccurate data:

a) They would have been obtained by the person in charge directly from the affected party.

b) They would have been obtained by the person in charge of a mediator or intermediary in the event that the regulations applicable to the sector of activity to which it belongs the person in charge of the treatment established the possibility of intervention of an intermediary or mediator who collects on his own behalf the data of the affected for its transmission to the person in charge. The mediator or intermediary will assume the responsibilities that may arise in the event of communication to the data controller that does not correspond to the provided by the affected party.

c) They were subjected to treatment by the person responsible for having received them from another person responsible by virtue of the exercise by the affected party of the right to portability in accordance with article 20 of Regulation (EU) 2016/679 and the provisions in this organic law.

d) Were obtained from a public registry by the person responsible".

III

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In the present case, as stated in the antecedents and first proven fact the claim filed is due to the fact that the claimant, upon registering with the Security Social to a worker on 04/06/2018 requested the reduction of her contribution for being older than 50 years; The request was denied by the TGSS, on the grounds that had debts with the AEAT, requesting the claimant to present a certificate to be up to date with their fiscal and tax obligations; for what I request to this body positive certification of being up to date with their obligations prosecutors; four months have elapsed since the request for the certificate and in the face of the silence of the claimed person, I request an appearance by requesting a prior appointment at the AEAT without having obtained a satisfactory response, although the next day it was issued positive electronic certificate of your tax situation that you presented to the TGSS is again rejected due to the existence of a tax crime, having been concealed such circumstance until 11/18/2018; Faced with such an unusual situation, he goes to the DPD who, after more than a month without receiving a response, presented himself at the headquarters of the AEAT where he explained his situation and after five days he receives a reply from the DPD considering it entirely unsatisfactory and unfortunate.

It is true that the documentation in the file shows that the defendant would have violated article 5.1.d), principle of accuracy, in relation to Article 4 of the LOPDGDD by keeping inaccurate data in its files related to the claimant without having corrected them, appearing since 2012 as linked to a crime fiscal.

The DPD itself in the written response to the claimant's request/complaint pointed out on 04/01/2019 that "The explanation of why this data is not completed This is due to the age of the information, which is prior to the improvements made in the

Legal Assistance Application, to help the public employee in the maintenance of the data and status of the files” and that “When you have requested to the TGSS, although the meaning of the certificate is NEGATIVE, it has been provided as reason for refusal: “M. Tax Crime”, for its transfer and that it could request a review before the Tax Agency. It must be recognized that the term Fiscal Crime is unfortunate and a message of the type “Go to your tax office to review the situation.

Therefore, it is true that the respondent himself has admitted that the data were used to generate the claimant's certificate and that they had been registered in 2012, due to an error the status of the file properly.

However, it is also true that on the occasion of the request/complaint of the claimant, the parameters used to issue the certificates of so that at present the conditions have been modified in the consultation with Argos Criminal, application of the AEAT, in the issuance of negative certificates; furthermore, as a result of the complainant's case, the DPD referred a proposal to the Management Group Electronic Department of the Tax Agency, proposing "a general revision of this procedure with the aim of identifying improvements in the management of certificates and the information that is provided to the interested parties who request it, having modified the descriptions of the reason for denial that are provided to the Petitioning Public Administrations”.

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It should also be noted that on the occasion of the claim,

a series of measures aimed at avoiding similar incidents in the future

such as the one that has given rise to this claim:

Since 2015, the Legal Assistance application has integrated different

controls to help employees who use this application and improve the quality

of the data. That controls have been included in the Legal Assistance application for

ensure that the necessary data is provided to the files and not left without

fill in and the generation of follow-up reports has also been facilitated.

status of the files that allow better control of them,

controls that are already implemented without evidence of errors similar to

those reported by the claimant.

All files prior to 2015 are in the process of being reviewed by the

legal services of the Tax Agency delegations.

The Data Protection Delegate has sent a proposal to the Group of

Electronic Administration of the Tax Agency, where the

areas that participate in the procedure for issuing tax certificates,

proposing a general review of this procedure with the aim of identifying

improvements in the management of certificates and the information provided to the

interested parties who request them.

Article 83.5 a) of the RGPD, considers that the infringement of “the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9” is punishable.

IV

On the other hand, the LOPDGDD in its article 72, for prescription purposes, indicates

which are: “Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

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

(...)"

However, the LOPDGDD in its article 77,

Regime applicable to

certain categories of controllers or processors, establishes the

Next:

"1. The regime established in this article will be applicable to treatments of which they are responsible or entrusted:

a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

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

d) Public bodies and public law entities linked or dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment

related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous Legislative, as well as the political groups of the Corporations

Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed.

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

body on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

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

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

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

and the existence of technical reports or recommendations for treatment is proven

that had not been duly attended to, in the resolution imposing the

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

will order the publication in the Official State or Autonomous Gazette that correspond.

4. The data protection authority must be informed of the resolutions that fall in relation to the measures and actions referred to the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article.

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6. When the competent authority is the Spanish Agency for the Protection of Data, it will publish on its website with due separation the resolutions referred to the entities of section 1 of this article, with express indication of the identity of the person in charge or in charge of the treatment that would have committed the infringement.

When the competence corresponds to a regional protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

In accordance with the available evidence of the conduct of the claimed constitutes a violation of the provisions of article 5.1.d) of the RGPD.

It should be noted that article 77 of the LOPDGDD contemplates the possibility of go to the sanction of warning to correct data processing personal data that do not conform to their forecasts, when those responsible or

those in charge listed in section 1 committed any of the infractions to the referred to in articles 72 to 74 of this organic law.

Likewise, it is contemplated that the resolution issued will establish the measures that it is appropriate to adopt so that the conduct ceases, the effects of the infraction are corrected that had been committed through the adoption of the measures and the provision of accrediting means of compliance with what is required, a regulation that is not a novelty since it was also included in part in the previous LOPD.

However, taking into account that the interested party's claim was addressed, issuing the requested certificate and reviewing the false negative that had been issued at the request of the TGSS and that, in addition, complementary measures were adopted how to include the reason for provisional dismissal in the application file legal status of the claimed party in order to avoid similar incidents; that was modified parameter of the automated certificate issuance application to reduce the false negatives requiring human intervention; that the message was modified receives the remote requesting Public Administration of certificates of being up to date current of tax obligations on the cause of the refusal of the certificate, etc., as indicated previously, it is not appropriate to urge the adoption of measures additional, having been accredited, that the respondent has adopted all those that are reasonable, in accordance with the provisions of the regulations on Data Protection.

Therefore, in light of the foregoing, it is not appropriate to urge the adoption of measures additional, having been accredited, that the respondent has adopted the measures reasonable, in accordance with the regulations on data protection, which

As he himself points out, it is the main purpose of the procedures regarding those entities listed in article 77 of the LOPDGDD.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: IMPOSE the STATE TAX ADMINISTRATION AGENCY,

with NIF Q2826000H, for the infringement of article 5.1.d) of the RGPD, typified in the article 83.5.a) of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the STATE AGENCY OF TAX ADMINISTRATION, with NIF Q2826000H.

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

month 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 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing 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 precautionary suspension.

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through the
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Director of the Spanish Data Protection Agency
C/ Jorge Juan, 6
28001 – Madrid
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