

□ File No.: PS/00024/2022

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the complaining party) dated February 23, 2021 filed a claim with the Spanish Data Protection Agency. The claim is directed against CITY COUNCIL OF FUENTES DE LEÓN with NIF P0605500H (hereinafter the claimed one). The grounds on which the claim is based are the following: the claimant states that she participated in a selection process for personnel, publishing the resolution of admitted and excluded in which the name and surname of the participants on the Facebook page of the City Council without that was foreseen in the general bases for contracting.

Provides the general selection bases for hiring during the year 2021 and the pictures posted on the claimed Facebook account.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), on 03/22/2021 said claim was transferred to the party claimed, so that it proceeded to its analysis and inform this Agency within the period of a month, of the actions carried out to adapt to the foreseen requirements in data protection regulations.

Although the respondent's response is not recorded, in his brief of 06/23/2021 indicates that it resubmits the Report as the data protection officer that has already It had been sent on 04/16/2021 in response to the request of the AEPD and They accompany the minute of the Exit Registry that accredits said sending.

THIRD: On 06/07/2021, in accordance with article 65 of the LOPDGDD,

the claim filed by the claimant was admitted for processing.

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

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the

following ends:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/11

On 06/11/2021, in writing from the respondent, the following information is provided, among others:

- That, in order to prevent similar incidents from occurring, some

bases for the selection of personnel.

- Copy of the "BASES THAT MUST GOVERN THE SELECTION OF PERSONNEL. In the

fourth base that refers to the development of the tests, the following is indicated: "LIST

OF PRE-SELECTED AND CITATIONS OF THE SEXPE: ..., it will approve the List

Definitive list of shortlisted candidates, which will be displayed on the Notice Boards and

link in the corporate social networks of the City Council."

On 06/23/2021, in writing from the respondent, the following information is provided, among others:

- Report from the mayor regarding the transfer of the claim and request for

information.

- That, on 01/27/2021, the claimant published on her personal Facebook profile a

reference to his participation in the selection process to which he refers in his claim.

- Screenshots of messages from the claimant.

- That, on 02/03/2021, the Provisional List of Admitted and Excluded was published

on the Notice Board of the Town Hall, on the Notice Board of the headquarters

City Council email address and on the City Council's corporate Facebook profile.

- Screenshot of a message posted by a profile with the same name as

the claimant in which she refers to her exclusion from the manager selection process

cultural.

- That it registered entry of the transfer of this claim, sent by the AEPD, on the day

03/22/2021; and, on 04/09/2021, the deletion of the Facebook profile of the

claimed from the documents of this selective process in which the

name and surname of the claimant.

- Copy of the Claimant's Resolution, signed on 04/09/2021, in which

the following is resolved: "That they be deleted from the Facebook profile of a

of the City Council of Fuentes de León the documents related to the

selection procedure for a Cultural Manager for the year 2021, where it appears

the names and surnames of Mrs. A.A.A.." and that this resolution be notified to the

claimant. And a copy of the notification of the resolution is provided with the date of signature of the

04/13/2021.

- That, up to the date on which this document is sent, the City Council had not received

no request from the claimant to exercise the rights regulated in the

articles 15 to 22 of the General Data Protection Regulation;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

3/11

- That the application of the application of Law 19/2013, of December 9, of Transparency, Access to Public Information and Good Governance
 - That the application of Law 4/2013, of May 21, on the Open Government of Extremadura, which develops Law 19/2013,
 - That the application of Law 7/1985, of April 2, Regulating the Bases of Local Regime,
 - That they have published the lists of admitted and excluded to which reference is made in the claim on your Facebook profile (in addition to the Notice Board traditional and the electronic headquarters of the City Council, as indicated in the call) as a common practice in recent years to give publicity and transparency to the council resolutions, following the guidelines of the Royal Legislative Decree 5/2015, of October 30, which approves the consolidated text of the Law of the Basic Statute of the Public Employee,
 - Indication that the following measures have been implemented to prevent incidents similar: to state in the regulatory bases of the calls the use of networks social for the diffusion and publicity of the selective processes; and what, when contain personal data, the publication on social networks will be done through an en-link to the bulletin board of the electronic headquarters of the claimed person.
- In the searches carried out by the acting inspector on 01/12 and 13/2022 in Internet found the following data:
- The links in which the complainant indicated that the lists of admitted and excluded with their names and surnames directed to a page in which indicated that the link is wrong or has been deleted.
 - In the Facebook profile of the claimed party, the publications of

on 02/05/2021 and 11/02/2021 presented in the claim, in which the

lists of admitted and excluded.

- The existence of publications on Facebook in which a profile with the name of the complaining party informed about its participation in the selection process of Manager Cultural of the claimed have not been able to be verified after carrying out searches by the date of these posts on the Facebook profile with the name of the claimant and on the Facebook profile of the claimed party.

FIFTH: On 02/18/2022, 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 6.1 of the RGPD, typified in article 83.5.a) of the aforementioned RGPD.

SIXTH: Once the initiation agreement was notified on 03/05/2022, the respondent submitted a written allegations formulating in summary the following: that it is reiterated in what has already been indicated previously; that the publication on social networks of the data of the call

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/11

in which the claimant participated has sufficient legitimacy based on section e) of article 6.1 GDPR.

SEVENTH: On 03/16/2022, it was agreed to open a practice period for tests, 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 that are part of the file.
- Consider reproduced for evidentiary purposes, the allegations to the agreement of

home submitted by the claimed party and the accompanying documentation.

EIGHTH: On 07/13/2022, a Resolution Proposal was issued in the sense that by the Director of the AEPD will sanction the defendant for infraction of article 6.1 of the RGPD, typified in article 83.5.a) of the RGPD, with a penalty of warning.

After the period established for presenting allegations by the defendant, there was no submitted any writing.

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

PROVEN FACTS

FIRST. On 02/23/2021 it has entry in the Spanish Agency for the Protection of Written data of the claimant stating that she had participated in a process of selection of personnel convened by the respondent, publishing the resolution of admitted and excluded in which the name and surnames of the participants in the Facebook page of the City Council, including the name and surnames of the claimant, without it being foreseen in the general bases for contracting.

SECOND. There is a screen print provided where the Provisional List of Admitted and Excluded Plaza Gestor Cultural published by the respondent.

THIRD. There is a Mayor's Resolution approving the "General Bases of Selection of a cultural manager during the year 2021" and the tests are convened selection process for hiring a Cultural Manager.

FOURTH. The Bases that must govern the selection of personnel are provided for the hiring of personnel under Decree 13/2021, of March 17, which establishes the conditions of budget management and execution of the Municipal Economic Collaboration Program for Employment of Law 1/2021, of 3 February, of General Budgets of the CCAA of Extremadura for 2021.

FIFTH. It is provided by the claimed Report of 04/15/2021 in which

notes that:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/11

“Notwithstanding all of the above, the AEPD is informed that the defendant has been using a year or two ago, regularly their corporate Facebook profile to advertise all personnel selection processes (informative notices, publication of Bases, provisional and final lists, Minutes) in order to give a more widespread to citizens, observing at all times compliance with the regulations in force in data protection.

Although such information is published and can be followed on the Notice Board of the Town Hall (Physical and traditional Notice Board at the entrance of the House town hall and the one that works in the Electronic Headquarters of the Municipal Website), these are much less accessible and unknown by citizens, the first especially in the last year as a result of restrictions on access to the City Hall as a result of the Covid-19 Pandemic and the latter, for lack of habit or for the convenience of citizens, more accustomed to the use of Social Networks, as is the case of Facebook.

FOUNDATIONS OF LAW

Yo

In accordance with [Insert the text corresponding to [Basic text I PS].] and according to the provisions of 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 the rights digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this

procedure the Director of the Spanish Data Protection Agency.

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

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

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

regulatory provisions issued in its development and, as long as they do not contradict them, with

subsidiary character, by the general rules on administrative procedures

you."

II

In this case, the facts revealed by the claimant are

materialize in the publication of the resolution of admitted and excluded in which figure

name and surname of the participants, in a selective process convened by

the one claimed on its Facebook page without it being foreseen in the general bases.

als of said call.

Article 6, Legality of the treatment, establishes in its point 1 that:

"1. The treatment will only be lawful if at least one of the following is met

conditions:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/11

a) the interested party gave their consent for the processing of their personal data

final for one or several specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at its request of pre-contractual measures

contractual;

c) the treatment is necessary for the fulfillment of an applicable legal obligation.

cable to the data controller;

d) the processing is necessary to protect the vital interests of the data subject or of another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers vested in the controller of the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests permitted by the data controller or by a third party, provided that on such interests do not override the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment of data carried out by public authorities in the exercise of their functions.”

On the other hand, article 4 of the RGPD, Definitions, in its sections 1, 2 and 11, notes that:

“1) «personal data»: any information about an identified natural person or identifiable (“the interested party”); An identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by reference to an identifier, such as a name, an identification number, data of location, an online identifier or one or several elements of the identity. physical, physiological, genetic, psychic, economic, cultural or social nature of said person. na;

“2) «processing»: any operation or set of operations carried out about personal data or sets of personal data, either by procedures automated or not, such as the collection, registration, organization, structuring, conservation

vation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction;

“11) «consent of the interested party»: any manifestation of free will, is-specific, informed and unequivocal by which the interested party accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern”.

1. The documentation in the file shows that the defendant violates
nered article 6 of the RGPD, since I treat the personal data of the participants
in the process of selecting a cultural manager for the year 2021, among which are
smuggled the claimant, posting them on her Facebook page without any legal basis

III

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/11

that legitimize it.

The defendant himself has indicated that he has been using his Facebook profile for a long time.

cebook to publicize the personnel selection processes (Bandos informative, pu-
publication of Bases, provisional and definitive Lists, Minutes) in order to give a ma-
Greater diffusion for the knowledge of the neighbors.

It should be noted that the processing of personal data requires the
existence of a legal basis, in accordance with the provisions of article 6.1 of the
GDPR.

Therefore, data processing requires the existence of express consent.

consent of the interested party for one or more specified purposes, when necessary to the execution of a contract in which the affected party is a party or for the application, at the request of this, of pre-contractual measures, or when necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that said interests do not prevail the interests or rights and fundamental freedoms of the affected party that require the protection of such data. The treatment is also considered lawful when it is necessary for the fulfillment of a legal obligation applicable to the data controller, to protect vital interests of the affected party or of another natural person or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the data controller

In any case, the RGPD excludes the possibility that the treatments carried out made by the authorities in the exercise of their functions may have as a legal basis treatment letter f) of art. 6.1 RGPD, that is, the legitimate interest.

Well, in the present case there is no legal basis whatsoever that legitimizes the transaction. treatment made by the defendant.

2. The respondent considers that the publication and dissemination on social networks of the data from the call in which the claimant participated has sufficient legitimacy in section e) of article 6.1 RGPD that provides "e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment".

However, it should be noted that the data processing will be covered by letter e) of art. 6.1 if the applicable law has attributed a competence to the Administration by a norm with the force of law, art. 8.2 of the LOPDGDD, and will not be in opposite case.

Article 6.1.e) of the RGPD only considers the processing of personal data lawful.

on the basis of said precept if it is necessary for compliance
of a mission carried out in the public interest or in the exercise of public powers con-
transferred to the data controller. Therefore, if a given treatment is not
“necessary” for the fulfillment of the mission carried out in the public interest or in the exercise

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/11

service of the public powers conferred by the legal system, said treatment not only
would lack sufficient legitimating legal basis provided for in section e), but rather,
In addition, it would violate the principle of data minimization contained in article 5.1.c)
RGPD, also applicable to data processing carried out by the Administration
public nostration.

In the present case, the treatment is not necessary for the fulfillment of
that public interest or in the exercise of public powers conferred on the controller,
stating that it violates article 6.1 of the RGPD and, in addition, in none of the regulations
invoked impose said obligation, establish that mission of public interest or con-
public powers are conferred to carry out the treatment.

The infraction that is attributed to the claimed is typified in the art.

Article 83.5 a) of the RGPD, which considers that the infringement of “the basic principles
for treatment, including the conditions for consent under the ar-
Articles 5, 6, 7 and 9” is punishable.

IV

The LOPDGDD in its article 71, Violations, states that: “They constitute violations
tions 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 this law

organic”.

And in its article 72, it considers for prescription purposes, 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

entail a substantial violation of the articles mentioned therein and, in particular,

particular, the following:

(...)

b) The processing of personal data without the concurrence of any of the conditions

legality of the treatment established in article 6 of the Regulation (EU)

2016/679.

(...)”.

v

The LOPDGDD in its article 77, Regime applicable to certain categories

responsible or in charge of the treatment, establishes the following:

"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

tions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General State Administration, the Administrations of the communities

www.aepd.es

sedeagpd.gob.es

C/ Jorge Juan, 6

28001 – Madrid

autonomous entities and the entities that make up the Local Administration.

d) Public bodies and public law entities linked to or de-

pending from 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 Legislative Assemblies

autonomous communities, as well as the political groups of the Local Corporations

them.

2. When the persons in charge or persons in charge listed in section 1

had any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will issue resolutions

tion sanctioning them with a warning. The resolution will also establish

as the measures that should be adopted to stop the behavior or correct the effects

cough 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

gain of which it depends hierarchically, in his case, and to those affected who had the

Interested party status, if any.

3. Without prejudice to the provisions of the preceding section, the protection authority

tion of data will also propose the initiation of disciplinary actions when

there are sufficient indications for it. In this case, the procedure and the sanctions to

apply will be those established in the legislation on the disciplinary or sanctioning system.

for 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 corresponding Official State or Autonomous Gazette.

gives.

4. The resolutions must be communicated to the data protection authority.

tions that fall in relation to the measures and actions referred to in the

previous two paragraphs.

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

tions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of

www.aepd.es

sedeagpd.gob.es

C/ Jorge Juan, 6

28001 – Madrid

10/11

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 had committed the infringement

tion.

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 the case that concerns us, the present sanctioning procedure comes motivated by the presumption that the respondent would have incurred in violation of the regulations on data protection, article 6.1 of the RGPD.

It should be noted that the LOPDGDD contemplates in its article 77 the sanction of warning in relation to the processing of personal data that is not appropriate

Cuen to your forecasts. In this regard, article 83.7 of the RGPD contemplates that "Without prejudice to the corrective powers of the supervisory authorities under article 58, paragraph 2, each Member State may establish rules on whether it can, and To what extent, impose administrative fines on authorities and public bodies established in that Member State.

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 and its adaptation to the requirements contemplated in article 6.1 of the RGPD, as well as the provision of means of proof of compliance with the required.

However, it is considered that the answer formulated by the respondent in the Report of 04/15/2021 in relation to the claim presented has been reasonable, at include the deletion of the corporate Facebook profile of the City Council documents relating to the selection procedure of a Cultural Manager for the year 2021, where the names and surnames of the claimant appear, not proceeding to urge additional.

adoption
measures

of

the

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

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF FUENTES DE LEÓN, with NIF P0605500H, for an infringement of article 6.1 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the CITY COUNCIL OF SOURCES OF LION.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/11

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.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es