

□ File No.: EXP202212263

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: On August 16, 2022, by the Director of the Spanish Agency  
of Data Protection, a resolution was issued in the sanctioning procedure of the  
file number \*\*\*FILE.1, filed against the CITY COUNCIL OF THE  
PALMAS DE GRAN CANARIA (hereinafter, the City Council).

The resolution contains the following proven facts:

“FIRST: It is on record that on October 16, 2021, the claimant  
filed a claim with the Spanish Agency for Data Protection, against the  
CITY COUNCIL OF LAS PALMAS DE GRAN CANARIA, having published in its  
web page, the minutes of the Plenary Session dated 01/31/2019, where it appears in  
relation to some allegations that he made to a municipal ordinance, his name,  
surnames and ID.

SECOND: It has been verified that the document is accessible on the web  
of said body.”

In said resolution, in addition to sanctioning with a warning, the adoption of  
of the following measures:

THIRD: REQUEST the CITY COUNCIL OF LAS PALMAS DE GRAN CANARIA,  
to implement, within a month, the necessary corrective measures to adapt  
their performance to the personal data protection regulations, which prevent that in the  
similar events are repeated in the future, as well as to inform this Agency in the same  
deadline for the measures taken.

SECOND: The resolution of the disciplinary procedure was notified reliably on August 16, 2022 to the City Council, granting it the period of one month for the adoption of the imposed measures, as stated certified in the file.

THIRD: After the indicated period has elapsed without this Agency having received any writing on the measures implemented, a letter was received from the Ombudsman on October 7, 2022, with registration number of entry \*\*\*REGISTRATION.1, in which it requested information on the actions carried out by the City Council leading to comply with what is ordered in the resolution.

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For all these reasons, they proceeded to request him again so that, within ten days working days, they will prove to this Agency that they have adopted the corrective measures timely, in attention to what was agreed in the aforementioned Resolution. This requirement was collected by the City Council on October 18, 2022, as stated in the acknowledgment of receipt in the file.

FOURTH: The City Council did not send any response to this Agency that accredits compliance with the imposed measures.

FIFTH: Against the aforementioned resolution, in which the adoption of measures is required, There is no ordinary administrative appeal due to the expiration of the deadlines established for it. Likewise, the interested party has not expressed his intention to file a contentious-administrative appeal, nor is this Agency aware that

the same has been filed and a precautionary suspension of the resolution.

FIFTH: On November 30, 2022, the Director of the Spanish Agency for Data Protection agreed to start a sanctioning procedure against the City Council, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 58.2 of the GDPR, typified in the Article 83.6 of the GDPR Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter GDPR).

SIXTH: The aforementioned start agreement was collected by the City Council on the 13th of December 2022, as stated in the acknowledgment of receipt in the file.

SEVENTH: On December 20, 2022, entry into this Agency, with the number \*\*\*REGISTRO.2, writing in which the City Council alleges that On October 20, 2022, the General Directorate of Technological Innovation sends an email to the General Secretariat of the Plenary of the City Council requesting the anonymization of the record in question. Once the email is received, the General Secretariat of the Plenary will contact immediately with the computer support unit so that it can be urgently removed the aforementioned document from the City Council website. Add that bliss deletion is carried out satisfactorily in a short time and also checks the deletion of data in browser caches.

The City Council also adds that, although the adoption of measures by said General Secretariat is carried out immediately, involuntarily the communication of their adoption to this Agency is not carried out.

In addition, regarding the measures to be adopted in the future, the City Council affirms that, by the General Secretariat of the Plenary will be interested in the General Directorate of Technological Innovation the design and application of the measures that correspond with

homogeneous character for the whole institution, taking into account that the preparation of the matters of which the Plenary and the Committees of the Plenary know are carried out by different municipal services, without the General Secretariat of the Plenary, in the sense strict, is configured as the managing unit of the same.

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EIGHTH: On December 27, 2022, entry was registered at this Agency, with the number \*\*\*REGISTRATION.3, writing in which the claimant states that continues to be published on the City Council website and accessible from the search engine Google the aforementioned record, so the conduct constituting an infringement persists, indicating the following link:

\*\*\*URL.1

NINTH: On January 24, 2023, after verifying that the minutes were still published with the claimant's personal data, a proposal for resolution, in which it was proposed that the Director of this Agency impose a sanction of warning to the City Council, ordering again that it prove having proceeded to comply with the measures imposed in the resolution of the file \*\*\*FILE.1.

TENTH: Dated February 10, 2023 and entry registration number \*\*\*REGISTRATION.4, the City Council presents a written statement of allegations to the proposal for resolution in which, in order to prove compliance with the measures imposed In the resolution of \*\*\*FILE.1, the following is indicated:

The Minutes of the Plenary Session dated January 31, 2019 were removed from the web

municipal in the month of October 2022, as indicated to this Agency, verifying at that time that it was no longer possible to access it from the municipal website search engine and that the search result on said website also was negative for the claimant's data.

Likewise, the necessary steps were taken to prevent access to said record from Internet search engines based on content indexing, terms that They were checked at that time.

On the part of the technicians of the municipal website, measures are being taken to prevent the appearance of information related to the Internet in search engines object of the complaint.

In addition, it was verified that the link included in the eighth antecedent led to the Act of the Plenary Committee on Economic-Financial Management and Special Accounts dated January 28, 2019, Commission in which the agreed matter was discussed subsequently by the Plenary in session held on January 31, 2019. This record does not was found in the works of the month of October 2022 of search of existing documents on the municipal website with data from the complaining party, which prevented its removal at that time.

Said act dated January 28, 2019 has been removed from the municipal website, subsequently verifying that it is no longer possible to access it from the municipal website search engine, and the necessary steps have been taken to prevent access to said record from Internet search engines based on indexing of contents, verifying said terms.

Internal measures will also be reinforced, in terms of prior analysis of the information to be published, in order to guarantee the security and confidentiality of personal data, in addition to verifying that in the

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publicity carried out to date, the legal obligations have been observed established.

It has been prepared, and will soon be publicized on the Municipal Intranet, a "Protocol for the publication of administrative acts and announcements", which details how administrative acts containing personal data must be published, prepared from the document "Guidance for the provisional application of the Seventh additional provision of the LOPDGDD" issued by this Spanish Agency of Data Protection, which establishes a procedure for the selection of figures random to be published.

Additionally, the City Council is interested in acquiring a tool technology for the anonymization of data and has signed a contract to be in charge of treatment, with a specialized company, to carry out a proof of concept for the implementation of Software for the anonymization of data.

Making this tool available to the organization will be accompanied by a Circular to the employees of the City Council, containing the obligations to observe prior to the publication of information with personal data on the website or Municipal Transparency Portal.

Regarding the incident produced, it is noted that it has taken place due to an error human, causing the publication of the claimant's data without having proceeded to its anonymization.

Finally, the City Council is going to start carrying out specific training in this matter in order to give tools and knowledge to all its employees so that

This type of event does not happen again.

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: The resolution of the disciplinary procedure and the requirement for the compliance with the measures imposed therein indicated in the background first, second and third were notified electronically, in accordance with the provided in article 43 of the LPACAP. Said resolution became firm and executive due to the expiration of the periods established for the filing of appeals therein indicated.

SECOND: The City Council did not send any response to this Agency that accredit compliance with the measures imposed before the issuance of the agreement to initiate this disciplinary procedure.

THIRD: Notification of the agreement to start this procedure sanction was collected by the City Council on December 13, 2022.

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FOURTH: The claimed party has presented the allegations to the agreement to initiate this disciplinary procedure, described in the seventh precedent.

FIFTH: The notification of the proposed resolution was received by the Town Hall dated January 27, 2023.

SIXTH: The City Council has submitted a written statement of allegations to the proposal for resolution of this disciplinary procedure included in the tenth antecedent.

## FUNDAMENTALS OF LAW

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### Competence

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."

## II

### Arguments to the initiation agreement

In response to the allegations presented by the City Council to the start agreement the following should be noted.

The resolution of the disciplinary procedure where the adoption of measures was notified on August 16, 2022. Once the deadline granted for it, compliance was required again and finally the start of of this sanctioning procedure on November 30, 2022, without until that date a response from the City Council would have been received. The communication of the measures during the investigation of this procedure does not affect the existence of the proven facts constituting an infringement.



As regards the measures communicated in these allegations, there is no accredited that the necessary measures have been implemented, since the act It is still accessible in the link collected in the eighth antecedent, showing the Personal data of the complaining party. Therefore, it was appropriate to include in the proposal for resolution the imposition of measures to correct the infringement.

Allegations to the resolution proposal

II

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In response to the allegations to the motion for a resolution, presented by the City Hall, the following should be noted.

The communication of the measures during the instruction of this procedure does not affects the existence of proven facts constituting an infringement.

With regard to the measures communicated, this Agency accuses receipt of the same, without this declaration implying any pronouncement on the regularity or legality of the measures adopted.

In the proposed resolution it was proposed that the Director order to accredit having proceeded to comply with the measures imposed in the resolution of the file \*\*\*FILE.1. Having received communication of the proceedings made by the claimed party before issuing the resolution, it is not appropriate to order such measure in this resolution.

Notice of the provisions of article 5.2 of the GDPR, which establishes the principle of proactive responsibility when it states that "The person responsible for the treatment will be

responsible for compliance with the provisions of article 1 and capable of demonstrating it".

This principle refers to the obligation that falls on the person responsible for the treatment not only of designing, implementing and observing legal, technical and organizational processes so that the data processing is in accordance with the regulations, but to remain actively vigilant throughout the entire life cycle of the treatment so that this compliance is correct, being also able to prove it.

IV.

breached obligation

Based on the available evidence, it is considered that the City Council breached the resolution of the Spanish Agency for Data Protection in relation to the measures imposed on him, since he had not proven his compliance prior to the issuance of the agreement to initiate this sanctioning procedure.

Therefore, the facts described in the "Proven facts" section are considered constituting an infraction, attributable to the City Council, for violation of article 58.2.d) of the GDPR, which provides the following:

"2. Each control authority will have all the following corrective powers indicated below:

(...)

d) order the person in charge or person in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

Classification and classification of the offense

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This infringement is typified in article 83.6 of the GDPR, which stipulates the following:

"Failure to comply with the resolutions of the control authority under article 58, section 2, will be penalized in accordance with section 2 of this article with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount."

For the purposes of the limitation period for infringements, the alleged infringement prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as the following behavior is very serious:

"m) Failure to comply with the resolutions issued by the authority for the protection of competent data in exercise of the powers conferred by article 58.2 of the Regulation (EU) 2016/679."

SAW

sanction imputed

Article 83.7 of the GDPR provides the following:

"Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and bodies public establishments established in that Member State."

Likewise, article 77 "Regime applicable to certain categories of responsible or in charge of 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 communities 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 law

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

likewise, the measures that should be adopted to cease the conduct or to correct it.

the effects of the offense committed.

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

that depends hierarchically, where appropriate, and to those affected who had the condition

interested, if any.

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

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

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

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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, the Director of the Agency Spanish Data Protection RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF LAS PALMAS DE GRAN CANARIA, with NIF P3501700C, for a violation of Article 58.2 of the GDPR, typified in the Article 83.6 of the GDPR, a warning sanction.

SECOND: NOTIFY this resolution to LAS PALMAS CITY COUNCIL FROM GRAND CANARY.

THIRD: COMMUNICATE this resolution to the Ombudsman, 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

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writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<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

938-181022

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