

□ Procedure No.: PS/00380/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 06/29/2020

before the Spanish Agency for Data Protection. The claim is directed against the

TOWN HALL OF *** TOWN HALL.1 with CIF P3737900E (hereinafter, the

reclaimed). The reasons on which the claim is based are the exposure of your data in two

media outlets in the province of Salamanca, one on paper and the other digital, which were

communicated by the mayor of the City Council of *** TOWN HALL.1.

Provides:

-File containing the reference to the digital newspaper, "****DIARIO.1" section "****SECTION.1",

of ***DATE.1, in which it appears: "200 WRITINGS REGISTERED BY THE OPPOSITION

IN ONE YEAR. The mayor of *** TOWN HALL.1 rejects the accusations made by the

PSOE on "obscurantism and justifies not holding ordinary plenary sessions." after the note

released yesterday Monday by the PSOE in relation to the situation experienced by the Social Councillors.

lists in the City Council of *** TOWN HALL.1, the mayor XXX B.B.B. he wanted to go out

in step... .

Figure on "the non-holding of ordinary plenary sessions since last August 29, the regi-

dora remember...

Under the section "Withdrawal of access to XXXXXX" as soon as the withdrawal of access to the pro-

program of XXXXXX, of access to the documents of entry and exit of the City Council,

"B.B.B. remember that after his inauguration he gave access to this program to the opposition

"and my surprise was that people from outside the City Council began to come, neighbors –of course-

to— and that they have the right to information, to ask about issues that I had just

to know at that time and that they had been registered at the Town Hall for two hours

before". Once the municipal officials were ruled out, "we did an audit and we saw that

June 24 to July 9, the councilor of XXX, (who is identified by name and first appellate)

Ilidos) had entered the program 800 times, and had even accessed personal documents.

such as the declaration of assets that the members of the Corporation made". B.-

B.B. acknowledges that you gave him access to the entire XXXXXX program in good faith but that once

seen what happened, the minimum required by law has been left to him."

"A.A.A. ensures that "most entries have to be seconds."

"About the accusations against A.A.A. of a 'possible misuse' of the XXXXXX program, the

Councilor did not deny the number of entries, although he justified the figure in the access system,

that "it forces you to several entries to get to a document, that is why many of them have

It has to be a few seconds", he asserted."

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"For A.A.A., having access to XXXXXX is the only way we can find out what

happens in the Town Hall: of complaints or requests from the neighbors, judicial resolutions,

subsidies and a lot of information that the Secretariat is hiding from us as a result of the opening

file", a procedure that, on the other hand, did not go through several definitions.

science at its inception.

Regarding access to personal documents, A.A.A. points out that "I have entered the

sites I had access to, so it's not my fault. Blame it on the secretary

because it was she who introduced that document in a place that did not have to be".

Along with the news, there is a photograph of a sheet titled: "audit report of the user".

rio..." detailing the name and surnames of the claimant with their NIF, with the logo of the City Council.

*** TOWN HALL.1," audit entries recorded since 06/24/2019

until 07/09/2019 "listing the accesses of the claimant in what would be a first page-

na, indicating whether or not it enters, and the queries it performs. At the foot of the image appears "first page of the audit on the data entries of the claimant - to the program XXXXXX".

Clicking on the link that appears in the "note released yesterday Monday by XXX" leads to a news of ***DATE.2, "DENOUNCE OBSTRUCTION TO THE WORK OF THE OPPOSITION. The XXX came goes before the Cortes the management of the Government team of the XXX in the City Council of

***CITY COUNCIL.1" The Socialist Attorneys for ***LOCALITY.1 register in the

Autonomous Chamber an interpellation to the Board in which they denounce "opacity, occultism" and lack of transparency" in the face of ten months without ordinary plenary sessions!", referring to the

Attorneys of the XXX of ***LOCALITY.1 in the Cortes of Castilla y León who have

denounced irregularities in the management of the XXX Government team in the City Council

*** TOWN COUNCIL.1 because it has been almost 10 months without calling the plenary sessions

ordinary councils to which it is bound by law and by a plenary agreement approved

by that same City Council every two months.

He adds that "to this is added the permanent attitude of obstruction and hindrance that maintained since the beginning of the legislature by the PP government team, who also more than denying access to the XXXXXX application to the main opposition group, the socialist group, and that the Board puts at the service of local administrations and positions public for the open consultation of data and information, refused to provide the document - tation that is requested to which the socialist councilors are entitled and is obliged - to deliver within the regulated deadlines, to answer any type of question carried out by any of the channels or channels stipulated and also "to access to the entry of the municipal register assure the socialists"

-In the second piece of news, it is a photo of the written press, newspaper ***DIARIO.2, section province, Tuesday ***DATE.1, in which the headline is reported: "XXXXXX control the secretary" appears in the headline the name of the claimant as mayor XXXXXX of *** TOWN HALL-MIENTO.1, and refers that "in 15 days he accumulated all these entries to the municipal platform pal, his license was withdrawn and now the XXX denounces before the Board the obscurantism of the consist-thorium".

The news indicates that the claimant accessed the municipal platform 800 times in just 15 days "being the only way to control what the secretary does, he affirmed yesterday to

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*** DAILY.2 the Councilor". It also collects other affirmations of the claimant of the application information technology XXXXXX.

It refers to the fact that these data come from the consultancy released now by the City Council headed by the mayor of the XXX B.B.B. and which motivated the removal of her authorization to access it. It is also recorded that when he took command of the City Hall, "the opposition was given access to XXXXXX again, although shortly after Then we began to see unusual movements and requests for information in the con-audition by individuals, so we requested the audit that revealed the that it was XXXXXX, with XXX, A.A.A." The news indicates that "in the audit it is clearly seen mind as the claimant socialist had done between the two dates mentioned above an average of 50 daily accesses to XXXXXX with multiple downloads of international documents us of the consistory. Faced with a situation that endangers due Data Protection of the consistory it was decided after speaking with the socialist councilor to close the accesses to the platform-

way to avoid greater evils affirmed yesterday B.B.B. “

SECOND: Prior to this claim being admitted for processing, it was transferred to the claimed, on 07/14/2020, in accordance with the provisions of article 65.4 of the Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD), in actions with reference

E/05811/2020, to report on:

1. The decision made regarding this claim.
2. Report on the causes that gave rise to the incident that gave rise to the claim.
3. Report on the measures adopted to prevent similar incidents from occurring, dates of implementation and controls carried out to verify its effectiveness.

The notification through electronic notification is delivered on 07/15/2020.

After the time granted, the request was not addressed.

THIRD: On 10/16/2020, the admission to processing of the claim is agreed

FOURTH: On 01/04/2021 the Director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE of warning the

CITY COUNCIL OF ***CITY COUNCIL.1, with CIF P3737900E, for an alleged infringement of article 5.1.f) of the RGPD in relation to article 5 of the LOPDGDD, of in accordance with article 83.5.a) of the RGPD.”

No claims received

FIFTH: On 06/09/2021, a PROPOSED RESOLUTION was issued for the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with warning to CITY COUNCIL OF ***CITY COUNCIL.1, with CIF P3737900E, for a infringement of article 5.1.f) of the RGPD, in relation to article 5 of the LOPDGDD, of in accordance with article 83.5 a) of the RGPD.”

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No claims were received.

PROVEN FACTS

1) During a debate in the press between the PSOE and the mayor of the City Council of

*** TOWN HALL.1, this, to respond to the statements made previously

by that, in relation to the situation experienced by the socialist councilors of the city council-

to, in the digital newspaper “Las arribes al Día” and in a written press newspaper, on ***DATE.1,

discloses the data of the claimant together with his NIF, in an audit report, consisting of

you in the times you enter the City Council XXXXXX application.

2) According to the news, the claimant, XXXXXX of XXX, as well as the rest of the con-

eyebrows, they had access to the XXXXXX application that gives access to the entry documents

and exit of the Town hall, verifying that shortly after the writings were presented,

certain parties unrelated to the matter were aware, so the City Council decided to

have an audit. Indicates that the claimant, who is identified by name and surname, as

XXXXXX of XXX had entered the program 800 times, being the use of the rest of councilors-

them of the normal PSOE, with several entrances. “For “the claimant” to have access to XXXXXX

It is the only method to be able to find out what is happening in the City Council, about complaints or

requests from neighbors, judicial resolutions, subsidies and a lot of information”” In

Regarding access to personal documents, ...he points out that “I have entered the sites in

those who had access...”

3) The paper diary, ***DIARIO.1 de ***DETA.1, also contains the data of the

claimant, XXX XXXXXX of *** TOWN HALL.1, the accumulation of con-

sultas in the municipal platform, the license was withdrawn. It is indicated that the rest of the concessions

tailings entered in the same period of time an average of less than five times per

mayor, "said the mayor", and the claimant affirms that "every document and page that con-

hits marks an entry that is not the same as hits to the application". the mayor

He assured that "when I took command of the city council, XXXX was given access again.

XX to the opposition", "although a short time later we began to see movements and requests

Unusual sources of information in the consistory by individuals, so it is

we tendered the audit that revealed..."the claimant had done an average of 50

daily accesses to XXXXXX" and that the queries occupy 35 pages.

FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency for

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD and in art.

47 and 48.1 of LOPDGDD.

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II

The RGPD defines in its article 4:

1) "personal data": any information about an identified or identifiable natural person

("the interested"); An identifiable natural person shall be deemed to be any person whose identity

can be determined, directly or indirectly, in particular by means of an identifier, such as

for example a name, an identification number, location data, an identifier

online or one or more elements of the physical, physiological, genetic,

psychic, economic, cultural or social of said person;"

2) “processing”: any operation or set of operations performed on data

personal data or sets of personal data, whether by automated procedures or not,

such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or

any other form of authorization of access, collation or interconnection, limitation, suppression or

destruction;

4) “file”: any structured set of personal data, accessible in accordance with

determined criteria, whether centralized, decentralized or distributed functionally or

geographical;

7) “controller” or “controller”: the natural or legal person, authority

public, service or other body that, alone or jointly with others, determines the ends and means

of the treatment; if the law of the Union or of the Member States determines the purposes and

means of treatment, the person responsible for treatment or the specific criteria for its

appointment may be established by the Law of the Union or of the Member States;

In the news that appear in the media, the data of XXX XXXXXX, claimant,

with your name and surnames referred to as elected public representative in the corporation,

with public responsibilities.

Due to this condition, it seems that access to a computer application was enabled in its day

that contains the entries and exits of writings of the residents of the town, companies and

any document referring in general to the competences of the city council.

On the possibilities, limits and requirements of access to information that may have the

Councilors, subsidiarily to information containing personal data of the

neighbors, for carrying out their functions, there are reports on the AEPD website, as well

as well as the Basque Data Protection Agency (AVPD). For example, for all

would serve as the AVPD, the Opinion regarding requests for access by Councilors to the

records of entries and exits of the town hall, CN16-006, of 03/31/2016, with the

foreseeable adjustments that should refer to the RGPD and LOPDGDD instead of the LOPD.

However, this procedure is not related to those accesses, although it should

having already accommodated the City Council its proactive behavior some time ago to the limitation of

access to the information that is required for the development of functions, in this case

of the Councillors.

The opinion, in addition, to indicate that access to sensitive data can occur

without a real justification or any need, concludes that by default a certificate is not granted

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indiscriminate right to access the entry and exit registry database, and that

the purpose of this is not your access as a general rule or as a means of knowing what

It happens at City Hall.

However, here the modality of access given to the Councilors is not valued, but the

statements made in the press containing personal data of the claimant, therefore

imputed to the claimed City Council, an infringement of article 5.1.f) of the RGPD that

indicates:

1. The personal data will be:

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

Obligation specified in article 5 of Organic Law 3/2018, of 5/12, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), which specifies:

"1. Those responsible and in charge of data processing as well as all persons

that intervene in any phase of this will be subject to the duty of confidentiality to the

referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the

duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when

the relationship of the obligor with the person responsible or in charge of the treatment had ended.

In the present case, what is valued is the constancy in the published news, not the

name and surname of the claimant, associated with his status as XXX XXXXXX of the

City Hall, which had access to XXXXXX, for being a public person. In

In this aspect, it is assumed that your data would yield when treated or referred to in some

information media, offering their public profile, derived from their own performance in the

exercise of their functions, and in a relevant news item of general interest. It's not just about

of that, but to support the news, the City Council, which carried out an audit with

the access logs in the XXXXXX application, exposes in one of the newspapers, the cover of the

audit with the NIF of the claimant, personal data that has nothing to do with their

public position in the debate raised. This is the reason and foundation that supposes the

imputed infraction, without entering to value as it has been said the granted access and its

conditions. Data of a personal identifying nature that is disseminated, unnecessary for the

intended purpose, which could have been crossed out, eliminated or omitted, achieving the

same effect. Data that should have remained secret and unrevealed, and that due to lack of

diligence went beyond the scope of the person responsible.

III

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles for the

treatment, including the conditions for consent under articles 5, 6, 7 and

9" is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation.

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regulation, with administrative fines of a maximum of €20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total turnover annual global of the previous financial year, opting for the highest amount.

Article 72.1 a) of the LOPDGDD indicates:

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

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

Article 83.7 of the RGPD indicates:

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

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

b) send a warning to any controller or processor when the treatment operations have infringed the provisions of this Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with

a specified manner and within a specified time.

The Spanish legal system has chosen not to fine entities

public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: “1. The

regime established in this article will be applicable to the treatments that are

responsible or in charge:

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

autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

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

competent data protection authority will issue a resolution sanctioning

the same with warning. The resolution will also establish the measures that

appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

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

depends hierarchically, where appropriate, and those affected who had the status of

interested, if any.

4. The data protection authority must be notified of the resolutions that

fall in relation to the measures and actions referred to in the sections

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previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of

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

protection of this article.

6. When the competent authority is the Spanish Agency for Data Protection, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction.”

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the CITY COUNCIL OF ***CITY COUNCIL.1, with CIF P3737900E, for an infringement of article 5.1.f) of the RGPD, in accordance with article 83.5 a) of the RGPD, and article 72.1.a) of the LOPDGDD, a sanction of warning.

SECOND:

*** TOWN HALL.1.

NOTIFY

the present

resolution to

TOWN HALL OF

THIRD

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

: COMMUNICATE this resolution to the OMBUDSMAN, of

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

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

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

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

Interested parties may optionally file an appeal for reconsideration before the Director of

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

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with
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 two months from the day following the notification of this act,
according to the provisions of 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, it may be
precautionary suspension of the firm decision in administrative proceedings if the interested party expresses
its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency
Spanish Data Protection, presenting it through the Electronic Registry of the
Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the
remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the filing
effectiveness 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

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following the notification of this resolution, it would end the suspension
precautionary

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-131120

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