

938-0419

Procedure No.: PS/00410/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on 04/06/2018 filed  
claim before the AEPD against the MINISTRY OF JUSTICE, ADMINISTRATION  
PUBLIC, DEMOCRATIC REFORMS AND PUBLIC LIBERTIES (hereinafter,  
claimed) for having fully exposed a notification in the BOE giving  
know all the circumstances of the matter, and also, be published without complying with the  
legal requirements. The reasons on which the claim is based are that the Management  
General of Justice of the Valencian Community publishes in the BOE of XX/XX/2018 a  
notification edict of YY/YY/2018 in which it notifies the administrative resolution by the  
that proceeds to the cancellation and issuance of a new letter of payment on assets  
unduly perceived.

- Provides:

of which stands out:

A) Copy of the copy of the BOE "supplements and notifications" of XX/XX/2018,

1) "Announcement of notification of YY/YY/2018 in edict procedure by the

that the administrative resolution is notified by which the

cancellation of the payment letter issued and proceed to the issuance of a

new payment card. The payment letter is identified with the name of the

claimant, his DNI, date of issue and reference number and import and the

concept of "return of unduly received funds".

2) "By this edict, A.A.A. the resolution issued by the Director General of Justice of VV/VV/2017, having tried repeatedly and unsuccessfully service by certified mail with acknowledgment of receipt at the known address in Alicante, or whose operative part and information of resources is of the following literal tenor..." The resolution of the mentioned D. General by which proceeds to annulment of the letter of payment issued on ZZ/ZZ/2017 citing again the name and surnames and the complete DNI, indicates that it is due to the return of assets unduly received. I know continues explaining that he was notified on 05/16/2017 of a payment letter, indicating that a part corresponded to remuneration of a period unduly received in his payroll, which ceased in the Court for not having passed the internship period

3) It is also reported that "the payment of the voluntary improvement of the protective action of social security in disability processes temporary as a result of the medical leave that began on 11/28/2016.", and which was "12/23/2016 the last effective working day lent"

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4) It is reported that this notification is made for the purposes of article 44 of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations (LPACAP),

5) Finally, a new debt payment term is granted.

B) Document that the claimant addressed to the General Directorate of Justice of the Valencian Community with departure date 04/03/2018 in which it indicates that

has been informed on 04/02/2018 of the announcement of notification of YY/YY/2018. In it, in addition to issues related to the letter of payment, indicates that "It was reported in previous writings that there was a error in the shipping address of the writings specifically to the address of \*\*\*ADDRESS.1, when the correct address is c \*\*\*ADDRESS.2. By what is requested by means of this document, a copy of the resolution, as well as as well as the return of this by the postal service sent", adding that the data protection regulations have been violated. It also requests the identification of the officials who have intervened in your file.

SECOND: In view of the facts revealed in the claim and the documents provided by the claimant of the facts and documents of which he has had knowledge of this Agency, the Subdirector General for Data Inspection proceeded to issue a letter dated 06/05/2018, addressed to the respondent with a copy of the claim and with the following content,

"In accordance with the functions provided for in Regulation (EU) 2016/679, of 04/27/2016, General Data Protection (RGPD), particularly those that They respond to the respect, by the data controller, of the principles of transparency and proactive responsibility, transfer of the claim submitted, requiring that, within a maximum period of one month from receipt, send to this Agency the relevant documentation regarding the procedures carried out carried out in relation to the facts set forth in the claim, including in particular the next information:

1. Clear specification of the causes that have motivated the incidence that has occurred place to claim.
2. Detail of the measures adopted by the person in charge to solve the

incident and to prevent new incidents from occurring such as the exposed.

3. Documentation proving that, in accordance with the provisions of article 12 of the RGPD, the appropriate measures have been taken to facilitate the affected the exercise of your rights under articles 15 to 22, including copy complete list of communications sent in response to requests made.

4. Documentation proving that the claimant's right to be informed about the course and outcome of this claim.

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In view of all the documentation provided, the Agency may carry out the actions that are appropriate, in application of the powers of investigation and corrections established in article 57 of the RGPD.”

On 07/02/2018, the respondent answers detailing the iter that gave rise to the procedure for reimbursement of undue salaries, as the claimant ceased in his posted on 12/23/2016 and having received the full month. It proves that in the course of procedure notifications were made to the address of \*\*\*ADDRESS.2 that were collected (01/27/2017 or 05/16/2017). It is proven that the letter annulling the letter of payment of 548.19 euros and the issuance of a new one, of VV/VV/2017, is attempted notify the same address as the previous ones that if they were collected, resulting returned by the postal service. Reiterates that the publication was made when it was not possible notify the resolution to the address of the claimant, exposing the full text as states the law.

Add a copy of a response resolution to the claimant, signed on 06/1/2018, on the allegations that the claimant made in the proceeding of the payment letter, and in it he answers because he published the resolution in the BOE of

XX/XX/2018

, with the same arguments offered in the letter to this AEPD in the written on 07/02/2018. There is also information about the officials who intervened in his proceedings.

THIRD: On 06/06/2018, a letter was sent to the claimant informing him of the receipt of your claim and transfer to the person in charge of the treatment and that this will inform of the course and the result of the claim exercise of their rights.

FOURTH: On 09/25/2018, it is sent in writing again to the claimed indicating that the new RDL 5/2018 of 07/27 "has provided for a mechanism prior to the Admission to processing of claims made before the AEPD consisting of in giving transfer to the data protection delegates designated by the responsible or in charge of treatment, or to these when they had not designated, to proceed with the analysis of said claims and to give them response within one month. It is reported that, from the answer provided by the claimed, "does not include a copy of the necessary communication that must be sent to the claimant informing him about the decision he has adopted regarding the claim", and the request is reiterated so that "the affected party is given an answer on the claim formulated and a copy of said response is sent to this Agency in the period of five business days.

FIFTH: On 02/20/2019, the director of the AEPD agreed:

"INITIATE PUNISHMENT PROCEDURE to MINISTRY OF JUSTICE, PUBLIC ADMINISTRATION, DEMOCRATIC REFORMS AND LIBERTIES PUBLIC, for the alleged infringement of article 5.1.c) of the RGPD, in accordance with article 83.5 of the RGPD and classified as very serious in article 72.1 a) of the LOPDGDD."

SIXTH: The respondent made allegations on 05/17/2019, reiterating what was already

manifested, which was fully exposed so as not to render the claimant defenseless

so that what was published was motivated and known for its eventual

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challenge. He adds that he carried out a search with his name and surnames in

search engines, no results come up.

SEVENTH: On 05/24/2019, a resolution proposal is issued with the literal:

“That by the director of the Spanish Agency for Data Protection, the

MINISTRY OF JUSTICE, PUBLIC ADMINISTRATION, REFORMS

DEMOCRÀTIQUES I LLIBERTATS PÚBLIQUES, with NIF S4611001A, for a

infringement of Article 5.1.c) of the RGPD, in accordance with Article 83.5 of the RGPD,

a warning sanction.”

EIGHTH: On 05/28/2019, a letter is received from the respondent in which it indicates

“extension of allegations”, stating that when the events occurred he was not

implemented the regulations on publication of data with name and surnames and last

NIF figures. A data protection delegate has been appointed,

courses on the subject and a circular is being prepared that relates the

minimization of data with the notifications deducted under article 46 of the

Law 39/2015. Indicates that the brief indication of the content of the act of the place where

interested parties can appear for the full knowledge of the content of the

act and record may be given to the publication of announcements or publication that may

harm rights or interests by referring to:

-Minors, social exclusion, gender violence.

-containing data of special protection, racial, ethnic origin, political opinions, etc.

Pointing out the reasoned weighting that they have to carry out between the duty to publish and the rights or legitimate interests of those affected.

In this regard, article 46 of the LPCAP only states”:

“If the competent body appreciates that the notification by means of announcements or the publication of an act harms rights or legitimate interests, it will be limited to publishing in the corresponding Official Gazette a brief indication of the content of the act and of the place where the interested parties may appear, within the period established, to knowledge of the full content of the aforementioned act and proof of such knowledge.”

In case of doubt, the opinion of the data protection delegate can be requested.

It should be noted that the aforementioned legitimate interest or rights are not only can injure with the type of data referred to by the defendant, also with data their right would be violated, because especially they usually refer to other additional personal circumstances that can complete and add circumstances that if published in an official newspaper could reach any person.

NINTH: On 06/18/2019, a letter is received from the respondent indicating that take into account the allegations made on 05/28/2019 that entered after the broadcast of the proposal.

#### PROVEN FACTS

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1)

The MINISTRY OF JUSTICE, PUBLIC ADMINISTRATION, REFORMS

DEMOCRÀTIQUES I LLIBERTATS PÚBLIQUES exhibited in the BOE “supplements and notifications” of XX/XX/2018 a notification. edict of YY/YY/2018 in which notifies the administrative resolution by which the cancellation of the letter of

payment issued and a new payment letter is issued, together with the data of the claimant, who ceased in the Court for not having passed the period of internships, your DNI, date of issue and reference number and amount and the concept of "return of unduly received assets". In the exhibition of indicates how reason "having been repeatedly and unsuccessfully attempted to serve by e-mail certified with acknowledgment of receipt at the known address in Alicante. It is also reported that "the payment of the voluntary improvement of the action was granted protector of the social security in the processes of temporary incapacity as consequence of the medical leave that began on 11/28/2016.", and that it was on "12/23/2016 the last effective working day borrowed".

two)

It is reported that the notification in the Bulletin is made for the purposes of article 44 of the Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations (LPACAP).

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 regarding the protection of natural persons with regard to the processing of personal data and the free circulation of these data (hereinafter GDPR); recognizes each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5/12, of Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), the director of the AEPD is competent to initiate and resolve this process.

II

Law 39/2015, of 1/10, of the Common Administrative Procedure of the



Public Administrations (LPACAP), points out and differentiates the regime of the individual notifications to the interested parties, of the publication of administrative acts that will be published when so established by the regulations of each procedure or when advised by reasons of public interest appreciated by the competent body.

Article 44.1 of the LPACAP indicates: "When those interested in a procedure are unknown, the place of notification is ignored or, attempted this, it had not been possible to practice, the notification will be made by means of a announcement published in the «Official State Gazette».

On the other hand, article 40.2 of the same rule states: "Any notification must be completed within a period of ten days from the date on which the act has been issued, and must contain the full text of the resolution, indicating [www.aepd.es](http://www.aepd.es)

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of whether or not it puts an end to the administrative procedure, the expression of the resources that proceed, where appropriate, administratively and judicially, the body before which they would have to be submitted and the term to file them, notwithstanding that the interested parties may exercise, where appropriate, any other that they deem appropriate."

Meanwhile, article 45 of the same law, on the publication of acts administrative, indicates that it will be done, "when so established by the rules regulations of each procedure or when advised by reasons of public interest appreciated by the competent body" that do not concur in this claim, then the publication would proceed when:

- the act is not addressed to an indeterminate plurality of people

(article 45.1.a).

- It is not a selective procedure or competitive concurrence of any

The LPCAP in the cases in which its notification is appropriate through

Type.

publication its effects.

. Article 46 of the LPCAP adds a common denominator applicable to both

notifications as well as publications, of the following tenor:

"If the competent body appreciates that the notification by means of announcements or the publication of an act harms rights or legitimate interests, it will be limited to publishing in the corresponding Official Gazette a brief indication of the content of the act and of the place where the interested parties may appear, within the period established, to knowledge of the full content of the aforementioned act and proof of such knowledge."

Without discussing whether or not there is a basis for going to notify through

bulletin for understanding the notification attempt process well, you must

indicate that in any case, therefore, advertisements to be published in the BOE are distinguished,

corresponds to the interested parties, of publications of administrative acts that can

be also in the BOE.

Regarding the effects of the administrative act, article 39.2 of the LPACAP

indicates: "The effectiveness will be delayed when required by the content of the act or is

subject to its notification, publication or superior approval.", distinguishing from

new the regime of ordinary notification, or publication.

The LPCAP indicates:

article 13.h):" Rights of people in their relations with

Public administrations.

"To the protection of personal data, and in particular to the security and

confidentiality of the data contained in the files, systems and applications of

Public Administrations.”

Article 40.5 of the LOPD, within the title notifications, indicates: "The

Public Administrations may adopt the measures they deem necessary

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for the protection of personal data contained in resolutions and acts

administrative, when they have more than one interested party as addressees.”

Although it should be noted that article 40 of Law 39/2015 establishes that the

notification of resolutions and administrative acts to the interested parties to whom

affects must contain the full text of the resolution, it must be understood in light of the

article 46, to preserve privacy and given the purpose of the announcement, which as

general rule an individual notification through an edict announcement to an interested party

it does not have to contain the complete text of the same . Exposure of your data, the matter

on which it deals is not proportional to the intended purpose, exceeding the

purpose, there being means for not fully indicating such references as

happens in the present case.

In this case, the respondent proceeded to notify an act

singular administrative, which exclusively affects the claimant, being published in a

official newspaper that can be consulted by anyone. The excess in the publication

contain the integrity of the same, disclosing your personal data,

occurred with the question of the return of undue income or that ceased in the

service, the date, or that he was on medical leave supposes a violation of the RGPD.

III

In accordance with the principles of proportionality and necessity, it is considered that

the principle of data minimization contained in the article has been violated

5.1.c) of the RGPD with the tenor:

"1. The personal data will be:

c) adequate, relevant and limited to what is necessary in relation to the purposes for those who are treated"

This infraction is referred to in article 83.5 of the RGPD, which indicates:

"Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

This infraction is included in the LOPDGDD, article 72.1.a) that qualifies it as very serious with the following tenor:

"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:

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

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated 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 a certain way and within a specified period of time.

Article 83.7 of the RGPD adds: "each Member State may establish rules on whether and to what extent administrative fines can be imposed on public authorities and bodies established in that Member State.

Article 77 of the LOPDGDD indicates:

1. The regime established in this article will apply to the treatment of those who 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 law organic, 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.

#### IV

The data minimization design has been embodied in the LOPDGDD, which in its "Seventh additional provision: on Identification of the interested parties in the notifications through announcements and publications of administrative acts" indicates:

1. When it is necessary to publish an administrative act that contains personal data of the affected party, it will be identified by its name and surnames, adding four random numerical figures of the national document of

identity, foreign identity number, passport or equivalent document.

When the publication refers to a plurality of affected these random figures they should alternate.

When it comes to notification through advertisements, particularly in the assumptions referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, will be identified to the affected party exclusively by means of the complete number of his national document identity card, foreign identity number, passport or equivalent document.

When the affected party lacks any of the documents mentioned in the 9/11

two preceding paragraphs, the affected party will be identified only by name and surnames. In no case should the name and surnames be published together with the complete number of the national identity document, identity number of foreigner, passport or equivalent document.

2. In order to prevent risks for victims of gender violence, the Government will promote the development of a collaboration protocol that defines procedures insurance of publication and notification of administrative acts, with the participation of the bodies with competence in the matter.”

The provision has been the subject of a provisional recommendation until the moment in which the governing bodies and public administrations authorities approve provisions for the application of the aforementioned Provision Additional seventh. So objective is to try to prevent the adoption of different formulas in application of the aforementioned provision may give rise to the publication of figures numerical identification documents in different positions in each case, allowing the complete recomposition of said documents.

For your interest, the aforementioned recommendation of 03/04/2019 is transcribed, entitled:

## “GUIDANCE FOR THE PROVISIONAL APPLICATION OF THE PROVISION

### ADDITIONAL SEVENTH OF THE LOPDGDD”

“In the Spanish Agency for Data Protection, the Catalan Authority for Data Protection, the Basque Data Protection Agency and the Council of Transparency and Data Protection of Andalusia, multiple queries have been received on the application of the provisions of the first paragraph of the first section of the Seventh additional provision “Identification of the interested parties in the notifications through advertisements and publications of administrative acts” of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights.

This circumstance has advised that, in order to facilitate a practical criterion, said authorities propose guidance for the provisional application of guarantees of protection of the disclosure of the national identity document, foreign identity number, passport or equivalent document of the interested.

To do this, they have randomly selected the group of four numerical figures to be published for the identification of those interested in the publications of administrative acts. The procedure for the random determination of the four numerical figures to be published of the identification code of an interested party performed through the process of random selection in an opaque bag of a ball of between five balls numbered from 1 to 5, held on 02/27/2019 at the AEPD.

The resulting ball was number 4, therefore:

The publication of national identity document, identity number of foreigner, passport or equivalent document may be made in the following way:

- Given a DNI with format 12345678X, the digits will be published in the format occupy the fourth, fifth, sixth and seventh positions. In the example: \*\*\*4567\*\*.

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- Given a NIE with format L1234567X, the digits will be published in the format  
occupy the positions, avoiding the first alphabetic character, fourth, fifth, sixth  
and seventh. In the example: \*\*\*\*4567\*.
- Given a passport with format ABC123456, having only six figures, will be published  
the digits that occupy the positions in the format, avoiding the three characters  
alphabetical, third, fourth, fifth and sixth. In the example: \*\*\*\*\*3456.
- Given another type of identification, as long as that identification contains at least  
7 numeric digits, these digits will be numbered from left to right, avoiding  
all alphabetic characters, and the procedure of publishing those  
numeric characters that occupy the fourth, fifth, sixth and seventh positions.  
For example, in the case of an ID like XY12345678AB, the post  
would be: \*\*\*\*\*4567\*\*\*.
- If that type of identification is different from a passport and has less than 7 digits  
numeric, all characters, including alphabets, will be numbered with the same number.  
previous procedure and those who occupy the last four will be selected.  
positions. For example, in the case of an ID such as ABCD123XY, the  
publication would be: \*\*\*\*\*23XY.
- Alphabetic characters, and those numeric characters not selected for their  
publication, they will be replaced by an asterisk for each position.”

Therefore, in addition to introducing the aforementioned measures in general, if  
to publish or notify any act, it must be taken into account in addition to these  
references, a special diligence for the possible identification or identifiability to



through other direct or indirect references that are not name and surnames or NIF and that allow the person to be identified.

Regarding the fact that this provision was not in force when the facts, this is true and its implementation is expected to contribute to being able to apply the publication/notification scheme in edicts or official journals respecting data protection regulations.

On the other hand, article 46 was in force, which could have been taken into account and the principle of data minimization is related to the data, which has its origin in article 4.1 of the LOPD. "Personal data will only be may collect for treatment, as well as submit them to said treatment, when are adequate, relevant and not excessive in relation to the scope and purposes determined, explicit and legitimate for which they have been obtained."

It is estimated that with the measures it has put in place, and those derived from the LOPDDG it is not necessary to order the respondent to adjust its operations of treatments, since the criteria expressed in this resolution are decisive for that a situation similar to the one reported is not repeated.

FIRST: IMPOSE THE MINISTRY OF JUSTICE, PUBLIC ADMINISTRATION, DEMOCRATIC REFORMS AND PUBLIC LIBERTIES, with NIF S4611001A, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

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SECOND: NOTIFY this resolution to the DEPARTMENT OF JUSTICE, PUBLIC ADMINISTRATION, DEMOCRATIC REFORMS AND LIBERTIES PUBLIC.

THIRD: Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDPGDD, 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, 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers 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 within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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