

□ Procedure No.: PS/00290/2020

## 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 claimant) files a claim dated  
January 29, 2020 before the Spanish Data Protection Agency (AEPD). The  
The claim is directed against the CITY COUNCIL OF \*\*\*CITY COUNCIL.1, with CIF  
P4723200D (hereinafter claimed). The ground on which the claim is based is that  
the respondent lacks a data protection delegate despite being bound by the  
regulations in force at their appointment.

The claimant has submitted, attached to her claim brief, numerous  
documentation that is not related to the fact that determines the opening of  
this sanctioning procedure. In summary, the following documents: Copy of the  
letter addressed to him by the Common Prosecutor of Castilla y León, signed  
electronically on 12/27/2019, with which it sends you the Resolution adopted regarding  
to the City Council of \*\*\* TOWN HALL.1 in use of the powers it has  
conferred by the Statute of Autonomy and Law 2/1994, of March 9, of the Attorney  
of the Common. The receipt of the entry register in the City Council of  
\*\*\* TOWN HALL.1, electronically validated on 01/22/2020, of the documents  
that the claimant contributes in the hearing process of an administrative file in  
the one that is an interested party and that is substantiated in the scope of the Local Administration  
in which it provides its services. The documents are a letter addressed to the mayor  
of the townhall; a copy of a report from the Legal Office of the AEPD -in which  
neither the reference number nor the date on which it was issued appears - and a doctrinal study

on the burden of proof in the administrative procedure.

SECOND: In view of the facts set forth in the claim, on 02/28/2020

a query is made, whose result was negative, to the list of delegates of protection of data communicated to the AEPD using as search criteria the name of the claimed entity.

Within the framework of file E/2582/2020, the AEPD, in a document signed on 26 March 2020, transferred the claim to the respondent so that within a period of month will provide this Agency with an explanation of the facts denounced, will detail the measures adopted to prevent situations from occurring in the future similar and also proceed to communicate its decision to the claimant. The writing is notified the claimant electronically. This is confirmed by the FNMT certificate that work in the file in which it appears as the date of making it available at the headquarters electronically on June 2, 2020 and as the date of acceptance of the notice by the claimed on June 3, 2020.

As of September 4, 2020, the response had not been received by the AEPD of the claimed to the informative request. In accordance with the provisions of article 65 of

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Organic Law 3/2018, on Data Protection and Guarantees of Digital Rights

(LOPDGDD) on that date the agreement for admission to process the claim is signed.

The agreement for admission to processing was notified to the claimant by mail postcard sent on September 4, 2020.

THIRD: On September 29, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 37 of the RGPD, typified in Article 83.4 of the RGPD.

FOURTH: On October 27, 2020, the respondent presented allegations in the that it referred that it answered the transfer of the claim, dated October 5, 2020.

Regarding the imputed fact, it indicates that, on November 29, 2019, received an email from the Provincial Council of \*\*\*LOCALIDAD.1, from the Service of New Technologies of the Electronic Procurement Area, where it is indicated that it is analyzing the current situation in the local entities of the province of Valladolid less than 20,000 inhabitants, and where we were asked if this City Council had assigned a Data Protection Delegate, their method of assignment, their denomination, and if it has already proceeded to carry out the registration of activities of treatment, impact assessment and risk analysis in accordance with the provisions of the GDPR. The answer was negative, and for this reason, we are waiting for the Diputación itself, and in accordance with the obligation established in art. 36, of the LRBRL. In view of everything that has been done, by the Spanish Data Protection Agency In this proceeding, the following are considered proven facts:

## FACTS

I know

FIRST:

TOWN HALL OF

\*\*\*CITY COUNCIL.1, due to the lack of a data protection delegate, despite being bound by current regulations to their appointment.

claim against the

He received

SECOND: The list of data protection delegates communicated to the

AEPD is not communicated.

THIRD: The CITY COUNCIL OF \*\*\*CITY COUNCIL.1 has not appointed a Delegate

Data Protection (DPD).

## FOUNDATIONS OF LAW

Yo

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

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II

The Public Administrations act as responsible for the treatment of data of a personal nature and, on occasions, perform functions of those in charge of the treatment for which, following the principle of proactive responsibility, we It is necessary to meet the obligations that the RGPD details, among which is the to appoint a data protection delegate, make their contact details public and communicate them to the AEPD (article 37 RGPD)

Sections 1 and 7 of article 37 GDPR refer to these obligations and

“The person in charge and the person in charge of the treatment will designate a delegate of establish, respectively:

data protection provided that:

a) the treatment is carried out by a public authority or body, except those courts acting in the exercise of their judicial function;

“The person in charge or the person in charge of treatment will publish the contact details of the data protection delegate and will communicate them to the control authority.”

On the appointment of the data protection delegate, sections 3 and 5 of the Article 37 of the RGPD indicate that “When the person in charge or the person in charge of the treatment is a public authority or body, a single person may be designated data protection officer for several of these authorities or bodies, taking into account its organizational structure and size”. “The delegate of protection of data may be part of the staff of the person in charge or of the person in charge of the treatment or perform their functions within the framework of a service contract.

For its part, the LOPDGDD dedicates article 34 to the “Appointment of a delegate-do of protection of data”, precept that provides:

“1. Those responsible and in charge of the treatment must designate a delegate data protection in the cases provided for in article 37.1 of the Regulation ment (EU) 2016/679 and (...)”

“3. Those responsible and in charge of the treatment will communicate within the period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional laws on data protection, appointments, appointments and dismissals of the data protection delegates both in the cases in which they are train obliged to their designation as in the case in which it is voluntary”.

The infringement of the obligation imposed on the claimed party by article 37.1 RGPD

It is typified in article 83.4. GDPR, which states:

“Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 10,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 2% of the volume overall annual total turnover of the previous financial year, opting for the higher amount:

the obligations of the person in charge and the person in charge pursuant to articles (...)

25 to 39,..."

a)

The LOPDGDD indicates in article 73, "Infringements considered serious":

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679

are considered serious and will prescribe after two years the infractions that suppose a

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substantial violation of the articles mentioned therein and, in particular, the following

Followers: (...)

v) Failure to comply with the obligation to appoint a data protection delegate

data when their appointment is required in accordance with article 37 of the Regulations

ment (EU) 2016/679 and article 34 of this organic law."

III

Regarding the sanction or sanctions that could be imposed on the person claimed in

the present sanctioning procedure, the following have been taken into consideration

provisions:

On the one hand, article 58.2 of the RGPD that establishes that "Each authority of

control will have all the following corrective powers indicated below-

tion:

(...)

b) send a warning to any data controller or data processor when

treatment operations have violated the provisions of this Regulation-

mint;

(...)

d) order the controller or processor that the processing operations

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

(...)

i) impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, depending on the circumstances of

each particular case;

(...)"

On the other hand, article 83.7 RGPD, which indicates that "Without prejudice to the co-

rectives of the supervisory authorities under article 58, paragraph 2, each State

member may establish rules on whether, and to what extent, it is possible to impose

administrative fines to authorities and public bodies established in said State.

member".

In accordance with this authorization granted by the RGPD, the LOPDGDD has

provided in article 77, "Regime applicable to certain categories of liability

saberes or in charge of treatment", the following:

"1. The regime established in this article will be applicable to the treatment of

those who are responsible or in charge:

(...)

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

Autonomous Communities and the entities that make up the Local Administration.

(...)

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 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 of the infraction that had been committed. The resolution will be notified to the responsible

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responsible or in charge of the treatment, to the body on which it reports hierarchically, in its case, and to those affected who had the status of interested party, as the case may be.

3. Without prejudice to the provisions of the preceding section, the protection authority 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. or that results from application.

Likewise, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment is accredited 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 that fall in relation to the measures and actions referred to in the paragraphs previous two.

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



logs of the autonomous communities the actions carried out and the resolutions

dictated under this article.”

The City Council of \*\*\* TOWN HALL.1 is obliged to appoint a DPD

since the treatment is carried out by a public authority or body. The modality

of their hiring, appointment and employment relationship is very broad, you can choose what

most suitable for your specific situation.

The RGPD entered into force on May 25, 2016, although it was not applicable

until two years later. This period of time was necessary to adapt the treatments

ments to the new regulations. But the City Council mentioned, after more than two

years after that adaptation period, he had not yet appointed a DPO.

Consequently, the City Council of \*\*\*AYUNTAMIENTO.1 has failed to comply with the

obligation established in article 37 of the RGPD and sanctioned in article 83.4.a)

of the same.

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 TOWN HALL OF \*\*\* TOWN HALL.1, with CIF

P4723200D, for an infringement of Article 37 of the RGPD, typified in Article 83.4

of the RGPD, a sanction of warning.

SECOND: REQUEST the TOWN HALL OF \*\*\* TOWN HALL.1, with CIF

P4723200D:

1. The appointment of the Data Protection Delegate.

You must inform this Agency within a month from the notification

cation of this Resolution.

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THIRD

\*\*\* TOWN HALL.1.

: NOTIFY this resolution to the CITY COUNCIL OF

FOURTH

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

: COMMUNICATE this resolution to the Ombudsman,

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 month from

counting 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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