

□ File No.: PS/00208/2022

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On January 9, 2020, by the Director of the Spanish Agency for
Data Protection resolution was issued in sanctioning procedure number
PS/00407/2018, filed against the CITY COUNCIL OF ORIA (hereinafter, the
claimed). In said resolution, in addition to imposing a sanction of warning,

The following measures were required:

“SECOND: Considering that article 58.2.d) empowers the control authority to:

”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”, the

ORIA CITY COUNCIL that contributes within a month of receiving this
resolution, detail the organizational and technical measures so that the materialization of
another infraction like the one analyzed is difficult to carry out. As an indication to adopt,
those suggested in this resolution are valid.”

SECOND: The resolution of the sanctioning procedure was notified
irrefutably on January 13, 2020 to the claimed party, granting the
period of one month for the adoption of the imposed measures, as stated
accredited in the file.

THIRD: After the expiration of the indicated term without this Agency having
received any writing on the measures implemented by the claimed party and
having requested the Ombudsman information in this regard on the 19th of

May 2020, they were requested again on two occasions to report on the corrective measures adopted, in accordance with what was agreed in the aforementioned Resolution.

These requirements were collected by the person in charge on June 24, 2020 and November 22, 2021, as stated in the Notific@ certificates that they work in the file.

FOURTH: Having received a registered document with an entry number 000007128e2100050363, on December 9, 2021, communicating the measures adopted, it is noted that it has not been proven that in the minutes of the Plenary there is no publish unnecessary personal data, not having taken measures to comply with the principle of data minimization, as indicated in resolution previously mentioned. Therefore, the claimed party is once again required to review said measures and communicate again the measures adopted in the maximum period of one month, in order to comply with the provisions of the resolution and be able to report, as requested, to the institution of the Ombudsman.

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This requirement, collected by the person in charge on March 10, 2022, as It is stated in the Notific@ certificate that is in the file, it has not received response.

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 stated 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.

SIXTH: On May 30, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (in hereinafter, LPACAP), for the alleged violation of Article 58.2 of the RGPD, typified in Article 83.6 of the RGPD Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD).

The aforementioned initial agreement was collected by the person in charge on June 1, 2022, as stated in the Notific@ certificate that is in the file.

SEVENTH: With dates June 15 and 21, 2022 and entry registration numbers REGAGE22e00024677511 and REGAGE22e00025611590 respectively, the part claimed presents allegations to the initial agreement in which it states that in the Decree of the Mayor provides the necessary instructions to "all dependencies of the City Council of Oria" for the publication of resolutions and agreements, proposing the minimization of the data that appears in them, which which includes the minutes of the Plenary and all those actions of the City Council in which that it is necessary for personal data to appear.

Furthermore, the respondent has contracted the services of a external consultant expert in data protection regulations such as support and guidance to implement the following measures:

- A procedure has been developed to duly comply with the obligation to inform interested parties about the processing of their personal data.
- Measures have been adopted to ensure compliance with the principles of the

treatment of legality, loyalty and transparency data.

- The limitation of the purpose for which the data is processed will be ensured, these being collected for specific, explicit and legitimate purposes, and not processed after manner incompatible with those purposes.
- Through the aforementioned Decree of the Mayor's Office, the principle of minimization of data, treating personal data when necessary for the intended purposes.
- The principles of accuracy, limitation of the term of conservation and integrity and confidentiality.
- The analysis of the legal bases of the treatments will be carried out in a that it is guaranteed that there is always a legal legal basis for the treatment of the data that is obtained.

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In addition, a Data Protection Delegate has been appointed who is taking a course in this matter with a duration of 180 hours.

Additionally, within the scope of the adaptation project, the preparation of a Record of Treatment Activities in accordance with the provisions in article 30 of the General Data Protection Regulation.

Likewise, the external company is proceeding to prepare a risk analysis of the processing of personal data, to determine the security measures applicable to them. In this way, in case of determined through the same that the treatments carried out suppose a high

risk to the rights and freedoms of those affected, will proceed with the Evaluation of Impact as established in article 35 of the RGPD.

In the same way, the due procedures have been developed and implemented for:

- The correct detection, management and notification of security breaches that occur produced in the City Hall facilities.
- Attend to the requests for the exercise of rights that are required by the citizens.
- Assess whether the data processors who are going to work with the City Council offer sufficient guarantees of compliance in accordance with the legislation on of data protection, also adapting the data processing contracts in this sense.
- Carry out a training and awareness plan for employees on the matter, in such a way that human errors are avoided as far as possible.

EIGHTH: On July 14, 2022, a resolution proposal was formulated proposing that the Director of the Spanish Data Protection Agency impose a sanction of warning to the claimed party.

In view of everything that has been done, by the Spanish Data Protection Agency In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The resolution of the sanctioning procedure and the requirements for the compliance with the measures imposed therein indicated in the background third and fourth were notified electronically, in accordance with the provisions of the Article 43 of the LPACAP. Said resolution became firm and executive by the course of the terms foreseen for the interposition of the resources indicated therein.

SECOND: The party complained against has not sent to this Agency, prior to the

agreement to initiate this procedure, a response that proves that in the minutes of the Plenary that unnecessary personal data is not published in order to comply with the principle of data minimization.

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THIRD: The notification of the agreement to initiate this procedure sanctioning was carried out electronically through the Notific@ system, being collected by the person in charge on June 1, 2022.

FOURTH: The party complained against has presented the arguments to the agreement to initiate this sanctioning procedure collected in the seventh antecedent.

FIFTH: The notification of the proposed resolution was sent electronically to through the Notific@ system, being collected by the person in charge on July 14, 2022.

SIXTH: The respondent has not presented arguments to the proposal of resolution of this sanctioning procedure within the period indicated for it.

FOUNDATIONS OF LAW

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Competition

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), 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 Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

Allegations to the Home Agreement

II

As regards the arguments presented by the respondent, collected

In the seventh antecedent, the following should be noted.

The resolution in which the adoption of measures was required, for which a response period of one month, was notified on January 13, 2020.

Likewise, the adoption of corrective measures was again required twice and, after a response in which it is noted that it has not been proven that in the minutes of the Plenary no unnecessary personal data is published, no measures have been taken

To comply with the principle of data minimization, a new requirement is made which was not answered, so it was finally agreed to start the procedure penalty on May 30, 2022.

When the Decree of the Mayor's Office, provided before the agreement to start this procedure, provides instructions for data minimization, refers

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specifically to the publication of resolutions and agreements, contracts, agreements and management assignments and notification by means of announcements.

The communication of measures adopted during the instruction of this procedure it does not affect the existence of the proven facts constituting the infringement.

With regard to the measures communicated, on the part of this Agency it is accused receipt of the same, without this statement implying any pronouncement on the regularity or legality of the measures adopted.

You are warned about the provisions of article 5.2 of the RGPD, which establishes the principle of proactive responsibility when it states that "The data controller 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 the legal, technical and and adequate organizational so that the processing of data is in accordance with the regulations, but to remain actively vigilant throughout the entire life cycle treatment so that compliance is correct, being also capable of prove it.

III

unfulfilled mandate

In accordance with the available evidence, it is considered that the party claimed has failed to comply with the resolution of the Spanish Agency for Data Protection in relation to the measures imposed on him.

Therefore, the facts described in the "Proven Facts" section are considered constituting an infringement, attributable to the claimed party, for violation of the article 58.2.d) of the RGPD, which provides the following:

"two. Each supervisory authority will have all of the following corrective powers listed below:

(...)

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 specified manner and within a specified period;”

Typification and qualification of the infraction

IV

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

“Failure to comply with the resolutions of the control authority pursuant to article 58, paragraph 2, will be sanctioned in accordance with paragraph 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.”

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

“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.”

v

Imputed sanction

Article 83.7 of the RGPD 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 organizations public authorities 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 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.

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 party, if any.

(...)

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 ORIA CITY COUNCIL, with NIF P0407000I, for a infringement of Article 58.2 of the RGPD, typified in Article 83.6 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to the ORIA CITY COUNCIL.

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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 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

938-120722

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