

□ Procedure No.: PS/00376/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. President and legal representative of the Association of Mothers and Fathers  
of Students of \*\*\*COLEGIO.1, (hereinafter, the claimant) dated April 30, 2019  
filed a claim with the Spanish Data Protection Agency. the claim  
is directed against CITY COUNCIL OF LA CARLOTA with NIF P1401700H (hereinafter, the  
reclaimed).

The reasons on which the claim is based are that the claimant as president and  
legal representative of the Association of Mothers and Fathers of Students (AMPA) of the  
\*\*\*COLEGIO.1 registered a complaint at the Carlota town hall  
about cleaning the school, and the Councilor for Education met with the cleaner of the  
school to deal with this issue and gave him a copy of the complaint filed with the data  
of the claimant or president of the AMPA, generating the dissemination of their data  
personal and a great conflict.

SECOND: In view of the facts denounced in the claim and the documents  
provided by the claimant, the General Subdirectorate for Data Inspection proceeded to  
carrying out preliminary investigative actions to clarify the facts  
in question, by virtue of the investigative powers granted to the authorities of  
control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of  
Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title  
VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, of  
Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD).

The aim is to inform the respondent of this claim on June 7, 2019, requiring you to submit to this Agency, within a period of one month, information on the response given to the claimant for the facts denounced, as well as the causes that have motivated the incidence and the measures adopted to adapt its "Policy of Privacy" to Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR).

The Data Protection Delegate of the Córdoba Provincial Council answers that they have signed agreement for its adaptation to the Data Protection regulations with the councils, although at the moment the reported council does not have a policy of privacy but they hope to solve it soon.

THIRD: On December 18, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD.

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FOURTH: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure Common of Public Administrations.

FIFTH: Not having made allegations or presented evidence within the given period, proceeds to issue this resolution taking into account the following:

## FACTS

FIRST: The claimant as president and legal representative of the Association of Mothers and Fathers of Students (AMPA) of the \*\*\*COLEGIO.1 registered in the city council of la Carlota of a complaint about the cleanliness of the school, and the councilor of Education met with the school cleaner to discuss this issue and gave her a copy of the complaint filed with the personal data of the claimant or president of the AMPA, generating the dissemination of your personal data and a great conflict.

SECOND: This Agency transfers the claim received to the claimant, receiving response from the Data Protection Delegate of the Córdoba Provincial Council affirming that have signed an agreement for its adaptation to the Data Protection regulations with councils, although at the moment the reported council does not have a policy of privacy, but they hope to resolve it soon.

The present sanctioning procedure is opened and after the term of allegations, the respondent has not sent any statement in this regard.

## FOUNDATIONS OF LAW

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

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, section 1, further processing of personal data for archiving purposes in the interest

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public, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable for the erasure or rectification without delay of the personal data that is inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of processing the personal data; the personal data may be kept for longer periods as long as they are processed exclusively for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

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").

The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility")."

For its part, article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, has:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide you with all the information listed below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained information, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide the personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.

III

In the present case, the delivery of the personal data of the

claimant to a third party without his consent, by giving himself to a person in charge of the cleaning of a school, a copy with your complaint as president of the AMPA of said college.

In response to the request for information after sending this Agency transfer of the

claim object of this procedure, the Data Protection Delegate of the

The Córdoba Provincial Council replies that they have signed an agreement for its adaptation to the Data Protection regulations with the municipalities, although at the moment the

The reported town hall does not have a privacy policy, but they hope to resolve it soon.

Thus, we proceed to the opening of this sanctioning procedure and

After the period for pleadings, the aforementioned municipality claimed, has not sent any statement about it.

For all these reasons, it is considered that the known facts, that is, that the councilor of

Education of the aforementioned town hall when meeting with the school cleaner to deal with a

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complaint about the cleanliness of the center give you a copy of the complaint with the data of the claimant (president of the AMPA of the aforementioned association), supposes a infringement, attributable to the defendant, for violation of the principles of "limitation of the purpose" and "integrity and confidentiality" of art. 5.1 b) and f) of the RGPD.

#### IV

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 a warning

when the treatment 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 accordance with

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, according to the circumstances of each case

particular;

The art. 83.5 of the RGPD establishes that infractions that affect:

"a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22."

#### v

The LOPDGDD in its article 77, Regime applicable to certain categories of responsible or in charge of the treatment, establishes the following:

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

those who are responsible or in charge:



- a) The constitutional bodies or those with constitutional relevance and the institutions of the autonomous communities analogous to them.
- b) The jurisdictional bodies.
- c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.
- d) Public bodies and public law entities linked or dependent on the Public Administrations.
- e) The independent administrative authorities.
- f) The Bank of Spain.
- g) Public law corporations when the purposes of the treatment are related to the exercise of powers of public law.
- h) Public sector foundations.
- i) Public Universities.
- j) The consortiums.
- k) The parliamentary groups of the Cortes Generales and the Assemblies Autonomous Legislative, as well as the political groups of the Corporations Local.

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2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of this

organic law, 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 conduct or correct 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 on which it reports hierarchically, where appropriate, and to those affected who had the condition interested party, if any.

3. Without prejudice to what is established in the previous section, the protection authority of data will also propose the initiation of disciplinary actions when there are sufficient evidence for it. In this case, the procedure and the sanctions to be applied will be those established in the legislation on disciplinary or sanctioning regime that result of application.

Likewise, when the infractions are attributable to authorities and managers, and proves the existence of technical reports or recommendations for treatment that are not had been duly attended to, in the resolution in which the sanction is imposed, will include a reprimand with the name of the responsible position and order the publication in the corresponding Official State or Autonomous Gazette.

4. The resolutions must be communicated to the data protection authority 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 the institutions analogous of the autonomous communities the actions carried out and the resolutions issued under this article.

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

When the competence corresponds to a regional authority for the protection of

data will be, in terms of the publicity of these resolutions, to what your specific regulations”.

SAW

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each control authority may “order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

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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 LA CARLOTA CITY COUNCIL, with NIF P1401700H, by an infringement of article 5.1.f) of the RGPD in relation to article 5 of the LOPDGDD, typified in article 83.5.a) of the RGPD, a sanction of warning.

SECOND: REQUEST LA CARLOTA CITY COUNCIL, with NIF P1401700H, to in accordance with article 58.2.b) of the RGPD so that within one month from the notification of this resolution, certify:

-The adoption of all necessary measures so that the denounced entity act in accordance with the principles of "purpose limitation" and "integrity and confidentiality» of art. 5.1 b) and f) of GDPR respectively.

-The adoption of the necessary measures to update its "Privacy Policy" to current regulations on the protection of personal data, -Regulation (EU) 2016/679 (RGPD)-, adapting the information offered to the requirements contemplated in article 13 of the RGPD, and must provide users, with prior to the collection of their personal data, all the information required in the aforementioned precept, for which said company must have taking into account the provisions of article 6 of the RGPD in relation to the legality of the treatment.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

FOURTH: NOTIFY this agreement to the CITY COUNCIL OF LA CARLOTA with NIF P1401700H,

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 (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, 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

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

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