

□ File No.: PS/00189/2022

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Dated September 16, 2021, by the Director of the Agency

Spanish Data Protection, a resolution was issued in the exercise procedure
of rights number TD/00169/2021, filed against the MUNICIPAL COMPANY
URBAN TRANSPORTS, S.A. DE GIJÓN (hereinafter, the claimed party). In
said resolution required the adoption of the following measures:

“Based on the foregoing, considering that this proceeding has as
object that the guarantees and rights of those affected are duly
restored, and given that the new technology allows through techniques that
anonymize images show recordings in a way that does not harm third parties
and, also adding a legitimate interest on the part of the claimant since, it is
requesting samples of impartiality in the test carried out, for all these reasons,
we find reason why the claimant cannot have the recordings that
can be an essential part of your screening test to obtain a
job position and that also reflect the transparency in the tests carried out.

In view of the aforementioned precepts and others of general application, the Director of the Agency
Spanish Data Protection RESOLVES:

FIRST: ESTIMATE the claim made by A.A.A. and urge NOW

MUNICIPAL URBAN TRANSPORTS, S.A. DE GIJÓN with NIF A33696279, for
that, within a period of ten business days following the notification of this
resolution, send the claimant party a certification that addresses the right

requested access or is denied for reasons indicating the reasons why

It is not appropriate to attend to the request, in accordance with what is established in the body of the
this resolution. The actions carried out as a result of this

Resolution must be communicated to this Agency within the same period. The

Non-compliance with this resolution could lead to the commission of the infraction

considered in article 72.1.m) of the LOPDGDD, which will be sanctioned, in accordance
with art. 58.2 of the GDPR.”

SECOND: The resolution of the indicated procedure was reliably notified
on September 17, 2021 to the claimed party, granting him the term of
ten working days for the adoption of the imposed measures, as stated
accredited in the file.

THIRD: This Agency has received a written document, registered on September 30
of 2021 and registration number XXXXXXXXXXXXX, in which the claimed party

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proposes as compliance with the resolution to allow the complaining party to
view the images in your facilities without giving you a copy of them.

FOURTH: On March 7, 2022, this Agency has received in writing, with
registration number XXXXXXXXXXXXX, in which the complaining party says that no
satisfactorily answered your request for access and requests that you be provided with a copy
of said recording.

FIFTH: On April 8, 2022, the party was again requested
claimed so that, within a period of five business days, it could send the claimant

certification of compliance with the resolution referenced in the terms therein described and, within ten business days, notify this Agency of the measures adopted.

This requirement was collected by the person in charge on April 8, 2022, as It appears in the Notific@ certificate that is in the file.

SIXTH: Dated April 13, 2022 and entry registration number

XXXXXXXXXXXXXXX, the respondent has sent a response to this Agency in the which states that on October 21, 2021, the recording was made available to the claimant party in its facilities to repeat its viewing as many times as considered necessary, understanding that with this the resolution was fulfilled.

SEVENTH: 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.

EIGHTH: On May 20, 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).

NINTH: The aforementioned initial agreement was collected by the person in charge on the 23rd of May 2022, as stated in the Notific@ certificate in the file.

TENTH: Dated June 2, 2022 and entry registration numbers

XXXXXXXXXXXXXXXXXX and XXXXXXXXXXXXXXXXXXXX, the respondent files allegations to the initial agreement in which it states that in the recordings requested images of third parties appear, which in order not to harm their rights and liberties must be anonymized, and that, requested budgets to proceed to said processing, its cost would suppose an excessive disbursement, contributing supporting budget. Additionally, the recording is made available to the claimant party at its facilities to repeat its viewing as many times as deem necessary.

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ELEVEN: On July 5, 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.

TWELFTH: Dated July 13, 2022 and entry registration number

XXXXXXXXXXXXXXXXXX, the respondent provides, as proof of the actions made, copy of the content of the burofax, with acknowledgment of receipt signed by the party claimant, in which the claimed party denies the request for delivery of the recordings as the economic cost of the video anonymization. However, in order to meet the right of access of the complaining party, the availability of the recordings of their evidence at the facilities of the claimed party so that they can come and view them when you require it.

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

The resolution of

FIRST:

procedure for exercising rights and the

requirement for compliance with the measures imposed therein indicated

in the first and fifth antecedents they were notified electronically, in accordance

to the provisions of article 43 of the LPACAP. This resolution became final and

due to the expiry of the periods established for the filing of appeals

indicated therein.

SECOND: In the aforementioned resolution, the requested party is ordered to adopt the

following measures: send to the complaining party a certification in which the

right of access requested or denied for reasons indicating the reasons why

those that do not proceed to attend the request, as well as communicate the actions carried out

to this Agency.

THIRD: The respondent did not send a response to this Agency that accredited

sufficiently compliance with the measures imposed in accordance with the

reasoned in the resolution, prior to the issuance of the agreement to start the

present sanctioning procedure.

FOURTH: 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 May 23, 2022.

FIFTH: The respondent presented arguments to the agreement to initiate this

sanctioning procedure collected in the tenth antecedent.

SIXTH: The notification of the proposed resolution was sent electronically to

through the Notific@ system, being collected by the person in charge on July 5,

2022.

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SEVENTH: The respondent has filed a brief in response to what is referred to in the proposed resolution of this sanctioning procedure, written in the twelfth background, to prove the remission to the claimant of the denial motivated copy of the recording indicating the causes, as well as the guarantee of the right of access by other means.

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 initiation agreement

II

In response to the allegations to the initiation agreement that were presented by the claimed entity, the following should be noted.

The resolution in which the adoption of measures was required, for which a response period of 10 business days, was notified on September 17, 2021. Likewise, the adoption of corrective measures was again required and finally It was agreed to start the sanctioning procedure on May 20, 2022, without up to that date, the respondent party would have accredited the right to obtain copy or had denied it in a sufficiently motivated manner.

Given that the new technology allows, through techniques that anonymize the images provide copies of recordings in a way that does not harm third parties, this does not suppose an impediment of departure and attributable to all the cases to prevent access to a copy of a recording, as reasoned in the resolution itself.

The denial of the copy for assuming a disproportionate cost to carry out a process of anonymization of the personal data of third parties has not been justified until the allegations of the agreement to initiate this proceeding, and the denial

The reason for the copy must be communicated to the claimant.

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Written in response to the motion for a resolution

Regarding the document presented by the entity claimed and included in the

twelfth antecedent should be noted the following.

The communication of the measures during the instruction of this procedure does not affects 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, being incorporated into the file.

In the proposed resolution it was proposed that the Director order that, if attend to the right to obtain a copy, a certification in the one that was denied with reasons together with the guarantee that the access to recordings at the premises of the respondent. having received communication of the actions carried out by the claimed party before issue the resolution, it is not appropriate to order such a measure in this resolution.

You are warned about the provisions of article 5.2 of the RGD, 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.

IV

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

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

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"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."

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.”

SAW

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:

(...)

d) Public bodies and public law entities linked or

dependent on the Public Administrations.

(...)

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."

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Therefore, in accordance with the applicable legislation, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE EMPRESA MUNICIPAL TRANSPORTES URBANOS, S.A.

DE GIJÓN, with NIF A33696279, for an infringement of Article 58.2 of the RGPD, typified in Article 83.6 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the MUNICIPAL COMPANY

URBAN TRANSPORTS, S.A. OF GIJON.

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

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