

□ File No.: EXP202102442

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the complaining party) dated September 7,
2021 filed a claim with the Spanish Data Protection Agency. The
claim is directed against Union of Professional Civil Guard Officers with NIF
G85478576 (hereinafter the claimed part).

The grounds on which the claim is based are as follows:

The complaining party states that on September 7, 2021, he received, in his position
of work, a letter sent by the claimed party, appearing on their data,
without having previously contributed them, or being part of said association.

And, the following documentation is attached:

Letter sent by the claimed party.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), said claim was transferred to the claimed party, to
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements set forth in the regulations of
Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of the Administrations
Public (hereinafter, LPACAP), was collected on October 7, 2021 as

It is stated in the acknowledgment of receipt that is in the file.

On November 3, 2021, this Agency received a response letter

stating: “that the claim and, therefore, the processing of personal data does not

It is part of the scope of application of European and national regulations on protection

of personal data. This argument is based on the thesis itself.

maintained by the Data Protection Agency itself in TD/01217/2018 –

R/01690/2018, in which it expressly says: “Ultimately, then, both people

legal as the professionals who provide their services in those are outside

of the scope of the GDPR”

“That this Association has the professional character that, for this purpose, is conferred by the LO

11/2007, regulating the rights and duties of the members of the Civil Guard,

watches over the rights and interests of the professionals who make up the body of the

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Civil Guard and, among them, the protection of all its components stands out, in

particular officers, whether or not they are associated with it.

The documentation provided by the claimant has been sent to the professional post

as stated in the ranking of the Civil Guard Corps, the purpose being

informative and not propagandistic. It does not pursue an electoral purpose nor is any

electoral campaign, so nothing prevents the Association from carrying out its activity

ordinary with normal.

The source to collect the data is of restricted public access (Civil Guards),

obtained from the lists published as Echelons of the effective in accordance with the

OM 108/94, of October 28, on Norms for the Elaboration of the Steps of

the Armed Forces and Civil Guard and Law 29/2014, on the Personnel Regime of the Civil Guard.

The inserted data reproduced in the envelope have the character of professional data and the content is merely informative of the creation and made available to the group of officers of a professional computer application created by the Association. The ordinary letter has been sent only once and has been inserted in the on the professional data essential for the identification of the recipient and that said about reached him.

He concludes that he is not aware of any right exercised by the claimant.”

THIRD: On December 7, 2021, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On February 22, 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 6.1 of the RGPD, typified in Article 83.5 of the RGPD.

FIFTH: Having been notified of the aforementioned initiation agreement, the party complained against submitted a written allegations in which, in summary, it stated: “that in article 36 of the law Organic 11/2007, of October 22, is the legitimizing basis for the treatment of personal data, does not exclude from the functions entrusted to the Association the defense and interests of non-associates, since said article differentiates two types of subjects or groups, as well as three types of purposes.

Regarding the subjects or groups, said article 36 differentiates the so-called associates and so-called members and, expressly stated in said article, making a clear differentiation and allusion to both subjects or groups.

The communication carried out by the Association, which has been made only once

In turn, it is a consequence of social activity aimed at favoring the efficiency of the

professional exercise, and what more efficiency, than that of informing according to the right that

The members of the Civil Guard have an exclusive tool for said

members where you can have relevant information for professional practice.

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Regarding the restricted access source, said source is public and restricted to

through the Intranet of the Civil Guard, providing as Document number 1

screenshot of the one in which you can observe and visualize the provision

from that source.

The publication of the personal data of those affected (members of the Guard

Civil) in these cases is, therefore, beyond their control. It establishes a norm and

justified by the narrow public interest it pursues. Further processing by

of the Association also pursues an identical purpose in the interest of those affected

in said publications, that is, the informative interest in accordance with article 7 Law

11/2007.

The Association believes that there is no less invasive means of achieving

same efficiency as the List of Rankings published by the Civil Guard to be able to

treat the data with a subsequent purpose in accordance with fundamental rights.

Regarding the verification of the judgment of proportionality with respect to the measure

restrictive for the affected party, as is known, the judgments must be overcome or accredited

suitability; judgment of necessity; and finally the judgment of proportionality in the sense

strict.

Judgment of suitability, the DNI is not available but simply the data and surnames of the Ladder and the professional destination in which he provides services within the Corps of the Civil Guard, data that is included in the envelope and not in the communication itself, non-commercial but informative in the interest of their profession, being data professional and not personal.

Judgment of Necessity. We do not believe that it is necessary to redound in said judgment, indicating that the treatment is proportional, occasional, not existing, to date present, less intrusive media for the affected.

Expectations. The affected party does not lose control of their personal data from the Ranking.

Request to file the sanctioning procedure or subsidiarily sanction with warning or reprimand or reduce the proposal of the sanction”.

SIXTH: On March 17, 2022, the instructor of the procedure agreed perform the following tests:

1. The claim filed by D. is considered reproduced for evidentiary purposes.

A.A.A. and its documentation, the documents obtained and generated during the admission to processing of the claim.

2. Likewise, it is considered reproduced for evidentiary purposes, the allegations to the agreement initiation of the referenced sanctioning procedure, presented by the Union of Professional Civil Guard officers, and the documentation that accompanies them.

SEVENTH: On April 25, 2022, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction the Union of Professional Civil Guard Officers with NIF G85478576 for a C/ Jorge Juan, 6 28001 – Madrid

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infringement of Article 6.1 of the RGD, typified in Article 83.5 of the RGD, with a fine of 6,000 euros (six thousand euros).

EIGHTH: Once the proposed resolution was notified, the party complained against submitted a written of allegations in which, in summary, it stated: "that the claimant received the communication in your workplace, we are facing a clear exception to the application of the data protection regulations, since the claimant provides services in the Civil Guard and data processing has no particular interest but a clear professional interest.

Likewise, in case the preceding statement does not fit, equally, the own LOPDGDD in its article 19 establishes the so-called iuris tantum presumption, allowing the treatment based on the legitimate interest of article 6.1 f) RGD, allowing the treatment of contact data and, where appropriate, those related to the role or position held by natural persons who provide services in a legal person.

Since the claimant's data affects not his private sphere but his sphere professional, the data protection regulations are not applicable and, in the event that, as well outside, the iuris tantum presumption of article 19 would accrue that the treatment carried out by the claimed party (Association) is in accordance with the law and, therefore, the legality of the treatment would be protected by the legitimate interest of article 6.1 f) RGD.

This party understands that when there is an intranet there is a restriction and said restriction is lifted by the access that the Civil Guard grants to associations through its own resource provided by the Civil Guard itself and, therefore, with the possibility of access to such restricted information, not only by all its members (professional) but by the Associations by authorized personnel,

said authorization being legally granted by its own regulations

affects the lists of ranks of the members of the body.

That this party maintains and confirms all the allegations and documents that up to the date have been submitted to the AEPD, indicating that, in the event that the this written in its entirety and, therefore, our request to file at least reduce or proceed to make a warning according to the corrective measures that this part already contributed at the time.”

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: It is verified that the complaining party on September 7, 2021 received in your job, a letter sent by the claimed party, appearing in the envelope your data, without having previously provided them, or being part of said association.

SECOND: Letter sent by the claimed party.

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FOUNDATIONS OF LAW

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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 and 48.1 of the Law

Organic 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 Data Protection Agency.

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."

II

In response to the allegations presented by the respondent entity, it should be noted the following in relation to the interpretation made by the respondent party on the article 36 of Organic Law 11/2007, it should be noted that article 36 is framed within Title VI <<On professional associations>> and the statement of article 36. <<Scope, duration and purpose of the association>>.

<<The professional associations of Civil Guards must have state scope, They will be constituted for an indefinite period of time and their main purpose will be the satisfaction of the social, economic and professional interests of its associates and the realization of social activities that favor the efficiency in the exercise of the profession and the professional ethics of its members. In no case these associations professionals will be lucrative.>>

Well, both the title and the wording of the article refer to the associations professionals and indicates the satisfaction of the social, economic and professionals of its associates and the realization of social activities that favor the efficiency in the exercise of the profession and the professional ethics of its members, it is clear that it refers to the members of the association and not to the members of the Civil Guard Corps.

Therefore, it is necessary to point out that article 36 of Organic Law 11/2007, of 22 of October, foresees that the functions of the professional associations of Guards

civilians are directed to the defense of rights and interests of their associates, against what is asserted by the defendant.

The use of the ranking list published by the Civil Guard is restricted and does not justify the basis of legitimacy, do not weigh the legitimate interest, nor offer guarantees to the recipients as a right of opposition, although it indicates in his pleadings brief that will fully comply with section 3 of article 65, when proposing a corrective measure (inclusion of the right to object), but in the present claim said guarantee was not included.

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On the other hand, in relation to the allegation made by the respondent party “that the claim and, therefore, the processing of personal data is not part of the scope of application of European and national regulations on data protection personal. This argument is based on the thesis itself maintained by the Data Protection Agency itself in TD/01217/2018 – R/01690/2018, in which it expressly says: Ultimately, then, both legal entities and professionals who provide their services in those are outside the scope competence of the RGPD”

Regulation (EU) 2016/679, of April 27, 2016, General Data Protection (RGPD), establishes in its article 1:

"1. This Regulation establishes the rules relating to the protection of natural persons with regard to the processing of personal data and rules relating to the free movement of such data.

2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to the protection of personal data.

3. The free movement of personal data in the Union may not be restricted or prohibited for reasons related to the protection of natural persons in what regarding the processing of personal data.

It is important to highlight that the regulations apply only to personal data individuals, without, therefore, being applicable to legal persons.

According to article 4.1) of the RGPD, "personal data" is: all information about a identified or identifiable natural person ("the interested party") (...). Consequently, they are personal data both the data of natural persons who work in persons legal, such as data relating to sole proprietors and professionals liberals.

As is also clear from article 19 of the LOPDGDD, which, when referring to the treatment of contact data, individual entrepreneurs and professionals liberal, establishes a presumption of legality when the treatment of the data of those are carried out to maintain relations with the legal entity or in its condition business or professional, provided that they are not treated to establish a relationship with the same as natural persons.

Thus, the aforementioned article states the following:

"1. Unless proven otherwise, it will be presumed covered by the provisions of the article 6.1.f) of Regulation (EU) 2016/679 the processing of personal data contact and, where appropriate, those related to the function or position held by the natural persons who provide services in a legal person, provided that meet the following requirements:

a) That the treatment refers only to the data necessary for its processing. professional location.

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b) That the purpose of the treatment is only to maintain relations of any kind with the legal person in which the affected person lends his services.

2. The same presumption will operate for the treatment of the data related to the individual entrepreneurs and liberal professionals, when they refer to them only in said condition and do not treat each other to establish a relationship with them as natural persons.

3. Those responsible or in charge of the treatment referred to in the article 77.1 of this organic law may also process the data mentioned in the two previous sections when this is derived from a legal obligation or necessary for the exercise of its powers.”

Therefore, there is no doubt that in the present case personal data and that such treatment does fall within the powers of this Agency, as provided in art. 1 of the RGPD, since the claim is limited to the treatment of personal data of the claimant (natural person).

Likewise, in relation to the allegation made by the respondent that the LOPDGDD itself in its article 19 establishes a presumption *iuris tantum*, allowing the treatment based on the legitimate interest of article 6.1 f) of the RGPD of the data of contact and those related to the function or position held by natural persons that provide services in a legal person, it is appropriate to reiterate that article 19 of the LOPDGDD, regarding the processing of contact data of natural persons

who work in legal persons, as well as individual entrepreneurs and liberal professionals, indicates that, unless proven otherwise, it will be presumed protected in the legitimate interest the treatment of these data provided that they are not treated for establish a relationship with their holders as natural persons, a situation that has occurred in the case analyzed here, so the presumption of legality contained in the aforementioned article.

Therefore, the presumption that there is a legitimate interest in the treatment of these data only affects "B2B" relationships, business relationships with another company.

III

Article 6 of the RGPD, "Legality of the treatment", details in its section 1 the assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if it meets at least one of the following conditions:

a) the interested party gave their consent for the processing of their personal data for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is part of or for the application at the request of the latter of pre-contractual measures;

(...)"

The infraction for which the claimed entity is held responsible is typified in article 83 of the RGPD that, under the heading "General conditions for www.aepd.es

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the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 Eur or, in the case of a company, of an amount equivalent to a maximum of 4% of the volume of total annual global business of the previous financial year, choosing that of by higher amount:

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

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"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 in it and, in particular, the following:

(...)

b) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679."

IV

The documentation in the file shows that the claimed party, violated article 6.1 of the RGPD, since it processed the data of the complaining party without having any legitimacy to do so.

The party complained against processed the data of the claimant without a basis of legitimacy of the

treatment of personal data.

On the other hand, the application of legitimate interest as a basis for legitimizing the treatment requires weighting or evaluation.

The weighting must demonstrate that there is a legitimate interest for the treatment of the data, that the treatment is necessary and proportional in attention to its purpose and that the fundamental rights and freedoms of the interested party do not prevail.

However, and this is essential, the defendant does not prove the legal basis for the processing of the data of the complaining party, does not weigh the legitimate interest or offer guarantees to the recipients as a right of opposition, and only states that the source to collect the data is publicly accessible restricted, without explaining the purpose of publishing such listings or why it is restricted access.

Personal data published in restricted public access sources cannot be treated freely, the person in charge must analyze whether the purpose of the new treatment pursued is compatible with the purpose of the original treatment.

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Additionally, it should be noted that article 36 of Organic Law 11/2007, of October 22, provides that the functions of the professional associations of Guards civilians are directed to the defense of rights and interests of their associates, against what was stated by the respondent:

“The professional associations of Civil Guards must have a state scope, constitute for an indefinite period of time and their main purpose will be the satisfaction of the

social, economic and professional interests of its associates and the realization of social activities that favor efficiency in the exercise of the profession and professional ethics of its members

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In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

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same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

“two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatment of personal information.

c) The profits obtained as a result of committing the offence.

- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection delegate.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are disputes between them and any interested."

In accordance with the precepts transcribed for the purposes of setting the amount of the sanction of fine to be imposed on the claimed party, as responsible for an infraction typified

In article 83.5.a) of the RGPD, the following factors are considered concurrent:

It is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD, considering as an aggravating circumstance the linking the activity of the offender with the performance of data processing personal (art. 83.2 k of the RGPD in relation to art. 76.2 b of the LOPDGDD).

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: IMPOSE THE UNION OF CIVIL GUARD OFFICERS

PROFESSIONAL, with NIF G85478576, for a violation of Article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, a fine of 6,000 euros (six thousand euros).

SECOND: NOTIFY this resolution to the UNION OF OFFICERS OF THE PROFESSIONAL CIVIL GUARD.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once Once this resolution is enforceable, in accordance with the provisions of the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP), within the payment term voluntary established in art. 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and the number of procedure that appears in the heading of this document, in the account restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if between the 16th and last day of each month, both inclusive, the payment term It will be until the 5th of the second following month or immediately after.

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/](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

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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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