

□ Procedure No.: PS/00206/2021

## RESOLUTION

OF TERMINATION OF THE PROCEDURE BY RECOGNITION

OF LIABILITY

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

## BACKGROUND

FIRST: On MAY 14, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against D. A.A.A. with NIF

\*\*\*NIF.1 which is transcribed below:

<<Procedure no.: PS/00206/2021

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

## BACKGROUND

FIRST: The claim presented by the Patrol has been received in this Agency

of Seprona of Guadix (Granada), dated June 29, 2020. The claim is

directs against D.A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed one).

The Guadix Seprona Patrol states that on May 11, 12 and 13,

2020, the defendant, carried out butane gas reviews for private homes,

based on a list, with name, surname, address and telephone number of people who

At no time did they give their consent to appear in it. All of them,

born between the years 1935 and 1951.

They add that he was previously investigated for crimes of fraud and denounced for

twenty-two people since 2019, and who supposedly works for the company

ENERGY-GAS, which does not appear as a company registered to carry out activities of

gas check.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant and the facts and documents of which he has had knowledge of this Agency, the Subdirector General for Data Inspection proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

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Several requests for information were made to the respondent, firstly, to the address provided by Seprona and subsequently to the fiscal domicile provided by the AEAT. All notifications were returned, by the postal service.

FOUNDATIONS OF LAW

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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.

Article 58 of the RGPD, "Powers of Attorney", says:

II

"2 Each supervisory authority shall have all of the following powers

corrections listed below:

(...)

b) send a warning to any person responsible or in charge of the treatment 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 a certain way and within a specified period.

(...)

i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, depending on the circumstances of the case particular

(...)"

III

The RGPD deals in its article 5 with the principles that must govern the treatment of personal data and mentions among them that of "lawfulness, loyalty and transparency". The provision provides:

"1. The personal data will be:

a) Treated in a lawful, loyal and transparent manner in relation to the interested party (<<legality, loyalty and transparency>>);"

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 at least one of the following is met conditions:

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

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

(...)"

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 the imposition of administrative fines", states:

"5. Violations of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest 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 the Regulation (U.E.)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in it and, in

particularly 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 the

Regulation (EU) 2016/679."

IV

The documentation in the file offers evidence that the

claimed, violated article 6.1 of the RGPD, since it carried out the treatment of the

personal data of third parties without legal authorization to do so.

The personal data were registered in lists of the claimed and were

treated without legitimacy for it. Consequently, it has carried out a treatment of

personal data without having proven that you have the legal authorization to

it.

In short, it appears in the file provided by the Seprona Patrol of

Guadix (Granada) that on May 11, 12 and 13, 2020, the defendant, made

butane gas reviews by private homes, based on a list, with

name, surnames, address and telephone number of people who were unaware of their inclusion in

the same.

Respect for the principle of legality that is in the essence of the fundamental right

of protection of personal data requires that it be accredited that the

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responsible for the treatment displayed the essential diligence to prove that extreme. Failure to act in this way -and this Agency, who is responsible for ensuring for compliance with the regulations governing the right to data protection of personal character - the result would be to empty the content of the principle of legality.

v

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

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations 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 as the number of stakeholders affected and the level of damage and damages they 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 have

applied under articles 25 and 32;

e) any previous infraction 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 put remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such case, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms certificates 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 realized or losses avoided, direct or indirectly, through infringement.”

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

“Sanctions and corrective measures”, provides:

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"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 data processing personal.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have led to the commission of the infringement.
- 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 officer.
- 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 controversies between them and any interested party.”

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of fine to be imposed in the present case to the one claimed as responsible for an infraction typified in the article 83.5.a) of the RGPD, in an initial assessment, the following are considered concurrent factors:

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In the present case we are facing an intentional action (article 83.2 b) RGPD).

Basic identifiers are affected (name, surnames and addresses),

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(art. 83.2 g) RGPD).

This is why it is considered appropriate to adjust the sanction to be imposed on the person claimed and set it at the amount of €5,000 for the infringement of article 6.1 of the RGPD.

Therefore, based on the foregoing,



By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: START PUNISHMENT PROCEDURE against D.A.A.A., with NIF

\*\*\*NIF.1, for the alleged infringement of article 6.1 of the RGPD typified in article

83.5.a) and classified as a very serious infringement, for prescription purposes, by article

72.1.b) of the LOPDGDD.

SECOND: APPOINT instructor D. R.R.R. and secretary to Ms. S.S.S., indicating

that any of them may be challenged, where appropriate, in accordance with the provisions of

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Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the

Public Sector (LRJSP).

THIRD: INCORPORATE to the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its attached documentation, and all

documents generated by the claim.

FOURTH: THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1

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

sanction that could correspond to the infraction (article 83.5.a, RGPD) would be

5,000 euros (five thousand euros), without prejudice to what results from the instruction.

FIFTH: NOTIFY this agreement to D. A.A.A., with NIF \*\*\*NIF.1, granting

a hearing period of ten business days to formulate the allegations and

Submit whatever evidence you deem appropriate. In his pleadings

You must provide your NIF and the procedure number that appears in the heading

of this document.

If within the stipulated period it does not make allegations to this initial agreement, the

The same may be considered a resolution proposal, as established in the

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that

the sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it

which will entail a reduction of 20% of the sanction to be imposed in

the present procedure. With the application of this reduction, the total sanction

would be established at 4,000 euros (four thousand euros), resolving the procedure

with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of the

present procedure, carry out the voluntary payment of the proposed sanction, which

which will mean a reduction of 20% of its amount. With the application of this

reduction, the total sanction would be established at 4,000 euros (four thousand euros) and its

payment will imply the termination of the procedure.

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this

acknowledgment of responsibility is revealed within the period

granted to formulate arguments at the opening of the procedure. The pay

volunteer of the amount referred to in the preceding paragraph may be made at any

time prior to resolution. In this case, if it were appropriate to apply both

reductions, the amount of the total sanction would be established at 3,000 euros (three

a thousand euros)

In any case, the effectiveness of any of the two reductions mentioned

will be conditioned to the withdrawal or renunciation of any action or resource in via administrative against the sanction.

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In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above, 4,000 euros or 3,000 euros, you must do so cash by depositing it in account number ES00 0000 0000 0000 0000 opened on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which is welcomed.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to proceed with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency>>

THIRD: Notification of the Start Agreement on May 26, 2021. The claimant to

through its representative has proceeded on June 9, 2021, to the recognition of its responsibility in the aforementioned facts, stating that he cannot face to the payment of the established sanction and requesting a fractionation in the payment.

FOURTH: The acknowledgment of responsibility entails the renunciation of any administrative action or recourse against the sanction, in relation to the facts to those referred to in the Start Agreement.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: It appears in the file, provided by the Guadix Seprona Patrol, that on May 11, 12 and 13, 2020, the respondent carried out gas checks butane by private homes, based on a list, with name, surnames, address and telephone number of people who were unaware of their inclusion in it.

FOURTH: It is recorded that the Start Agreement was notified on May 26, 2021, proceeded the representative of the defendant to the acknowledgment of his responsibility in the facts mentioned.

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#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

Article 85 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (hereinafter LPACAP), under

the heading "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature,

the competent body to resolve the procedure will apply reductions of, at

least 20% of the amount of the proposed sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of

initiation of the procedure and its effectiveness will be conditioned to the withdrawal or

Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of

Data RESOLVES:

FIRST: That for the purposes provided in article 85 of the LPACAP, however

that the defendant has acknowledged his responsibility, the sanction would be established

in 4,000 euros (four thousand euros), resolving the procedure with the imposition of this sanction.

SECOND: TO DECLARE the termination of procedure PS/00206/2021, of in accordance with the provisions of article 85 of the LPACAP.

THIRD: NOTIFY this resolution to D. A.A.A. with NIF \*\*\*NIF.1.

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In accordance with the provisions of article 50 of the LOPDGDD, the

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 process as

prescribed by art. 114.1.c) of Law 39/2015, of October 1, on Procedure

Common Administrative of Public Administrations, interested parties may

file a contentious-administrative appeal before the Contentious Chamber

of the National High Court, in accordance with the provisions of article 25 and

in section 5 of the fourth additional provision of Law 29/1998, of July 13,

regulation of the Contentious-Administrative Jurisdiction, within a period of two months to

count from the day following the notification of this act, as provided in the

Article 46.1 of the aforementioned Law.

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