

□ File No.: PS/00407/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated March 8, 2021  
filed a claim with the Spanish Data Protection Agency. The  
claim is directed against **MONFORTE DE LEMOS CITY COUNCIL** with NIF  
P2703100D (hereinafter, MONFORTE TOWN HALL). The reasons on which the  
claim are as follows:

- Searching your name and surnames, or your DNI, in Google, a document appears, with the  
all of your personal data, presented in an allegation to the questions of a  
entrance exam to the Local Police position for the AYTO. OF MONFORTE, as well as  
the complete data of two other opponents.
- Having contacted the AYTO. DE MONFORTE, requesting that they erase  
said document, receives the response that it has been deleted. However, six  
months after said request, the document remains available on the website of the  
**TOWN HALL OF MONFORTE.**

Together with the claim, it provides a copy of the documents, which can be viewed at  
access the link:

\*\*\*URL.1.

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 was sent on 04/12/2021 through GEISER (integrated management of registration services), being received on 04/13/2021.

On 04/28/2021, this Agency received a written response indicating that:

-In the framework of a selection process for a Police Agent position

Municipal, in 2018, was published on the AYTO website. OF MONFORTE a

written claim submitted by the claimant, in order to give it the due

advertising.

-On 10/04/2020 an email is received from the complaining party requesting the

withdrawal of your data. On 10/06/2020, the concessionaire company of the

management of the municipal website that proceeds to delete the data. That same day the company

reply by email that the data has been deleted.

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2/7

-On 10/07/2021 an email is sent to the applicant, indicating that the

proceeded to withdraw the content and that there is no longer any visible data on the website of the

AYTO. OF MONFORTE.

-Received request for information from the Spanish Data Protection Agency

(AEPD), again the concessionaire company of the management of the web is requested

municipal confirmation of the removal of the publication, who sends proof of

that by entering the personal data of the complaining party in google, they do not appear

and publications of the AYTO. OF MONFORTE.

THIRD: On 06/08/2021, the claim filed by

the claiming party.

FOURTH: On October 29, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

for the alleged infringement of Article 17 of the RGD, typified in Article 83.5 of the

GDPR.

FIFTH: On 12/13/2021, the instructor of the procedure agreed to open

a period of practice tests, considering the following:

Consider reproduced for evidentiary purposes:

-The claim filed by the claimant and its documentation, the

documents obtained and generated during the phase of admission to processing of said

claim.

-The allegations to the initiation agreement PS/00407/2021 presented by the

CITY COUNCIL and the documentation that accompanies them.

-Result of the checks carried out by the instructor, to date

12/03/2021, incorporated into the file by diligence dated 12/13/2021,

consisting of performing a google search limited to the site

"monfortedeleemos.es" of the term "A.A.A.", which results in the link \*\*\*URL.1,

through which the written claim presented on its day by the party is accessed.

claimant before the TOWN HALL.

SIXTH: On January 26, 2022, a resolution proposal was formulated,

proposing that, due to the infringement of article 17 of the RGD, typified in article

83.5 of the RGD, the Director of the Spanish Agency for Data Protection sanctions

with a WARNING to the CITY COUNCIL OF MONFORTE DE LEMOS, with NIF

P2703100D.

SEVENTH: On 02/15/2022, the CITY COUNCIL presents a new letter of

allegations.

## PROVEN FACTS

FIRST: It is proven that, within the framework of a selection process for a

Municipal Police Agent position, in 2018, was published on the website

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3/7

of the TOWN HALL a written claim presented by the claimant party, to the

in order to give it due publicity.

SECOND: It is accredited that, as a result of the reception at the CITY COUNCIL of

an email from the complaining party, requesting the withdrawal of

said letter, the CITY COUNCIL contacted the concessionaire of the

management of the municipal website in order to carry out the request, and that

received a response to the effect that the request had been carried out.

THIRD: It is accredited that the letter of claim to the selection process,

presented at the time by the claimant, remained accessible six months later

of having requested the CITY COUNCIL its withdrawal, and even later, during

the substantiation of this sanctioning procedure, as has been stated

manifest with the practice of the test carried out for this purpose, which has been given

Transfer to the CITY HALL.

## FOUNDATIONS OF LAW

Yo

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 relation to the arguments presented to the resolution proposal, the City Council reiterates those already presented previously, insisting that the part claimant had never requested the deletion of his personal data by presenting written before the CITY COUNCIL by any of the means provided for in article 16.4 of Law 39/2015 of October 1 of the Common Administrative Procedure of Public Administrations, however, the CITY COUNCIL requested the company concessionaire of the management of the municipal website that proceeded to delete them, receiving response that the request had already been carried out.

Upon receipt of a copy of the administrative file, they verify that in the same work a diligence according to which you can access the written claims filed by the complaining party through the link provided.

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In this regard, the CITY COUNCIL states that technically and humanly took the necessary measures to delete the data of the complaining party without procrastination, but the internet has memory and search links are preserved, so It takes a certain time for everything to disappear, and it is also necessary that clear cookies and cache.

However, when this Agency received the claim from the complaining party and verified the link provided, the allegation presented to the selection process of Local Police positions of the TOWN HALL was perfectly accessible, so It can be concluded that they had not been withdrawn, or, at least, there had been no done correctly.

The CITY COUNCIL is charged with the commission of an infraction for violation of the article 17 of the RGPD.

III

The lack of attention to the right of deletion is regulated in 17 of the RGPD, which indicates:

Article 17 "Right of suppression"

"1. The interested party shall have the right to obtain, without undue delay, from the person responsible for the treatment the deletion of personal data that concerns you, which will be obliged to delete personal data without undue delay when any of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for which were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), and this is not based on another legal basis;

c) the interested party opposes the treatment in accordance with article 21, paragraph 1, and does not other legitimate reasons for the treatment prevail, or the interested party opposes the

treatment according to article 21, paragraph 2;

d) the personal data has been illicitly processed;

e) the personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the data controller;

f) the personal data has been obtained in relation to the offer of services of the information society mentioned in the article

8, paragraph 1. 2. When you have made the personal data public and you are obliged, By virtue of the provisions of section 1, to delete said data, the person in charge of the treatment, taking into account the available technology and the cost of its application, will take reasonable measures, including technical measures, with a view to informing the Responsible for processing the personal data of the interested party's request for

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5/7

deletion of any link to such personal data, or any copy or replica of the same.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the processing of data imposed by the law of the Union or of the Member States that applies to the responsible for the treatment, or for the fulfillment of a mission carried out in the interest public or in the exercise of public powers vested in the controller;

c) for reasons of public interest in the field of public health in accordance with

article 9, section 2, letters h) and i), and section 3; d) for archival purposes in interest public, scientific or historical research purposes or statistical purposes, in accordance with Article 89, paragraph 1, insofar as the right indicated in section

The infringement is referenced in the RGPD, article 83:

"5. Violations of the following provisions will be sanctioned, in accordance with the paragraph 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:

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

Its prescription is referred to in the LOPDGDD, article 72.1.k) which determines:

"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 therein and, in particular, the following:

k) The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679."

It has been demonstrated that the CITY COUNCIL did not proceed to withdraw from the web the allegation document that the claimant presented at the time, since six months after requesting it, it was still accessible.

Article 83 section 7 of the RGPD, provides the following:

IV

Without prejudice to the corrective powers of the control authorities under of 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.”

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6/7

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 autonomous communities 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.

(...)

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 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 MONFORTE DE LEMOS CITY COUNCIL, with NIF

P2703100D, for an infringement of Article 17 of the RGPD, typified in Article 83.5

of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the MONFORTE CITY COUNCIL

OF LEMOS.

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

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7/7

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-](https://sedeagpd.gob.es/sede-electronica-web/)

[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

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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