

□ Procedure No.: PS/00246/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. and Mrs. B.B.B. (hereinafter, the complaining party) dated
06/22/2020 filed a claim with the Spanish Data Protection Agency.

The claim is directed against CITY COUNCIL OF ***CITY COUNCIL.1 with CIF
P3123900G (hereinafter the claimed part). The reasons on which the
claim are the following: in the bulletins and informative circulars that are
distributed by the municipality on issues dealt with in plenary, are being published
your personal data without your consent and who have exercised the right of opposition and
They have not received any response. They also consider that the publication of said
personal data is excessive and disproportionate taking into account the purpose that
follow the post.

SECOND: In accordance with the provisions of article 65.4 of the LOPDGDD, the
transfer of the claim to the respondent so that he proceeded to analyze it and give
response to the incident claimed. In addition, accreditation was requested from the
response provided to the claimant, in the event of exercising the rights
regulated in articles 15 to 22 of the RGPD; report on the causes that motivated
the incidence produced and details of the measures adopted to avoid situations
Similar.

On 08/10/2020, the respondent responded to the previous request.

THIRD: On 11/03/2020, after analyzing the documentation that was in the
file, a resolution was issued by the director of the Spanish Protection Agency

Data, agreeing to file the claim. The resolution was notified to the Appellant party on 11/17/2020, according to the receipt notice that appears in the file.

FOURTH: On 12/16/2020, the appellant files a brief with the Office of Correos de Pamplona (Navarra), which is registered with the AEPD on 12/22/2020, filing an optional appeal for reconsideration against the resolution issued by the file E/05518/2020, showing its disagreement with the contested resolution, stating that there has been no access to the allegations of the respondent, in which that the non-inclusion of your personal data in the circulars, bulletins and published notes relating to the plenary sessions, which are not being anonymized personal data in the published circulars, providing the one of 07/01/2020 and 02/04/2021, after the date of the appealed resolution; that has not been attended to right of opposition exercised, etc.

Likewise, on 03/02/2021 the appellant submitted a brief with allegations supplementary, stating that the respondent continued to violate the regulations

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of data protection, attaching circular of 02/04/2021 in which your data is cited personal.

FIFTH: On 05/14/2021, the appropriate checks were carried out after the documentation provided by the claimants after the resolution of the initial claim filed deriving from a breach of the established in the appealed resolution, it is resolved to uphold the appeal for reversal filed against the resolution issued on 11/03/2020.

SIXTH: On 08/18/2021, the Director of the Spanish Agency for the Protection of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infraction of articles 5.1.c) and 21 of the RGPD, typified in articles 83.5.a) and 83.5.b) of the aforementioned Regulation, considering that the sanction that could correspond would be of WARNING.

SEVENTH: Notified of the initiation agreement, on 09/03/2021 the respondent submitted a written of allegations stating, in summary: that she has been unaware of the appeal for replenishment filed by the claimant party as he was not given transfer of the same as, depriving him of the possibility of formulating allegations against it, which would lead to the infringement of the provisions of Law 39/2015, with the consequent nullity of the resolution by virtue of the provisions of article 47 of said Law or its annulment. in accordance with the provisions of article 48 of the same.

FOUNDATIONS OF LAW

Yo

The Director of the Spanish Protection Agency is competent to resolve of Data, in accordance with the provisions of section 2 of article 56 in relation to the section 1 f) of article 57, both of Regulation (EU) 2016/679 of the Parliament European and Council of April 27, 2016 on the protection of people regarding the processing of personal data and the free circulation of these data (hereinafter GDPR); and in article 47 of the LOPDGDD.

II

In accordance with the provisions of article 55 of the RGPD, the Agencia Es-Data Protection Office is competent to perform the functions that are assigned to it in its article 57, among them, that of enforcing the Regulation and promoting raising awareness of data controllers and data processors about the obligations incumbent on them, as well as dealing with the claims presented by a

concerned and investigate the reason for them.

The facts object of the claim and pointed out by the claimants are confirmed

They believe that through the circulars that the City Council sends to the neighbors to

informal municipal affairs, the personal data of the claimants are transferred

without his consent and that, despite what was stated by the respondent, they had not

taken the corresponding measures since, after the resolution of the

file issued by the AEPD, dated November 3, 2020, you could continue accessing

giving to the data by continuing to be published in circulars and municipal bulletins,

in addition to not having attended the exercise of the right of opposition.

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Before getting to the bottom of the matter, violation of the principle of integrity and

confidentiality of personal data and exercise of the right to object,

the formal question raised by the respondent in his writ of

allegations dated 09/03/2021.

Article 47 of Law 39/2015, of October 1, on Administrative Procedure

Common Agreement of Public Administrations establishes that:

"1. The acts of the Public Administrations are null and void in

the following cases:

a) Those who violate the rights and freedoms subject to constitutional protection.

tional.

b) Those issued by a manifestly incompetent body for reasons of ma-

land or of the territory.

c) Those with impossible content.

d) Those that constitute a criminal offense or are issued as a consequence.

cia of this one.

e) The dictates disregarding totally and absolutely the legal procedure-established mind or of the norms that contain the essential rules for the formation of the will of collegiate bodies.

f) The express or presumed acts contrary to the legal system by the that faculties or rights are acquired when the requirements are lacking essential for your purchase.

g) Any other that is expressly established in a provision with range of law

(...)"

The respondent alleges that there has been the admission for processing of a re-claim and the opening of a sanctioning procedure, without formalities having been hearing in the reconsideration appeal phase that occurred against the resolution filing of the claim filed on 06/22/2020, as it was not transferred side of said resource in order to allege what would have been convenient according to determines article 118 of Law 39/2015, of October 1, of the Administrative Procedure Common Information of the Public Administrations (hereinafter LPACAP), which write the following:

"1. When new facts or documents not recognized must be taken into account governed in the original file, the interested parties will be made clear so that, within a period of not less than ten days nor more than fifteen, formulate the allegations and pre-present the documents and supporting documents that they deem appropriate.

They will not be taken into account in the resolution of appeals, facts, documents or allegations of the appellant, when having been able to contribute them in the process of

cations have not done so. Neither may the taking of tests be requested when

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its lack of performance in the procedure in which the appealed decision was issued was attributable to the interested party.

2. If there are other interested parties, they will be given, in any case, transfer of the resource so that, within the aforementioned period, they can allege whatever they deem appropriate.

3. The appeal, the reports and the proposals do not have the nature of documents.

cough new for the purposes of this article. Neither will those who are interested have contributed to the file before the contested decision is handed down.”

It seems undeniable that said procedural defect has caused defenselessness to the one claimed for what is a nullity defect of full right of in accordance with the provisions of article 47.1.e) of Law 39/2015.

Therefore, the annulment of the resolution of the appeal for repossession proceeds. appraisal, retrotracting the procedure to the appropriate procedural moment.

tune, transferring the appeal filed by the claimant, so that the party

You claimed make the appropriate allegations if you consider it necessary.

Considering the aforementioned precepts and others of general application,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ANNUL the resolution of the appeal for reconsideration, dated 05/31/2021 and

ROLL BACK the actions at the time of transfer of the writ of appeal for position filed by D. A.A.A. and Mrs. B.B.B. to the CITY COUNCIL OF

*** TOWN HALL.1, for the purposes indicated in article 118 of the LPACAP.

SECOND: FILE the sanctioning procedure PS/00246/2021 instructed to the CITY COUNCIL OF ***CITY COUNCIL.1, with CIF P3123900G, for the alleged infringement of articles 5.1.f) and 21 of the RGPD typified in articles 83.5.a) and 83.5.b) of the GDPR.

THIRD: NOTIFY this agreement to D. A.A.A. and Mrs. B.B.B. and TO TOWN HALL- *** TOWN HALL.1, with CIF P3123900G.

In accordance with the provisions of article 50 of the LOPDPGDD, the pre-

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 LOPDPGDD, and in accordance with the provisions of article 123 of the Law

39/2015, of October 1, of the Common Administrative Procedure of the Administrations

Public Administrations (LPACAP), the interested parties may file a contentious-administrative

administrative proceedings before the Contentious-Administrative Chamber of the National High Court,

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

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) LPACAP, it

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may provisionally suspend the firm resolution in administrative proceedings if the interested party

do states its intention to file a contentious-administrative appeal. If it is-

In this case, the interested party must formally communicate this fact in writing

addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned LPA-CHAP. You must also transfer to the Agency the documentation that proves the interposition effective determination of the contentious-administrative appeal. If the Agency were not aware filing of the contentious-administrative appeal within a period of two months from the day following the notification of this resolution, would end the precautionary suspension has been lifted.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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