

□ Procedure No.: PS/00354/2021

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 claimant) dated May 22, 2020

filed a claim with the Spanish Data Protection Agency.

The claim is directed against the GENERAL DIRECTORATE OF SECURITY AND

EMERGENCIES OF THE GOVERNMENT OF THE CANARY ISLANDS with CIF S3511001D (hereinafter, the claimed).

The grounds on which the claim is based are that the claimant states that with

dated May 20, 2020, Civil Protection personnel from ***LOCALIDAD.1 carried out

temperature controls at the pier of ***PIER.1 (***LOCATION.1) and those

people who refused were noted down on a list of their personal data and

They communicated themselves to the Coordinating Center for Emergencies and Security, and these

Turn to your workplace.

SECOND: On September 23, 2020, the Director of the AEPD agrees to the

admission to processing of this claim.

THIRD: In view of the facts denounced in the claim and the

documents provided by the claimant, the Subdirector General for Inspection of

Data 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 investigative actions prior to the opening of this sanctioning procedure it must be indicated that a request for information was sent to the GENERAL DIRECTORATE OF SECURITY AND EMERGENCIES OF THE GOVERNMENT OF CANARY ISLANDS without getting a response.

On February 2, 2021 electronically through notific@ and on March 22, 2021 by postal mail.

In relation to the electronic notification, there was an automatic rejection after ten calendar days from its availability without access by part of the claim.

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Regarding the postal notification, it is delivered on March 13, 2021, but despite this, no response has been received to the aforementioned request.

FOURTH: On July 12, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 6 of the RGPD, article 13 of the RGPD, typified in the article 83.5 of the RGPD.

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: The Civil Protection personnel of ***LOCALIDAD.1 carried out controls of

temperature in the pier of ***PIER.1(***LOCATION.1)

The personal data of the people who refused the aforementioned control, communicated to the Coordination Center for Emergencies and Security, and these in turn His workplace.

SECOND: Two notification attempts are made, on February 2, 2021 electronically through notific@ and on March 22, 2021 by mail Postcard.

In relation to the electronic notification, there was an automatic rejection after ten calendar days from its availability without access by part of the claim.

Regarding the postal notification, it is delivered on March 13, 2021, but despite this, no response has been received to the aforementioned request.

Said agreement becomes a resolution proposal in accordance with the Articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure Common Administrative of Public Administrations (LPACAP), by not carrying out the claimed allegations within the indicated period.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of individuals with regard to the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD) recognizes each control authority, and according to what is established in the articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to initiate

this procedure.

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Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the 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

Article 6.1 of the RGPD, establishes that "in accordance with the provisions of the Article 4.11 of Regulation (EU) 2016/679, means consent of the affected any manifestation of free will, specific, informed and unequivocal by the one that he accepts, either by means of a declaration or a clear affirmative action, the processing of personal data concerning you".

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,
location, an online identifier or one or more elements of the identity
physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) “processing”: any operation or set of operations carried out on
personal data or sets of personal data, whether by procedures
automated or not, such as the collection, registration, organization, structuring,
conservation, adaptation or modification, extraction, consultation, use,
communication by transmission, broadcast or any other form of enabling of
access, collation or interconnection, limitation, suppression or destruction;”

Therefore, in accordance with these definitions, the collection of personal data
constitutes data processing, for which the data controller

Treatment must comply with the provisions of article 13 of the RGPD.

In relation to this matter, it is observed that the Spanish Agency for the Protection of
Data is available to citizens, the Guide for the fulfillment of duty
to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and,
in case of carrying out low-risk data processing, the free tool
Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

Article 13 of the RGPD, a precept that determines the information that must be
provided to the interested party at the time of collecting their data, it has:

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“1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their case;

f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

c) when the treatment is based on article 6, paragraph 1, letter a), or article

9, paragraph 2, letter a), the existence of the right to withdraw consent in

any time, without affecting the legality of the treatment based on the

consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a

necessary requirement to sign a contract, and if the interested party is obliged to provide

personal data and is informed of the possible consequences of not

provide such data;

f) the existence of automated decisions, including profiling, to which

referred to in article 22, sections 1 and 4, and, at least in such cases, information

about applied logic, as well as the importance and consequences

provisions of said treatment for the interested party.

3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the

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interested party, prior to such further processing, information on that other purpose

and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

"2 Each supervisory authority shall have all of the following corrective powers 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 responsible 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;”

“i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;”

Article 83.5 in section a) and b) of the RGPD establishes that:

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“The infractions of the following dispositions 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:

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

b) the rights of the interested parties pursuant to articles 12 to 22;”

Article 72.1 b) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679, are 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:

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

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered mild has:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year. merely formal of the articles mentioned in paragraphs 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a)
Failure to comply with the principle of transparency of information or the right of information of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679.”

v

From the facts denounced, a treatment of data without legitimacy is deduced, since that Civil Protection of ***LOCALIDAD.1 carried out temperature controls in the dock of ***MUELLE.1(***LOCALIDAD.1) and the claimant by refusing to submit to the temperature control their personal data were noted on a list, data that identifies them as their first and last names, which without their knowledge are reported to the Emergency and Security Coordination Center.

On the other hand, with the evidence available, the assignment of personal data first by the Civil Protection of ***LOCALIDAD.1 to the Center Coordinator of Emergencies and Security, and these in turn to the workplace of the claimant, which implies data processing without legitimacy.

Therefore, personal data has been collected from the claimed party, without indicating none of the aspects required in article 13 of the RGPD, indicated in the basis of law III, that is, when taking personal data the

responsible for the treatment, that is, the claimed party, must inform the owner of the themselves, of the aspects indicated in said precept such as the identity and data of contact of the person in charge of the treatment, the purposes of the treatment to which they are destined personal data and the legal basis of the treatment, conservation period, existence of the right to request access to data from the data controller

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related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data, the right to file a claim with a control authority, etc.,

and in addition, data processing is being carried out without legitimation.

Therefore, in this case we are faced with two infractions, one against the article 13 and another against article 6 of the RGPD.

SAW

Therefore, with the available evidence, it is considered that the assignment of personal data first by the Civil Protection of ***LOCALIDAD.1 to the Center Coordinator of Emergencies and Security, and these in turn to their place of work, supposes a treatment of data without legitimacy, which supposes an infringement of the article 6 of the RGPD.

Against this infraction, a warning could be directed for each of the infractions in accordance with article 58.2.b) of the RGPD, when collecting data of the users and consider that the administrative fine that could fall in accordance with the provisions of article 83.5.b) of the RGPD would constitute a burden

disproportionate for the respondent, whose main activity is not directly linked to the processing of personal data, since there is no record of the commission of any previous breach of data protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, this Agency sends the claimed a warning, requiring him to collect data of a personal nature, adapt the information offered to citizens, to the requirements contemplated in articles 13 and 6 of the RGPD, as well as the contribution of means of evidence accrediting compliance with the requirements.

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

Spanish Data Protection RESOLVES:

FIRST: ADDRESS THE GENERAL DIRECTORATE OF SECURITY AND EMERGENCIES, with CIF S3511001D, for an infringement of article 6 of the RGPD, typified in the article 83.5 of the RGPD, a warning.

SECOND: ADDRESS THE GENERAL DIRECTORATE OF SECURITY AND EMERGENCIES, with CIF S3511001D, for an infringement of article 13 of the RGPD, typified in the article 83.5 of the RGPD, a warning.

THIRD: REQUEST the GENERAL DIRECTORATE OF SECURITY AND EMERGENCIES, with CIF S3511001D, under the provisions of article 58.2 d) of the RGPD, so that it adopts the necessary measures, so that when collecting data from personal character, the information offered to citizens, meets the requirements contemplated in articles 13 and 6 of the RGPD.

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Said measures must be adopted within a period of one month computed from the date in which this sanctioning resolution is notified, and the means must be provided proof of compliance.

FOURTH: NOTIFY this resolution to the GENERAL DIRECTORATE OF SECURITY AND EMERGENCIES.

FIFTH

with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, in accordance

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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