

□ Procedure No.: PS/00072/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

FIRST: The Spanish Agency for Data Protection proceeded to open the
guardianship of law TD/00196/2019, having knowledge of the following facts:

On June 13, 2018, D. A.A.A. (hereinafter, the claimant) requests
the right of access to the Secretary of State for Security with NIF
S2800109G (hereinafter, the claimed party), without having received the answer
legally established.

SECOND: The Director of the Spanish Agency for Data Protection, issued on 25
September 2019, resolution of legal guardianship TD/00196/2019,
proceeding to ESTIMATE the claim made by D. A.A.A. and urge the
Secretary of State for Security so that, within ten working days
following the notification of this resolution, send the claimant a certification
in which it is stated that he has attended to the right of access exercised by him or
deny reasoned indicating the reasons why it is not appropriate to meet your
petition. The actions carried out as a result of this Resolution
must be communicated to this Agency within the same period. The breach of this
resolution could lead to the commission of the offense typified in article 72.1 m)
of the LOPDGDD, which will be sanctioned, in accordance with art. 58.2 of the GDPR.
Said agreement was notified to the Secretary of State for Security on 7
October 2019, being rejected by the electronic service of notifications to the
After the ten calendar days of delivery have elapsed. The second attempt is

made on December 16 of the same year, being notified on the same date. To its

Once he was sent on December 3, 2019, a letter of information from said

resolution, being notified on the 13th of the same month and year.

THIRD: On February 3 of this year, this Agency received a letter from the

claimant in which he states that after the period granted for the

compliance with the aforementioned Resolution, the Secretary of State for Security has not

complied with said resolution.

The claimant providing the document sent by the claimed, dated 19

of December 2019 that reiterates the data that was previously notified, which

gave rise to the legal guardianship resolution TD/00196/2019.

The Secretary of State for Security did not send the claimant a certification in

which full access to your data is provided, despite the resolution of guardianship of

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2/11

law TD/00127/2019 issued by the Director of the Spanish Protection Agency

of data.

FOURTH: On March 19, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of article 15 of the RGPD, in relation to the

article 13 of the LOPDGDD, typified in article 83.5 b) of the RGPD.

FIFTH: Notification of the aforementioned initiation agreement, on June 11, 2020, the claimed

presented a pleadings brief in which, in summary, it stated that: "within the information held on the server of this Secretary of State for Security relating to the suitability assessment procedure of D.A.A.A. only the

Following data:

A.A.A. ***DATE.1 B.B.B. ***NIF.1 ***ADDRESS.1

The claimant, again supports the claim of access to his data despite to have been provided by this Secretary of State for Security up to two occasions, through two separate writings dated 05/23/2019 (Document No. 4) and 12/18/2019 (document no. 1), having also been informed about the identity of the responsible for the treatment, the purposes of the treatment and the added information that is established in the RGPD, thus guaranteeing total transparency with respect to the right to Obtain information and communication of the data that concerns you.

SIXTH: On June 12, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, as well as the documents provided by the reclaimed.

SEVENTH: On July 22, 2020, a resolution proposal was formulated, proposing that the Secretary of State for Security be imposed with a NIF S2800109G, for an infringement of article 15 of the RGPD, in relation to article 13 of the LOPGDD, typified in article 83.5 of the RGPD, a sanction of warning.

EIGHTH: Once the proposed resolution was notified, on August 3, 2020, the respondent summarizes the following allegations: "it is proven that up to two occasions, the data controller provided the interested party with access to their data and in the letter dated December 19, 2019, whereby the right of access of the claimant is duly attended to".

PROVEN FACTS

1º On June 13, 2018, the claimant states that he requested the right to access against the claimed, without having received the answer legally established.

2nd It is accredited that the claimed party has completed the exercise of the right of access requested, dated December 19, 2019, having been informed,

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3/11

also, about the identity of the person responsible for the treatment, the purposes of the treatment and the added information that is established in the RGPD, thus guaranteeing total transparency with respect to the right to obtain information and communication from data that concerns you.

This is stated by the claimed certification according to the right of access of the claimant:

“In correspondence with the request, you are informed of the following:

1º Right of access and information about the treatment:

Responsible for the treatment: The Secretary of State for Security, through the Permanent Information and Coordination Center of the Coordination Cabinet and Studies, with registered office at calle Amador de los Ríos, 2, CP 28010, Madrid.

Data Protection Delegate: Head of the Department of Regulations and Reports of the Coordination and Studies Cabinet of the Secretary of State for Security.

Phone: 91.537.19.29. Email: ses.dpd@interior.es.

Purpose of the treatment: Comply with the legal requirements established in the Plan National Security Area, derived from European Union legislation for

inform about the suitability of the people who intend to access the Zones

Restricted Security in air infrastructures through the Manager of
Events.

You can find it in the Registry of Processing Activities of the Ministry of

Interior: <http://www.interior.gob.es/web/servicios-al-ciudadano/participacion-citizen/protection-of-data-of-a-personal-character/protection-of-rights>.

The data processed will be: Name, Surname, DNI, NIE or PASSPORT, Date of birth; Place of birth; Home.

The data is provided by the interested party when requesting accreditation.

Transfers: Unless legally required to do so, personal data will only be
will cede or communicate if necessary to the Security Forces and Corps
authorities, Judicial or Fiscal Authority, other State bodies with powers
in the matter.

International data transfers: Not planned.

Conservation: The data will be kept for 5 years. Being also of
application 10 provided in the regulations of administrative files and documentation.

The rights of access, rectification, deletion, limitation or opposition to the treatment
can be exercised before the data controller: (CEPIC) Secretariat of
Security State. Ministry of the Interior, Calle Amador de los Ríos 2; 58010; mail
email: ses.cepic@interior.es.

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4/11

You can consult the detailed information on personal data protection

staff

the website:

exercise of their rights in

<http://www.interior.gob.es/web/servicios-alciudadano/participacion->

and the

Your data is not processed subjecting it to automated decisions.

2º It is reiterated that only the following data is used in this treatment: A.A.A.

***DATE.1 B.B.B. ***NIF.1 ***ADDRESS.1

3º The complete information about the treatment that is carried out can be found in

the public part of the PNS in the link: <https://www.fomento.gob.es/recursos>

mform/comodin/recursos/resolution of July 9, 2019.pdf

Also informing you that if you intend to obtain a card again

airport access to security restricted areas, must submit to

new to the evaluation procedure described.

FOUNDATIONS OF LAW

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The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of art. 58.2 of the

RGPD and in the art. 47 and 48.1 of LOPDGDD.

II

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5/11

Article 12 of Regulation (EU) 2016/679, of April 27, 2016, General

Data Protection (RGPD), provides that:

"1. The person responsible for the treatment will take the appropriate measures to facilitate to the interested party all the information indicated in articles 13 and 14, as well as any communication under articles 15 to 22 and 34 relating to processing, in the form concise, transparent, intelligible and easily accessible, with clear and simple language, in particular any information directed specifically at a child. Information shall be provided in writing or by other means, including, if applicable, by electronics. When requested by the interested party, the information may be provided verbally provided that the identity of the interested party is proven by other means.

2. The data controller will facilitate the interested party in the exercise of their rights under articles 15 to 22. In the cases referred to in article 11, section 2, the person in charge will not refuse to act at the request of the interested party in order to to exercise your rights under articles 15 to 22, unless you can demonstrate that it is not in a position to identify the interested party.

3. The data controller will provide the interested party with information regarding their proceedings on the basis of a request under articles 15 to 22, and, in in any case, within one month from receipt of the request. Saying The term may be extended for another two months if necessary, taking into account the complexity and number of requests. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means when possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not process the request of the interested party, will inform without delay, and no later than one month after receiving the request, the reasons for its non-action and the possibility of presenting a

claim before a control authority and exercise legal actions.

5. The information provided under articles 13 and 14 as well as any communication and any action carried out under articles 15 to 22 and 34 they will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person responsible for the treatment may:

- a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or
- b) refuse to act on the request.

The data controller shall bear the burden of proving the character manifestly unfounded or excessive of the request.

6. Without prejudice to the provisions of article 11, when the person responsible for the treatment has reasonable doubts in relation to the identity of the natural person that makes the request referred to in articles 15 to 21, may request that provide the additional information necessary to confirm the identity of the interested party.

7. The information that must be provided to the interested parties by virtue of articles 13 and 14 may be transmitted in combination with standardized icons that allow provide in an easily visible, intelligible and clearly legible form an adequate overview of the planned treatment. The icons that are presented in format electronic will be machine readable.

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6/11

8. The Commission shall be empowered to adopt delegated acts in accordance with

article 92 in order to specify the information to be submitted through

icons and procedures for providing standardized icons.”

Article 15 of the GDPR provides that:

III

"1. The interested party shall have the right to obtain from the data controller

confirmation of whether or not personal data concerning you is being processed and, in such

case, right of access to personal data and the following information:

a) the purposes of the treatment;

b) the categories of personal data in question;

c) the recipients or categories of recipients to whom they were communicated or

personal data will be communicated, in particular recipients in third parties or

international organizations;

d) if possible, the expected term of conservation of the personal data or,

not possible, the criteria used to determine this term;

e) the existence of the right to request from the controller the rectification or deletion

of personal data or the limitation of the treatment of personal data related to the

interested, or to oppose said treatment;

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

g) when the personal data has not been obtained from the interested party, any

available information about its origin;

h) the existence of automated decisions, including profiling, to

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.

2. When personal data is transferred to a third country or to an organization

international, the interested party shall have the right to be informed of the guarantees

appropriate under Article 46 relating to the transfer.

3. The controller will provide a copy of the personal data

treatment object. The person in charge may receive for any other requested copy

by the interested party a reasonable fee based on administrative costs. When the

The interested party submits the request by electronic means, and unless he requests

provided otherwise, the information will be provided in an electronic format of

Common use.

4. The right to obtain a copy mentioned in section 3 shall not affect

negatively to the rights and freedoms of others.”

IV

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7/11

Article 13 of the LOPDGDD determines the following:

"1. The right of access of the affected party will be exercised in accordance with the provisions in article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data related to the affected party and

he exercises his right of access without specifying whether it refers to all or part

of the data, the person in charge may request, before providing the information, that the

affected specify the data or treatment activities to which the

request.

2. The right of access shall be deemed granted if the data controller

will provide the affected party with a remote, direct and secure access system to the data

that guarantees, permanently, access to its entirety. to such

effects, the communication by the person in charge to the affected of the way in which the latter may accessing said system will suffice to consider the request to exercise the law.

However, the interested party may request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that are not included in the remote access system.

3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, may consider repetitive the exercise of the right of access on more than one occasion for a period of six months, unless there is legitimate cause for it.

4. When the affected party chooses a means other than the one offered that supposes a disproportionate cost, the request will be considered excessive, so said affected will assume the excess costs that their choice entails. In this case, just The data controller will be required to satisfy the right of access without undue delay.”

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Fourth transitory provision. Treatments subject to Directive (EU) 2016/680.

“The treatments subject to Directive (EU) 2016/680 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons regarding the processing of personal data by the authorities competent for purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of such data and repealing Council Framework Decision 2008/977/JHA, will continue to be governed by Organic Law 15/1999, of December 13, and in particularly article 22, and its development provisions, as long as the law does not enter into force. rule that transposes into Spanish law the provisions of the aforementioned directive.”

Article 22. Files of the Security Forces and Bodies.

"1. The files created by the Security Forces and Bodies that contain personal data that, due to having been collected for administrative purposes, must be subject to permanent registration, will be subject to the general regime of the this Law.

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8/11

2. The collection and treatment for police purposes of personal data by the Security Forces and Bodies without the consent of the people affected are limited to those assumptions and categories of data that are necessary for the prevention of a real danger to public safety or for the suppression of criminal offenses, and must be stored in specific files established for this purpose, which must be classified by categories according to their degree of reliability.

3. The collection and treatment by the Security Forces and Bodies of the data, referred to in sections 2 and 3 of article 7, may be carried out exclusively in the cases in which it is absolutely necessary for the purposes of a specific investigation, without prejudice to the control of the legality of the action administrative or the obligation to resolve the claims made in your case by the interested parties that correspond to the jurisdictional bodies.

4. Personal data recorded for law enforcement purposes will be canceled when not are necessary for the inquiries that led to their storage.

For these purposes, the age of the affected party and the nature of the of the stored data, the need to keep the data until the conclusion of a specific investigation or procedure, the final judicial resolution, especially the

acquittal, pardon, rehabilitation and prescription of liability.”

Article 23. Exceptions to the rights of access, rectification and cancellation.

“1. Those responsible for the files containing the data referred to in the sections 2, 3 and 4 of the previous article may deny access, rectification or cancellation based on the dangers that could arise for the defense of the State or public security, the protection of the rights and freedoms of third parties or the needs of the investigations that are being carried out.

SAW

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency of 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 powers corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;”

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28001 – Madrid

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9/11

(...)

“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 in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

In this sense, article 77.1 c) and 2, 4 and 5 of the LOPGDD, indicates:

1. The regime established in this article will be applicable to the treatments

of which they are responsible or entrusted:

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 offenses referred to in articles 72 to 74 of this

organic law, 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 conduct or correct the

effects of the infraction that had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the

on which it reports hierarchically, where appropriate, and to those affected who had the condition

of interested, in his case.”

4. The resolutions must be communicated to the data protection authority

that fall in relation to the measures and actions referred to in the sections

previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions

analogous of the autonomous communities the actions carried out and the resolutions

dictated under this article.”

Article 74.a) of the LOPDGDD, under the heading "Infringements considered minor

has:

“They are considered minor and the remaining infractions of merely formal character of the articles mentioned in sections 4 and 5 of the 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 to information of the affected party for not providing all the information required by Articles 13 and 14 of Regulation (EU) 2016/679.”

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10/11

In this case that concerns us, it is proven that the respondent has completed the requested access exercise.

Thus, it is stated that on December 19, 2019, the right to access of the claimant having been informed, in addition, about the identity of the responsible for the treatment, the purposes of the treatment and the added information that is established in the RGPD, thus guaranteeing total transparency with respect to the right to obtain information and communication of the data that concerns you and that was notified to the same by certified mail on January 10, 2020.

Considering the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE sanctioning procedure PS/00072/2020, instructed to

SECRETARY OF STATE FOR SECURITY, with NIF S2800109G, for having

accredited that they have completed the exercise of the right of access requested.

SECOND: NOTIFY this resolution to the SECRETARY OF STATE OF SECURITY.

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 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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

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Electronic Registration of

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11/11

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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