

□ Procedure No.: PS/00390/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00390/2021, instructed by the Spanish Agency for Data Protection before Mrs. A.A.A., with NIF.: \*\*\*NIF.1, (hereinafter, "the part claimed"), by virtue of the claim filed by the CITY COUNCIL OF \*\*\*LOCALIDAD.1, (hereinafter, "the claimant party"), for alleged violation of the Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the Protection of Natural Persons with regard to the Treatment of Personal Data and the Free Circulation of these Data (RGPD); and of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, (LOPDGDD) and based on the following:

### BACKGROUND:

FIRST: On 06/16/20, he entered this Agency, through the Authority Catalan Data Protection, written by the City Council of \*\*\*LOCALIDAD.1, in the which indicated, among others, the following:

"On 06/04/20, UNIPA agents are required by a Guard patrol Urban of \*\*\*LOCALIDAD.1 since to a locutorio "\*\*\*\*LOCUTORIO.1" located in the street \*\*\*ADDRESS.1 of \*\*\*LOCATION.1 a lot of people who Possibly an illegal activity is being carried out. The agents they interview the people queuing at the entrance of the establishment that they are going to deliver the documentation to make the curriculum for an offer of worked.

The agents meet with the person in charge of the booth, identified as the Mrs. A.A.A. - \*\*\*NIF.1, which informs, which makes people's CVs in exchange for a euro for the service and then give it to his brother who then takes them to the

company, INTERIM AIRE ETT to \*\*\*ADDRESS.2.

The brother, who identifies himself as Mr. B.B.B. - \*\*\*NIF.2, informs that it is in charge to collect the resumes to take them to the ETT since they need people to go to work go down in the fruit sector.

The agents speak with the company INTERIM AIRE ETT where they state that they do not know see nothing of the resumes nor of the brothers.

The agents want to mention that the defendant collects data from the people doing submitting resumes, collecting photocopies of personal documentation, without informing of the treatment that will be given to it, without following the principles and guarantees of the Law of Data Protection".

SECOND: On 06/26/20, this Agency sent a request information to the claimed party, in accordance with the provisions of article 65.4 of the LOPDGDD Law.

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2/6

THIRD: On 08/21/20, the respondent sends this Agency the following information and demonstrations:

“That in relation to said file I let you know that at that moment of the inspection was not the person in charge of the establishment, and I was in client quality I was making some photocopies, so the information I it is requested of me, I cannot provide it because I do not have it”.

FOURTH: On 09/24/20, by the Director of the Spanish Agency for Data Protection agreement is issued for the admission of claims processing

presented, in accordance with article 65 of the LPDGDD Law, when assessing possible rational indications of a violation of the rules in the field of powers of the Spanish Data Protection Agency.

FIFTH: This Agency has carried out the following checks, under the investigative powers granted to the control authorities in the art 57.1 of the RGD Regulation:

1º.- On 12/16/20 it is verified in the application, "Google Maps", that the business labeled as, "Copy \*\*\* LOCUTORIO.1", located at Calle Ramón Llull 17 (\*\*LOCALIDAD.1), is labeled with the information:

“\*\*\*PHONE.1” and

“\*\*\*EMAIL.1”.

2º.- On 12/17/20, the “Facebook” application verified the existence of a profile with the same logo as the labeling in the indicated business and where the contact information “\*\*\*PHONE.1” and \*\*\*EMAIL.1.

SIXTH: On 07/29/21, by the Director of the Spanish Agency for Data Protection, a sanctioning procedure is initiated against the claimed party, for infringement of article 13 of the RGD, due to the lack of information to the interested parties about the purpose of processing the personal data collected, with an initial sanction of 2,000 euros (two thousand euros), based on the provisions of art. 64.2 b) of the law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (LPACAP).

SEVENTH: Notification of the initiation of the file on 08/26/21, as of today, no there is evidence that the respondent has made allegations to the agreement to start the process. In this sense, article 64.2.f) of the LPACAP - provision of which the one claimed in the agreement to open the proceeding was reported - establishes that, if allegations are not made within the stipulated period on the content of the agreement of

initiation, when it contains a precise pronouncement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the respondent has not made allegations to the agreement to initiate the file and in attention to the provisions of article 64.2.f) LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

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3/6

#### PROVEN FACTS:

1.- According to the report of the Local Police of \*\*\*LOCALIDAD.1, they verified how, the on 06/04/20, at the call center "\*\*\*\* LOCUTORIO.1" located on the street \*\*\* DIRECTION.1 of \*\*\*LOCATION.1 the people queuing at the entrance of the establishment are giving the person in charge of the locutorio personal data so that she can make a resume for a job offer.

The person in charge of the call center, identified as Mrs. A.A.A. - \*\*\*NIF.1, informs agents who make people's CVs in exchange for one euro and then give them to the company, INTERIM AIRE ETT, but put in contact with this company, they They state that they do not know anything about the curricula nor about the requested person.

2.- Required, by this Agency, information to the claimed, it states that at the time of the inspection in the establishment she was like a mere customer and had nothing to do with the owner.

3.- This Agency carries out the necessary checks to corroborate what was affirmed by the respondent, noting that, on 12/16/20, check in the application, "Google Maps", that the business labeled, "Copy \*\*\*CALL SHOP.1", located on street \*\*\*ADDRESS.1 (\*\*\*LOCATION.1), is labeled with the information: "\*\*\*\*TELEPHONE.1" and "\*\*\*\*EMAIL.1" and on 12/17/20, check through the "Facebook" application, the existence of a profile with the same logo as the labeling in the business where the contact information appears "\*\*\*\*PHONE.1" and \*\*\*EMAIL.1.

## FOUNDATIONS OF LAW

### I.- Competition:

Is competent to resolve this Sanctioning Procedure, the Director of the Spanish Agency for Data Protection, by virtue of the powers that article 58.2 of the GDPR Regulation and as established in arts. 47, 64.2 and 68.1 of the Law LOPDGDD.

In the present case, the Urban Guard of \*\*\*LOCALIDAD.1 informs that, in person at the "\*\*\*\* LOCUTORIO.1" establishment, located on \*\*\* DIRECTION.1 street in \*\*\*LOCATION.1, verify that the requested person is collecting data from interested people, making them the curriculum and collecting photocopies of their personal documentation and then, according to her, give it to a work company temporary. However, the agents, put in contact with this company, are informed that they have no knowledge of such resumes nor do they know the claimant.

### II

For his part, at the request of this Agency, the requested person alleges that, in the moment of the arrival of the agents she was only as a client making some photocopies at the establishment.

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4/6

III

However, this Agency has been able to verify that the labeling located in the establishment in question, "Copy \*\*\*LOCUTORIO.1", located on Calle

\*\*\*ADDRESS 1

information:

“\*\*\*PHONE.1” “\*\*\*EMAIL.1” .

(\*\*\*LOCATION.1),

The next

exists

Regarding the collection of personal data, article 13 of the RGPD, establishes the information that must be provided to the interested party at the time of collecting their personal information:

“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: 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 officer, in his case; c) the purposes of the treatment to which the personal data is destined and the basis legal treatment; d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party; e) the recipients or the categories of recipients of personal data, if any; f) where appropriate, the intention of the controller to transfer personal data to a third country or

international organization and the existence or absence of an adequacy decision of the Commission, or, in the case of the transfers indicated in articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or the fact that have lent.

2. In addition to the information mentioned in section 1, the person in charge of 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 this is not possible, the criteria used to determine this period; b) the existence of the right to request access to data from the data controller 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; c) when the treatment is based on article 6, paragraph 1, letter a), or the 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 control authority; e) if the communication of personal data is a requirement legal or contractual, or a necessary requirement to enter into a contract, and if the The interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data; f) the existence of decisions you automate, including profiling, referred to in article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party”.

Therefore, the known facts constitute an infraction, attributable to the

person claimed, for violation of article 13 of the RGD, by not informing

conveniently to the interested parties, of the purposes for which they were going to allocate their data personal.

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5/6

Article 72.1.h) of the LOPDGDD, considers "very serious", for prescription purposes,

"The omission of the duty to inform the affected party about the processing of their data in accordance with the provisions of articles 13 and 14 of the RGD"

This infraction can be sanctioned with a maximum fine of €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

of greater amount, in accordance with article 83.5.b) of the RGD.

In accordance with the precepts indicated, in order to set the amount of the penalty to

impose in the present case, it is considered appropriate to graduate the sanction to be imposed

in accordance with the following aggravating criteria established in article 83.2 of the

GDPR:

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The way in which the supervisory authority became aware of the infringement,

that this Agency had knowledge through the Urban Guard of

\*\*\*LOCATION.1, who appeared at the scene of the events after a complaint

prior to and after carrying out several investigations to clarify them,

made, before the person claimed and before the company that supposedly

collected the curricula, (section h).



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The lack of collaboration or impediment revealed by the person claimed, in the clarification of the facts, because in the allegations that presented before this Agency assured that she was always a client of the establishment and that it had nothing to do with the data collection users personal. (section k).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 13 of the RGPD, allows setting a penalty of 2,000 euros (two thousand euros).

In view of the foregoing, the following is issued:

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#### RESOLVE

FIRST: IMPOSE D<sup>a</sup>. A.A.A., with NIF.: \*\*\*NIF.1, a fine of 2,000 euros (two thousand euros), for the infringement of article 13 of the RGPD, by not properly informing to the interested parties, of the purposes to which they were going to allocate the personal data obtained from them.

SECOND: NOTIFY this resolution to Ms. A.A.A. and report the result to the claiming party.

Warn the sanctioned party that the sanction imposed must be made effective once it is enforce this resolution, in accordance with the provisions of article 98.1.b) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad-Public Administrations (LPACAP), within the voluntary payment period indicated in article 68 of the General Collection Regulations, approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of December 17, me-upon deposit in the restricted account N° ES00 0000 0000 0000 0000 0000, opened

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28001 – Madrid

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6/6

on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank,

S.A. or otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

will be until the 20th day of the following month or immediately after, and if

is between the 16th and last day of each month, both inclusive, the term of the payment

It will be valid until the 5th of the second following month or immediately after.

In accordance with the provisions of article 82 of Law 62/2003, of December 30,

bre, of fiscal, administrative and social order measures, this Resolution is

will make public, once it has been notified to the interested parties. The publication is made

will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the

established in articles 112 and 123 of the LPACAP, the interested parties may interpose

have, optionally, an appeal for reconsideration before the Director of the Spanish Agency

of Data Protection within a period of one month from the day following the notification

fication of this resolution, or, directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions

placed in article 25 and in section 5 of the fourth additional provision of the Law

29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the

two months from the day following the notification of this act, according to

the provisions of article 46.1 of the aforementioned legal text.

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 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-electronicaweb/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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