

□ File No.: EXP202210469

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter the complainant) on 08/01/2022 filed  
complaint to the Spanish Data Protection Agency. The complaint is directed  
against GRUPO CONTROL EMPRESA DE SEGURIDAD, S.A. with NIF A04038014 (in  
forward, the claimed). The reasons on which the complaint is based are the following:  
complainant, as delegate coordinator of the Valencian Federation of  
Private Security Workers Union Alternative, shows that the  
denounced entity has carried out an illegitimate treatment of the personal data of  
a former employee; indicates that the defendant, upon receiving a notification from the  
Directorate General of Traffic of a fine for speeding detected at a  
tourism owned by him, on 06/06/2022, he identified as a driver a  
ex-employee despite the fact that he had been dismissed with discipline on 11/22/2021.  
Together with the complaint document, it provides images of the aforementioned fine of  
trafficking, attributed to the former employee, report of his working life and notice of dismissal  
disciplinary action that accredits the termination of the employment relationship of the affected third party with the  
denounced on 11/22/2021.

SECOND: On 12/20/2022, the Director of the Spanish Protection Agency  
of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged  
infringement of article 6.1 of the GDPR, typified in article 83.5.a) of the aforementioned GDPR.

THIRD: Notified of the initiation agreement, the claimant on 01/04/2023 presented  
pleadings stating, in summary, the following: that the offending vehicle

is not the property of the defendant but of the NORTHGATE company, the defendant maintains a Vehicle Rental contract dated 03/05/2019; that is not accredited that the defendant made illegitimate use of the personal data of the former employee or that was the one who provided the aforementioned data to the DGT, especially when I make allegations to the notification of the fine denying his involvement in the alleged traffic offense limiting itself to justifying that the rental period of the vehicle ended a long time before the infraction, without identifying any driver because he was denying the facts; that the processing of personal data carried out by the defendant has all the security measures and respecting the bases and principles required by the GDPR and LOPDGDD; informs how the DGT operates in case of comedic traffic offenses by rental vehicles and points out that at some point At the time of this process there has been an error because the DGT directs the fine despite of not being the lessee of the vehicle involved for having returned it 3 months before the alleged infringement; that at no time during the hiring process of the vehicle carries any personal data of any employee for which reason it has not been been able to incur in any infraction in this sense; which in any case is the company NORTHGATE is responsible for processing the personal data provided by the

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/5

interested directly at the time of the withdrawal and delivery of the vehicle; that he claimed in his performance takes the necessary measures to comply with the principle of proactive responsibility required by the GDPR, applying the technical measures and appropriate organizational measures in order to guarantee and be able to demonstrate that the treatment is

in accordance with the Regulation.

And he contributed the DGT fine and the allegations to it; certificate-written from the Northgate company; ISO quality and environment certificate.

FOURTH: On 01/23/2023, a Resolution Proposal was issued in the sense that for the Director of the AEPD will file the claimant for a violation of article 6.1 of the GDPR, typified in article 83.5.a) of the GDPR.

After the period established by the claimant, at the time of this Resolution, had not submitted any written allegation.

FIFTH: Of the actions carried out in this procedure, have been the following accredited:

#### PROVEN FACTS

FIRST. On 08/01/2022 it has entry into the Spanish Agency for the Protection of Written information from the complainant stating that the defendant has made a illegitimate processing of the personal data of the affected party, former employee of the same, noting that upon receiving notification from the DGT of a traffic fine for speeding in tourism owned by him, on 06/06/2022, he identified as driver of the vehicle to a former worker who had been fired.

SECOND. The dismissal letter of the affected person dated 11/22/2021 is provided.

THIRD. There is a traffic fine provided, file number \*\*\*FILE.1, in the one that appears as the date of the infraction on 06/06/2022, for speeding of the Renault Clio tourism registration \*\*\*REGISTRATION.1.

ROOM. The defendant has provided the allegations to the aforementioned fine, of 06/22/2022, in which it is indicated:

"FIRST. - My client, the defendant, signed a lease with the company NORTHGATE, through which the model vehicle was leased to us CLIO 1.5 DCI 75 BUSINESS ENERGY, registration \*\*\*MATRICULA.1. However the

claimed proceeded to return the vehicle on March 18, 2022, it was

accompanies the return certificate as document number 2.

SECOND. - That the sanction that is intended to be imposed on this party dates back to about

events that occurred on June 6, 2022, the date after the return of the

sanctioned vehicle. Therefore, the defendant is not responsible for the fine with

file number: \*\*\*FILE.1.

THIRD. - For supporting purposes, it is also attached as document number 3

the Certificate issued by NORTHGATE indicating the start and end date of the renting

of the vehicle, which exempts my client from responsibility, in view of the

dates.

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

3/5

FIFTH. The defendant has provided a letter from NORTHGATE, dated 05/22/2022, in the

that is indicated: "UNICA. That the company claimed, with CIF..., is not the company

lessee of the vehicle with registration \*\*\*MATRICULA.1, on the date of the infraction.

Beginning the lease on 03/07/2022 and ending on 03/18/2022, you cannot

be responsible for any traffic offense committed with

after that date."

SIXTH. The defendant has stated in a letter of 01/04/2022 that "he strives to

a lot for internal procedures and assurance of doing them well (quality), and

for this they have the quality certification with the ISO 27.001 standard

INFORMATION SECURITY (document number 6) being also certified in

ISO 9001 standards; ISO1400; ISO 45001; ISO 18788; ISO 50001. In addition, it consists

the communication to the Spanish Data Protection Agency of the appointment of the Data Protection Officer as can be seen in the website of the AEPD”.

## FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 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 Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that:

"The procedures processed by the Spanish Data Protection Agency will be governed by the provisions of Regulation (EU) 2016/679, in this organic law, for the regulatory provisions dictated in its development and, as soon as they are not contradict, on a subsidiary basis, by the general rules on the administrative procedures."

II

Law 40/2015 on the Legal Regime of the Public Sector provides in its article 28, Responsibility, in its section 1, that:

"1. They may only be penalized for acts constituting an infringement administrative authority for natural and legal persons, as well as when a Law recognize capacity to act, affected groups, unions and entities without legal personality and independent or autonomous estates, which result

responsible for them by way of fraud or negligence.”

The standard follows the criteria in force in our legal system in accordance with the which the requirement of guilt is essential for liability to arise sanctioning which prevents imposing sanctions based on strict liability of the alleged offender.

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/5

The requirement of disciplinary liability presupposes the existence of the unlawful conduct described in the sanctioning type and the subjective element of the infringement. The presence of this element as a condition for the birth of the disciplinary responsibility has been recognized by the Constitutional Court, among others, in STC 76/1999, in which it affirms that administrative sanctions participate of the same nature as the criminal ones, being one of the manifestations of the ius puniendi of the State, and that, as a requirement derived from the principles of security legal and criminal legality enshrined in articles 9.3 and 25.1 of the CE, it is necessary to impose them.

In the present case, in accordance with the proven facts, it has not been accredited that the defendant was the one, having received the fine from the DGT motivated by the traffic violation for speeding, identify yourself as the driver of the vehicle to your former employee.

First, the date of the speeding offense for tourism

Renault Clío registration \*\*\*REGISTRATION.1, is dated 06/06/2022, while the dismissal of the worker occurs on 11/22/2021, that is, prior to that.

Secondly, in the allegations made by the defendant to the sanction notified, there is no mention of the former employee, stating that the sanction that seeks to be imposed is motivated by events that occurred on a date after the return of the sanctioned vehicle.

Lastly, the leasing company, NORTHGATE, with which the defendant had signed vehicle rental contract has certified that the claimant is not the lessee company of the vehicle immersed in the infringement, since the lease ended on 03/18/2022 and cannot be held responsible for it.

Therefore, in light of the foregoing, it is appropriate to agree on the filing of the present actions followed against the defendant in the absence of administrative responsibility required of it.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ARCHIVE to GRUPO CONTROL EMPRESA DE SEGURIDAD, S.A., with NIF A04038014, for a violation of article 6.1 of the GDPR, typified in article 83.5.a) of the GDPR.

SECOND: NOTIFY this resolution to GRUPO CONTROL EMPRESA DE SECURITY, S.A.

In accordance with the provisions of article 50 of the LOPDGDD, the

This Resolution will be made public once the interested parties have been notified.

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

Against this resolution, which puts an end to the administrative process in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, interested parties may optionally file an appeal for reversal

before the Director of the Spanish Data Protection Agency within a period of one

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 for in article 46.1 of the

referred Law.

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

LPACAP, the firm resolution may be temporarily 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,

presenting it 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

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

day following the notification of this resolution, would terminate the

injunction suspension

Electronic record of



through the

Mar Spain Marti

Director of the Spanish Data Protection Agency

C / Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)