

□ Procedure No.: PS/00009/2021

RESOLUTION OF PUNISHMENT 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 claimant) dated October 2, 2018
filed a claim with the Spanish Data Protection Agency. The
claim is directed against the University of Extremadura with NIF Q0618001B (in
later, the claimed one).

The claimant states that on August 10, 2018, he submitted a request for access to
your personal data, processed in the pre-registration and admission procedure in the
undergraduate studies at the University of Extremadura for the 2018/2019 academic year.

Thus, the request for access was not answered after more than one
month from its presentation, being dismissed due to administrative silence.

And, provide the following documentation:

-Copy of the application for the right of access to the University of Extremadura dated
to August 10, 2018 in relation to the pre-registration and admission procedure of the
University of Extremadura for the 2018/2019 academic year.

SECOND: In view of the facts denounced in the claim, of the
documents provided by the claimant and the facts and documents of which he has
had knowledge of this Agency, the Subdirectorate General for Data Inspection
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 research actions carried out, it is found that the responsible for the treatment is the claimed one.

As background to this sanctioning procedure, it must be stated:

In another claim processed previously E/04599/2018, the right of access formulated on April 18, 2018 in front of the University, if well, with respect to the personal data processed in the pre-registration procedure and admission for the 2017-2018 academic year.

On December 11, 2019, in procedure RR/00301/2019, with Origin file E/08924/2018, the Spanish Data Protection Agency agreed to uphold the motion for reconsideration because it did not meet the right of access to

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the requested data since the claimed party, in the allegations it provides, attaches the same writings with which he responded to the exercise of the right of access made on April 18, 2018.

On July 27, 2020, the respondent sends to this Agency the documentation already sent previously on December 13, 2018 on the occasion of the file E/08924/2018, which refers, in turn, to file E/04599/2018.

THIRD: On February 9, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, 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 RGD, typified in Article 83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that: "On November 15, request for information is received from the AEPD in this regard, and the request is answered and sent. information to both the AEPD and the applicant dated December 3, 2018.

Although it is true that said answer and documentation refers to the course 2017/2018, but it is the same as that corresponding to the 2018/2019 academic year as it is the Same procedure and same data.

That the defendant enjoys the concept of interested in the procedure E/08924/2018. However, it does not notify us of the motion for reconsideration filed in said file as is its obligation, nor its corresponding procedure of claims under art. 118 of Law 39/2015, causing formal defenselessness and material to this part.

But what is more, we are not notified of the approving resolution either. we are before a clear assumption contemplated in art. 47.1 a) and e) of Law 39/2015, and has effects ex tunc, that is, from the date on which the null act was issued.

The defendant has a Network Services Access System, which allows the access to the claimed to all their data, by obtaining the IDUEX (user) and the establishment of a PINWEB (password), and for this you must authenticate through the main email account of the Uex, digital certificate or electronic DNI.

This Administration is aware that this is known by the respondent, as it is an old student of this University, and in fact, has (IDUEX and PINWEB), which has used in the pre-registration process, and where you have been able to consult

permanently all your personal data, being perfect to know about it (DOC

4 and 5).

Break the principle of legal certainty with this sanctioning file. Yes

The request for the right of access of the respondent is registered on August 10,

2018, and the deadline for answering this administration is one month, it is understood that

the alleged infringement occurred on September 10, 2018. And according to art. 74 of

Organic Law 3/2018, minor infractions prescribe a year, so the

This alleged infraction is prescribed since September 10, 2019.

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In the event that it is understood that the limitation period begins with the resolution

estimate of the appeal for reconsideration, this being dated December 10, 2019,

the prescription would operate from December 10, 2020.

In any case, forwarded to the Agency (DOC 6) and to the claimant a reply to his

exercise of the Right of access to your personal data at the beginning of the 2019 academic year-

19".

They provide an answer to the claimant dated February 23, 2021, in relation to his

request for access to your personal data, processed in the procedure of

Pre-registration and admission to undergraduate studies at the University of Extremadura

for the 2018/2019 academic year.

FIFTH: On February 25, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous investigative actions, E/11834/2019, as well as the documents

provided by the respondent and it is requested that it contribute to this Agency, document proving that the person responsible for the treatment provided the affected party with a remote, direct and secure access system to personal data, indicating the date in which access was provided and its period of validity.

Likewise, if said right of access is complete or information is missing, in relation to the provisions of article 13, paragraph 2.

On March 8, 2021, the respondent requests that the document be resubmitted prior writing, due to the expiration of the electronic notification period.

On the same day, the 8th, the opening of the practice period for evidence, and on March 23, 2021, the respondent provides the exercise of the right of access to the University of Extremadura, stating in summary: "which makes disposal of the university community a complete information system intended for self-service in regard to the exercise of the right of access to the personal identification, academic, labor data, etc... this procedure electronic is composed of documents that in any case can be printed, obtaining double access, both electronic and printed.

When verbal information is desired, the University of Extremadura has a wide set of organizational means for direct consultation. In this

In this case, students can obtain information from the Information Service Administrative, in the secretaries of the Centers and in the corresponding Services Centers of Access, Degree, Masters and Doctorate and Own Studies.

In the electronic system, the student is identified through a user system (IDUEX) and password (PINWEB).

Since the main means of access is electronic, access is immediate and the electronic response is immediately available to the interested party.

All electronic accesses are free.

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Electronic access is free and has no limitation on the number of accesses being available 24x7.

Members of the university community are permanently informed of the existence of the Portal and the students know these means. accessing the road electronically there are many documents that are issued in PDF format that They can be printed later. In no case is the printing of the documents.

The University of Extremadura informs registered or pre-registered students of the existence of the academic data portal found on the institutional website.

The IDUEX and PINWEB obtaining system of the University of Extremadura.

System purpose:

The right of access to the personal information of the University student always has been practiced through a mandatory document to be issued, which is the certification official academic, where, together with the personal data that the University has of the student, the academic data is found with a list of subjects adjusted to the student's study plan. This document, due to its official nature, has a shipping cost that is specified, annually, in the price order and Public rates of the Junta de Extremadura. This document is requested directly at the secretariat of the Center where the student is studying. This is the first form of access to personal data, even if it is not free as it is required in the GDPR. Parallel to this traditional method, there is the access

through computer applications made available to any member of the university community (student, administration and services staff (PAS) and teaching and research staff (PD) completely free of charge.

In order to exercise this right, it is required that the member of the community university is identified before the management system of the University of Extremadura. The form provided for identification starts on the web page of the University (www.unex.es/credentials).

The first page that appears, at the top, indicates the following:

Credential management (the page is attached). This page indicates that those people who are new to the University, they are given a means of obtaining the appropriate identifier and key.

The next page that is obtained (attach the page). The document is requested National Identity Document and pressing the ACCESS button takes you to the following screen (screen attached). On this screen you are offered the possibility of contact us by email or phone number previously contributed by the same person and that have been uploaded to the Database Data. This will receive an email with a temporary pin.

At that moment, the PINWEB that you want to have is included and when you click on the button modify, it is saved encrypted in the access database.

From that moment there is no more communication.

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In short, a letter is not sent stating the IDUEX and the PINWEB to the user, but

that they are the ones who obtain it through this tool.

Regarding the way to use the query, it is done on the main page of the

University: www.unex.es/. At the bottom of the page there is a call to the Portal of Services.

In this case, when entering the portal, the following screen is obtained in which ask for authentication. To maintain confidentiality, only those who access know the password (WEBPIN).

Once the passwords have been entered, you access the main page of the Portal and the left of the page you get the menu of the following figure (the page is attached).

By clicking on academic personal data, the personal data that listed in academic. As you can see there is a whole series of options that, when they are consulted by any identified natural person, it allows knowing data personal, work, academic, payroll, bank accounts, etc... That is, the full exercise of the Right of Access, but designed from the University itself and embedded in the application of art. 25 GDPR, so you don't have to ask for it.

When clicking on Academic personal data: the following is obtained (page attached).

As can be seen, there are all the identification data and they can be modified, although some of them will be monitored for changes.

On the other hand, the academic data can be seen through the menu option ACADEMIC DATA.

As can be seen, only with these identifiers are the rights available.

access and rectification, without the need for anyone's intervention or recourse to the

AEPD and available 24 hours/day/7 days/week (24x7). The way of obtaining

these identifiers are indicated to the students on the web page dedicated to the process pre-registration: www.unex.es/preins.”,

and request a copy of the file,

proceeding to the referral of the same.

SIXTH: On April 5, 2021, a resolution proposal is formulated in the following terms:

That the Director of the Spanish Data Protection Agency impose to UNIVERSIDAD DE EXTREMADURA, with NIF Q0618001B, for an infraction of the Article 15 of the RGD, typified in Article 83.5 of the RGD, a sanction of warning.

The proposed resolution was notified electronically to the respondent, being the date of making available on April 5, 2021 and the date of acceptance that the same day.

Of the actions carried out in this proceeding and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: It is stated that the claimant on August 10, 2018, submitted request for access to your personal data, processed in the procedure of Pre-registration and admission to undergraduate studies at the University of Extremadura for the 2018/2019 academic year.

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The request was not answered after more than a month had elapsed since its presentation, being dismissed due to administrative silence.

SECOND: The respondent sent the claimant and this Agency, in response to the exercise of the right of access for the 2018/2019 academic year, procedure of

admission pre-registration for the 2017-2018 academic year.

THIRD: It is recorded that on February 23, 2021, the respondent answered the claimant in relation to the exercise of the right of access to your personal data of the 2018-2019 academic year.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

In accordance with the available evidence, it is considered that the Proven facts constitute an infringement.

II

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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.

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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.

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.”

III

The defendant is charged with the commission of an infraction for violation of Article 15 of the GDPR.

Article 15 of the GDPR provides that:

"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:

the purposes of the treatment;

- a)
- 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;

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- 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.”

Article 13 of the LOPDGDD determines the following:

IV

"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.”

v

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

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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;”

(...)

“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:

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“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:

c) Failure to respond to requests to exercise the rights established in the articles 15 to 22 of Regulation (EU) 2016/679, unless the application of the provisions of article 72.1k) of this organic law.”

SAW

In the present case, at first, the data controller of the data did not grant access to the requested data in the terms provided in the transcribed data protection regulations, but merely provided the same writings with which he responded to the exercise of the right of access formulated on April 18, 2018 regarding the pre-registration procedure and admission for the 2017-2018 academic year.

Now, it is clear that on February 23, 2021, the respondent answered to the claimant in relation to the exercise of the right of access to their data personal at the beginning of the 2018-2019 academic year.

In relation to what is alleged by the respondent that the

prescription, it is necessary to point out in this regard what Law 40/2015, of 1

October, of the Legal Regime of the Public Sector, in its article 30.2, indicates: "The term

of prescription of the infractions will begin to be counted from the day in which the

offense had been committed. In the case of continued violations or

permanent, the term will begin to run from the end of the offending conduct.

The prescription will be interrupted by the initiation, with the knowledge of the interested party, of

an administrative procedure of a sanctioning nature, restarting the term of

prescription if the sanctioning file was paralyzed for more than a month

for reasons not attributable to the alleged perpetrator."

Well, being a continuous infraction, the prescription began to be counted,

as of February 23 of this year, when the respondent gave

compliance with the request for the right of access of the claimed party.

In relation to the fact that defenselessness has occurred, the same has not occurred

since in this procedure you can exercise your right of defense.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the UNIVERSITY OF EXTREMADURA, with NIF Q0618001B,

for an infringement of Article 15 of the RGPD, typified in Article 83.5 of the RGPD,

a warning sanction.

SECOND: NOTIFY this resolution

EXTREMADURA, with NIF Q0618001B.

the UNIVERSITY OF

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THIRD

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman,

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-](https://sedeagpd.gob.es/sede-electronica-web/)

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.

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