

□ Procedure No.: PS/00326/2020

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 4, 2020

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against the CITY COUNCIL OF IMPROVEMENT OF THE CAMPO with NIF
P2808400B (hereinafter claimed).

The reasons on which the claim is based are that the aforementioned council lacks a
data protection officer.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in
hereinafter LOPDGDD), with reference number E/04008/2020, transfer of

said claim to the respondent, on June 7, 2020, so that he could proceed with his

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations.

THIRD: On September 30, 2020, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the
alleged infringement of article 37 of the RGPD, typified in article 83.4 of the RGPD.

FOURTH: On October 8, 2020, the agreement to start this

procedure, becoming the same in resolution proposal in accordance

with articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure

Common Administrative System of Public Administrations (LPACAP), by not carrying out
claims within the specified period.

In view of everything that has been done, by the Spanish Protection Agency
of Data in this procedure the following are considered proven facts,

FACTS

FIRST: The requested City Council lacks a Delegate for the Protection of
Data.

SECOND: the respondent has not presented any allegation.

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FOUNDATIONS OF LAW

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

II

The Public Administrations act as data controllers of
personal character and, on some occasions, they exercise functions of those in charge of
treatment, for what corresponds to them, following the principle of responsibility
proactively, meet the obligations that the RGPD details, among which is included, the
obligation to appoint a data protection delegate and communicate it to this

AEPD

The obligation is imposed by article 37 of the RGPD, which indicates:

"1. The person in charge and the person in charge of the treatment will designate a delegate of

data protection provided that:

a) the treatment is carried out by a public authority or body, except those courts acting in the exercise of their judicial function;"

Article 37.3 and 4 of the RGPD indicates about the appointment of the DPD "When the

The person responsible or the person in charge of the treatment is a public authority or body, may designate a single data protection delegate for several of these authorities or bodies, taking into account their organizational structure and size.

4. In cases other than those referred to in section 1, the person in charge or the in charge of the treatment or the associations and other organisms that represent categories of managers or managers may designate a protection delegate of data or they must designate it if so required by the Law of the Union or of the States members. The data protection delegate may act on behalf of these associations and other organizations that represent those responsible or in charge."

The LOPDGDD determines in its article 34.1 and 3: "Appointment of a delegate of Data Protection "

Those responsible and in charge of the treatment must designate a delegate

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data protection in the cases provided for in article 37.1 of the Regulation (EU) 2016/679 and, in any case, in the case of the following entities:

3. Those responsible and in charge of the treatment will communicate within a period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional authorities for data protection, appointments, appointments and dismissals of the data protection delegates both in the cases in which they are obliged to their designation as in the case in which it is voluntary.

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The infringement is considered as such in article 83.4.a of the RGPD, which states: "4. The

Violations of the following provisions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 a 39, 42 and 43;"

Article 83.7 of the RGPD indicates:

"Without prejudice to the corrective powers of the control authorities under the

Article 58(2), each Member State may lay down rules on whether

can, and to what extent, impose administrative fines on authorities and organizations

public authorities established in that Member State.

Article 58.2 of the RGPD indicates: "Each control authority will have all the

following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period.

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

The regime established in this article will be applicable to the treatment of

1.

those who are responsible or in charge:

c) The General Administration of the State, the Administrations of the Communities autonomous and the entities that make up the Local Administration.

2 “When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this law

organic, 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 behavior or correct it.

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 body of the

that depends hierarchically, where appropriate, and to those affected who had the condition

of interested, in his case.”

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4. The data protection authority must be notified of the resolutions 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 similar institutions

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

under this article.”

III

Article 73 of the LOPDDG indicates: "Infringements considered serious

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:”

v) Failure to comply with the obligation to appoint a data protection delegate when his appointment is required in accordance with article 37 of the Regulation (EU) 2016/679 and article 34 of this organic law.”

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE IMPROVED CITY COUNCIL WITH NIF

P2808400B, for a violation of article 37.1 of the RGPD, in accordance with article 83.4 of the RGPD, a sanction of warning.

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body the fulfillment of designating a Protection Delegate of Data, in accordance with article 37.1 of the RGPD.

THIRD

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

: COMMUNICATE this resolution to the Ombudsman,

FOURTH: NOTIFY this resolution to the CITY COUNCIL OF Mejorada OF THE FIELD.

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

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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/](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

Director of the Spanish Data Protection Agency

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