

Procedure No.: PS/00066/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before

GARISOAIN COUNCIL, by virtue of a claim filed by Ms. A.A.A.

(hereinafter, the claimant) and based on the following:

BACKGROUND

FIRST: On July 20, 2018, you have an entry in this Agency claim

formulated by Ms. A.A.A. (hereinafter, the claimant) stating the exposure in

the bulletin board of the Council of Garisoain (Navarra), of a document in which

There is a list of fourteen people with their corresponding DNI numbers and

signatures, among which is yours. In addition, it was placed on June 10,

2018 and continues as of the date of the claim, it is located on a public street, for which

Anyone who passes by has access to it.

SECOND: On December 10, 2018 and January 15, 2019, the

transfer of the claim presented by the claimant to the Council of Garisoain for

proceed to its analysis and respond to the claimant and this Agency in a

month, both notifications being returned by the postal service by

impossibility of delivery, due to absent in delivery.

Previously, on September 27, 2018, the City Council of

Guesalaz, in whose answer they state that the infraction had been committed by the

Garisoain Council, which is a totally independent entity.

THIRD: On February 22, 2019, the Director of the Spanish Agency for

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

alleged infringement of article 5.1.f) of the RGPD, in relation to article 5 of the

LOPDGDD typified in art. 83.5 section a) of the RGPD and classified as very serious

in art. 72.1.i) of the LOPDGDD, in accordance with the provisions of article 58.2 of the GDPR being notified by the postal service on March 1, 2019.

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

PROVEN FACTS

FIRST: On July 20, 2018, the claimant states the exposure in the notice board of the Council of Garisoain (Navarra), of a document in which There is a list of fourteen people with their corresponding DNI numbers and signatures, among which is yours. In addition, it was placed on June 10,

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2018 and continues as of the date of the claim, it is located on a public street, for which Anyone who passes by has access to it.

SECOND: Garisoain Council has not responded to the request for information of the Spanish Agency for Data Protection, nor has it presented allegations to the agreement to initiate this proceeding, despite the repeated transfer of the requirement made by this Agency.

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 art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

Article 5, section 1, letter f) RGPD "Principles related to treatment"

provides that the personal data will be:

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational (<<integrity and confidentiality>>).

Article 32 of the RGPD "Security of treatment" provides that:

1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which in your case includes, among others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;

c) the ability to restore the availability and access to personal data quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the controller or the manager and has access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States.

Article 5 of the LOPDGDD "Duty of confidentiality" provides that:

1. Those responsible and in charge of data processing as well as all the people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.
2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.
3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment.

III

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“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 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.

i) impose an administrative fine under article 83, in addition to or in

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

of each particular case.

Article 83.5 a) of the RGPD, considers that the infringement of “the principles

basic for the treatment, including the conditions for the consent in accordance with

of articles 5, 6, 7 and 9 “is punishable, in accordance with section 5 of the

mentioned article 83 of the aforementioned Regulation, with administrative fines of

€20,000,000 maximum or, in the case of a company, an equivalent amount

at a maximum of 4% of the total global annual turnover of the financial year

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above, opting for the highest amount, and for prescription purposes, it is qualified

very serious in art. 72.1 of the LOPDGDD.

In the present case, it is taken into account that the exposure on the bulletin board

announcements of the Council of Garisoain (Navarra), of a document with character data

staff may involve an omission of the duty to adopt or observe the measures

technical and organizational that guarantee the security of said data, avoiding its

theft loss or improper access; fact that motivated the beginning of the present penalty procedure.

In this specific case, the denounced party must prove that it has adopted a series of appropriate measures to guarantee the security and confidentiality of the data.

On the other hand, it should be noted that the seventh additional provision of the LOPDGDD regulates the "Identification of interested parties in notifications by means of announcements and publications of administrative acts" and establishes the

Next:

"1. When it is necessary to publish an administrative act containing personal data of the affected party, it will be identified by its name and surnames, adding four random numerical figures of the national document of identity, foreign identity number, passport or equivalent document.

When the publication refers to a plurality of affected these random figures they should alternate.

When it comes to notification through advertisements, particularly in the assumptions referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, will be identified to the affected party exclusively by means of the complete number of his national document identity card, foreign identity number, passport or equivalent document.

When the affected party lacks any of the documents mentioned in the two previous paragraphs, the affected party will be identified only by his Name and surname. In no case should the name and surnames be published in a together with the complete number of the national identity document, number of foreign identity, passport or equivalent document.

2. In order to prevent risks for victims of gender violence, the Government

will promote the development of a collaboration protocol that defines procedures insurance of publication and notification of administrative acts, with the participation of the bodies with competence in the matter.”

Given that in this case the actions of the entity denounced falls under section 1) of this additional provision, it would be convenient for hereinafter adopt the content of the publications as provided in this provision.

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

5/5

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: PROCEED to WARN the COUNCIL OF GARISOAIN, by the infringement of article 5.1. f) of the RGPD, in relation to article 5 of the LOPDGDD; typified in art. 83.5 section a) of the RGPD, ordering that it proceed under the established in article 58.2 letter b) RGPD.

SECOND: TO REQUEST the GARISOAIN COUNCIL to remove from the notice board announcements of the Council of Garisoain (Navarra), the document with character data personnel object of this procedure; in addition to adopting and observing the measures technical and organizational measures that guarantee the security of the data, avoiding its theft loss or improper access; fact that motivated the beginning of the present penalty procedure; having to inform this Agency within a period of month, and henceforth adjust the content of these publications to the provisions of the seventh additional provision of the LOPDGDD.

THIRD: NOTIFY this resolution to the GARISOAIN COUNCIL.

FOURTH: COMMUNICATE this resolution to the OMBUDSMAN, in accordance with the provisions of article 77.5 of the LOPDGDD.

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. 114.1 c) of

the LPACAP, 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.

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