

□ Procedure No.: PS/00047/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Claims filed by A.A.A., and B.B.B. (hereinafter, the
claimants) have entry dated July 1 and 10, 2020 in the Spanish Agency
Data Protection.

The claims are directed against the CITY COUNCIL OF CADREITA, with NIF
P3106300A (hereinafter claimed).

The reasons on which the claims are based are that the aforementioned council has
mailed in all the houses in the neighborhood without anonymizing, Order No. 109/2020, in
which the claimants appear as a party.

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/06033/2020, transfer of
said claim to the claimant on August 6, 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.

This Agency, in response to its request, receives from the aforementioned council a
document where it is stated that they have been in communication with the
claimants by sending them the following letter on September 3, 2020:

<< The City Council of Cadreita has sent NAVADAT (a company that has been designated
nothing to carry out the functions of data protection delegate) written
of transfer and a copy of the claim that has been filed with the Spanish Agency of

Data Protection.

Through this communication we want to put ourselves at your disposal and transfer

give you our willingness to assist you for any matter related to your claim.

information or with other processing of personal data that is the responsibility of the City Council.

to which it may be considered affected.

In this regard, indicate that, as established in art. 38. 4 and 5 of the Regulation

(EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding

to the protection of natural persons in IO with regard to the processing of personal data

data and the free movement of these data and by which the Directive is repealed

95/46/EC (General Data Protection Regulation).

"Those interested may contact the data protection delegate

with regard to all matters relating to the processing of your personal data

and to the exercise of their rights under this Regulation".

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"The data protection delegate will be obliged to maintain the secrecy or confi-

identiality with regard to the performance of their duties, in accordance with

the law of the Union or of the Member States".

On the other hand, we want to express the commitment of this City Council with the

compliance with personal data protection regulations. Your re-

claim by the Data Protection Delegate and if deemed necessary, a

Once the analysis has been carried out, additional measures will be adopted to those already in place.>>

Likewise, the commitment of the City Council is manifested in the adoption of the

measures that were necessary once the analysis was carried out in relation to the claim.

The City Council of Cadreira has implemented action protocols with the in order to comply with the principle of proactive responsibility.

Staff have been trained in its application and in data protection personal.

Specifically, an "assignment protocol" has been prepared in which the criterion of action that must be taken into account when they intend to communicate personal data to third parties and especially reference is made to the assumptions habitual transfers of data from the census of inhabitants, cadastre, transfers in personnel matters and publication of minutes and data of interested parties in newsletters officers or boards.

In relation to this protocol, a review of the risks associated with the treatments in view of the claim and the appropriate measures will be adopted to mitigate risks:

Update of the protocol, incorporating the criteria to be followed in case of

☐

who wants to publicize a judicial resolution that may have special interest to neighbors.

Disseminate the action criteria among data users

☐

personal (personnel of the City Council and corporate that may have access for the performance of their duties).

Review of the information provided and signed by the corporations.

☐

It currently includes some references to the duty of secrecy and the use of

information but a document of good practices will be drawn up as a reminder practices in data protection to influence the importance of compliance with these obligations and the functions of the data protection officer.

Reminder to personnel with access to data on the functions of the

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Data Protection Delegate and his advisory work. They will be included those cases in which it is considered that the DPO should be consulted.

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THIRD: On February 12, 2021, 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, typified in Article 83.5 of the GDPR.

FOURTH: On April 22, 2021, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency address to the CITY COUNCIL OF CADREITA, with NIF P3106300A, for an infraction of the article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a warning.

PROVEN FACTS

FIRST: The council has mailed all the houses in the neighborhood without anonymize, Order No. 109/2020, in which the claimants appear as a party.

SECOND: The City Council on September 3, 2020, expresses its commitment in the adoption of the necessary measures once the analysis has been carried out in relation to the claim, to proceed to a satisfactory solution for all the

parts.

THIRD: The City Council on March 2, 2021 presents allegations to this sanctioning procedure indicating that he understands that the information provided is truthful and exact, of public relevance, as well as of great economic importance and social for a small locality and demanded by the neighbors, reason why he considered that there was a general interest for their knowledge by all of them. Therefore, it considers that the data processing as it was carried out is fully justified in the public interest and therefore the principle of confidentiality of art. 5.1.f of the RGPD.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and to resolve this procedure.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that "personal data will be:

"a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

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b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during longer than necessary for the purposes of the processing of personal data; the Personal data may be kept for longer periods provided that it is processed exclusively for archival purposes in the public interest, research purposes scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures that This Regulation is imposed in order to protect the rights and freedoms of the interested party ("limitation of the retention period");

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

The data controller will be responsible for compliance with the provisions of section 1 and able to demonstrate it ("proactive responsibility")."

III

In the present case, it has been found that the person claimed without deleting any data

staff, proceeded to mail in all the houses, premises and other properties of the municipality object of this claim, a full copy of Order No. 109/2020, in the that the claimants appear as a party, which supposes a violation of article 5.1 f) of the RGPD, which regulates the obligation of confidentiality.

The aforementioned city council justifies, however, the dissemination of the judicial resolution in the Foral Law 5/2018, of May 17, on Transparency, access to public information and good government of Navarre.

Based on this, it considers that the information provided, the subject of this sanctioning procedure, is of interest to the public, subsumable in the article 29 of the aforementioned Law.

Now, this Agency must point out that what such a precept allows is not so much the publicity of the judicial resolution (compulsory only for the Foral Community Navarra according to its Autonomic Transparency Law) but information of interest for citizenship.

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This implies that in order to fulfill the intended purpose and permitted by the Law it was not precise distribution of the resolution itself, but only information of its content and rationale; in any case, once the Order was published, the anonymization of the personal data becomes mandatory in accordance with the principle of data minimization, if These data are not relevant to inform the public about the meaning of a court resolution.

This is so since the transparency regulations are not absolute either and therefore have

limits, highlighting for such purposes article 15 of Law 19/2013, of December 9,
of transparency, access to public information and good governance.

IV

Likewise, it should be noted that after the request of this Agency of August 6
of 2020, the aforementioned city council replied stating that it had already adopted
measures in this regard, specifically, it had drawn up a "handover protocol" in the
which establishes the criteria of action that must be taken into account when
intend to communicate personal data to third parties and especially reference is made
to the usual assumptions of transfers of data from the census of inhabitants, cadastre,
assignments in terms of personnel and publication of minutes and data of interested parties in
official bulletins or notice boards.

In addition, the city council stated that it had contacted both
claimants by letter dated September 3, 2020, through their Delegate of
Data Protection, informing you of the following:

"The Data Protection Delegate of this City Council is at your disposal
for any matter related to the claim presented, or treatments of
personal data responsibility of the City Council, on which it can be considered
affected."

It also states that "their claim will be assessed and if it is considered necessary,
Once the analysis has been carried out, additional measures will be adopted to those already in existence."

V

Thus, it is verified that the resolution of the order was disseminated to all the
neighbors, without prior anonymization.

It should be noted that the events took place, as stated by the
claimed, in the interest of the general interest, a circumstance that does not exempt compliance
of article 5.1 f) of the RGPD, which establishes that personal data must be

be:

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

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Therefore, in this case, the facts denounced are recognized and it is not alleged cause that according to law, justifies that it is not incurring in an infraction of article 5.1 f) of the RGPD, since the city council could always publicize the document if he considered it of interest, but duly anonymized.

SAW

Article 72.1 a) of the LOPDGDD states that "according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679".

7th

Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

b) send a warning to any person responsible or in charge of the treatment when the treatment 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 under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;

The art. 83.5 of the RGPD establishes that infractions that affect:

“a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2

d) it is established that each control authority may “order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain way and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

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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: DIRECT TO THE CITY COUNCIL OF CADREITA, with NIF P3106300A, by

an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUEST the CITY COUNCIL OF CADREITA, with NIF P3106300A, to protection of the provisions of article 58.2 d) of the RGPD, so that within a period of one month

From the notification of this resolution, certify:

-The adoption of all necessary measures so that the denounced entity acts in accordance with accordance with the principles of "purpose limitation" and "integrity and confidentiality» of art. 5.1 b) and f) of GDPR respectively.

-The adoption of the necessary measures to update its "Privacy Policy" to the current regulations on the protection of personal data, -Regulation (EU)

2016/679 (RGPD)-, adapting the information offered to the requirements contemplated in article 13 of the RGPD, and must provide users, prior to collection

of their personal data, all the information required in the aforementioned precept,

for which said city council must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment.

THIRD: NOTIFY this resolution to the CITY COUNCIL OF CADREITA.

FOURTH

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 C/ Jorge Juan, 6

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Electronic Register of the Agency [<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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