

□ Procedure No.: EXP202100427

## 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 March 10, 2021

filed a claim with the Spanish Data Protection Agency.

The claim is directed against CITY COUNCIL OF SIERO with NIF P3306600B (in  
later, the claimed one).

The claimant, \*\*\*PUESTO.1 of the City Council of Siero bases his claim on the fact that the  
Consistory has installed tracking devices in police vehicles without  
notify workers in advance.

It indicates that the city council informed them of the use of the  
geolocation one year after its installation.

In turn, it states that the workers have not been provided with the information  
about the existence and characteristics of these devices or about the possible  
exercise of the rights of access, rectification, limitation of treatment and  
suppression.

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/04121/2021, transfer of  
said claim to the claimed party on April 16, 2021, to proceed with its  
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.

On May 14, 2021, in response to the request of this Agency, it is alleged by the

claimed the following:

The Siero City Council was aware of a claim in similar terms which had been carried out by a police union.

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The Data Protection Delegate of the respondent proposes a series of actions to review, improve and adapt the treatment to current regulations.

The actions proposed are submitted to the Information Security Committee of Siero.

The Committee meets on April 16, 2021, addressing globally the treatment, both from a legal adequacy point of view, where the proposals that she had presented as Data Protection Delegate, such as from a technical point of view addressing existing problems in access to vehicle location viewing application that is commented by the Responsible for City Security.

The Act details the need to:

First: The review and adaptation of the Registry of Activities of the Treatment of the City Council since, after its examination, the treatment for the Geolocation of municipal vehicles is not registered.

Second: Carrying out an Impact Assessment.

Third: Review of the relationship with the awardee of the contract with the signing of the data processor contract in accordance with article 28 of the RGPD

Fourth: Identification of the people affected by the treatment by sending them a

new detailed information of the treatment in the terms of article 13 of the RGPD and article 90.2 of the LOPDGDD.

Fifth: Review of security measures in the control of access to systems monitoring, adapting them to the ENS procedures (according to Provision Additional First of the LOPDGDD), avoiding generic users. users to the systems must be nominative (identifying the user by means of a code), but non-generic, adopting due diligence measures in the control of the credentials for each user.

Sixth: Preparation by the Committee of a schedule of actions and possible response to the claimant union...

To monitor the actions, on May 6, 2021, a meeting will be held again the Security Committee, to which the following documentation is presented:

- Information to workers
- Executive summary of the EIPD (in the drafting phase)
- Proposal to modify the Register of Processing Activities

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- Status of the Treatment Manager contract and content verification.

The Committee, after analyzing the documentation and at the proposal of this Delegate, approves provide unions with information on the geolocation of vehicles municipal, prior to the communication to the workers, so that they can make the contributions they deem appropriate.

In compliance with this decision, a document is prepared for the representatives

union that is sent from the Department of Human Resources of the

Siero City Council dated May 11, 2021. Also, dated May 11

2020 after the review and improvement of the treatment manager contract is signed by both parties.

Currently, the City Council continues to work on the continuous improvement of the processing of personal data, in the coming days the conclusions will be analyzed

of the Impact Assessment, to adopt the measures, it will be approved and

The Registry of Treatment Activities will be published and new information will be sent to workers, once the information phase prior to the

union representatives.

THIRD: On July 19, 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 13 of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: On August 2, 2021, the respondent provides the following link, to certify that it has proceeded to correct the causes that generate this claim:

<https://www.ayto-siero.es/index.asp?MP=2&MS=318&MN=3#informacion>

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

#### FACTS

FIRST: The council has installed in police vehicles security devices geolocation without informing the workers of it until a year later.

SECOND: The person claimed on August 2, 2021, has informed this Agency that has proceeded to adopt measures to improve the processing of personal data staff, and has verified it by sending the following link:

<https://www.ayto-siero.es/index.asp?MP=2&MS=318&MN=3#informacion>

This link indicates the following:

“The Siero City Council treats the personal data collected through its portal website, [www.ayto-siero.es](http://www.ayto-siero.es), as data controller, as established in Regulation (EU) 2016/679 - General Regulation for the Protection of Data (RGPD) - and in Organic Law 3/2018, of December 5, on the Protection of [www.aepd.es](http://www.aepd.es)

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Personal data and guarantee of digital rights, and other regulations regarding of data protection that is applicable, in order to guarantee in all moment the fundamental right to data protection of users of the same.

By reading this Privacy Policy, the user is informed about the way in which Siero City Council treats and protects the data that are collected through this internet portal, as well as those others that are registered in the municipal electronic headquarters.

The user must carefully read this Privacy Policy that has been written in a clear and simple way with the aim of facilitating its understanding, being able to thus determine freely and voluntarily if you wish to provide your personal data to Siero City Council, through the different means enabled for it.

This Privacy Policy may be updated by the City Council of Siero when new treatments of your personal data are carried out or there are modifications legislation, if any.

The purpose of this Privacy Policy is to provide information about the

rights that assist you under the RGD, without prejudice to that other information of a nature that is made available to interested parties in the different forms of the Siero City Council.

The City Council of Siero has appointed a Data Protection Delegate

Personal being able to get in touch by clicking here or at the electronic headquarters at [sedeelectronica.ayto-siero.es](mailto:sedeelectronica.ayto-siero.es) -or postal address Plaza del Ayuntamiento s/n

CP: 33510. Pola de Siero, Siero, Asturias (Spain) to clarify any doubts regarding the processing of your personal data or further information.”

Next, this information is expanded in accordance with the regulations of data protection, in relation to:

- ☐ Responsible for the treatment.
- ☐ Personal data.
- ☐ Treatment limitations.
- ☐
- ☐ Record of treatment activities.
- ☐ Security measures.
- ☐ Rights.

Information on data collection.

## FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of individuals with regard to the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGD) recognizes each control authority, and according to what is established in the articles

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47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD), the

Director of the Spanish Data Protection Agency is competent to initiate

this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the

Spanish Agency for Data Protection will be governed by the provisions of the

Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council

of April 27, 2016, regarding the protection of natural persons in what

regarding the processing of personal data and the free circulation of these data

(General Data Protection Regulation, hereinafter RGPD), under the rubric

"Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"

### III

Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

"one. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

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- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in their case;



f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to which

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.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"one. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other

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medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

#### IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of 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 corrective powers listed 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;”

Article 83.5.b) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the rights of the interested parties pursuant to articles 12 to 22;”

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered mild has:

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“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

Failure to comply with the principle of transparency of information or the right

to)

of information of the affected party for not providing all the information required by the articles

13 and 14 of Regulation (EU) 2016/679.”

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In this case, it has been found that the defendant has installed in the vehicles

police geolocation devices without previously informing the workers;

fact in which the claim is specified, and that has served so that the claimed

adapt all the treatments to the data protection regulations, updating the

RAT (Remote Administration Tool) and studying if an Evaluation of

Impact and its realization, updating contracts for the provision of services and

providing complete information to those affected by the processing of their data.

Thus, the exposed facts constitute a violation of the provisions of the

Article 13 of the RGPD, indicated in the legal basis III.

However, on August 2, 2021, the respondent proceeded to update

its privacy policy as can be seen from the following link:

<https://www.ayto-siero.es/index.asp?MP=2&MS=318&MN=3#informacion>

Despite this, it should be noted that the sanction of warning for the

personal data that were collected without adequately informing their

workers, which constitutes an infringement of article 13 of the RGPD.

However, it will be a warning sanction without the need to adopt measures

by the claimed party, since it has already been updated.

In view of the foregoing, the Director of the Spanish Agency for Data Protection

RESOLVES:

FIRST: GO TO THE CITY COUNCIL OF SIERO, with NIF P3306600B, for a  
infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a  
warning.

SECOND: NOTIFY this resolution to SIERO CITY COUNCIL.

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

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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-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

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