

□ Procedure No.: PS/00227/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: SUPERIOR POLICE HEADQUARTERS OF ***COMMUNITY.1 (hereinafter,
the claimant) on January 15, 2021 filed a claim with the Agency
Spanish Data Protection.

The claim is directed against A.A.A. with NIE ***NIE.1 (hereinafter, the claimed).

The reasons on which the claim is based are that the respondent requires its clients
who provide their personal data to reserve an appointment for the processing of
documentation from the National Police, without providing them with all the information required
in accordance with article 13 of the RGPD.

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/00721/2021, transfer of
said claim to the claimed party on March 6, 2021, 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.

On May 4, 2021, the respondent responds to the aforementioned request
providing a copy of the document through which you request the express consent of
Your clients.

Said document indicates the following:

In order to comply with 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, and following the Recommendations and Instructions issued by the Spanish Agency for Data Protection (A.E.P.D.), IT IS REPORTED:

☐

The personal data requested and provided by you, are incorporated a file of private ownership whose responsible and sole recipient is SHURAIM MULTISERVICIO S.L.

☐ Only those data strictly necessary to provide information will be requested.

properly the requested services, it may be necessary to collect data from contact of third parties, such as legal representatives, guardians, or persons to position appointed by them.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/9

☐

All data collected has a commitment to confidentiality, with the legally established security measures, and under no circumstances are they transferred or treated by third parties, individuals or legal entities, without the prior consent of the client, guardian or legal representative, except in those cases in which those that are essential for the correct provision of the service.

☐ Once the relationship between the company and the client has ended, the data will be archived and kept, for a minimum period of time, after which will remain archived or, failing that, will be returned in full to the client or legally authorized.

☐

☐

The data that I provide will be included in the Treatment called Clients of SHURAIM MULTISERVICIO S.L, for the purpose of managing the contracted service, issuance of invoices, contact..., all procedures related to customers and I express my consent. I have also been informed of the possibility of to exercise rectification, cancellation and opposition, indicating it in writing to SHURAIM MULTISERVICIO S.L with address at STREET ***ADDRESS.1. access rights,

The personal data is transferred by SHURAIM MULTISERVICIO S.L to the entities that provide services to it.

Name and surname of the Client: DNI:

Legal representative (minor):

ID:

In

FIRM:

, to

from

of 20 ____

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 defendant requires his clients to provide their personal data to reserve an appointment for the processing of Police documentation

National, without providing them with all the information required in accordance with article 13 of the GDPR.

SECOND: On July 9, 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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/9

THIRD: On August 9, 2021, the claimant is notified of the settlement agreement beginning of this procedure, turning said agreement into a resolution proposal in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP), to the not make the claimed allegations within the indicated period.

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 RGPD) recognizes each control authority, and according to what is established in the articles 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;"

C/ Jorge Juan, 6

28001 – Madrid

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:

“1. 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 any;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- 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

www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

5/9

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 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 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;”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/9

“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:

“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:

to)

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

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

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

v

In this case, this Agency has confirmed that the respondent requires his

customers who provide their personal data to reserve an appointment for them

processing of documentation from the National Police, without reporting all the

aspects required in article 13 of the RGPD, indicated in the legal basis

III.

In this regard, it should be noted that despite the document provided by the respondent

to request the consent of its clients in the processing of their data

personal data, it should be noted that not each and every one of the

aspects indicated in article 13 of the RGPD, such as the right to

request the person responsible for the treatment to limit their treatment, or to oppose the

treatment, as well as the right to data portability, or the right to

file a claim with a supervisory authority.

Therefore, since the respondent does not comply with the information required in the aforementioned article

13 of the RGPD, incurs an infringement of the RGPD.

SAW

In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of administrative fines

under this Article for infringements of this Regulation

indicated in sections 4, 9 and 6 are in each individual case effective,

proportionate and dissuasive.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/9

“Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the treatment operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, to what extent gives;
- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under Article 40 or to certification mechanisms fication approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly. mind, through infraction.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the

infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection officer.

h) Submission by the person in charge or person in charge, on a voluntary basis, to

alternative conflict resolution mechanisms, in those cases in which

there are controversies between them and any interested party.”

In accordance with the precepts transcribed, in order to set the amount of the sanction of

fine to be imposed in this case on the entity claimed as responsible for a

infringement typified in article 83.5.b) of the RGPD, the

following mitigating factors:

-
-
-

The claimed one does not have previous infringements (83.2 e) RGPD).

It has not obtained direct benefits (83.2 k) RGPD and 76.2.c) LOPDGDD).

The claimed entity is not considered a large company.

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at the amount of €3,000 for the infringement of article 58.2 of the RGPD.

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 A.A.A., with NIF ***NIE.1, for a violation of article 13

of the RGPD, typified in article 83.5 of the RGPD, a fine of 3,000 euros (three thousand euros).

SECOND: NOTIFY this resolution to A.A.A.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/9

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es