 File No.: EXP202105953

RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter the claimant) on 11/17/2021 filed

claim before the Spanish Data Protection Agency. The claim is

directed against GENERAL DIRECTORATE OF TRAFFIC with NIF Q2816003D (hereinafter,

the claimed party). The grounds on which the claim is based are as follows:

claimed convened the Social Action Plan for its workers, requesting the

claimant an aid for children, publishing on the intranet of the claimed the

Provisional decision granting aid, stating the name and surnames

of the worker and his daughter, destination and the allocated amount. The claimant believes that the

The aforementioned notification allows access to the identification data of your daughter to the entire

staff with access to the intranet. Likewise, it indicates that the published act does not respect

the principles of protection, limitation and minimization of personal data of children.

Provides the provisional and final resolutions issued by the claimed entity.

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), ON 01/05/2022 said claim was transferred to the party

claimed, so that it proceeded to its analysis and inform this Agency within the period

of a month, of the actions carried out to adapt to the foreseen requirements

in data protection regulations.

On 01/24/2022, the respondent indicated that a report was requested from the Subdirectorate

HR Associate of the entity; In the report received, they state that they are not aware

that no claim of this type has been raised against them, so that, if the

claimant has not expressed his disagreement with this section during the

processing in relation to section 3.7 of the bases of the call and presented

your application for child support, it is not understood that you are now filing the claim

before that Agency.

It has not been possible to respond to the interested party because his identity is unknown.

In the aforementioned report, it is also communicated that they have consulted with the Management of

Information Technology of the organism and consider that the most viable solution, in the event

raised, would be to replace these data with the registration number of the application and with

This would not publish the name and surnames of the children.

THIRD: On 02/17/2022, in accordance with article 65 of the LOPDGDD,

the claim filed by the claimant was admitted for processing.

FOURTH: On 06/16/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged



infringement of article 5.1.c) of the RGPD typified in article 83.5.a) of the RGPD.

The receipt by the claimed party of the initiation agreement is recorded.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: On 11/17/2021 you have entry in the Spanish Agency for the Protection of

Written data of the claimant, stating that the person claimed in the call for

Social Action aid for its workers, requested aid for children,

publishing on the intranet of the defendant the provisional resolution granting

aid, stating the name and surname of the worker and his daughter, destination and

allocated amount; considering that the aforementioned publication allows access to the data

identification of your daughter to all staff with access to the intranet

SECOND: Provisional and definitive resolutions issued by the

claimed with the list of aid granted. They contain the name and

surnames of the claimant's daughter.

THIRD: The respondent in writing dated 01/24/2022 has indicated that “In view of the

exposed facts, a report has been requested from the Deputy Directorate of HR of

this Organization, subjecting it to "assessment if it is necessary to publish the name and

last name of the children, or if it could be enough to publish only the initials. I know

It is unknown if any claim related to this matter has been raised in

the rest of Escritos-Circulares, for example in the one related to family problems, and

we request that you inform us if the full name is strictly necessary

or if it is possible to remove it and publish only the initials ».

(…)

In the aforementioned report, we are also informed that they have consulted with the Management of

Informatics of this Organism and consider that the most viable solution, in the

supposed

raised, would be to replace these data with the registration number of the application and with

This would not publish the name and surnames of the children.

FOUNDATIONS OF LAW

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

Yo



control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

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

regulatory provisions issued in its development and, insofar as they are not

contradict, in the alternative, by the general rules on the

administrative procedures."

Law 39/2015, of October 1, on the Common Administrative Procedure of

the Public Administrations, in its article 64 "Agreement of initiation in the

procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with

transfer of how many actions exist in this regard, and the interested parties will be notified,

understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules

regulators of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

b) The facts that motivate the initiation of the procedure, its possible

rating and sanctions that may apply, without prejudice to what

result of the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with

express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that

attribute such competence, indicating the possibility that the presumed

responsible can voluntarily acknowledge their responsibility, with the

effects provided for in article 85.

e) Provisional measures that have been agreed by the body

competent to initiate the sanctioning procedure, without prejudice to those that

may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the

procedure and the deadlines for its exercise, as well as an indication that, in

If you do not make allegations within the stipulated period on the content of the

initiation agreement, this may be considered a resolution proposal

when it contains a precise statement about the responsibility

imputed.

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase



later by drawing up a List of Charges, which must be notified to

the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

The facts denounced specify that the respondent has published in his

intranet the decision granting aid corresponding to the Action Plan

Social, in which the name and surnames appear not only of the employee but also of his

daughter, in addition to the destination and the allocated amount, data that he considers excessive.

III

Article 5, Principles relating to processing, of the GDPR states that:

"1. The personal data will be:

(…)

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

(…)

The documentation in the file offers clear indications that the

claimed violated article 5 of the RGPD, principles related to treatment, by being published on the intranet of the entity the provisional resolution of action aids social, including the details of the claimant's daughter.

IV

Article 5 of the RGPD refers to the general principles for the treatment of data. Section c) refers to the principle of data minimization, indicating that the data must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed".

If we examine the definition we can deduce that only the personal data to be processed, that is, those that are strictly necessary for treatment; that can only be picked up when they are going to be treated and that can only be used for the purpose for which it was collected, but not for any other purpose.

Also Recital 39 states that: "... Personal data must be adequate, pertinent and limited to what is necessary for the purposes for which they are treaties"

The infraction that is attributed to the claimed one is typified in the article 83.5 a) of the RGPD, which considers that the infringement of "the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9" is punishable.

v

The LOPDGDD in its article 71, Violations, states that: "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the

present organic law".

And in its article 72, it considers for prescription purposes, which are: "Infringements

considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

(…)

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(…)

The LOPDGDD in its article 77, Regime applicable to certain categories

responsible or in charge of the treatment, establishes the following:

SAW

"1. The regime established in this article will be applicable to treatments

of which they are responsible or entrusted:

a) The constitutional bodies or those with constitutional relevance and the

institutions of the autonomous communities analogous to them.

b) The jurisdictional bodies.

c) The General Administration of the State, the Administrations of the

autonomous communities and the entities that make up the Local Administration.

d) Public bodies and public law entities linked or

dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment

related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Assemblies

Autonomous Legislative, as well as the political groups of the Corporations

Local.

2. When the managers or managers listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law, 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 on which it reports hierarchically, where appropriate, and those affected who have

the condition of interested party, if any.

3. Without prejudice to what is established in the previous section, the

data protection will also propose the initiation of disciplinary actions

when there is sufficient evidence to do so. In this case, the procedure and

sanctions to apply will be those established in the legislation on disciplinary regime

or sanction that results from application.

Likewise, when the infractions are attributable to authorities and managers,

and the existence of technical reports or recommendations for treatment is proven

that had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and

will order the publication in the Official State or Autonomous Gazette that

correspond.

4. The data protection authority must be informed of the

resolutions that fall in relation to the measures and actions referred to

the previous sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the institutions

analogous of the autonomous communities the actions carried out and the

resolutions issued under this article.

6. When the competent authority is the Spanish Agency for the Protection of

Data, it will publish on its website with due separation the resolutions

referred to the entities of section 1 of this article, with express indication of the

identity of the person in charge or in charge of the treatment that would have committed the

infringement.

When the competence corresponds to a regional authority for the protection of

data will be, in terms of the publicity of these resolutions, to what your

specific regulations".

In this case, the sanctioning procedure brings cause of the presumption

of the fact that the defendant has violated the regulations on the protection of

personal data, principle of data minimization.

According to the available evidence, said conduct

constitutes, on the part of the defendant, the infringement of the provisions of article 5.1.c) of the

GDPR.

It should be noted that the RGPD, without prejudice to the provisions of article 83,

contemplates in its article 77 the possibility of resorting to the sanction of warning

to correct the processing of personal data that is not in accordance with your

forecasts, when those responsible or in charge listed in section 1

committed any of the offenses referred to in articles 72 to 74 of

this organic law.



Likewise, it is contemplated that the resolution issued may establish

measures to be taken to stop the behavior, correct the effects of the

infraction that had been committed and its adequacy to the requirements contemplated in

article 5.1.c) of the RGPD, as well as the provision of supporting means of the

compliance with what is required.

In this same sense, it contemplates article 58 of the RGPD, in its section 2 d)

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 the

this Regulation, where appropriate, in a certain way and within a

specified period…”.

However, the respondent in his response dated 01/24/2022 has indicated

that “In view of the facts exposed, a report has been requested from the Subdirectorate

HR Deputy of this Organization, subjecting it to "assessment if necessary

publish the first and last name of the children, or if it could be enough to publish only

The initials. It is unknown if they have been raised any claim related to

this matter in the rest of Escritos-Circulares, for example in the one related to

family problem, and we request that you inform us if the full name is

strictly necessary or if it is possible to remove it and publish only the initials ».

(…)

In the aforementioned report, we are also informed that they have consulted with the Management of

Informatics of this Organism and consider that the most viable solution, in the

supposed

raised, would be to replace these data with the registration number of the application and with

they would not be published

children".

name and surname of

Therefore, it is considered that the respondent's response was reasonable, not

proceeding to urge the adoption of additional measures, by proposing the adoption of

technical and organizational measures in accordance with the regulations in

matter of data protection to avoid the recurrence of situations such as

which gave rise to this claim, which is the main purpose of the

procedures regarding those entities listed in article 77 of the

LOPDGDD.

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 the GENERAL DIRECTORATE OF TRAFFIC, with NIF

Q2816003D, for an infringement of Article 5.1.f) of the RGPD, typified in Article

83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the GENERAL DIRECTORATE OF

TRAFFIC.

THIRD: 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, the

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es