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□ Procedure No.: PS/00382/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated 03/16/2019 I present

claim before the Spanish Data Protection Agency. The claim is

directed against the CITY COUNCIL OF TRES CANTOS with NIF P2818400J (in

later, the claimed one). The grounds on which the claim is based are:

that the City Council offers "Jornada Lúdica" and the authorization for participation in

said activity is as follows: "I XXXXX with D.N.I. XXXXX authorize my Son/daughter

XXXXXX who is enrolled in the Course: XXXXX at the XXXXX College and has

XXXXXX years, to participate in the activities of the Jornada Lúdica organized by the Con-

Department of Education of the Tres Cantos City Council and allow the publication of

coughs taken during the activity, attendance at the pool at the established time and

transfer to emergency centers, if necessary.", considering that, in the case of

of a written statement, it is necessary to clearly differentiate the part

regarding the data protection of the rest of the declarations.

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

On 05/15/2019, the claim submitted was transferred to the defendant for analysis and communication to the affected party of the decision adopted in this regard. Likewise, it required so that within a month it would send to the determined Agency information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of similar incidents.
- Any other that you consider relevant.

On 10/22/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing filed by the claimant against the respondent.

On 11/12/2019, the respondent responded by stating that he had unified in a statement only the authorization requirements for participation in the fun day activity and establishes the conditions accepted by the person signing the authorization, not contemplating an authorization to the user's letter; that from the City Council there is a contradiction between the proposed authorization model and the regulations in force and that, having examined the articles of the RGPD from this body, they consider none of the minor's rights violated.

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THIRD: On 02/26/2020, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged Violation of articles 7.2 and 13 of the RGPD contemplated in article 83.5.a) and b) of the aforementioned Regulation, considering that the sanction that could correspond would be of WARNING.

FOURTH: 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.

FIFTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: The claimant, dated 03/16/2019, submitted a written document to the Agency Spanish Data Protection, claiming against the system implemented by the AYUN-TREATMENT to request consent to participate in the activities of Jornada Lúdica organized by the Department of Education and "allow the publication of photos taken during the activity, attendance at the pool at the established time and transfer to emergency centers, if necessary.", considering that, in the case of a written statement, it is necessary to clearly differentiate the part Regarding the data protection of the rest of the declarations.

SECOND: In the participant file to take part in the Fun Day

promoted by the Ministry of Education of the respondent appears at the bottom of the aforementioned document the authorization to participate with the following content:

"Me.....with

IDI authorize my

Child who is enrolled in the

Course: at the College and is years old,

to participate in the activities of "Playful Day" organized by the Department of

Education of the City Council of Tres Cantos and allow the publication of photos taken

during the activity, attendance at the pool at the established times and transfer to

emergency centers, if necessary.

SIGNATURE OF THE FATHER / MOTHER OR GUARDIAN:

Three Songs, to

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The legal basis on which the data processing is based comes

regulated in art. 6 of Regulation (EU) 2016/679 of the European Parliament and of the

Council, of April 27, 2016, regarding the protection of natural persons in relation to

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

and which repeals Directive 95/96/CE (General Regulation for the protection of data).

The present instance bases the treatment of the data contained in

it, in the fulfillment of a mission carried out in the public interest or in the exercise of

public powers conferred on this City Council established in case e) of

Article 6 section 1 of the General Data Protection Regulation”

THIRD: The respondent in writing of 10/29/2019 has stated: “That from this City Council, in conclusion, and regarding this case, there is no contradiction between the authorization model proposed by the City Council and the current regulations”.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, 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 solve this procedure.

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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 results of 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 attributes such competence, indicating the possibility that the alleged perpetrator can voluntarily acknowledge its responsibility, with the effects provided for in the article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those may adopt during the same in accordance with article 56.

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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 the event not to carry out allegations within the stipulated period on the content of the agreement of initiation, it may be considered a resolution proposal when it contains a precise statement about the imputed responsibility.

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 procedure initiated.

III

The claimed facts show the violation by the respondent of the indicated in articles 7.2 and 13 of the RGPD; First, when requesting the consent to the parents of minors for their children to participate in a Recreational Day and later to be able to publish photos, attendance at the pool and transfer to emergencies, etc., and, secondly, by not reporting the planned treatment of in accordance with the provisions of article 13 of the RGPD.

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will 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;

(...)

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 6 of the RGPD, Legality of the treatment, establishes that:

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes;

(...)"

Article 7 of the RGPD, Conditions for consent, establishes that:

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"1. When the treatment is based on the consent of the interested party, the responsible must be able to demonstrate that he consented to the treatment of his personal information.

2. If the data subject's consent is given in the context of a statement writing that also refers to other matters, the request for consent will be presented in such a way as to be clearly distinguishable from other matters, in a manner intelligible and easily accessible and using clear and simple language. It will not be binding any part of the declaration that constitutes an infringement of these Regulations.

3. The interested party shall have the right to withdraw their consent at any moment. The withdrawal of consent will not affect the legality of the treatment based on consent prior to withdrawal. Before giving your consent, the Interested party will be informed of this. It will be as easy to withdraw consent as it is to give it.

4. In assessing whether consent has been freely given, account will be taken to the greatest extent possible whether, among other things, the execution of a contract, including the provision of a service, is subject to the consent of the processing of personal data that is not necessary for the execution of said contract".

On the other hand, article 13 of the RGPD determines the information that must be be provided to the interested party at the time of collecting their data, establishing the
Next:

"Article 13. Information that must be provided when personal data is

obtain from the interested party.

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 basis legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your case;

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

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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 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 related 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 data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw the

consent at any time, without affecting the legality of the

treatment based on 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 obligated

do to provide personal data and is informed of the possible

consequences of not providing such data;

f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases,

significant information about the applied logic, as well as the importance and

anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of data

personal data for a purpose other than that for which they were collected, you will provide

to the data subject, prior to such further processing, information about that other

purpose and any additional information relevant to the meaning of paragraph 2.

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

IV

In the present case, the respondent states that he has unified into a single declaration of the authorization requirements for participation in the activity day playful establishing the conditions accepted by the person signing the authorization, not contemplating an authorization to the user's letter and, that from the City Council No contradiction is observed between the proposed authorization model and the regulations in force and that having examined the articles of the RGPD, from the aforementioned body of local government, none of the minor's rights are considered violated.

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In the open procedure, the defendant is charged with the violation of article 7 of the RGPD when evidencing the infringement of the regulations on data protection in what regarding obtaining consent in the document provided by the claimant to participate in the activities of the Leisure Day organized by the Department of Education of the Local Entity and in which, in addition to requesting the consent for the aforementioned day, the same is intended for other activities such as the assistance to the pool, the transfer to emergency centers and the publication of photos. The provided text does not distinguish or discriminate about the authorization to participate in each of the activities to be carried out showing the obsolescence of the clause included to obtain consent.

And while it is true that within the consent to participate in the Conference

Lúdica we could tacitly understand including the authorization to participate in the pool activities as well as the possible transfer to the emergency room as a consequence participation in the aforementioned activities, is no less true than for the publication of photographs of the participating minors, a new consent of the parents or guardians because it is a different purpose and that could be accredited by including in the aforementioned form document a specific box whose marking authorizes the person responsible for the file to use of the personal data of the participants for said purpose, being able to withdraw such consent at any time.

It should be noted that the consent given must be a specific consent; that is to say, a consent that is given in general without determining the specific purpose for which they will be treated the data that is intended to be collected.

Article 6.1.a) of the RGPD indicates it when the consent is granted by the character of legitimizing basis of the treatment if it has been granted for one or several purposes specific and connecting it with article 7.2 of the RGPD, it is established that for the consent is valid and specific must be intelligible, so that it is clearly determine what data is going to be processed, what will be the treatment operation to be carried out and what is the purpose for which it is intended to perform that operation with that data, etc.

In this way, a consent that is given for all the legitimate purposes that the person in charge intends to achieve, but it must be done reference to those operations that are reasonable and necessary in relation to the specifically intended purposes.

Therefore, the City Council violates the RGPD in the collection of consent parents of minors so that their children can participate in a Fun Day

since, in addition to requesting consent for it and in which we could understand including participation in the pool and transfer to the emergency room, intends to apply for another purpose: the publication of photos and, furthermore, not adequately informing about the planned treatment.

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Nor is the requirement that “consent must be given through a clear affirmative act that reflects a manifestation of free will, specific, informed, and unequivocal of the interested party to accept the processing of data of a personal nature that concern him”, it being understood that “inaction should not constitute consent” (Recital 32).

Thus, the defendant violated article 7.2 of the RGPD by obtaining the

Consent for all activities in general must be collected for each

one of them in the participant file, so it is considered to be inadequate not complying with the requirements of the RGPD.

Secondly, it should be noted that for a correct privacy policy

It is necessary to take into account the provisions of article 13 of the RGPD.

In the present case, the respondent makes no reference to compliance

of the duty of information established in the aforementioned article that contemplates the information

that must be provided in the collection of data when it is carried out

directly from the interested party so that he is able to determine in advance

what is the scope and consequences of data processing,

must determine the identity of the person in charge, contact information of the

responsible and, where appropriate, of the data protection delegate, purposes of treatment to that the data will be destined, recipients of the data, rights that the interested party can exercise before the person in charge, etc.

v

Article 83.5 a) and b) 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” and “the rights of the interested parties according to articles 12 to 22”, is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation.

On the other hand, the LOPDGDD in its article 71, Violations, states that:

“The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

The LOPDGDD in its article 72 indicates for prescription purposes: "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

entail a substantial violation of the articles mentioned therein and, in particular,

ticular, the following:

(...)

c) Failure to comply with the requirements of article 7 of the Regulation

(EU) 2016/679 for the validity of consent.

(...)

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h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.

(...)"

SAW

However, the LOPDGDD in its article 77,

Regime applicable to

certain categories of controllers or processors, establishes the

Next:

"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

gain of which it depends hierarchically, in his case, and to those affected who had the

Interested party status, 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.

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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 paragraphs.

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 protection authority of data will be, in terms of the publicity of these resolutions, to what is available its specific regulations.

In the case examined, it has been proven that the person claimed in the collection of consent from parents of minors for their children to participate in a Recreational Day organized by the Department of Education of the claimed allowing, in addition, the publication of photos if necessary and, without informing adequately on the intended processing of personal data, incurs in violation of the regulations on data protection, articles 7.2 and 13 of the GDPR.

In accordance with the evidence available to said conduct constitutes by the claimed the infringement of the provisions of articles 7.2 and 13

of the GDPR.

It should be noted that the RGD, 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.

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As indicated previously, it has been proven that the defendant does not comply with the data protection regulations in relation to obtaining the consent included in the participant file in the recreational activities organized by the Department of Education by pretending not to consent but rather a kind of general consent for all those purposes intended, as well as in relation to its poor privacy policy not having adopted pertinent and necessary measures in accordance with what is indicated in them articles 7.2 and 13 of the RGD.

It is necessary to point out that if these deficiencies are not corrected by adopting the appropriate measures as indicated in articles 7.2 and 13 of the RGD or reiterate the behavior revealed in the claim and that is the cause of the this procedure, as well as not immediately informing this AEPD of the measures adopted could give rise to the exercise of possible actions before the responsible for the treatment in order to apply effectively the measures

appropriate to guarantee and not compromise the confidentiality of the data of personal character and the right to privacy of individuals.

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 TRES CANTOS CITY COUNCIL, with NIF P2818400J, for an infringement of Article 6 of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

SECOND: REQUEST the CITY COUNCIL OF TRES CANTOS, with NIF P2818400J, so that within a month from the notification of this resolution, proves: the adoption of the necessary and pertinent measures in accordance with the regulations regarding the protection of personal data in order to prevent incidents such as those that have given rise to the claim correcting the effects of the infraction, adapting the participant file to take part in the Play Day promoted by the Ministry of Education to the mentioned measures in such a way that a box is included that allows the parents of the minors oppose the publication of photographs of minors participating in the same and adapt to the requirements contemplated in articles 7.2 and 13 of the GDPR.

THIRD: NOTIFY this resolution to the CITY COUNCIL OF TRES CANTOS, with NIF P2818400J.

FOURTH

in accordance with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE

this resolution to the Ombudsman, of

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

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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.

Sea Spain Marti

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