

□ File No.: PS/00159/2021

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., B.B.B., C.C.C., D.D.D., E.E.E., F.F.F., G.G.G., H.H.H., I.I.I., J.J.J.,
L.L.L., M.M.M., N.N.N. and O.O.O., and on their behalf and representation P.P.P., lawyer
of the ICAS, with collegiate number ***NUMBER.1 (hereinafter, the claimant party),

On November 18, 2020, he filed a claim with the Spanish Agency

Data Protection. The claim is directed against CITY COUNCIL OF

MARCHENA with NIF P4106000E (hereinafter, TOWN HALL). The reasons in

on which the claim is based are as follows:

On 08/20/2020, it was published in the BOP nº 193 of Seville, Mayor's Resolution

on the provisional system of organization of Local Police services of

Marchene. Said resolution publishes the name and surnames, as well as the indicative

associated with each of the agents of the entire staff, as well as the groups of

work of which each agent will be part.

Literally the resolution states:

“That in relation to the express power to make a decision that to the best of knowledge and understanding

of the undersigned considers it more suitable for the formation of the groups that are

determined in the quadrant, we proceed to the configuration of the new groups,

leaving these as follows:

a) Working group number 1 will be made up of the following Police officers

Venue: ***GROUP.1.

b) Working group number 2 will be made up of the following Police officers

Venue: ***GROUP.2.

c) Working group number 3 will be made up of the following Police officers

Venue: ***GROUP.3.

d) Working group number 4 will be made up of the following Police officers

Venue: ***GROUP.4.

e) Working group number 5 will be made up of the following Police officers

Venue: ***GROUP.5.

Likewise, the annual quadrant of services is published, indicating in each group if the service is provided in the morning, afternoon or evening, thus making public when each agent is serving personally.

Along with the claim, a copy of BOP No. 193 of Seville is provided.

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 12/14/2020 said claim was transferred to the CITY COUNCIL, to proceed with its analysis and inform this Agency in the

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period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

The transfer was sent on 12/14/2020 through the Notification Service

Electronic and Electronic Address Enabled, being notified on 12/14/2020.

On 02/03/2021, this Agency received a written response indicating:

-The published resolution establishes a system for organizing and planning

Local Police services, being dictated by the Mayor's Office in the exercise of its functions, for the satisfaction of legitimate interests and public interest, according to provides the art. 21.1i) of Law 7/1985, of April 2, regulating the Bases of the Local Regime, being therefore lawful the treatment by application of article 6.1 of the GDPR.

This resolution disseminates issues of interest to local police officers, such as as the annual quadrant of services and the days that they correspond to work, being therefore a lawful treatment as it is useful information for them and for the service organization.

-The publication of the resolution of the Mayor's Office is also carried out within the scope of the Law 19/2013, of December 9, on transparency, access to public information and good government, and the general principles of active advertising, being applicable the criterion to be taken into consideration of article 15.2, which provides:

"In general, and unless in the specific case prevails the protection of personal data or other constitutionally protected rights on the interest public in the disclosure that prevents it, access will be granted to information that contains merely identifying data related to the organization, public functioning or activity of the body".

The identification data of the local police officers contained in the resolution are legitimized in accordance with the aforementioned legal precept, because the public interest prevails in the disclosure of information that is of interest to them and to the police service local, and therefore does not imply any risk situation for the claimants who make your fundamental right to data protection prevail.

-It is not true that, as the complainants say, that the shifts have been published agents' specific work schedules (morning, afternoon or night), this quadrant only sets the work day, but not the shift. Furthermore, the resolution does not contain the

domiciles of officials, so their residence cannot be known.

-No sensitive data has been published, such as ideology, union affiliation, religion, beliefs, racial origin..., or data for police purposes, or derived from gender violence.

-Given that the claimants do not agree with the published resolution, from the City Council is going to proceed to request the Ministry of the Presidency, Public and Interior Administration of the Junta de Andalucía, the reassignment of numbers of professional identification of the Agents of the Local Police of Marchena, in order to respond to your request.

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THIRD: On February 18, 2021, the application was admitted for processing.

claim filed by the claimant.

FOURTH: On December 3, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the CITY COUNCIL, for the alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, and Article 32 of the RGPD, typified in article 83.4 of the RGPD.

FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

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: It is accredited that in the Official Gazette of the Province of Seville number 193, dated 08/20/2020, Mayor's Resolution on the system was published provisional organization of local police services in Marchena. Bliss resolution publishes the name and surnames, as well as the police code associated with each of the agents of the entire staff, as well as the work groups of which each agent will be part.

SECOND: It is stated, according to the statement of the CITY COUNCIL itself, that since the complaining party does not agree with the published resolution, it will proceed to request the Ministry of the Presidency, Public Administration and Interior of the Board of Andalusia, the reassignment of professional identification numbers of Agents of the Marchena Local Police, in order to attend to your request.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

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The Spanish Agency for Data Protection is competent to resolve this process.

The CITY COUNCIL is charged with the commission of an infraction for violation of the Article 5.1.f) of the RGPD and Article 32 of the RGPD.

II

Article 5.1.f) RGPD states that:

"1. The personal data will be:

(...)

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

The aforementioned infringement of article 5.1.f) of the RGPD could lead to the commission of the offenses typified in article 83.5 of the RGPD that under the heading "Conditions rules for the imposition of administrative fines" provides:

"Infractions of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as a maximum of the overall annual total turnover of the financial year

above, opting for the highest amount:

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

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that:

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

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

For the purposes of the statute of limitations, article 72 "Infringements considered very serious" of the LOPDGDD indicates:

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

2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles

mentioned therein and, in particular, the following:

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

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It has been shown that the personal data of the members of the staff

of the local police of the TOWN HALL have been accessible to third parties, due to

the publication in the BOP of the Mayor's Resolution, in which, together with the

The professional identification of each police officer also includes their name and surnames, information

the latter that should not have been published, taking into account what is established

in article 13 of Decree 250/2007, of September 25, which establishes the

uniformity of the Andalusian Local Police:

“Article 13 Professional accreditation document

1. All personnel belonging to the Local Police Forces, for their personal identification, will be provided with a professional accreditation document issued by the mayor's office, according to the official model, whose design and technical characteristics will be determined by Order of the Ministry of the Interior, which will include the name of the municipality, name and surname of the agent, category, number of professional identification and National Identity Document number.

2. The identification number that will appear on the accreditation document professional will be assigned by the Ministry of the Interior.

3. The professional accreditation document must be carried when you are on service and will have to be displayed when necessary for the service.

4. Personnel who are out of service may only use the identification document professional accreditation, exceptionally, when you have to act in defense of the legality or citizen security.

5. Personnel who are in the administrative situation of second activity will be provided with a professional accreditation document in which it appears, in addition to of what is stated in section 1 of this article, which is in said situation administrative.

6. The municipal security personnel, in the exercise of the functions attributed to the members of the Local Police Forces, must be identified by means of a accreditation document of their status as municipal security guard, whose design and technical characteristics will be determined by Order of the Ministry of Government, which will contain the name of the municipality, the official, number of identification as an agent and number of the National Identity Document”.

Therefore, the infringement of article 5.1.f) of the RGPD is accredited.

Article 83 section 7 of the RGPD, provides the following:

Without prejudice to the corrective powers of the control authorities under of Article 58(2), each Member State may lay down rules on whether can, and to what extent, impose administrative fines on authorities and organizations public authorities established in that Member State.”

Likewise, article 77 “Regime applicable to certain categories of responsible or in charge of the treatment” of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

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c) The General Administration of the State, the Administrations of the communities autonomous and the entities that make up the Local Administration.

(...)

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this law organic, 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.

(...)

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article.

Article 32 "Security of treatment" of the RGPD establishes:

IV

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which in your case includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore availability and access to data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and evaluation of the effectiveness technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element

to demonstrate compliance with the requirements established in section 1 of the present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the person in charge or the person in charge and has access to personal data can only process said data following instructions of the person in charge, unless it is obliged to do so by virtue of the Right of the Union or the Member States.

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The violation of article 32 of the RGPD could lead to the commission of the infractions typified in article 83.4 of the RGPD that under the heading "General conditions for the imposition of administrative fines" provides:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

For the purposes of the limitation period, article 73 “Infringements considered serious”

of the LOPDGDD indicates:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679,

considered serious and will prescribe after two years the infractions that suppose a

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

following:

(...)

f) The lack of adoption of those technical and organizational measures that

are appropriate to guarantee a level of security appropriate to the risk

of the treatment, in the terms required by article 32.1 of the Regulation

(EU) 2016/679.

(...)

The fact of having jointly published the names and surnames of the policemen,

attached to your professional identification number indicates that the CITY COUNCIL does not

had the appropriate technical and organizational measures. Also, by posting

the work quadrants and work groups, each police officer is associated with the

provision of its services at a given time, which entails a risk

additional staff. For all these reasons, the infringement of the aforementioned article is considered to have been committed.

32 of the GDPR.

v

Article 83 section 7 of the RGPD, provides the following:

Without prejudice to the corrective powers of the control authorities under

of Article 58(2), each Member State may lay down rules on whether

can, and to what extent, impose administrative fines on authorities and organizations

public authorities established in that Member State.”

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Likewise, article 77 “Regime applicable to certain categories of responsible or in charge of the treatment” of the LOPDGDD provides the following:

"1. The regime established in this article will be applicable to the treatment of who are responsible or in charge:

(...)

c) The General Administration of the State, the Administrations of the autonomous communities and the entities that make up the Local Administration.

(...)

2. When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this law organic, 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.

(...)

5. They will be communicated to the Ombudsman or, where appropriate, to similar institutions of the autonomous communities the actions carried out and the resolutions issued under this article. (...)"

SAW

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 MARCHENA CITY COUNCIL, with NIF P4106000E, by an infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

IMPOSE the MARCHENA CITY COUNCIL, with NIF P4106000E, for a infringement of Article 32 of the RGPD, typified in article 83.4 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to the MARCHENA CITY COUNCIL.

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, this Resolution will be made public once it has been notified to the interested parties.

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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-](https://sedeagpd.gob.es/sede-electronica-web/)

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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