

□ File No.: PS/00182/2021

## 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 CATALONIA (hereinafter, the claimant) dated January 14, 2021 filed a claim with the Agency Spanish Data Protection.

The claim is directed against A.A.A. with NIF e (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 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/00720/2021, transfer of said claim to the claimed party on February 22, 2021, to proceed with its analysis and report to this Agency within a month, of the actions carried out carried out to adapt to the requirements set forth in the data protection regulations. However, no response to the aforementioned request has been received.

THIRD: On July 5, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 13 of the RGPD, typified in article

83.5 of the GDPR.

FOURTH: Once the aforementioned initial agreement was notified, on August 16, 2021, the

The defendant filed a pleadings brief in which, in summary, he stated that the

Data collected is done as part of customer support services in the

carrying out their particular procedures, but in no case is any

deferred action, but simply take the data to move them to

processing platforms as a courtesy formula, given the inability of the

customers from doing that activity themselves.

It alleges that given the complexity of inserting information of a personal nature

the clients; who required assistance in our trade, the person who provided

assistance to customers recorded their data on a physical medium, with the aim of

corroborate its correctness; that is, as they are foreigners, their data

characters are found in characters that differ from the continental alphabet, so

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that must be transferred to these characters, which requires an intellectual exercise

of translation and verification of the correctness of the data.

It concludes by saying that the data of its clients have not been used for a

purpose other than assistance in carrying out particular procedures requested

for them.

FIFTH: On September 2, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous investigative actions, E/00720/2021, as well as the documents

provided by the claimant.

SIXTH: On September 22, 2021, a resolution proposal was formulated, proposing to direct a warning against the defendant, for the violation of article 13 of the RGD, typified in article 83.5 of the RGD.

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: It is reported that the defendant requires his clients to provide their personal data to reserve an appointment for the processing of documentation of the National Police, without providing them with the information required in accordance with the article 13 of the RGD.

SECOND: The respondent alleges that the data collected is a mere formula of courtesy, given the inability of clients to request by themselves, prior appointment for the processing of documentation from the National Police.

Likewise, the respondent notes that the personal data of its clients have not been been used for a purpose other than assisting in the performance of particular steps requested by them.

#### FOUNDATIONS OF LAW

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

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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;”

Therefore, in accordance with these definitions, the collection of personal data constitutes data processing, for which the data controller

Treatment must comply with the provisions of article 13 of the RGD.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

III

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

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“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;

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f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data

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

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

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

"1. 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

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:

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b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;"

(...)

"d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in a specified manner and within a specified period;"

"i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;"

Article 83.5.b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

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

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

"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:

a)

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."

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.

The respondent has alleged that the data collected is taken to transfer them to the police processing platforms as a courtesy formula, given the inability of customers to carry out that activity by themselves.

It is also indicated that, given the complexity of inserting the data, these are they wrote down in a physical support, since when dealing with foreign people, their data characters have characters that differ from the continental alphabet, so must be transferred to these characters, which requires an intellectual exercise of transfer and verification of data.

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In spite of everything, the defendant has not been able to prove that when taking the data of his clients inform them of the aspects indicated in article 13 of the RGPD, such as the identity and contact details of the data controller, the purposes of the treatment to which the personal data is intended, the legal basis of the treatment, and so on.

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 \*\*\*NIF.1, for an infraction of article 13 of the

RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: REQUIRE A.A.A., with NIF \*\*\*NIF.1, under the provisions of the article 58.2 d) of the RGPD, which adopts the necessary measures to update its "Privacy Policy" to current regulations on data protection

-Regulation (EU) 2016/679 (RGPD)-, adapting the information offered to the requirements contemplated in article 13 of the RGPD, and must provide the users with users, prior to the collection of their personal data, all the information required in the aforementioned precept, for which said company must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment, as well as what is indicated in article 5 of the RGPD in relation to the purpose of the treatment and term of conservation of the data.

Said measures must be adopted within a period of one month computed from the date in which this sanctioning resolution is notified, and the means must be provided proof of compliance.

THIRD: NOTIFY this resolution to A.A.A.

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

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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/](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.

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