

□ Procedure No.: PS/00380/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on March 14, 2019 filed

claim before the Spanish Data Protection Agency against the CITY COUNCIL

DE SEVILLA, with NIF P4109100J (hereinafter, the claimed).

The reasons on which the claim is based are that on the website of the aforementioned City Council

there is no information or legal notice as established by Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights.

Likewise, it is not indicated who is the Data Protection Delegate of the

claimed town hall, to ask about the transfer of the claim file

patrimonial that the claimant has presented in the Municipal Management of

Town planning.

SECOND: In view of the facts denounced, the present

claim, which states to this Agency on June 24, 2019 that it still does not have

Data Protection Officer but who wants to appoint one, although they are still in the

drafting of the specifications for hiring.

All this despite the mandatory appointment of a Data Protection Officer

according to article 37 of Regulation (EU) 2016/679 of the European Parliament and of the Council

of April 27, 2016 (hereinafter RGPD) published on May 24, 2016,

directly applicable and mandatory to all Member States of the European Union

from May 25, 2018.

THIRD: On December 27, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 37 of the RGPD, typified in Article 83.4 of the RGPD.

FOURTH: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure Common of Public Administrations.

TO: Not having made allegations or presented evidence within the given period,
WHO

proceeds to issue this resolution taking into account the following:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/6

FACTS

FIRST: On the website of the aforementioned City Council there is no information or legal notice as established by Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights.

Likewise, it is not indicated who is the Data Protection Delegate of the claimed town hall, to ask about the transfer of the claim file patrimonial that the claimant has presented in the Municipal Management of Town planning.

SECOND: The respondent states in response to the transfer sent by this Agency does not yet have a Data Protection Officer but wants to appoint one, although they are still in the drafting of the specifications for their hiring.

All this despite the mandatory appointment of a Data Protection Officer according to article 37 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (hereinafter RGPD) published on May 24, 2016, directly applicable and mandatory to all Member States of the European Union from May 25, 2018.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to what is established in articles 47 and 48 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

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 you with all the information listed 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;
- 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;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/6

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 decision to adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or 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 information, the following information necessary to guarantee fair data processing 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 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 the portability of the data;
- 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 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 the personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 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 about that other purpose and any additional relevant information pursuant to 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.

Public Administrations act as data controllers.

data of a personal nature and, on some occasions, they exercise functions of those in charge of treatment, for what corresponds to them, following the principle of responsibility proactively, meet the obligations that the RGPD details, among which is included, the obligation to appoint a data protection delegate and notify this AEPD

The obligation is imposed by article 37 of the RGPD, which indicates:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/6

"1. The person in charge and the person in charge of the treatment will designate a protection delegate

of data provided that:

a) the treatment is carried out by a public authority or body, except those courts acting in the exercise of their judicial function;"

Article 37.3 and 4 of the RGPD indicates about the designation of the DPD "When the

The person responsible or the person in charge of the treatment is a public authority or body, may appoint a single data protection delegate for several of these authorities or agencies, taking into account their organizational structure and size.

4. In cases other than those referred to in section 1, the person in charge or the in charge of the treatment or the associations and other organisms that represent categories of managers or managers may designate a delegate for the protection of data or must designate it if required by the Law of the Union or of the States members. The data protection delegate may act on behalf of these associations and other organizations that represent those responsible or in charge."

The LOPDGDD determines in its article 34.1 and 3: "Appointment of a delegate of Data Protection"

1. "Those responsible and in charge of processing must designate a delegate of data protection in the cases provided for in article 37.1 of the Regulation (EU)

2016/679

3. Those responsible and in charge of the treatment will communicate within a period of ten days to the Spanish Agency for Data Protection or, where appropriate, to the authorities regional authorities for data protection, the appointments, appointments and dismissals of the data protection delegates both in the cases in which they are obliged to his appointment as in the case in which it is voluntary."

In this sense, article 77.1 c) and 77.2, 77.4 and 77.5 of the LOPDGDD, indicates:

1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

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 organic law, the

competent data protection authority will issue a resolution sanctioning the

themselves with warning. The resolution will also establish the appropriate measures

adopt to stop the behavior or correct the effects of the infraction that had occurred.

task.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which

depends hierarchically, where appropriate, and to those affected who had the status of interested party,

in your case."

4. The data protection authority must be notified of the resolutions that

fall in relation to the measures and actions referred to in the preceding sections.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

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

the autonomous communities the actions carried out and the resolutions issued under the

this article."

III

In the present case, it is denounced that on the website of the aforementioned City Council there is no

there is no information or legal notice as established by Organic Law 3/2018, of December 5,

Protection of Personal Data and guarantee of digital rights, nor is it

indicates who is the Data Protection Delegate of the claimed town hall.

After the corresponding transfer of this claim sent by this

Agency to said City Council, the reported situation is partially resolved,

appointing Data Protection Delegate, in accordance with article 37 of the

RGPD, but the breach of article 13 of the RGPD that regulates the information continues

that must be provided to the interested party at the time of collecting their data.

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 powers

corrective measures in the event of a violation of the provisions of the RGPD.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following corrective powers

listed below:

(...)

b) sanction any person responsible or in charge of the treatment with a warning

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 accordance with

a specified manner and within a specified time;”

“i) impose an administrative fine under article 83, in addition to or instead of

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

section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of

of a company, of an amount equivalent to a maximum of 4% of the turnover

global annual total of the previous financial year, choosing the highest amount:

b) 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 minor 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 sections 4 and 5 of article 83 of the

Regulation (EU) 2016/679 and, in particular, the following:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/6

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

data subject 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, it is taken into account that the respondent collects personal data from

users who fill in the form included on its website without providing them,

prior to its collection, all information on data protection

provided for in article 13 of the aforementioned 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 SEVILLE CITY COUNCIL, with NIF P4109100J, for a

infringement of article 13 of the RGPD, in relation to article 74 a) of the LOPDGDD,

typified in the article in accordance with article 83.5 b) of the RGPD, a sanction of

warning

SECOND: REQUEST SEVILLE CITY COUNCIL, with NIF P4109100J, to

in accordance with article 58.2.b) of the RGPD so that within one month from the notification of this resolution, certify:

-The adoption of the necessary measures to update its "Privacy Policy" to the current regulations on the protection of personal data, -Regulation (EU) 2016/679 (RGPD)-, adapting to the requirements contemplated in article 13 of the RGPD, on the information that must be provided to the interested party at the time of the collection of your data, as indicated in the Basis of Law II.

THIRD: COMMUNICATE this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

FOURTH: NOTIFY this resolution to SEVILLE CITY COUNCIL, with NIF P4109100J.

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 (article 48.2 of the LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, the interested parties may optionally file an appeal for reconsideration before

the Director of the Spanish Agency for Data Protection within a period of one month from

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es