Procedure No.: PS/00012/2019

938-051119

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. and 6 other claimants listed in ANNEX 1 (hereinafter, the

claimants) dated 07/24/2018 filed a claim with the Spanish Agency for

Data Protection against the CITY COUNCIL OF VIGO for exhibiting at its headquarters

electronically, in free access to any person, minutes of the Local Government Board of

XX/XX/XXXX and YY/YY/YYYY with agreements with personal data.

In the publications they refer to the section of "indefinite staff but not

fixed" to judicial sentences pending to be included in public employment offers, with their

names and surnames.

It also warns that the Administration did not inform them of the published file, and

that on 04/12/2018, they requested access to the documentation of the files

related, being denied indicating that it falls within the scope of character data

staff, specifying that they filed an appeal for reconsideration and it was dismissed, considering

that “they have not been given access to said files to guarantee the protection of

data".

Provides:

1) Copy of the minutes of the Local Government Board of YY/YY/YYYY (pages 5 to 75 of your

complaint that has 242 in electronic pdf file). It includes, among others, the

following personal data:

-identified as 9 (155) - Proposal of the Local Government Board, rejecting

appeal for reversal filed against the agreement of the local government board of

12/28/2007 approving the 2017 Public Employment Offer, exte ZZZZZ/220.

After exposing the background, the regularization of all labor personnel is mentioned.

indefinite contemplating in the job offers of each year the places necessary to

effect. The person pending inclusion in said job offers is mentioned, for

name and surnames and Center in which the creation of the square is proposed.

It refers to the publication in the BOP of the places offered (without personal data).

The people who file the reversal appeal are mentioned, 8 people

identified with names and surnames, values the exposed allegations and DISMISSES the

claims of the appellants, indicating that the appellants be notified, among which

claimants are listed.

- identified as 10 (156) the same as the previous one, referring to file RRRRR/220 (47

of 242) similar to the previous one

two)

Minutes of the Local Government meeting of XX/XX/XXXX (76 et seq.) in which in

In relation to the public employment offer 2017, exte TTTTT/220, the name and surnames appear

of employees who left in 2016 with name and surname, category, work center

job and date, including police, cause: showing absolute disability or voluntary retirement

or forced and a list of non-permanent indefinite personnel, folio 125- which coincides with that of the record

identified as 9 (155) -with court rulings pending inclusion in the OEPS with

breakdown by centers, categories, and names and surnames, including those of the claimants.

It proposes the agreement to approve the OEP for 2017 to be published in the BOP that

goes with vacant positions.

3)

Copy of written request to the claimed copy of the documentation of the

SSSSS and VVVVV/220 file under article 53 of Law 39/2015 and copy of the

resolution of the City Council, and copy of the appeal for reversal, dismissed on 07/09/2018

(folio 220 of 242).

SECOND: In view of the facts and the documents provided by the claimant, at

claimed, a copy of the claim is sent to them through the AEPD, so that they can send:

Copy of the communications and of the adopted decision that has been sent to the

1.

claimant regarding the transfer of this claim.

Report on the causes that have motivated the incidence that has originated the

two.

claim.

Report on the measures adopted to prevent incidents from occurring

3.

Similar.

On 9/11/2018, the respondent states:

a) The claimants are part of the Vigo City Council staff for

a sentence that classified them as indefinite labor personnel and forced the

administration to regularize the situation. When preparing and managing the job offer

public of the city council, is related to all the personnel included in this situation and the

need to enforce its regularization by court order. In said process

the claimants made allegations requesting a process of consolidation of

job.

b) The request for access to public information is not related to the protection of

data.

c) Recognizes that the minutes of the Local Government Boards are published at the headquarters

the City Council, and on the justification of the public access exhibition

to the content of the resolutions included in the Local Government Boards, states

that the claimants already provide their services for the City Council, and the post of

work and its category are part of the service relationship they maintain as

employees, they are not specially protected data, the name and surnames are

necessary for the publicity and notification of the agreement.

d) The treatment was adapted to the determined, explicit and legitimate purpose such as the

publication of an OEP and the allegations thereto. The Law on local matters provides for the

publicity of the minutes, specifically, articles 70.2 of the LBRL and 229 of the ROF of the

ROF indicate that the agreements recorded in the minutes of the Local Government Board

will be published and notified in accordance with the law. The non-public nature of the session with

its development and debate does not imply in any way, an obstacle in the dissemination of its

agreements, prevailing the right of citizens to information collected in the

article 105 of the CE.

e) The Transparency Law reinforces this right by implementing active publicity as

proactive way of the administration to ensure transparency and dissemination to

increase participation in public affairs.

f) The data was published in accordance with the provisions of article 6.2 of the LOPD, in the

proper exercise of its functions.

g) The exposition of the data in the minutes was what allowed the presentation of allegations

by how many people wanted it.

h) In the management of the regularization of the sentences of indefinite fixed through the

public employment offer not only affects them, it can affect third parties with interests

legitimate that could be affected, refers as a point of support article 45 of

Law 39/2015 LPCAP.

i) Understand that the RGPD was not applicable to the data that was exposed before its

entry into force.

j) Provide a copy of the response sent to the claimant with the same content as the

statements made before this AEPD and acknowledgments of receipt.

THIRD: On 05/27/2019, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE of WARNING to the

CITY COUNCIL OF VIGO, with NIF P3605700H, for the alleged infringement of the

article 5.1.f) of the RGPD, in accordance with article 83.5 a) of the RGPD.”

FOURTH: On 06/12/2019, allegations are received in which it reiterates that the guarantee

transparency and publicity of the competitive bidding process must prevail

on the principle of data protection, as determined in the Cabinet report

Legal of the AEPD number 385/2015 that deals with a consultation of opposition to the

publication in official data bulletins in selective processes.

FIFTH: The content of the report of the Legal Office of the

AEPD number 358/2015, transcribed:

N/REF: 359710/2015

Examined your request for a report, sent to this Legal Office, regarding the

query raised by the SUB-DIRECTORATE GENERAL OF PLANNING OF

HUMAN RESOURCES AND REMUNERATION OF THE MINISTRY OF FINANCE AND

PUBLIC ADMINISTRATIONS, please inform you of the following:

It is consulted if, in accordance with the provisions of Organic Law 15/1999, of 13

December, Protection of Personal Data, you can exercise the right to

opposition recognized in article 17 of said rule to the publication of the name and

surnames of candidates in the development of a selective process for admission to a Corps

of the Public Administration, based on the fact that participation in it can give

result in retaliation by the applicants current employer.

The question raised has been studied in a report by this Agency dated 21

July 2012, whose conclusions may be applicable to this case, therefore

the same is transcribed below:

“This consultation raises what is the criterion of this Agency on the

request by a candidate for a selective procedure that his name be excluded from

the lists of admitted and excluded, and assessment of merits of said procedure,

published in the electronic headquarters of the consulting body.

The query refers to personal data within the framework of a

“public employment procedure”. Not specific, therefore, if it involves procedures

that affect civil servants or labor personnel, nor does it determine if it is being questioned about

procedures for access to public employment or internal promotion. In any case, yes

It is indicated that “the information includes lists of admitted, excluded and evaluations of

merits with identification of the candidates”. We understand, therefore, that in the lists of

admitted, excluded and evaluation of merits appear the names and surnames of the

candidates, not knowing if other information appears.

Thus, we consider, first of all, that the lists referred to in the query

undoubtedly include personal data, as they refer to the name and

surnames, it could be that the DNI or the personal registration number, as well as the

circumstance of participating in a selective public employment procedure, being or not

admitted, as well as the results of the different phases of the selection process, including the

evaluation of the merits of the contest phase, if any. They will presumably refer

also to the definitive results of the selective procedure. It is, therefore, data

that fall within the definition of personal data enshrined in art. 3.a)

LOPD as "any information concerning natural persons identified or

identifiable".

It is considered whether it is possible to attend to the right of opposition of the affected party. The right to

opposition results from article 6.4 LOPD that establishes: "In cases in which it is not

The consent of the affected party is necessary for the processing of personal data.

personal, and provided that a law does not provide otherwise, he may oppose his

treatment when there are well-founded and legitimate reasons related to a specific situation

staff. In such a case, the person responsible for the file will exclude the data

relating to the affected party".

Article 6.4 LOPD appears developed by articles 34 to 36 RDLOPD. The art.

34 RDLOPD defines the right of opposition in the following terms:

"The right of opposition is the right of the affected party not to carry out the treatment

of your personal data or ceases in the same in the following cases:

a) When your consent is not necessary for the treatment, as a consequence of

the concurrence of a legitimate and well-founded reason, referring to their specific personal situation,

that justifies it, provided that a law does not provide otherwise.

b) In the case of files whose purpose is to carry out activities of

advertising and commercial prospecting, in the terms provided in article 51 of this

Regulation, whatever the company responsible for its creation.

c) When the purpose of the treatment is to adopt a decision regarding the affected party

and based solely on an automated processing of your personal data, in

the terms provided for in article 36 of this Regulation".

Considering that sections b) and c) of this article are totally foreign to the

assumption raised, we will delve into the study of the first assumption.

In addition, we want to specify that the right of opposition must be exercised in the

terms of article 35 RDLOPD, by means of a request addressed to the data controller,

stating the well-founded and legitimate reasons related to the specific personal situation,

the request must be resolved within a period of ten days; after said period has elapsed without

expressly responds to the request, the guardianship may be interested before this Agency in the

terms of art. 18 LOPD.

In this sense, it is appropriate to study whether all the requirements to meet the

exercise of the right to oppose data processing. First of all, we will start

indicating that the publication of lists of admitted and excluded and the assessment of merits

constitutes a true assignment, in accordance with the definition of article 3.i) LOPD

as "any disclosure of data made to a person other than the interested party". and the assignment

is included within the concept of data processing in accordance with the

article 3.c) LOPD and art. 5.1.t) of the Development Regulation of the LOPD approved by Real

Decree 1720/2007 of December 21 (RDLOPD).

II

For the art. 6.4 LOPD and art. 34.a) RDLOPD are applicable is necessary,

first, that there is a legitimate and well-founded reason, referring to the specific personal situation

of the affected. It is, therefore, an eminently casuistic element, as it comes

maintaining this Agency, as in the report of September 18, 2006, which must be

studied in each case of concrete fact, without being able to offer an answer

abstract. In the consultation it is mentioned that the interested party could see his future damaged

professional through the publications in question. Well, it will be necessary to analyze what is

his profession, and if the damage invoked may occur in it. In this sense,

This Agency does not have sufficient data to assess the specific situation being prosecuted.

But it is that, secondly, it is required that a law does not provide otherwise. The

matter of selective procedures appears presided over by the principles of

transparency and publicity. Based on article 103 of the Spanish Constitution, article

55 of the Basic Statute of the Public Employee approved by Law 7/2007 of April 12 indicates

in its second section: “2. The Public Administrations, entities and organizations to which

referred to in article 2 of this Statute will select their official staff and

through procedures in which the constitutional principles are guaranteed

previously expressed, as well as those established below:

a) Publicity of the calls and their bases.

b) Transparency.

c) Impartiality and professionalism of the members of the selection bodies.

d) Independence and technical discretion in the actions of the governing bodies.

selection.

e) Adequacy between the content of the selection processes and the functions or tasks develop.

f) Agility, without prejudice to objectivity, in the selection processes".

Regarding the provision of jobs, article 78 of the EBEP also establishes the principle of publicity in the following terms: "1. The Administrations Public companies will provide the jobs through procedures based on the principles of equality, merit, ability and publicity".

In its development, Royal Decree 364/1995 of April 10, on Entry of personnel to the service of the AGE, provision of jobs and professional promotion, points out in its article 5 the application of the principle of publicity; and thus applies it throughout its articles, like art. 15 relative to the publication of the announcements of entry of civil servants and its bases in the BOE, as well as art. 20 regarding the publication in the BOE of the resolution approving the list of admitted and excluded and indicating the place where they will be Official lists posted. In this sense the art. 20.2 prescribes: "2. When the selective procedure allows it, the exhibition to the public of the lists will not be mandatory of admitted applicants, and must be specified in the corresponding call. In In these cases, the resolution, which must be published in the "Official State Gazette", must collect the place and the start date of the exercises, as well as the list of the applicants excluded with an indication of the causes and the term of rectification of defects".

Article 22 also refers to the publication of the approved list.

As far as professional promotion procedures are concerned, it is also enshrined the principle of publicity, both of the call and of the resolution, in article 38 of RD 364/1995, as well as particularized in articles 42 and 52 of the same Regulation.

In addition, as the query was raised by a State Agency, we want to highlight

that these principles, including that of publicity, are fully applicable to

procedures for the provision of jobs of said agencies, in accordance with

Article 20 of Law 28/2006 of July 18 on State Agencies. Furthermore, article 19

of the same provides in its section 1: "The selection of personnel referred to in the

Article 18.1.c) is carried out by public call and in accordance with the principles of

equality, merit and ability, as well as access to public employment for people with

disability". Principles also applicable to labor personnel according to art. 19.2 of the

same Law.

For its part, article 33 of Royal Decree 1403/2007, of October 26, by which

the AECID Statute is approved determines the applicability to said Agency of article

55 EBEP cited above, and therefore the oft-repeated principles of publicity and transparency.

Thus, we see that in selection procedures, the principle of publicity and

Transparency becomes essential, as a guarantor of the principle of equality. The

The National Court has weighed the principle of publicity with the protection of personal data.

personal nature, reaching the conclusion that during the processing of the selective process

the former must prevail. Thus, in the recent judgment of April 26, 2012 of the

First Section of the Administrative Litigation Chamber of the National High Court, which

cites in turn the relapse in resource 215/2010, he pointed out (emphasis is ours): “For

Therefore, one of the exceptions to the requirement of consent for data processing

is that of the collision with general interests or with other rights of greater value than

make data protection decline due to the preference that should be granted to that other

interest.

In the present case, since it is a competitive bidding procedure

we must attend to what article 103 of the Constitution states when it states that the

Public Administration objectively serves the general interests and acts in accordance with

the principles of effectiveness, hierarchy, decentralization, deconcentration and coordination, with

full submission to the Law and the Right. (paragraph 1) and when it states in paragraph 3 that

"The Law will regulate the status of public officials, access to the public function of

in accordance with the principles of merit and capacity..." (all in relation to the provisions of

article 23 C.E. which we will refer to later.

Obviously, the guarantees required by the processing of personal data cannot

serve to obscure or annul these general requirements that force processes to be

drive in compliance with the minimum requirements of transparency and publicity. The

superiority of these other values advises that in this case it be understood that it was not

The consent of the interested party is required for the treatment of the data of the consistent note

in his communication by the union now recurring.

From this point of view, we must conclude that the consent of the

those persons who participate in a competitive bidding procedure for the

treatment of the qualifications obtained in said procedure and this as a guarantee and

requirement of the other participants to ensure the cleanliness and impartiality of the

procedure in which they attend. (...)

It is true that Organic Law 15/1999 does not expressly include exemptions or

exceptions to the personal data processing regime contained therein with

based on the guarantees of transparency of the competitive processes, for which it will be

It is necessary to weigh the conflicting interests in order to determine which of them should

prevail. Once said weighting has been carried out, and assessing the circumstances that here

concur, it is clear to this Court that the guarantee of

publicity and transparency of the competitive process on the right to protection of

data. (It is not uncommon for this Chamber to carry out this type of weighting or

appraisals; it suffices to refer to the judgment of appeal 331/205; DF 2/2010 or 862/2009).

Therefore, the estimation of the appeal and the annulment of the resolution will be appropriate.

appealed on the basis of the prevalence of the general interest, taking into consideration that,

As is natural, said use will only be protected within the purposes related to it.

competitive bidding procedure in application of the limits indicated in article

4 of the LOPD (...)".

All this, of course, provided that data is being published whose treatment is not

excessive, since art. 4 LOPD states in its first section that "data of a nature

personnel can only be collected for treatment, as well as subjecting them to said

treatment, when they are adequate, pertinent and not excessive in relation to the scope and

the specific, explicit and legitimate purposes for which they were obtained". In this

sense, it would never be possible to exercise the right of opposition with respect to those data of

personal character that are necessary for compliance with the principle of publicity and

transparency of the selection process. For this they would have to be examined by the entity

consultant what data is being published and to what extent it is necessary

for compliance with these principles. Since this Agency does not know in this

specific data point, can not pronounce. But in any case we consider that

To comply with the principle of publicity, the interested party must be identified, as well as the

circumstance of being or not admitted to the call; if applicable, the reason for exclusion; So

how to offer the data of the evaluation of the merits. Regarding the valuation
individualized of each merit, it is also a subject subject to a wide casuistry.
But it is that, thirdly, it could be that the premise
basic of the right of opposition that consent is not necessary for the
processing of personal data. The foundations of the
announcement of the selective procedure in question, but if they contain the
way in which the publication of the different phases of the call will be carried out –
indicating, for example, the publication of all of them in the electronic office, without prejudice
that, when the regulations provide for it, they must also be published in the BOE – it can
It is understood that the interested party is implicitly granting his consent for said
publication, and therefore for said assignment.
In other words, the processing of this personal data is based on the consent
of the affected party, who has signed an instance to participate in the selective procedure of
in question, including your personal data; and participation implies acceptance of
the bases of the call, which become law for the selective procedure. By
Therefore, the assignment implied by the publication of the data may be covered by the
own bases of the announcement of the selective procedure in relation to the article
59.6.b) of Law 30/1992. This is how this Agency has been pronouncing itself, as in reports
of April 18, 2011, which in turn cites that of April 9, 2008. In this second
we affirm:
"However, the communication of data raised, contained in the notification of the
resolution of the admitted procedure, must be considered as transfer of data of
personal nature, since article 3 i) of the Organic Law defines it as "all
disclosure of data made to a person other than the interested party". If what they want is
the publication of the aforementioned lists on bulletin boards of the dependencies of the
…, it supposes a transfer of personal data, defined in article 3 i) of

Organic Law 15/1999, as "Any disclosure of data made to a person other than

Of the interested".

In relation to the transfer of data, article 11.1 of the Law provides that "the data

of a personal nature subject to treatment may only be communicated to a third party for

the fulfillment of purposes directly related to the legitimate functions of the transferor

and of the assignee with the prior consent of the interested party". This consent is only

will be excepted in the cases contemplated in article 11.2, whose section a) provides

the possible transfer without consent of the data when a norm with the rank of Law so

dispose.

In the event that arises, if the bases of the call for admission to the

…, provide for the publication of the lists of those admitted and excluded, including the causes of

exclusion, the participants in them will have given their consent prior to the aforementioned

transfer of their data when they accepted the bases and made their request to participate

in the same. In that case, consent could be implicitly understood.

with the acceptance of the bases of the call and the publication of the

aforementioned data as it has been reflected in the same call.

However, the above provisions must be connected with the obligation

to notify the interested parties of the administrative resolutions that affect their rights and

interests, established in article 58 of Law 30/1992, of November 26, on the Regime

Legal of the Public Administrations and the Common Administrative Procedure.

Said precept and the following article (article 59) strictly regulate the

assumptions in which such notification will occur in a different way from the personal notification, either by publishing the resolutions, or by posting them on the bulletin board of edicts or announcements. Therefore, it is appropriate to analyze whether, in accordance with the Organic Law 15/1999, the provision contained in article 59.- 6 of Law 30/1992, of November 26, can be considered an enabling rule for the transfer, through publication, of the data to which the consulting Corporation refers in its writing.

In accordance with the aforementioned precept, referring to the “Notification Practice”:

“Article 59. Practice of notification. (...)6. The publication, in the terms of the article following, will replace the notification having the same effects in the following cases:

a) When the act is addressed to an indeterminate plurality of people or when the Administration considers that the notification made to a single interested party is insufficient to guarantee the notification to all, being, in this last case, additional to the notification made. b) In the case of acts that are part of a procedure selective or competitive concurrence of any kind. In this case, the call for procedure must indicate the bulletin board or media where the successive publications will be made, lacking validity those that are carried out in different places”.

However, Law 30/1992, of 26/11, in its article 61, relative to the “Indication of notifications and publications”, provides that: “If the competent body appreciated that the notification by means of announcements or the publication of an act harms legitimate rights or interests, it will be limited to publishing in the corresponding official gazette a brief indication of the content of the act and the place where the interested parties may appear, within the period established, to learn the full content of the mentioned act and evidence of such knowledge.

In conclusion, the publication of the causes of exclusion will be appropriate to the Law Organic 15/1999, if in the bases of the call it had been established how it would be done

public those admitted and excluded, making reference to the causes of exclusion. Nope

However, if the consulting body considers that the publication of the causes of exclusion

injures rights and legitimate interests may choose to apply the provisions of article 61

of Law 30/1992, previously transcribed”

Therefore, if in the selective procedures we understand that it has been provided,

albeit implicitly, consent to the processing of personal data

personal will not fit the application of article 6.4 LOPD.

III

From the previous section of this report it can be deduced that while advertising

is necessary for the correct development of the selection process, the

same, without it being possible to attend to the exercise of the right of opposition based on article

6.4 LOPD, for the reasons stated above. That is, at this point there is a law that, at

enshrine the principle of publicity, expressly provides for the processing of personal data

personal, without being able to stop the treatment to achieve the good end of the process

selective. And it is understood implicitly granted the consent for the treatment of

data for the publication in the selective procedure.

However, the law does not specify, to ensure compliance with the principle of

advertising, no specific means, limiting itself to pointing out cases in which the publication is

will be made in the BOE (fundamentally, call with the bases, list of excluded and the

cause of exclusion, list of approved and appointment in the selective procedure of

entry; and call and resolution for the procedures for the provision of positions of

worked). Therefore, there may be cases in which the form of publication by which it has been opted for may be considered excessive. Thus, we can distinguish two cases:

a)

Phases of the call in which the legislation provides for some form of specific post. We have already indicated specific cases in which the regulations provide for publication in the Official State Gazette. In other words, in these cases, the regulations themselves foresees phases of the selective procedures that must be published in a certain medium. If, for example, the call, the bases, the list of excluded and the list of approved are published in the BOE, there will be no obstacle for its publication on the website of the convening body, since they already have a top advertising.

b)

Phases of the call in which the legislation does not expressly provide for publication in a specific medium. For example, the assessment of merits. In this case, it will be application of article 59.6 of Law 30/1992 of November 26 on the Legal Regime of Public Administrations and the Common Administrative Procedure that establishes: "The publication, under the terms of the following article, will replace the notification supplying its same effects in the following cases: (...) b) When it comes to acts that are part of a selective procedure or competitive concurrence of any kind. In this case, the call for the procedure must indicate the notice board or means of communication where the successive publications will be made, lacking validity the take place in different places.

In other words, it is expressly provided that it is the call for the procedure that Indicate the means of communication to be used. Furthermore, in this case it will be possible to publication in the electronic office, either substituting or complementing the publication on bulletin boards, since article 12 of Law 11/2007 of June 22,

Electronic Access of Citizens to Public Services states: "The publication of

acts and communications that, by legal or regulatory provision, must be published in

bulletin board or edicts may be replaced or complemented by its publication in the

electronic headquarters of the corresponding body.

However, the availability and accessibility of the electronic headquarters referred to in

Article 10.3 of the aforementioned Law 11/2007 does not imply that it is possible to universally admit the

indexing of all personal data by search engines.

In its Report of April 4, 2008, the Working Group of Article 29 of the

Directive 95/46/CE, of October 25, 1995, of the European Parliament and of the Council,

on the protection of natural persons with regard to data processing

and their free circulation, has analyzed the legal situation in relation to the

protection of personal data and Internet search engines, reaching the conclusion of

that the period of conservation of personal data by said search engines does not

should generally exceed six months.

But it is that, even more, in a report of this Agency of November 5, 2010 it is already

indicated that it was possible to limit indexing by search engines

search for personal data, since advertising “is not an obstacle for the

system should [not] establish mechanisms that prevent or hinder indiscriminate access to

the information for purposes other than the knowledge by the interested party of the notification that is

practices him through the edictal board”.

Thus, the possibility of prohibiting the indexing of information could be considered.

contained in the electronic headquarters related to personal data by motors
search. In this way, only those who directly access the edictal board or the
electronic headquarters will have knowledge of the information contained in them, without a
simple search of the data through a search engine may be enough to
access to the content of the personal data of those affected. And this does not imply that the
electronic office is not available or accessible, since we are limiting ourselves to indicating
that non-indexing by search engines can be considered, regardless of
that the data does appear published in the electronic headquarters that will act as a bulletin board
advertisements. In other words, we are referring to the use of technical tools and
non-robot type computer or any other type of technical and computer measures that
are appropriate aimed at avoiding said indexing of content with data of a personal nature
staff. This Agency has already ruled in this regard, as in the reports of 28
October and November 5, 2010 and February 17, 2011. In the second of them
We indicate: "Consequently, the exercise of the right of opposition obliges the
Administration acting to make an assessment of the personal situation of the affected,
considering whether it is appropriate to exempt said treatment. Although, in general, the
right of opposition will not exclude the publication of the act if it is legally required,
This Agency has been pointing out, as a solution in those cases in which it is exercised
the right to oppose the publication of an act in the Official State Gazette, the
adoption of technological measures to prevent indexing by search services".

IV

Thirdly, the query asks if the possible estimation of the right of
Opposition could be resolved by publishing the candidates' DNI. On the one hand,
We have already stated that the right to object cannot be upheld for the sake of publicity and
transparency of the selection processes and of having lent, although

be

implicitly, the consent for the treatment. But it is also what I know

would seek through the estimation of the right of opposition would be the suppression of the data of

the identity. The identity data is through the name and surnames, either through the

DNI, will always be essential to determine which candidate they are referring to

certain parameters (admission or not in the procedure, results...), so

It can never be considered as excessive data. And if the way of

publish the data, all mispublished data should be removed, not just the

identification of the interested party.

On the other hand, we consider whether, in general, substitution is possible, in the

different phases of the selective procedure that are going to be published, the name and

Surnames by ID.

In general, the name and surnames may be replaced by the DIN since

it has enough value, by itself, to prove the identity of the people. The

The question now raised was already resolved in a report dated June 30, 2009 in the

following terms: ""…the [principle] of proportionality is especially relevant,

provided for in article 4.1 of the Organic Law, according to which "Personal data

They can only be collected for treatment, as well as subjecting them to said treatment,

when they are adequate, relevant and not excessive in relation to the scope and

specific, explicit and legitimate purposes for which they were obtained".

From the application of this principle follows the need for the advertising of

the information just referred to extends only to the data

necessary to guarantee transparency in the selection process, without incorporating those that could be excessive for the achievement of such purpose.

Article 1 of Royal Decree 1553/2005, of 12/23, after indicating in section 1 that "The National Identity Document is a personal and non-transferable document issued by the Ministry of the Interior, which enjoys the protection that public and official documents the laws grant. Its owner will be obliged to the custody and conservation of the same, "he adds. in its section 2 that "said Document has sufficient value, by itself, to prove the identity and personal data of its owner that are recorded in it, as well as the Spanish nationality of the same".

Consequently, the indication of the number of the national identity document by itself sufficiently identifies its owner, without the indication of the data being precise of a personal nature contained therein, such as your name and surnames, so the use of said number in the publication made by the consultant on its page website would be respectful of the provisions of Organic Law 15/1999, to which it refers Royal Decree 248/2009.

In any case, it must be indicated, following what has been established in this matter by the Chamber of the Contentious-Administrative of the National High Court, which does not mean that said publication does not contain personal data, given that the number of the document, given its character of unique identifier of the interested party, it has such character, but when included said number without indication of the name and surnames of its owner is being given adequate compliance with the principle of proportionality and submission to Organic Law 15/1999 advertising carried out, which is covered by article 11.2 a) of the Law Organic 15/1999, in connection with article 55.2 of the Basic Employee Statute public and the regulatory standards governing the selection processes.

Therefore, it would be possible to meet the request of the candidate who only He wants to see his ID number published."

SIXTH: On 12/17/2019, a resolution proposal was issued, from the literal:

“That by the Director of the Spanish Agency for Data Protection, the

with a warning to the CITY COUNCIL OF VIGO, with NIF P3605700H, for an infraction

of article 5.1.f) of the RGPD, in accordance with article 83.5 A) and 58.2.b) of the RGPD.

REPORT on the measures adopted to adapt the processing of data

contained in the minutes of the Local Government Board, in order not to violate the

article 5.1.f) of the RGPD, in accordance with article 58.2.c) of the RGPD.”

On 01/08/2020, allegations were received regarding the proposal, which in summary indicate:

-A copy of Instruction 1/2020, on data protection in files for

approval by the Local Government Board. It refers to the principle of

transparency and the right to data protection that must be adapted to that of the

minimization of data to what is adequate and pertinent. The instructions state that “The

proposed agreements that, from the different municipal areas and services, are sent

for the adoption of agreements by the Local Government Board must guarantee the due

protection of personal data, considering the intense degree of publicity to which

These agreements are subject, adjusting their wording to the principle of privacy from the

design and by default, as prescribed by the RGPD, reducing the volume of information

compiled.”…”To this end, the resolution proposals that are sent to the Governing Board

Local will only require the minimum possible data collection and processing action, so

that, avoiding the processing of data that is not necessary for the purposes

persecuted in the treatment1 or through the application of anonymization techniques or

dissociation, the possible impacts on privacy are limited" "Doubts regarding

This issue must be resolved through consultation with the Protection Delegate of

Data from the Vigo City Council and in accordance with that indicated in the "Privacy Guide from the

design" prepared by the Spanish Agency for Data Protection."

-"The Data Protection Delegate Service will monitor and

supervision of the implementation of the concrete measures exposed and a report

specific audit on areas for improvement."

-"The instruction has been disclosed to the City Council staff and has been posted on the portal

of transparency."

-Two modules on transparency and data protection have been taught, providing the

program and university professors in November 2019.

-They have acted in good faith with the conviction that it was done correctly and for the sake of

of transparency and publicity.

-A report from the DPD of 01/02/2020 is attached, which means that in a matter of

provision of jobs, article 78 of the EBEP enshrines the "principles of

equality, merit, ability and publicity". The Regulation of Entry of the personnel to the service

of the AGE indicates in its article 5 the application of the principle of publicity, and article 15

on the publication of the call for admission. It was understood that it was not necessary

consent of those affected to process their data when all these rules exist

applicable in these processes.

PROVEN FACTS

1)

At the electronic headquarters of the VIGO CITY COUNCIL, with free access to any

person, you can access, print or save, the minutes of the Local Government Board of

XX/XX/XXXX and YY/YY/YYYY.

They refer to them in the section on "permanent staff but not

fixed" to judicial sentences pending to be included in public employment offers, with their

names and surnames.

The claimants provided a copy of the minutes of the Local Government Board of

YY/YY/YYYY (pages 5 to 75 of his complaint, which has 242 in an electronic pdf file). In

It includes, among others, the following personal data:

-identified as 9 (155) - Proposal of the Local Government Board, rejecting

appeal for reversal filed against the agreement of the local government board of

XX/XX/XXXX approving the 2017 Public Employment Offer, exte ZZZZZ/220.

After exposing the background, the regularization of all labor personnel is mentioned.

indefinite contemplating in the job offers of each year the places necessary to

effect. Mention is made of the personnel pending inclusion in said job offers, for

name and surnames and Center in which the creation of the square is proposed.

It refers to the publication in the BOP of the places offered (without personal data). I know

mention the people who file the appeal for reconsideration, 8 people identified

with names and surnames, values the exposed allegations and DISMISSES the claims

of the appellants, indicating that the appellants be notified, among which are

claimants.

- identified as 10 (156) the same as the previous one, referring to file RRRRR/220 (47

of 242) similar to the previous one

-Minutes of the Local Government meeting of XX/XX/XXXX (76 et seq.) in which, in relation to the

public employment offer 2017, exte TTTTT/220 contain the name and surnames of employees

who left in 2016 with name and surname, category, work center and date,

including police, cause: showing absolute disability or voluntary or forced retirement and a

List of non-permanent indefinite personnel, folio 125- which coincides with that of the identified record

such as 9 (155) -with court rulings pending inclusion in the OEPS with a breakdown by

centers, categories, and names and surnames, including those of the claimants. In the same

the agreement is proposed to approve the OEP for 2017 to be published in the BOP that goes with

vacancies.

The claimants provided a copy of the minutes in which the first approved

the public job offer 2017 and their data appear, and in the second they are contained again

their data in reference to an appeal for reconsideration filed by 8 affected parties.

In addition, it contains the people with their names and surnames, categories, which

were discharged during 2017 with their category and cause of forced, voluntary or forced retirement

inability.

two)

The respondent stated that the claimants are part of the staff

of the City Council of Vigo for a sentence that classified them as labor personnel

indefinitely and forced the administration to regularize the situation. “By preparing and managing the

offer of public employment of the city council, is related to all the personnel included in that

situation and the need to enforce its regularization by court order. "In said

process, the claimants made allegations requesting a process of consolidation of

job."

3)

The respondent acknowledges that the minutes of the Local Government Boards are published in the electronic headquarters of the City Council, and on the justification for the exhibition of public access to the content of the resolutions included in the Local Government Boards, indicates that the claimants already provide their services for the City Council, and the post of work and its category are part of the service relationship they maintain as employees, and the name and surnames are necessary for publicity and notification of the agreement and transparency.

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 the Spanish Agency for Data Protection is competent to resolve this procedure.

II

Regarding the disclosure of the data for proceeding from sentences, it is based on the principle of publicity of judicial actions, constitutionalized by art. 120.1 CE, and to which reference is made in different precepts of the Organic Law of Power Judicial (articles 232, 234, 235 and 266.1). Article 232 LOPJ establishes "1 The actions judicial proceedings shall be public, with the exceptions established by procedural laws. 2. Exceptionally, for reasons of public order and protection of rights and liberties, the Judges and Courts, may by reasoned resolution limit the scope of publicity and agree on the secrecy of all or part of the actions".

Article 234 LOPJ prescribes "The Secretaries and competent personnel of the Courts and Tribunals will provide the interested parties with all the information they request about the status of the judicial proceedings, which they may examine and hear, unless they are or have been declared secret in accordance with the law. In the same cases, the

testimonials that are requested, with the expression of their addressee, except in cases in which the law provides otherwise".

Article 235 LOPJ refers to the access by the interested parties to the books, files and judicial records that are not reserved and article 266 states that

will allow any interested party access to the text of the judgment.

The STS of March 3, 1995, resource 1218/1991, indicates in relation to the publicity of judicial actions "...that the right and correlative duty of knowledge and access to the text of judicial resolutions is graded according to three various areas or spheres of affectation, each one governed by different criteria, namely: a) one of maximum amplitude or of generalized affectation, which includes the public or the citizens in general, without specific qualification and that corresponds to the publicity of the judicial actions carried out in all kinds of processes, which allows those go to the practice of proceedings that must take place "in public hearing", except the declaration of reservation that the court agrees with reasons, principle of advertising constitutionalized in art. 120.1 of the Fundamental Norm and which includes art. 232.1 of the Organic Law.

b) at the opposite extreme, of maximum restriction of the scope of knowledge of the judicial decisions, are the acts of notification and communication of these, directed only to those who have the status of procedural party under the laws of procedure, and that in terms of sentences determine the right and correlative duty of the Judges and Courts to their knowledge through the instrumental act of notification,

as prescribed by art. 270 LOPJ.

c) occupying an intermediate position that places the question in a more imprecise sphere,

find the procedural actions already completed, including the sentences, integrated into

books, files or judicial records, and with respect to which, on the one hand, art. 235 LOPJ

determines that: "the interested parties will have access to the books, files and judicial records

that are not reserved, through the forms of exhibition, testimony or

certification established by law"

Regarding the quality of interested party for the aforementioned purposes, it is pointed out in the aforementioned

sentence that «the legitimate interest that is required in the case, can only be recognized in

who, natural or legal person, declares and accredits, at least prima facie, before the

judicial, a connection of a specific and singular nature with the very object of the process

and, therefore, of the sentence that ended it in the instance, either with one of the acts

procedures through which it has been developed and which are documented in

record, a connection that, on the other hand, is subject to two conditions: a) that it does not

affects the fundamental rights of the procedural parties or of those who in some way

have intervened in the process, to essentially safeguard the right to

privacy and personal and family intimacy, the honor and the right to one's own image that

could eventually affect those people; and b) that if the information is used,

as a mediating activity, to satisfy the rights or interests of third parties, and in

consequence acquires, as is the case, an aspect of globality or generality by

relation not to a specific process, such interest remains within the scope of the

legal system and its applicators, in general, because something else would be

as well as involving or collaborating with the judicial body in tasks or activities that, by

However lawful they may be, they go beyond their jurisdictional function."

The doctrine established in said sentence has been reiterated in the SSTS of May 22

1996 and April 6, 2001, resource 9448/1996.

Also the SAN (1st) of November 29, 2001, resource 531/2000 echoes the

doctrine established by the aforementioned STS of March 3, 1995, and indicates that "the data contained

in the books and court records are not available to the public in a

entirely free and indiscriminate since access to them is regulated and to a certain

restricted measure. On the one hand, due to the appeal made by the aforementioned articles 235 and

2666.1 of the Organic Law of the Judiciary to the condition of "interested party", whose

significance and scope we already know the jurisprudential interpretation. On the other hand, because

access to such books and archives is mediated by the necessary intervention of the

Judicial Secretary and the mandatory subjection to the application and authorization process regulated in

Articles 1 to 5 of Regulation 5/1995, of June 7, of the General Council of Power

Judicial, on accessory aspects of judicial proceedings".

In other words, and for what interests us here, the publicity of judicial proceedings does not

means that the data contained in a judicial procedure that is in the process of

execution, can be examined and are available to the general public

completely free and indiscriminate way, but such advertising is restricted except

those actions that are held in public hearing to those who hold the condition

of "interested parties", to which article 234 LOPJ appeals. This concept of interested, which does not

necessarily coincides with that of the procedural part and that has been outlined by the

jurisprudence in the above sense.

To finish with the examination of the jurisprudence and the regulations on this matter

It should be noted that the jurisprudential criterion exposed is consistent with the position

maintained by the Civil Chamber of the Supreme Court when weighing the publicity of the sentences with the right to honor, establishing in its sentence of December 22, 2008 the following:

“The publicity of the sentences constitutes an instrument of guarantee of the independence of the courts and their actions in accordance with the law, since these principles are reinforced through knowledge of the actions of the courts by the citizens, and must be considered closely linked to the protection of the rights fundamental rights inherent to the exercise of jurisdictional power by judges and courts.

This advertising can only be restricted or limited, in accordance with the established in the law, when it may lead to the impairment of a fundamental right of affected citizens or a constitutionally protected asset, especially when knowledge of the private data contained in the judgment may give rise to the disclosure of aspects of privacy that must be protected, provided that this disclosure is not protected by the right to information in the framework of free public communication typical of a democratic society.

Indeed, according to STC 57/2004, of April 19, FJ 5 (in the same sense, Regarding the publication of the judgments of the Constitutional Court, ATC 516/2004, of December 20, FJ 1, and STC 114/2006, FJ 7), the principles of weighting and proportionality may lead to the conclusion that other fundamental rights or goods with constitutional protection must take precedence over the publicity of the judicial resolutions.

This principle is applied by article 266.1 II LOPJ, introduced by LO 19/2003, of December 23, according to which «[t]he access to the text of the sentences, or to certain extremes thereof, may be restricted when it could affect the right to privacy, the rights of people who require a special

duty of protection or the guarantee of anonymity of the victims or harmed, when

appropriate, as well as, in general, to prevent the sentences from being used

for purposes contrary to the law."

When the publication of a judicial resolution may affect the honor of the

person who has obtained an unfavorable result in the process, it is necessary to determine

if the exception that the LPDH establishes in the sense of considering non-existent the

violation of the scope protected by this right when it is the product of the exercise of a

right recognized by the legal system (art. 2.2 LPDH: «The

existence of illegitimate interference in the protected area when expressly

authorized by law").

The contrast between the right to honor and the right to disclose the content of the

sentence, which results from the principle of publicity, must give rise to a weighting in the

that is taken into account, in the first place, the fulfillment of the institutional purposes that the

advertising principle pursues. This aspect, in turn, requires taking into account the

way in which the publication has been produced, taking into account whether it is a

neutral communication of the content of the sentence or if elements are added or subtracted that

are likely to distort the objective knowledge of what was resolved by the court to

convert the publication of the ruling into a procedure suitable for undermining the honor of the

affected person, beyond what is objectively implied in the field of reputation

failure of an action or opposition maintained before the courts of justice.

Well then, it is evident that the principle of publicity of the sentences that

contemplates our LOPJ is not absolute, but finds limits, either by referring

to those who hold the status of interested parties or due to the prevalence of other

rights or assets that enjoy constitutional protection, as is the case with the right to

data protection, and within the resolution of an appeal for reversal is not appropriate

nor proportional to expose the same and make known the sentences and the condition of the

claimants.

Finally, it should be noted that the constitutional doctrine contained in the STC

114/2006, of 5/04, does nothing but corroborate what has been stated so far, since in it the Court

Constitutional is limited to extracting from a joint reading of articles 120 and 164.1 CE and

of articles 86.2 and 99.2 LOTC -in its wording prior to the reform operated by the Law

Organic 6/2007, of 05/24-, related to articles 9.1 CE and 5.1 LOPJ, a

constitutional requirement of maximum dissemination and publicity of the full content of the

jurisdictional resolutions of that Court that incorporate constitutional doctrine, which is

specifically, on the one hand, in the formal obligation to publish such resolutions in the

Official Gazette, and in a material obligation to provide the greatest accessibility and public dissemination

to their content, regardless of their nature and the process in which they are

dictate; and, on the other, that publicity and dissemination must affect the full resolution.

It is significant that for this the Constitutional Court relies especially

in art. 164.1 CE establishes, of the one who preaches that he establishes, even beyond the principle

general publicity of judicial proceedings and their resolutions of art. 120 CE, one

specific constitutional requirement of maximum dissemination and publicity of resolutions

jurisdiction of this Court.

Moreover, it highlights the nuances that differentiate the advertising principle from the

sentences of the Constitutional Court of the own of the sentences of the Judicial Power, to the

limit the applicability to that of the regime established in this regard by the LOPJ, affirming the

Next:

“Being evident that the possibility itself, foreseen in art. 266.1 LOPJ, to restrict

fully access to the text of a Judgment could be problematic, as far as

refers to the constitutional judgments, thanks to the obligation of its formal publication in

the Official Gazette, provided for both in art. 164.1 EC as in art. 86.2 LOTC, and that,

even the possibility of omitting the identification of the parties involved in the process

can be, in general, much more exceptional in constitutional processes than

in judicial proceedings, thanks to the material obligation, derived from arts. 164.1 EC and

99.2 LOTC, to guarantee the maximum dissemination of the jurisdictional resolutions of this

Court; the art. 266.1 LOPJ in conjunction with the aforementioned art. 6.4 LOPD, in any case, can

serve as an element of reference both in relation to establishing the need for the

decision on the restriction of advertising of the parties involved in the process

constitution is carried out by making an individualized weighting of the interests

constitutional concurrent in the case with which the principle of publicity can enter

in conflict, as well as in relation to revealing the interests that could

be prevalent, particularly the right to privacy, the rights of those who

require a special duty of protection, the guarantee of anonymity, when appropriate, of the

victims and harmed, and the avoidance of such data being used for purposes

contrary to the Laws. In any case, special emphasis should be made on the fact that the literal tenor

of art. 266.1 LOPJ does not imply a limitation of the fundamental rights and guarantees

constitutional provisions with which the principle may eventually come into conflict

of maximum diffusion of the jurisdictional resolutions of the Court

Constitutional, since any fundamental right or constitutional guarantee is

likely to be considered with respect to the possibility of making exceptions to said

principle, including, of course, the fundamental right provided for in art. 18.4 EC in the

terms and with the breadth and autonomy that has been recognized by this Court in the

STC 292/2000, of November 30, in its legal foundations 5 and 6".

Therefore, there is no right of the citizen to be delivered the sentence that

It does not relate employees to the city council, nor is it part of the right to transparency.

Something different is that the citizen can know said sentence without personal data or

anonymized because it is not necessary to know the identity of the employees to know the thesis

of the Court and the way in which the defendant acted, or the cost of the measure.

If the sentence is not delivered, and a record of the Board of Directors is made available to third parties,

Local Government with, among others but not only, data from the claimants, relating said

sentences, is being disclosed in a way not authorized by the regulations, said data,

when, due to the content of the act, it must be subject to the general principles of the

administrative documentation of affairs management.

III

Regarding the requests for access to the file and their eventual denial, this

The issue is not one of data protection.

Article 105 b) of the Constitution indicates:

"The Law will regulate:

…

Citizen access to administrative files and records, except in what

affects the security and defense of the State, the investigation of crimes and the privacy of

people."

Law 39/2015 indicates in its article 13. "Rights of people in their relationships

with the Public Administrations:

“Those who, in accordance with article 3, have the capacity to act before the

Public Administrations, are holders, in their relations with them, of the following

Rights:

d) Access to public information, files and records, in accordance with the provisions of the

Law 19/2013, of 9/12, on transparency, access to public information and good governance and

the rest of the legal system.

These rights are understood without prejudice to those recognized in article 53

referred to those interested in the administrative procedure.”

This right of access regulated in Law 39 is different from the one regulated in protection

of data, specifically in article 15.1 that regulates the right of the interested party to request and

Obtain free information on your personal data submitted to

treatment, the origin of said data, as well as the communications made or that are

they plan to make of them. This right is a very personal right, consisting of a

control over the data itself, while through the aforementioned right of access,

You can access not only your own data but also third-party data.

The control over the exercise of this right of access of Law 39 does not correspond

to the AEPD, as determined in the case of powers of the Basque Agency for

Data Protection, referred by the High Court of Justice of the Basque Country, in

Judgment of 07/08/2009:

“The behaviors described by the plaintiff do not correspond to any exercise

of that fundamental right but to the exercise of the right of access to files and records,

regulated in Law 30/1992, specifically in 35 a) or in 37.2 That is, it is the

right to access the documentation contained in a certain procedure, which

does not fall within the scope of action of the Agency."

In the competitive bidding process, the access of the participants to

the data to the rest of the requests would not violate the data protection regulations of

personal character whenever the knowledge of these data is necessary for the control

of the correct selection process.

However, what would not be justified, from the perspective of protection of

data, is that information on the data of the participants in the process be provided

selective that could affect their privacy and that lack relevance for the

purpose.

In this case, the foregoing does not correspond to any call for

selective process, but with the next publication of the public employment offer. Is

offer must be public knowledge, but by definition it is about vacancies. Their

Regularization is an internal matter for which it is not necessary to expose the data of the

people who have won the condition of indefinite by sentence.

IV

Law 39/2015, of 1/10, of the Common Administrative Procedure of the

Public Administrations (LPACAP), establishes in article 40.5

"Public Administrations may adopt the measures they consider

necessary for the protection of the personal data that appear in the resolutions and

administrative acts, when these are addressed to more than one interested party.”

Article 45 of the same rule highlights:

"1. Administrative acts will be published when so established.

the regulations governing each procedure or when advised by reasons of interest

public appreciated by the competent body.

In any case, the administrative acts will be published, providing this

the effects of the notification, in the following cases:

b) In the case of acts that are part of a selective procedure or

competitive competition of any kind. In this case, the call for the procedure

must indicate the medium where the successive publications will be made, lacking

validity those carried out in different places.

3. The publication of the acts will be carried out in the corresponding official gazette,

depending on the Administration from which the act to be notified proceeds.

4. Without prejudice to the provisions of article 44, the publication of acts and communications

that, by legal or regulatory provision, must be practiced on a bulletin board or

edicts, shall be understood to have been fulfilled by their publication in the corresponding Official Gazette.”

In the present case, it is not about notification of aspects related to a

selective process, but in one case, the approval of the public employment offer, which

refers to vacant positions, not to people, and in another on the dismissal of a

Replenishment resource.

v

Regarding publicity of municipal activities, article 70 of the Law

regulation of the Bases of the Local Regime, (LBRL) in the wording given to it by the

Law 57/2003, of 16/12, provides the following:

"1. The plenary sessions of the local corporations are public. Nevertheless,

The debate and vote on those matters that may affect the right to vote may be secret.

of the citizens referred to in article 18.1 of the Constitution, when

so agreed by an absolute majority.

The sessions of the Local Government Board are not public.

2. The agreements adopted by the local corporations are published or notified in the

manner provided by law.

3. All citizens have the right to obtain copies and certifications

accrediting the agreements of local corporations and their background, as well as

consult the files and records in the terms provided by the development legislation

of article 105, paragraph b), of the Constitution. The denial or limitation of this right,

in everything that affects the security and defense of the State, the investigation of crimes or the

privacy of individuals must be verified by means of a reasoned resolution."

That the sessions are not public does not add anything about the publication of the acts

administrative, since they govern general rules on notification and publicity of the

agreements as appropriate (art. 70.2 LBRL).

The regulation referred to by the LBRL can be found in its development rule,

Royal Decree 2568/1986, of 11/28, which approves the Organization Regulations,

Functioning and Legal Regime of Local Entities.

"Article 229.2

1. The calls and agendas of the plenary sessions will be transmitted to the

local social media and will be made public on the Notice Board

Of the entity.

2. Without prejudice to the provisions of article 70.2 of Law 7/1985, of April 2, the

Corporation will give summarized publicity of the content of the plenary sessions and of all the

agreements of the Plenary and the Government Commission, as well as the resolutions of the Mayor

and those dictated by their delegation by the Delegates."

Nothing is specified on the minutes, nor on the minutes of the Local Government Board.

In the same way, the basic principles of data protection link the minimization of

data, adequacy and need for treatment with the purpose in article 5.1 c);

"Principles relating to treatment" ,"1. The personal data will be:

adequate, pertinent and limited to what is necessary in relation to the purposes for which

are processed ("data minimization");

Not specifying what should be the summary that can be published of the sessions

plenary sessions, and not making express reference to the publication of the minutes of the Board of

Local Government, there is no legal mandate for said summary to offer the same

content that article 109 prevents for the minutes, and therefore, the part

operative of the agreements that are adopted, and on the other, the essential core of the right of

information of the neighbors remains intact insofar as they always and

regardless of the publication of said summary, they can directly exercise the

information right.

The "summary" referred to in said precept recommends eliminating from the same

those personal data that are not adequate, pertinent and are

excessive in order to offer "generic" information to neighbors, and of course

in no case should they contain sensitive personal data.

If the purpose is to approve the public employment offer, including the
positions that have obtained an indefinite labor sentence, it is not necessary to
publish the data of said people, nor those who have caused cancellation, their reason and category,
and if they present an appeal for reconsideration, it is also not adequate for the purpose of their
resolution and notification, since the notification for these is not public, and is
governed by the common rules for this, being common internal management.
In this way, it would only be in accordance with the provisions of the
data protection the communication of data, through its inclusion on the web, when it is
is protected by a regulation with the rank of Law.
In the remaining cases, the publication containing personal data or making
identifiable to people, it would only be possible if they had the consent
of the interested party or if the data could not, in any case, be linked to the data subject.
interested.
SAW
Considering that the planned way of notifying administrative resolutions does not
it is through the exhibition in the electronic headquarters of the agreements of the Governing Board
Local, accessible to any person, and there is no protection for the aforementioned exhibition of the
data of the claimants, it is proven that the CITY COUNCIL OF VIGO commits a
infringement of article 5.1. f) of the RGPD “1. The personal data will be: f) “treated in such a way
manner that ensures adequate security of personal data, including the
protection against unauthorized or unlawful processing and against loss, destruction or
accidental damage, through the application of appropriate technical or organizational measures
(“integrity and confidentiality”).”
The exposure on the web gives rise to the breaking of the confidentiality bond of the
Responsible for the data, its management and treatment for the matters on which it is

competent person responsible. The LOPDGDD indicates in its article 5:

1. Those responsible and in charge of data processing as well as all persons

that intervene in any phase of this will be subject to the duty of confidentiality to the

referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the

duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when

the relationship of the obligor with the person responsible or in charge of the treatment had ended.

The internal disciplinary scope of violation of the duty of secrecy for the actions

professionals developed is independent of the duty of secrecy that over the files and

databases corresponds to its person in charge. The first is on an individual basis, of character

deontological, the second is defined by the rule of creation of the file and by the

condition of being responsible for it. Their penalties are also different as

than the protected legal asset.

It is convenient to define the scope of the right to data protection that is contained in

Judgment 292/2000. By guaranteeing the power of control over the personal data of the holder

of the same, in the words of the aforementioned Court “the content of the fundamental right to

data protection consists of a power of disposal and control over data

personal information that empowers the person to decide which of these data to provide to a

third party, be it the State or an individual, or what this third party can collect, and that also

allows the individual to know who owns that personal data and for what, being able to

object to such possession or use. These powers of disposal and control over data
personal, which constitute part of the content of the fundamental right to the protection of
data are legally specified in the power to consent to the collection, obtaining and
access to personal data, their subsequent storage and treatment, as well as their use
or possible uses, by a third party, be it the State or an individual. And that right to consent
knowledge and treatment, computerized or not, of personal data, requires as
essential complements, on the one hand, the ability to know at all times who
has such personal data and to what use it is subjecting them, and, on the other hand, the power
oppose such possession and uses." The fact that the claimants have obtained a
judgment favorable to their interests does not prescribe that the other party, claimed, must
communicate the data and the judgment in the minutes, and this is available to anyone.
There is no legal norm that attributes powers to expose agreements of the Board in which
contain the data of the claimants related to the sentences or properly
with the filing of an appeal for reconsideration by those affected.
The facts consisting in the publication for any person on the website
of the claimed data of the claimants suppose a violation of article 5.1.f)
of the GDPR.
Regarding the application of the previous regulation, the LOPD, it should be indicated that the
The principle of confidentiality that has been violated exists in both regulations. and to
At the time of the opening of the initiation agreement, the reported infringement subsisted. With the
LOPD was framed in article 10 of the LOPD, with the new regulation 5.1.f)
GDPR
Whether the LOPD is applied, or the RGPD is applied, the basic principle that has not been complied with is that
the technical means have been provided so that open access can be accessed and viewed
documents with personal data that must not be available for consultation and
open access on said website.

On the other hand, the consequences in both norms suppose a declaration of infraction in the LOPD or the warning in the RGPD in similar procedures, which do not entail pecuniary sanction but adaptation of taking measures in your case with your subsequent follow-up if required.

7th

Regarding the fact that the data was exposed to comply with the duty of transparency, with active advertising, it should be noted that the Preamble of Law 19/2013 Law 19/2013, of 9/12, of transparency, access to public information and good governance in its preamble indicates that:

“The Law expands and reinforces the obligations of active publicity in different areas. In terms of institutional, organizational and planning information, it requires the subjects

included in its scope of application is the publication of information regarding the functions that they develop, the regulations that are applicable to them and their structure organization, in addition to its planning instruments and the evaluation of its degree of compliance. In terms of information of legal relevance and that directly affects the scope of the relations between the Administration and the citizens, the law contains a wide repertoire of documents that, when published, will provide greater security legal. Likewise, in the field of information of economic relevance, budgetary and statistics, a broad catalog is established that must be accessible and understandable for citizens, given its nature as an optimal instrument for the control of the management and use of public resources. Lastly, the obligation to publish all the

information that is most frequently the subject of a request for access, so that

Transparency obligations are consistent with the interests of citizens."

To channel the publication of such an enormous amount of information and facilitate the

compliance with these active advertising obligations and, from the perspective that it does not

you can, on the one hand, talk about transparency and, on the other, not put the appropriate means

To facilitate access to disclosed information, the Law contemplates the creation and

development of a Transparency Portal."

"Chapter II, dedicated to active advertising, establishes a series of obligations for

the subjects included in the scope of application of Title I, who will have to disseminate

certain information without waiting for a specific request from the administrators. In this

This point includes data on institutional, organizational and planning information,

legal relevance and of an economic, budgetary and statistical nature.

In order to decisively favor everyone's access to the information that is disseminated,

will create the Transparency Portal, which will include, in addition to the information on which

there is an obligation of active publicity, the one whose access is requested with greater

frequency. The Portal will be a meeting and dissemination point, showing a new

way of understanding the right of citizens to access public information. I know

It also provides in this point that the General Administration of the State, the

Administrations of the Autonomous Communities and the entities that make up the

Local Administration can adopt collaborative measures to comply with

their active advertising obligations."

The aspect of active advertising is developed in the following articles:

Article 5. General principles

1. The subjects listed in article 2.1 will publish periodically and updated

the information whose knowledge is relevant to guarantee the transparency of its

activity related to the operation and control of public action.

2. The transparency obligations contained in this chapter are understood without

prejudice to the application of the corresponding autonomous regulations or of other

specific provisions that provide for a broader regime on advertising.

3. The limits to the right of access to information will apply, where appropriate.

provided for in article 14 and, especially, that derived from data protection

of a personal nature, regulated in article 15. In this regard, when the information

contains specially protected data, advertising will only be carried out prior

their dissociation.

4. The information subject to the transparency obligations will be published in the

corresponding electronic offices or web pages and in a clear, structured and

understandable for those interested and, preferably, in reusable formats. I know

establish the appropriate mechanisms to facilitate accessibility, interoperability,

the quality and reuse of published information as well as its identification and

location.

In the case of non-profit entities that exclusively pursue

social or cultural interest and whose budget is less than 50,000 euros, compliance with

The obligations derived from this Law may be carried out using electronic means.

made available to them by the Public Administration from which the majority of

of public aid or subsidies received.

5. All information will be understandable, easily accessible and free of charge and will be

provision of persons with disabilities in a modality provided by means

or in suitable formats so that they are accessible and understandable, in accordance with the

principle of universal accessibility and design for all."

Article 14. Limits to the right of access

"1. The right of access may be limited when accessing the information involves a

damage to:

a) National security.

b) The defense.

c) Foreign relations.

d) Public safety.

e) The prevention, investigation and punishment of criminal, administrative or

disciplinary.

f) The equality of the parties in judicial proceedings and effective judicial protection.

g) The administrative functions of surveillance, inspection and control.

h) Economic and commercial interests.

i) Economic and monetary policy.

j) Professional secrecy and intellectual and industrial property.

k) The guarantee of confidentiality or secrecy required in decision-making processes.

decision.

l) The protection of the environment.

2. The application of the limits will be justified and proportionate to its object and purpose of

protection and will take into account the circumstances of the specific case, especially the

concurrence of a higher public or private interest that justifies access.

3. The resolutions that, in accordance with the provisions of section 2, are issued in

application of this article will be publicized prior to dissociation of the data of

personal nature that they contained and without prejudice to the provisions of section 3 of the

article 20, once they have been notified to the interested parties."

Section 2 deals with the "Exercise of the right of access to public information"

Article 15. Protection of personal data

"1. If the requested information contains specially protected data to which

refers to section 2 of article 7 of Organic Law 15/1999, of December 13 (RCL

1999, 3058), on the Protection of Personal Data, access is only

may authorize in the event that it has the express written consent of the

affected, unless said affected party had manifestly made public the data

prior to requesting access.

If the information includes specially protected data referred to in the

section 3 of article 7 of the Organic Law 15/1999, of December 13, or relative data

to the commission of criminal or administrative offenses that do not entail the

public reprimand to the offender, access may only be authorized in the event that

has the express consent of the affected party or if he is covered by a

standard with the force of law.

2. In general, and unless in the specific case prevails the protection of

personal data or other constitutionally protected rights over the public interest

in the disclosure that prevents it, access will be granted to information containing data

merely identifying related to the organization, operation or activity

body public.

3. When the requested information does not contain specially protected data, the

The body to which the request is addressed will grant access prior weighting sufficiently

reasoned statement of the public interest in the disclosure of information and the rights of affected whose data appear in the requested information, in particular their right fundamental to the protection of personal data.

For the realization of the aforementioned weighting, said body will take into particular consideration the following criteria:

a) The least damage to those affected derived from the expiration of the established periods in article 57 of Law 16/1985, of June 25, on Spanish Historical Heritage.

b) The justification by the applicants of their request in the exercise of a right or the fact that they have the status of researchers and motivate access for purposes historical, scientific or statistical.

c) The slightest prejudice to the rights of those affected in the event that the documents only contain data of a merely identifying nature.

d) The greatest guarantee of the rights of those affected in the event that the data contained in the document may affect your privacy or your security, or refer to to minors.

4. The provisions of the preceding sections shall not apply if access is made prior dissociation of personal data in such a way as to prevent the identification of affected people.

5. The personal data protection regulations will apply to the treatment subsequent to those obtained through the exercise of the right of access."

As a conclusion, it can be said that the disclosure of the claimants' data

in the minutes of the Local Government Board does not occur for the purpose of active publicity in the headquarters of the transparency portal of the defendant, and does not fit within the assumptions provided as active advertising, as knowledge of the users is neither necessary nor proportional. personal data of the people who obtained the condition of indefinite by sentence with its systematic publication in said acts. They are therefore not part of the information that by law 19/2013 must be published as active information. Furthermore, the exposure on the website of the one claimed in open reaches a greater meaning if they are taken into account the multiplier informative effects that are produced through the Internet and its impact on personal data protection.

viii

On the allegation that the data is exposed in the records to guarantee the transparency and publicity of the competitive process, providing the Cabinet report Legal of the AEPD number 385/2015 that deals with a query of data of the candidates in the development of a selective process, admitted, excluded, qualifications, must indicate that it deals with a different topic, which is not related to the management of the offer public employment and the exposure of data, replacement of troops, causes and categories of people who cause discharge in the service or people who hold by sentence the condition permanent indefinite employment. Therefore, that allegation does not serve to justify the exposition of data object of this procedure.

IX

Article 83.7 of the RGPD indicates:

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

Article 58.2 of the RGPD provides the following: "Each control authority will have

of all the following corrective powers indicated below:

a)

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

when the treatment operations have violated the provisions of this

Regulation;

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

29/31

d)

order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in accordance with

a certain way and within a specified period;

Article 72.1.a) of the LOPDGDD indicates: “Infringements considered very serious

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

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:

The processing of personal data violating the principles and guarantees established

a)

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

In this sense, article 77. 2 of the LOPGDD, indicates: "When those responsible or

managers listed in section 1 committed any of the offenses to which

referred to in articles 72 to 74 of this organic law, the data protection authority

that is competent will issue a resolution sanctioning them with a warning. The

The resolution will also establish the measures that should be adopted to stop the

conduct or correct 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 of the

that depends hierarchically, where appropriate, and those affected who had the status of

interested, if any."

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

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

previous.

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 to the

protection of this article.

6. When the competent authority is the Spanish Data Protection Agency,

this will publish on its website with due separation the resolutions referring to the

entities of section 1 of this article, with express indication of the identity of the

responsible or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority

it will be, in terms of the publicity of these resolutions, to what its regulations have

specific."

In allegations to the proposal, there has been news of the approved instruction for

consider the personal data in the records, in relation to the purpose of the

transparency, so that the owner of the data is not known or identifiable in

function of the purpose of the knowledge by the neighbors, reasonable so that the commission of

an infraction such as the one analyzed is not repeated, without prejudice to continuous analysis and

evaluations of the disclosure of data by the different platforms that can be

produce in the performance of the claimed.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE VIGO CITY COUNCIL, with NIF P3605700H, for a

infringement of Article 5.1.f) of the RGPD, related to article 5 of the LOPDGDD,

in accordance with article 83.5 a) of the RGPD, a sanction of WARNING.

SECOND: NOTIFY this resolution to the VIGO CITY COUNCIL.

THIRD

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

: COMMUNICATE this resolution to the OMBUDSMAN, of

FOURTH: 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 period of one month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

in accordance with the provisions of article 25 and section 5 of the fourth additional provision

of Law 29/1998, of 07/13 regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, as

provided for 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 interested party

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the

Spanish Agency for Data Protection, presenting it through the Electronic Registry

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

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. Also

must transfer to the Agency the documentation that accredits the effective filing of the

Sponsored links. If the Agency was not aware of the filing

contentious-administrative appeal within two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

APPENDIX 1

BBB

C.C.C.

DDD

E.E.E.

F.F.F.

GGG

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es