

□ Procedure No.: PS/00134/2019

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and based on
to the following

BACKGROUND

FIRST: INDEPENDENT TRADE UNION CENTRAL AND OFFICIALS CSI-CSIF (in
hereinafter, the claimant) on 10/23/2018 filed a claim with the Spanish Agency
of Data Protection because in a url address that indicates, from ***URL.1, "has been
published personal information of interim workers who provide their services for the
Principado de Asturias", "at least for a week with free access".

You could access the pdf whose copy is attached. These are Excel type sheets "LIST OF
EMPLOYMENT ATS, resolution ***RESOLUTION.1 BOPA ***BOPA.1 becomes operational
1/11/15". The list contains order number, up to 140, number of approved exercises,
some one, others two or zero, note, NIF, surnames and name, telephone, mobile and landline, boxes
marked in numbers 1 to 6 and comments on the vacancy. In a continuous sheet
they contain "Zones", "call day, time, call result".

SECOND: After receiving the claim, on 12/14/2018, the General Subdirectorate of
Data Inspection proceeded, in accordance with article 65.4 of Organic Law 3/2018,
of 5/12, of Protection of Personal Data and guarantee of digital rights, the
claim to the Ministry of the Presidency and citizen participation of the Principality of Asturias,
General Technical Secretary, urging that it respond to the claimant and detail what
happened and the measures implemented so that facts such as those object of the investigation were not repeated.
claim.

THIRD: On 01/04/2019, a letter is received in which it states that it is a delegate of

data protection, performing its duties exclusively in the field of

Ministry of the Presidency and citizen participation and that does not exercise its functions for the responsible for the treatment that gives rise to the aforementioned claim.

Provides a letter of "internal communication", sending the claim from the

General Technical Secretary to the "Management Directorate" of ESTABLISHMENTS

RESIDENTIAL HOMES FOR THE ELDERLY OF ASTURIAS dated 12/26/2018. In the referral

adds that it is accompanied by a report from the Head of the Publications Service, files

administrative, documentation and citizen participation. According to a copy of it, "report

on the publication of the ATS job vacancy of the ERA", indicates that it refers to an address

that corresponds to the electronic headquarters of the Principality of Asturias. "It is understood that

the claim does not refer to what is published in the BOPA but to a publication made in the

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electronic headquarters. "The announcement published in the BOPA that corresponds to these data does not

displays personal information. "The announcement publishes the resolution of ***RESOLUTION.1 of the

Managing Director of the Autonomous Body of Residential Establishments for the elderly in

Asturias, which provides for the employment contract for an indefinite period of 10 jobs

titled intermediate grade ATS-call published in the BO Principality of Asturias ***BOPA.2."

"The URL corresponds to the electronic headquarters of the Principality of Asturias, in which there are

a section of "public employment offers" that is managed directly by the respective

responsible bodies through a computer application that performs the publication in a

autonomous. Responsible for most of the publications is the administration service

staff through the temporary staff section. However, in this case, being

of an ERA bag, the responsible body is the HR management area through the recruitment and personnel management section.”

Carry out a search in the search engine of the electronic headquarters with the term “ats” and between other results, indicates a pdf “ATS EMPLOYMENT LIST ATS ERA 2015 labor personnel process selective available YES-employment exchange ERA-ATS employment list ERA 2015”. It shows the document to which he refers in the claim “at this time he informs that the list is not currently available”.

Another search is carried out with the term "nursing assistant", resulting in a pdf list "employee personnel selective process employment list ERA Aux nursing 2015 PDF" with a list of 10 employees with surnames and names, NIF, note, stock number, zones, result call. “But on that same screen there are other bags, such as AUXILIAR Educator, who shows similar data, referring to the “Educator Auxiliary Employment List, OEP 2016, resolution ***RESOLUTION.2, BOPA ***BOPA.3, takes office 09/10/2018 and a list Excel type with data of four people, with names and surnames, nif, note, date called 09/10/2018.”

“Currently, many documents are published that are not in accordance with the data protection regulations, in addition to the one claimed in this case”.

Proposal: “It is proposed to send it to all the Technical General Secretaries so that they send it to the bodies of their respective ministries that publish directly in electronic headquarters or those who send information for publication either in the portal Asturias or that of transparency a text similar to the following (Refers to the new Law Organic 3/2018, of 5/12, on the Protection of Personal Data and guarantee of rights data-hereinafter LOPDGDD-, its seventh additional provision).

FOURTH: The Autonomous Body RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY OF ASTURIAS, (ERA) (claimed) attached to the Ministry of Services and Social Rights

Submit written on 01/24/2019. Provide the same copy of the list that the claimant attached,

with the non-complete NIF and the name and surnames.

It states that “the list was immediately blocked, leaving an informative message of

list not currently available” and the list is drawn up in accordance with the provisions of the

LOPDGDD.

FIFTH On 03/20/2019, the Director of the AEPD admits the claim for processing.

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SIXTH: The BOPA of ***BOPA.1 is accessed, and the resolution of the Ministry of

Services and Social Rights, RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY OF

ASTURIAS (ERA) of ***RESOLUTION.1, of the Managing Director of the ORGANISM

AUTONOMOUS “RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY IN ASTURIAS”

(ERA), which provides for the employment contract for an indefinite period of 10 jobs

Middle Grade Graduate (ATS) (Call published in the Official Gazette of the Principality of

Asturias of 11/13/2009. In its first point it is indicated:

First.—Conclude a fixed employment contract with the workers who

appear in the annex that accompanies this Resolution and award the destinations, which will have the

character of definitive in the Councils and Work Centers that are mentioned in the same.

The annex contains only 10 names and surnames of those who have passed the test.

SEVENTH: On 10/30/2019, the Director of the Spanish Data Protection Agency

agreed to initiate a sanctioning procedure against the defendant, for the presumed infraction of article

6.1 of the RGPD, in accordance with article 83.5 of the RGPD.

No claims are received.

EIGHTH: On 03/17/2020, a resolution proposal was formulated and sent electronically,

with the result of expired as it was not opened by the claimed party. A second shipment occurs by regular mail, warning of the effects of telematic notification and being collected.

It meant: "That by the Director of the Spanish Protection Agency

of Data is sanctioned with a warning to AUTONOMOUS ORGANISM ESTABLISHMENTS

HOMES FOR THE ELDERLY OF ASTURIAS, for an infraction of article 5.1 a) of the

GDPR, in accordance with Article 83.5 a) of the GDPR,

Report of the measures implemented so that listings with personal data of offers

of employment or job boards are not visible when their purpose has been fulfilled, term of

exposure and blocking of data."

It states in pleadings that the list alluded to in the complaint was immediately

blocked leaving an informative message of "Currently not available list. Soon

We will fix the problem." Subsequently, they drew up said list in accordance with the provision

additional seventh of the LOPDGDD, publishing name and surnames and adding four figures

random numbers of the DNI. They indicate that the electronic address for access to the aforementioned list

was: ***URL.2, accessed on 07/27/2020 and it appears that it does not exist, however, it is accessed

to ***URL.1, and an ordered list has been published, with 140, with data on surnames and

name, NIF only four figures, containing the day of the call, time and result of the call,

accept, locale, or work ERA. This is resolution ***RESOLUTION.1 BOPA

***BOPA.1, "will come into operation 11/1/15". It is the same list object of the claim.

Supposedly, this 2015 list will have fulfilled its function, so in application of the

principle of "limitation of conservation period", data remain longer than necessary

for the purposes of the treatment, unless accreditation to the contrary. It is ignored if there are more listings

similar but the same principle would apply.

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

In this proceeding, the following are considered proven facts:

PROVEN FACTS

The claimant states that several excel list type sheets entitled "LIST OF

1)

EMPLOYMENT ATS, resolution ***RESOLUTION.1 BOPA ***BOPA.1 becomes operational

1/11/15", containing order number, up to 140, number of approved exercises (1 or

2) , note, NIF, surname and name, telephone, mobile and landline with the boxes marked in the

numbers 1 to 6 and observations on the vacancy, have been exposed in the electronic headquarters

of the Principality of Asturias. On the next sheet, "Zones" are contained, day of call, hour,

call result. In observations, reference dates appear as before 4/11/2015

and annotations on each person, dismissal, previous vacancy, work etc., accepts RIAÑO, does not accept exclusion, dates call 4/10/2018 as closest.

two)

On 01/04/2019, it is accredited that there is in the electronic headquarters of the Principality a

option in public employment offers, with "search for oppositions" or "job bank". done

search by ATS, the ATS ERA 2015 employment list appears, labor personnel, job bank

IT WAS. Clicking on the pdf shows the annotation "ATS EMPLOYMENT LIST, Resolution

***RESOLUTION.1 BOPA ***BOPA.1 becomes operational 1/11/15" "listing not available

Currently, we will correct the problem shortly." The respondent confirms in writing

01/24/219 that the listing was blocked, however, as of 07/27/2020, if it was available on the

headquarters at the url ***URL.1, the same list object of the claim with surnames and name, NIF

, the

only four digits, containing the day of the call, the time and the result of the call,

locality, or works ERA . In addition to containing data that is not provided for in the standard or

, the town, or work

any provision, day of call, time and result of call,

ERA typical of the management of the job market, supposedly, this 2015 listing will have

fulfilled its function, so in application of the principle of "limitation of the term of

conservation", its validity is not accredited.

you accept

you accept

3)

As pointed out by the data protection delegate of the Ministry of the Presidency and

participation, a search can be made in the electronic office with the term "auxiliary

Nursing", resulting in a pdf list "employee personnel selection process employment list was Aux

Nursing 2015 PDF" will come into operation on 05/13/2015 resolution ***RESOLUTION.3,

BOPA ***BOPA.4 with days called "12/01/2016" with a list of 10 employees with surnames

and name, NIF, note, stock number, zones, call result. On that same screen

other exchanges, such as that of AUXILIAR Educador, which shows similar data,

referring to the "educator assistant employment list, OEP 2016, resolution ***RESOLUTION.2, BOPA

***BOPA.3, takes office 09/10/2018" and an Excel type list with data of four people,

with names and surnames, nif, note, date called 09/10/2018. It is also verified in the course

of this file, that by accessing the electronic headquarters of the Principality of

Asturias, in the Public job offer section and it can be seen that there are personal data:

Complete ID, name and surnames and if you worked or not, and if you accept the job proposal, in

lists of 2005 calls that have presumably fulfilled their function. By way of

example, figure List employment of graduate in nursing resolution ***RESOLUTION.4

BOPA ***BOPA.5 which has presumably already served its purpose.

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The respondent has not informed “of the measures implemented so that lists with data

4)

personal job offers or job boards are not visible when it has been fulfilled

its purpose, exposure period and data blocking.” that was contained in the proposal.

FOUNDATIONS OF LAW

Yo

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

II

A first question arises that the list of the BOE is of 10 people, the one that appears as the subject of the complaint is 140. No reason has been given for the type, purpose and legitimacy of the exhibition of the 140 members of the list, since it does not appear related to the BOPA.

There is no legitimizing basis for the aforementioned exhibition, which is why it was imputed to claimed the Violation of article 6.1 of the RGPD that states: “Legality of the treatment””1. treatment alone will be lawful if at least one of the following conditions is met: "listing different, not concurring none of them for the treatment carried out on the page indicated as how it has been done.

Although an infringement of article 6.1 of the RGPD was imputed, in the proposal of resolution the classification of the infraction is changed, since it is considered more appropriate to classify the facts object of the complaint as incardinated in article 5.1 a). Thus, the exposure

publication of the lists with the data: DNI, name and surnames, and landline telephone numbers and/or mobile phones, and results of the calls with annotations, in the electronic office of the Principality of Asturias with access for any person, supposes an infraction of the aforementioned article, as there is no legitimacy for the set of elements that are published, also adding that it could be a process already completed since 2015 and remains exposed.

Article 5.1.a) of the RGPD indicates: "The personal data will be:

processed in a lawful, loyal and transparent manner in relation to the interested party

a)

("legality, loyalty and transparency");

The exposed document could rather be described as an internal document of management, as it is contained as a block, data that does not have to be exposed to give them publicity that looks for the concurrence of the processes, if it is about employment exchanges or any other selective process. After the development of the tests, it seems that a list is made of which annotations are produced, and in no case is there legal authorization to exhibit in a web, in electronic headquarters said list to the knowledge of third parties. It could be due to an error denotes lack of diligence. Therefore, there is no legitimizing cause that enables the exhibition of the data in the open electronic headquarters as it was given, a kind of management document of the process that is not related to qualifications or transparency when exceeding these elements.

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In addition, as a basic principle of the RGPD, when processing data, it has always been

to opt for the minimum data necessary for the group of affected parties to achieve its purpose. I know therefore proves the commission of the infringement of article 5.1. a) of the RGPD.

Likewise, it must be understood that the listings should not remain on the page when fulfilled its purpose and the defendant does not justify reasons that in the processing of this procedure these lists survived, even if it was with an incomplete DNI.

Article 83.5 of the RGPD

III

"5. Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual turnover of the previous financial year, opting for the highest amount:

a) the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9;"

IV

Article 72 of Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD) states:

"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:

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

Article 83.7 of the RGPD indicates:

v

"Without prejudice to the corrective powers of the control authorities under the Article 58(2), each Member State may lay down rules on whether and in what what measure, impose administrative fines on authorities and public bodies established

in that Member State."

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this

Regulation;

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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 a certain manner and within a specified period.

The Spanish legal system has chosen not to fine entities

public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: "1. The regime established in this article will be applicable to the treatments that are responsible or in charge:

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

2. When those responsible or in charge listed in section 1 commit any of the infractions referred to in articles 72 to 74 of this organic law, the authority of data protection that is competent will issue a resolution sanctioning them with warning. The resolution will also establish the measures to be adopted to that the conduct ceases or the effects of the infraction that had been committed be corrected.

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

depends hierarchically, where appropriate, and 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 preceding sections.

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

6. When the competent authority is the Spanish Agency for Data Protection, 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 person in charge or in charge of the treatment that had committed the infraction.”

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY OF ASTURIAS, with NIF Q8350062I, for an infringement of article 5.1 a) of the RGD, of in accordance with article 83.5 of the RGD, a warning fine, in accordance with with article 58.2.b) of the RGD.

SECOND: NOTIFY this resolution to RESIDENTIAL ESTABLISHMENTS OF ELDERLY OF ASTURIAS.

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THIRD: RESIDENTIAL ESTABLISHMENTS FOR THE ELDERLY OF ASTURIAS must prove in compliance with article 58.2.d) of the RGD the measures implemented so that

listed the personal data of job offers or job boards are not visible when

its purpose, exposure period and data blocking have been fulfilled.

FOURTH

with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the OMBUDSMAN, in accordance

FIFTH: 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 Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13/07,

regulation of the Contentious-administrative Jurisdiction, within a period of two months from

from the day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution in administrative proceedings if the interested party

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

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

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

records provided for in art. 16.4 of the aforementioned Law 39/2015, of 1/10. You will also need to transfer

the Agency the documentation that proves the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the notification of this resolution would terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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