

□ File No.: PS/00429/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The BURGOS OFFICIAL NURSING COLLEGE and the COUNCIL

GENERAL OF NURSING (hereinafter, the claimant party) dated 02/23/

2021 filed a claim with the Spanish Data Protection Agency. The

claim is directed against COUNCIL OF PROFESSIONAL SCHOOLS OF

DIPLOMA IN NURSING FROM CASTILLA Y LEÓN with NIF Q9755008A (in

hereafter, the party claimed). The grounds on which the claim is based are

following: that the ***POSITION.1 has sent in the last written months to the 52

Provincial Colleges of Nursing, announcing the successive publication of

sending of data and information about members of the General Nursing Council,

considering that these actions are contrary to what is established in the regulations of

Data Protection.

They provide documents that include personal data (address, DNI

economic remuneration) of members of the Executive Committee of the Board

Nursing General, (...).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), on 03/22/2021 said claim was transferred to the party

claimed, so that it proceeded to its analysis and inform this Agency within the period

of a month, of the actions carried out to adapt to the foreseen requirements

in data protection regulations. No response has been received to this letter.

THIRD: On 06/23/2021 the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 01/10/2022, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 5.1.c), typified in article 83.5.a) of the RGPD.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been

accredited the following:

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PROVEN FACTS

FIRST: On 02/23/2021 the claimant filed a claim with the Agency

Spanish Data Protection Agency, stating that the respondent has submitted in the

last months written to the 52 Provincial Colleges of Nursing, in which

announces the successive publication of shipments of data and information on members

of the General Nursing Council, considering that these actions are

contrary to the provisions of the data protection regulations.

SECOND: There is a letter dated 12/23/2020 sent by the Council of Schools of Nursing of Casilla and León to different Colleges of Nursing in which informs about the reception of documentation related to the claimed and that due to the seriousness of the presumed crimes that are denounced has been made known of the Prosecutor's Office and announcing the forthcoming disclosure of new information and documents that will be made known to the members while denouncing the continuous attacks and interference of (...).

THIRD: There is a new letter dated 02/12/2021 sent by the Council of Colleges of Nursing of Castilla y León announcing new information, documents, including the economic remuneration received (...).

FOURTH: Provided (...), Collegiate Organization of Nursing, Council General, whose recipient is (...), including their personal data (name and surnames, address and DNI) and economic remuneration for assignment as advisor (...), according to agreement of the ordinary meeting of the Executive Committee dated XX/XX/2019. The document does not contain the signatures of the President or the Treasurer.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

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2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.
- e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.
- f) Indication of the right to formulate allegations and to the hearing in the

procedure and the deadlines for its exercise, as well as an indication that, in

If you do not make allegations within the stipulated period on the content of the

initiation agreement, this may be considered a resolution proposal

when it contains a precise statement about the responsibility

imputed.

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase

later by drawing up a List of Charges, which must be notified to

the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

Article 5, Principles relating to processing, of the GDPR states that:

III

"1. The personal data will be:

(...)

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

(...)

IV

The documentation in the file offers clear indications that the

claimed violated article 5 of the RGPD, principles related to treatment, in its

section 1.c) when publishing and disseminating among the Colleges of Nursing data not

adequate or pertinent, excessive such as address, DNI and economic data, etc.

of collegiate

Article 5 of the RGPD refers to the general principles for the treatment

of data. Section c) refers to the principle of data minimization,

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indicating that the data must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed".

If we examine the definition we can deduce that only the

personal data to be processed, that is, those that are strictly

necessary for treatment; that can only be picked up when they are going to be

treated and that can only be used for the purpose for which it was collected, but

not for any other purpose.

Also Recital 39 states that:

(39) All processing of personal data must be lawful and fair. For the

natural persons it must be made absolutely clear that they are being collected, used,

consulting or otherwise treating personal data that concerns them, as well as

the extent to which such data is or will be processed. The principle of transparency

requires that all information and communication regarding the processing of said data be

easily accessible and easy to understand, and that simple and clear language is used.

This principle refers in particular to the information of the interested parties on the

identity of the data controller and the purposes thereof and the information

added to ensure fair and transparent treatment with respect to people

physical affected and their right to obtain confirmation and communication of the data

personal data that concern them that are subject to treatment. natural persons

must be aware of the risks, standards, safeguards and rights

regarding the processing of personal data as well as the way to assert their rights in relation to treatment. In particular, the specific purposes of the processing of personal data must be explicit and legitimate, and must be determined at the time of collection. Personal data must be adequate, pertinent and limited to what is necessary for the purposes for which they are treated. This requires, in particular, ensuring that their use is limited to a strict minimum. conservation period. Personal data should only be processed if the purpose of the processing treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than necessary, the person responsible for the treatment must establish deadlines for its suppression or periodic review. must take all reasonable steps to ensure that they are rectified or deleted personal data that is inaccurate. Personal data must be treated in a way that guarantees adequate security and confidentiality of the data including to prevent unauthorized access or use of such data and of the equipment used in the treatment (The underlined corresponds to the AEPD).

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The infraction that is attributed to the claimed one is typified in the article 83.5 a) of the RGPD, which considers that the infringement of “the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

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The LOPDGDD in its article 71, Violations, states that: "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

And in its article 72, it considers for prescription purposes, which are: "Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly the following:

(...)

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

(...)

However, article 58.2 of the RGPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

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(...)

b) sanction any person responsible or in charge of the treatment with warning when the treatment operations have infringed the provided in this Regulation;

(...)

The assumption examined evidences that the one claimed when proceeding to the publication and dissemination of personal data and information concerning members collegiate, not adequate or pertinent and excessive has caused the violation of the data minimization principle.

Said conduct constitutes the infringement of the provisions of articles 5.1.c) of the GDPR.

However, the infraction can be sanctioned with a warning in accordance with article 58.2.b) of the RGPD and consider that the administrative fine that could fall in accordance with the provisions of article 83.5.a) of the RGPD would constitute a disproportionate burden for the claimed, in addition to not stating the commission of no previous breach of data protection.

It should be noted that the respondent has not submitted arguments to the agreement of start ignoring whether it has adopted necessary and pertinent measures to prevent Incidents and situations such as those that have given rise to this claim are produce again in the future.

At this point, it is necessary to point out that if you do not correct and reiterate the conduct revealed in this case and that is the cause of this

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procedure, as well as not informing this AEPD of the measures adopted with

In relation to the claimed facts, proceedings could be exercised before the responsible for the treatment in order to apply effective measures

appropriate and adequate to guarantee the treatment and minimization of data

of a personal nature and that incidents such as the one that has occurred will not be incurred again.

place this file.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ON THE COUNCIL OF PROFESSIONAL ASSOCIATIONS OF

DIPLOMA IN NURSING FROM CASTILLA Y LEÓN, with NIF Q9755008A, by

an infringement of article 5.1.c) of the RGPD, typified in article 83.5.a) of the RGPD,

a warning sanction.

SECOND: TO REQUIRE the COUNCIL OF PROFESSIONAL ASSOCIATIONS OF

DIPLOMA IN NURSING FROM CASTILLA Y LEÓN, with NIF Q9755008A, to

that within a month from the notification of this resolution, prove the

adoption of necessary and pertinent measures in accordance with the regulations in

matter of protection of personal data in order to avoid that in the future

incidents such as those that gave rise to the claim occur again

correcting the effects of its possible infraction, adapting the treatment of the data

of a personal nature to the requirements contemplated in article 5.1.c) of the RGPD.

THIRD: NOTIFY this resolution to the COUNCIL OF SCHOOLS

PROFESSIONALS OF DIPLOMA IN NURSING FROM CASTILLA Y LEÓN.

In accordance with the provisions of article 50 of the LOPDGDD, the

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

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be provisionally suspended in administrative proceedings if the interested party expresses his intention to file a contentious appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency

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[<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 October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the

precautionary suspension.

Sea Spain Marti

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