

□ Procedure No.: PS/00163/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The inspection actions are initiated by the receipt of a letter of
notification of security breach of personal data (hereinafter
security breach) sent by the Subdelegate for Data Protection indicating
as responsible for the treatment to the Department of Education, Culture and Sport of
the Generalitat Valenciana regarding the personal data processed by the College of
Infant and Primary Education "****COLEGIO.1", of ***LOCALIDAD.1 (hereinafter
CEIP), ***LOCATION.1.

They inform the Spanish Data Protection Agency that the security breach
It is communicated by email by a mother of CEIP students. the mother of the
students reports that the center published on its website the list of accepted students, with
additional information, as well as the list of all the students of the school and the
of admissions last year. After contacting the CEIP management,
deleted some of the corresponding entries, but the links of the
<pdf> documents were still accessible if the saved links were available
or a search was made in any search engine of the students.

The information on the CEIP student lists is published on the center's website
(***URL.1) managed through the platform "****PLATAFORMA.1" offered by the
Undersecretary of the Department of Education, Research, Culture and Sport.

In the notification of the security breach it is indicated that there are about 450 minors
affected and that the categories of data are:

- Basic data.
- Economic or financial data.
-
- Percentage of disability.

Information about the family.

SECOND: In view of the aforementioned notification of the security breach, the Subdirector General for Data Inspection proceeded to carry out actions prior investigation having knowledge of the following extremes:

BACKGROUND

Security breach notification date: September 20, 2019.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/17

INVESTIGATED ENTITIES

Ministry of Education, Culture and Sport, with NIF S4611001A and with address at Avenida Campanar 32, 46015 Valencia.

RESULT OF THE INVESTIGATION ACTIONS

On October 3, 2019, the CEIP is required to provide information on the gap in security notified, obtaining as a response from the Undersecretary of the Ministry of Education, Culture and Sports of the Generalitat Valenciana the following:

“From the management of the educational center CEIP ***COLEGIO.1 of ***LOCALIDAD.1, dependent on the Ministry of Education, Culture and Sport of the Generalitat Valenciana, a request for information referred to has been sent to this Undersecretariat to a security breach that was apparently related to the actions of said

school.

Said request indicates that "in order to clarify the circumstances of the security breach notified to this Agency on 09/20/2019, in relation to the publication of a list of students accepted into the CEIP ***COLEGIO.1 de ***LOCATION.1...».

Since said security breach apparently has not been notified since any organ of the Generalitat Valenciana, and that, having consulted both the management of the center such as the educational inspection, there is not enough certainty about which publication of listing refers to the requirement, IT IS REQUESTED from that Spanish Agency of Data Protection:

That the content of the formulated requirement be completed, indicating, to the extent possible, with greater clarity and definition, to which action of the center is referred the security breach, all in order to be able to analyze the circumstances in which such breach could be produced and a full response to the formulated request could be given."

For this reason, the previously requested information is requested from the CEIP again, providing more information about the security breach notification received in this Agency, receiving a response from the Undersecretary of the Ministry of Education, Research, Culture and Sports of the Generalitat Valenciana, in the following terms:

" [...]

Once the lack of initial coordination between departments of the Generalitat and exactly identified the facts that gave rise to the notification of the breach of security, by the direction of the center CEIP ***COLEGIO.1 of

*** LOCATION.1 a report has been prepared, accompanied by the rest of the information requested, in accordance with the scheme included in Annex 2 of the request for information dated 01-17-2020.

The report in question recognizes, in summary, the following extremes:

- That the publication on the web page of the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/17

center of a list that should only have been exposed on the board

inside the CEIP center ***SCHOOL.1 of ***LOCALITY.1

- That such publication on the school website was made for the sake of greater

transparency to facilitate consultation with the parents of the students.

- That he acted in the manner exposed despite the existence of instructions from the

Conselleria indicative of the way in which to proceed (Resolution of 28 of

June 2018, from the Undersecretary of the Ministry of Education, Research,

Culture and Sports, by which instructions are issued for compliance with the

data protection regulations in public educational centers owned by

the Generalitat).

- That, although the list was removed from the website as soon as it became known, the

suppression of the same in the server of the Conselleria was delayed until the beginning of the

month of October.

- And lastly, that once the facts that motivated the notification of

the security gap, facing the start of the new school year 2019-2020

The pertinent measures were adopted and the teaching staff of the center were made aware so that they

a similar situation does not occur again in the future, which is contrary to the

regulations on data protection and the instructions given from the

Department.”

They are accompanied by a report from the director of the CEIP in which she states:

<< 1.- COPY OF THE REPORT PREPARED IN RELATION TO THE FACTS

MENTIONED:

a.-Detailed and chronological description: At the end of the 2018-19 academic year, in the Project School of the Center we have established the criterion of regrouping the students in the levels of first, third and fifth of Primary Education. In addition, they are produced changes in student tutorials regarding who will be the tutor during the course
Next.

a.1.- During the month of July 2019, the lists are published.

a.2.- It is detected at the beginning of September 2019.

a.3.- They are removed from the website in the days following the arrest, it is not visible or editable.

a.4.- It is removed from the Consellería server location at the beginning of the month of october.

When the month of October begins, the incident is fully resolved.

b.-Specification of the reason: The regrouping task is carried out by the tutors during the first week of July. Quite a few families march home from summer and quite frequently, they ask when they will know how the groups for the next course and who will be the tutor. It is regularly insisted if the lists were published on the web.

When the teachers had the lists prepared, for the sake of transparency and to facilitate the information to parents, the lists that are attached to this writing in this form and manner.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

4/17

c.-The n

or of students from the list located on the website was 439 students.

d.-The type of data: Corresponds to four fields:

COURSE (age) because it appeared childish (3 years old...)/ NO order STUDENT / NAME
STUDENT/ TUTOR'S NAME.

e.-Detailed description of the reasons why the listings were still accessible,

links removed: A mother from the center was at the school at the beginning of the month

September and had a conversation with the head of studies and ICT coordinator

from school. He sent his concern about the publication of lists of

students on the center's website and in Google search results for students by

This asked him to remove them from the school's website, "****PLATAFORMA.1". The

ICT coordinator did so on the center's website, but was unable to do so.

Google search results disappear since the "pdf" files of the

server were still indexed by Google, and at that time the ICT coordinator did not

he knew how to remove them. For this reason, he recommended sending an email to the Ministry of

Education asking you to consult how to remove it from the relevant location on the web

"****PLATAFORMA.1", any file related to the mother's request; she

so it proceeded.

Of said conversation, I was not informed as director, since, the head of

Studios thought they had resolved the incident. My first news about it was

when, in the middle of October, I received the communication from the Spanish Agency for

Data Protection, informing me of a security breach. I assembled the team

director to report on the letter received and at that time the head of studies

He brings me up to date on the meeting with the aforementioned mother. He omitted to tell me that he had

recommended to send an email to the Consellería. In my opinion, if the error was of the center, it should be the center that solved it, asking for advice correspondent.

f.- Detailed description of all the actions carried out in order to minimize the adverse effects and for the final resolution of the incident, including the date and time of the measures adopted:

f.1.- The center instantly removed from the web any link or trace visible at the same moment that the mother, expressing her disagreement, interviewed the ICT coordinator.

f.2.- The mother sent an email to the Department of Education, Culture and Sports of the Generalitat Valenciana, requesting the deletion of the files stored in the space reserved for the website of "****PLATAFORMA.1" of the CEIP, which They belong to the Ministry server, but it was not a complaint in this regard.

This lady is currently on the School Council of the center after the past elections of November 21, 2019, and their relationship with the Management Team, and with the Cloister is very good. In fact, this topic has been discussed repeatedly with her and expresses her concern about what happened, for it was not his intention to generate this conflict.

f.3.- After a few weeks, the head of studies and ICT coordinator had a

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/17

training promoted by the CEFIRE of ***LOCALIDAD.1 where among others aspects dealt with data protection. There he asked how to remove the rest

of the file, and after giving him the appropriate explanations, when he returned to school he eliminated. Currently, no trace is left on any server on the network.

2.- INFORMATION REGARDING IF YOU HAVE KNOWLEDGE OF THE USE

BY THIRD PARTIES OF THE PERSONAL DATA PUBLISHED:

1-We have no record, we have no communication of the use by third parties of the personal data published. Nor are we aware that there is manipulated or applied for any purpose the information of the lists of students and the assigned tutors.

3.- INFORMATION REGARDING THE NOTIFICATION MADE TO THE STUDENTS ABOUT THE EVENTS THAT HAPPENED.

1- The students were not informed about it since they are minors.

The CEIP ***COLEGIO.1 is an Infant and Primary school.

2- Concerned about the treatment of the center's data, from the team director, the entire faculty was told that, in the meetings of beginning of the course, in each of the tutorials, the topic of data protection, and inform all families that any information with sensitive data, they would not be published on the web, nor on the bulletin boards with external visibility to the center. This information would only be available in the official and internal bulletin board of the center. Likewise, in the aforementioned board The Data Protection Law (LOPD and its RGPD Regulation of 25 of May 2018) where the prohibition of taking photographs or giving publicity to the detailed information there.

3- Minutes of the meeting of the head of studies with the coordinators are attached where they were informed of the script for the meetings at the beginning of the course.

4- The minutes of the beginning of the course are also attached (point 2 of the minutes) where at the read the instructions at the beginning of the course of the Generalitat Valenciana,

RESOLUTION of July 5, 2019 where in its point 133 it is explicit the

use of the platforms, as well as the treatment of data protection.

4.-DOCUMENTATION ACCREDITING THE STANDARD OF THE CONSELLERIA THAT

SEND THE INSTITUTES:

<RESOLUTION of June 28, 2018, of the Undersecretary of the Ministry of

Education, Research, Culture and Sports, which dictates instructions for the

compliance with data protection regulations in educational centers

public owned by the Generalitat. In its article 3.3.4, it specifies that:

3.3.4 Publication on student boards by classes and/or activities

For the organization of the teaching activity, the centers distribute at the beginning of each

course to students by classes, subjects, activities and services.

To make this distribution known to students and their families, they can be placed

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/17

such relationships on bulletin boards or at classroom entrances, during

a reasonable time to allow knowledge by all interested persons,

or, through the ITACA> system.

5.-DOCUMENTATION ACCREDITING THE STANDARD OF THE CONSELLERIA THAT

SEND THE INSTITUTES.

1- Instructions for the beginning of the 2019-20 academic year. Reading to the Cloister of said

instructions as detailed in the measures adopted by the

previous point.

2- Record of the head of studies, at the proposal of the director, with the script that he gave them

to the coordinators for the tutoring meetings at the beginning of the course.

3- In the minutes of each one of the tutors it is stated that the point of the Data Protection.

For all the above, I COMMUNICATE:

1.- As director of the center, I apologize for the mistake made on my part in the publication of the lists. It was never intended to cause harm to third parties. The intention was to facilitate the information to the families avoiding the displacement to the center.

2.- Being on the "****PLATAFORMA.1" website, I thought that the data was "protected" by the Ministry of Education, and removed from the platform ***PLATAFORMA.2, we always thought and believed that there was no sensitive information in this regard, at no time were we able to rationalize that we were committing some irregularity.

3.- The list of students was never made public through the website of the center, and currently any publication is made by the internal bulletin board from the center.

4.- That they have apologized to the mother who made the email, who has accepted and regrets what happened.

5.- That I reiterate my apologies to the Department of Education, Culture and Sport for not knowing how to exercise my role as director as appropriate, deeply regretting professional and personal level what happened.

6.- That I will ensure that during the time that I continue to exercise the position, I will not return to Unfortunate events like this happen and I will be "in vigilance" regarding the publication center data.

7.- That I am at your disposal for whatever is required of me. >>

Since the publication of data was mentioned in the breach notification

additional, (of the family, economic and social) a new requirement is made to the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/17

CEIP to provide a copy of the first page of the published listings,

verifying that, in one of the lists provided of requests for assistance, assistance

course dining room 2019/2020, in addition to course data, student order number, name

and surnames of the student, there are also data on family income (from personal income tax), number of

members of the family unit, the economic score obtained, the score

social, and the total score.

The other two lists provided contain only course data, order number of the

student, name and surname of the student, name of the tutor.

THIRD: On June 17, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 32 of the RGPD, typified in Article 83.4 of the RGPD.

FOURTH: On October 2, 2020, a resolution proposal was formulated, in which

following terms:

<< That the Director of the Spanish Data Protection Agency sanction

the DEPARTMENT OF EDUCATION, CULTURE AND SPORTS OF THE GENERALITAT

VALENCIANA, with NIF S4611001A, for violation of article 32.1, b) and c) of the RGPD,

typified in article 83.4 of the RGPD, considered serious for the purposes of prescription in

article 73.g) of the LOPDGDD and for infringement of article 5.1.f) of the RGPD typified

in Article 83.5 of the RGPD, considered very serious for the purposes of prescription in the

Article 72.i) of the LOPDGDD, with a sanction of warning>>.

FIFTH: On 10/19/2020, the allegations were received regarding the proposal for resolution in the following terms:

In the first place, a violation of the principle of typicity is alleged based on the fact that the imputed facts do not constitute an infringement of the RGPD as it is mandatory to publication of listings.

In this sense, it should be noted that the alleged facts are described as infringement in articles 32.1.b) and 5.1.f) of the RGPD and typified in articles 83.4 and 83.5 of the RGPD, respectively, as described in the fundamentals of the this resolution. Consequently, the claim must be rejected.

Secondly, it is alleged a violation of the principle of presumption of innocence with based on the fact that the imputed facts are not proven.

In this sense, it means that the imputed facts are accredited not only by the own manifestations of the person in charge of the treatment and of the person in charge of the CEIP, but they are documented as proven in the document requested by the Inspection of this AEPD and sent to it on 02/21/2020, with identification number check-in registration 008501/2020. This document expressly contains the data published figures of family income, family members, economic score and social score. Consequently, this AEPD in its investigative actions has undermined the aforementioned principle. Therefore, the claim must be rejected.

Third, the application of the “in dubio pro reo” principle is alleged.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/17

In this regard, the facts imputed have been unquestionably accredited by

which does not proceed to apply such a legal principle. Consequently, the claim must be rejected.

Fourth, it is alleged that they have not been established in a reasoned manner in the Proposal for Resolution of the proven facts and their legal qualification, which has generated helplessness.

In this sense, it should be noted that in the Motion for a Resolution the same proven facts that in this resolution, as well as its legal qualification that they are reproduced in the FOURTH section of the antecedents of this Resolution. In Consequently, the claim must be rejected.

Fifth, it is alleged that the Instructor has taken as evidence against the "list of dining aids", and does not contain the data referred to in this process.

In this sense, point out again that the published list is included in the file at the request of the Data Inspection of this AEPD dated 02/21/2020 and entry registration number 008501/2020, and it expressly includes the family income data, family members, economic score and score community of 439 students. Consequently, the claim must be rejected.

Sixth, it is alleged that a security breach has not occurred every time that the data was not published in a place of permanent consultation "as could be the case of an official newspaper" (sic).

In this regard, it should be noted that it is proven that the list of dining aids was published on the website "****PLATAFORMA.1" whose responsible is the public body now investigated giving access to the analyzed data to third parties without it being relevant the form of its publication but that third parties have had access to the themselves. Therefore, the claim must be rejected.

Seventh, a list of regulations issued by the investigated is provided, and that

it is stated that the technical and organizational measures have already been implemented for the purpose of not violating the regulations on data protection and given that in the Community there are 1634 public centers it is absolutely impossible to control information and documents published in the centers.

In this sense, it should be noted that the measures included in the regulations indicated, since they only state the measures to be taken without this implies its proper implementation in the information systems of the investigated. Consequently, the claim must be rejected.

Eighth, it is alleged that the criteria established in to article 83.2 of the RGPD when assessing responsibility.

In this sense, to point out, as stated at the beginning of the aforementioned article 83.2 of the RGPD, these criteria will be applied in administrative fines. In the present case

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

9/17

the penalty is a warning, so its application is not appropriate. In Consequently, the claim must be rejected.

In the ninth and last place, AEPD files from the years 2018 and 2019 in which similar incidents have been filed, having resolved diligently and minimized the consequences of the reported breach.

In this sense, it should be noted that in the indicated cases the implantation of during the previous investigations of all those necessary corrective measures to avoid the repetition of similar events. In the present case, only made statements in this regard without reliable evidence of their

effective implementation in the information systems for which the organization is responsible.

investigated. Consequently, the claim must be rejected.

PROVEN FACTS

FIRST: The CEIP "***COLEGIO.1" of ***LOCALIDAD.1, is an educational center attached to the Ministry of Education, Culture and Sports of the Generalitat Valencian.

SECOND: The Ministry of Education, Culture and Sports of the Generalitat Valenciana is responsible for the platform "****PLATAFORMA.1" from which manages the publication of lists of students of the attached CEIP.

THIRD: The list of "requests for financial aid" was published on said platform. canteen assistance course 2019-2020 "to which outside third parties had access for a month. The list contained family data of underage students of the CEIP "****COLEGIO.1" relative to family income and "social score" (sic).

FOURTH: Outside third parties had access to the published listings.

FIFTH: The Resolution of June 28, 2018, of the Undersecretariat of the Ministry of Education, Research, Culture and Sport, by which they dictate instructions for compliance with data protection regulations in the public educational centers owned by the Generalitat.

FOUNDATIONS OF LAW

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 to resolve this procedure.

Article 4.12 of the RGPD establishes that it is considered "violation of the security of the personal data": any breach of security that results in the destruction, loss or accidental or unlawful alteration of personal data transmitted, stored or

otherwise processed, or unauthorized communication or access to such data.

Article 33.1 of the RGPD establishes the following:

Yo

II

III

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/17

"1. In case of violation of the security of personal data, the person in charge of the treatment will notify the competent control authority in accordance with the article 55 without undue delay and, if possible, no later than 72 hours after who was aware of it, unless it is unlikely that such violation constitutes a risk to the rights and freedoms of individuals physical. If the notification to the supervisory authority does not take place within the period of 72 hours, must be accompanied by an indication of the reasons for the delay." (...).

Article 34.1 of the RGPD establishes the following:

"1. When it is likely that the personal data breach entails a high risk for the rights and freedoms of natural persons, the responsible for the treatment will communicate it to the interested party without undue delay."

IV

From the actions carried out, it can be deduced that this AEPD was notified, in the Within 72 hours, the personal data security breach was communicated to the interested parties, complying with the provisions of article 33 and 34 of the RGPD.

Articles 4.7 and 24 of the RGPD, definition of responsible and responsibility of the

responsible for the treatment, indicate the following:

“4.7. “responsible for the treatment” or “responsible”: the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of treatment; whether the law of the Union or of the Member States determines the purposes and means of the treatment, the person in charge of the treatment or the Specific criteria for their appointment may be established by Union Law.
or of the member states.

“24.1. Taking into account the nature, scope, context and purposes of the treatment as well as the risks of varying probability and severity for the rights and freedoms of natural persons, the data controller will apply measures appropriate technical and organizational measures in order to guarantee and be able to demonstrate that the processing is in accordance with this Regulation. These measures will be reviewed and will update when necessary.

2. When they are provided in relation to treatment activities, between the measures mentioned in paragraph 1 shall include the application, by the responsible for the treatment, of the appropriate data protection policies” (...).

In the present case, the Ministry of Education, Culture and Sport is responsible of personal data processing in all actions carried out by the different organic units attached to it, the website “***PLATAFORMA.1” and the CEIP of the Autonomous Community, since, as stated in article 4.7 of the aforementioned RGPD, is the natural or legal person, public authority, service or other body that, alone or jointly with others, determines the purposes and means of processing; and so declares the Undersecretary of the Ministry of Education, Research, Culture and Sports in the Resolution of June 28, 2018, of the Undersecretary of the Ministry of Education, Research, Culture and Sport, by which they dictate instructions for compliance with data protection regulations in the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/17

public educational centers owned by the Generalitat, specifically points out what

Next:

“The Undersecretary of the Ministry of Education, Research, Culture and Sport is

the body responsible for personal data files as established

Article 9 of Decree 130/2012, of August 24, of the Consell, which establishes

establishes the information security organization of the Generalitat, and must

ensure, within its scope of competence, compliance with the legislation in

matter of data protection. Therefore, it is necessary to issue instructions

regarding the measures to be carried out by public educational centers where

there are treatments of personal data”, to which it adds and singles out in the

Annex I, section 2.4. of the same Resolution as “2.4. Security measures. So much

the Ministry responsible for education, as responsible for the

processing of personal data, such as educational centers must adopt a

series of security measures, of a technical and organizational nature, that guarantee the

security of the aforementioned data” (emphasis is from the AEPD).

Annex I of the aforementioned Resolution of 06/28/2018 adds the following:

“3.3.3. Publication of recipients of scholarships, grants and aid

The Law on Transparency and Access to Public Information and Good Governance determines

the obligation to make public, as a minimum, the information related to the

subsidies and public aid granted by public administrations with

indication of its amount, objective or purpose and the beneficiaries.

Without prejudice to the publication by the convening administration, the centers

Schools may also publish this information for informational purposes of the affected people.

In the case of scholarships and grants based on the disability situation of the beneficiaries, it will be enough to publish a list with an identification number of the beneficiaries, such as the DNI or an identification number that would have been provided to interested parties with the request.

Likewise, if there were several requirements to be assessed, the total result could be given and not the part of each of the requirements.

If the aid criteria are not based on circumstances involving the knowledge of special categories of data must be assessed whether, however, could affect the intimate sphere of the person, for example, by revealing their economic capacity or their situation of risk of social exclusion.

In these cases, it would be necessary to analyze in each case if it is necessary to make public said information to guarantee the transparency of the activity related to the operation and control of public action. Similarly, when they are no longer

If these lists are necessary, they will have to be withdrawn.” (the underlining is from the AEPD). In the In this case, the regulations of the Ministry published for the purpose of to guarantee the rights and freedoms of those affected.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

v

12/17

Article 32 of the RGPD establishes the following:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which in your case includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore the availability and access to the personal data of quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. (...)

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the person in charge or the person in charge and has access to personal data can only process said data following instructions of the person in charge, unless it is obliged to do so by virtue of the Right of the Union or the Member States. (the underlining is from the AEPD).

From the facts described and accredited, it is clear that the Department of Education, Culture and Sport did not have implanted in the web "****PLATAFORMA.1" of which it is

responsible, appropriate technical and organizational measures to guarantee a level of security appropriate to the risk, since it is accredited by the documentation in the file and the own allegations of the person in charge of the CEIP that omitted its duty to previously guarantee that the content of the information that is included on said website is adequate and pertinent, based, among others, on its own normative regulation transcribed above, having allowed the inclusion in the aforementioned website of inappropriate content. These inappropriate content published on the aforementioned website giving access to them by third parties - family income, economic score, social punctuation - they appear in the document improperly published on the platform “***PLATAFORMA.1” and with the title “requests for dining assistance aid course 2019/2020”, document requested by the AEPD Inspection and sent by the data controller to this AEPD on 02/21/2020, with registration number input 008501/2020.

Of the actions carried out, it has been verified that the security measures with which that the investigated entity had in relation to the data that it submitted to treatment as responsible, were not adequate at the time of breach of personal data security occurs, with the consequence of the www.aepd.es

C/ Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

13/17

public exposure on the aforementioned platform of the aforementioned personal data of the students' families. That is, those affected have been deprived of control about your personal data, making a certain positioning public economic and social whose public disclosure does not have to have been consented by

its holder.

This possibility represents a risk that must be weighed when treating certain data that are inappropriate for the purpose for which they have been collected and that increases the requirement of the degree of protection in relation to the security and safeguarding the confidentiality of these data.

This risk must be taken into account by the controller and depending on of the same having established the measures that would have prevented the loss of control of the data by the data controller and, therefore, by the data controllers. holders of the data that provided them to it.

Consequently, a violation of article 32.1.b) of the RGPD must be charged in relation to with article 5.1.f) of the RGPD and typified in article 83.4 of the RGPD.

Article 83.4 of the RGPD provides the following:

SAW

4. Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a) the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 a 39, 42 and 43;

For its part, article 71 of the LOPDGDD, under the heading "Infringements", indicates the following: Violations constitute the acts and conducts referred to in the sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

Lack of diligence in implementing adequate security measures and with the consequence of having violated the rights and freedoms of those affected

constitutes the element of culpability that requires the imposition of a sanction.

Regarding the prescription of infractions, it must be in accordance with the provisions of the

Organic Law 3/2018, on the Protection of Personal Data and Guarantee of Rights

(LOPDGDD) whose article 73.g) considers a serious infraction, being its term

prescription of two years, "The violation, as a consequence of the lack of

due diligence, of the technical and organizational measures that have been implemented

in accordance with the requirements of article 32.1 of Regulation (EU) 2016/679".

In the present case, the circumstance established in article 73.g) of the

LOPDGDD transcribed above.

Article 5.1.f) of the RGPD, Principles related to treatment, states the following:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7th

14/17

1. The personal data will be:

(...)

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational ("integrity and confidentiality").

In the present case, the security breach must also be qualified as

confidentiality, by having the treatment notified of the consequence of an illegal access

by third parties with knowledge of its content.

Consequently, a violation of article 5.1.f) of the RGPD (principle of

confidentiality), typified in article 83.5 of the RGPD.

Article 83.5 of the RGPD provides the following:

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

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

In the present case, there is a violation of the aforementioned article 5.1.f) of the RGPD, typified in art. 83.5 of the GDPR transcribed above.

For its part, article 71 of the LOPDGDD, under the heading "Infringements", indicates the following: "The acts and behaviors referred to in the sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

It establishes article 72 of the LOPDGDD, under the heading "Infringements considered very serious", the following:

"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.

In the present case, it is clear that the illicit access by third parties unrelated to the information sensitive of the students and families of the CEIP implies the violation of the duty of

C/ Jorge Juan, 6

confidentiality of the data for which the Ministry of Education is responsible,

Culture and Sports.

Regarding the prescription of infractions, it must be in accordance with the provisions of the

Organic Law 3/2018, on the Protection of Personal Data and Guarantee of Rights

Digital whose article 72.1.a) of the LOPDGDD considers a very serious infringement to

prescription effects.

Consequently, the circumstance provided for in article 72.1.a) of the

LOPDGDD transcribed above.

The LOPDGDD in its article 77, Regime applicable to certain categories of

responsible or in charge of the treatment, establishes the following:

viii

"1. The regime established in this article will be applicable to the treatment of

who are responsible or in charge:

a) The constitutional bodies or those with constitutional relevance and the institutions of autonomous communities analogous to them.

b) The jurisdictional bodies.

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

d) Public bodies and public law entities linked or dependent on the Public Administrations.

e) The independent administrative authorities.

f) The Bank of Spain.

g) Public law corporations when the purposes of the treatment are related to the exercise of powers of public law.

h) Public sector foundations.

i) Public Universities.

j) The consortiums.

k) The parliamentary groups of the Cortes Generales and the Legislative Assemblies autonomous, as well as the political groups of the Local Corporations.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this law

organic, the data protection authority that is competent will dictate

resolution sanctioning them with a warning. The resolution will establish

also the measures that should be adopted to stop the behavior or correct it.

the effects of the infraction that had been committed. (the underlining is from the AEPD).

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 to those affected who had the condition interested party, if any.

3. Without prejudice to what is established in the previous section, the data protection authority

data will also propose the initiation of disciplinary actions when there are

sufficient evidence for it. In this case, the procedure and the sanctions to be applied

will be those established in the legislation on disciplinary or sanctioning regime that

result of application.

Likewise, when the infractions are attributable to authorities and managers, and

proves the existence of technical reports or recommendations for the treatment that

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

had not been duly attended to, in the resolution imposing the

The sanction will include a reprimand with the name of the responsible position and will order the publication in the Official State or Autonomous Gazette that correspond.

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 under 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 person in charge or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional authority for the protection of data will be, in terms of the publicity of these resolutions, to what your specific regulations”.

In accordance with the solid evidence available indicated in the proven facts, the security breach now analyzed constitutes, on the part, the Ministry of Education, Culture and Sports of the Generalitat Valenciana infraction to the provisions of article 32.1 b) of the RGPD in relation to article 5.1.f) of the RGPD and infringement of article 5.1.f) of the RGPD, whenever the data controller violated its own protocol to guarantee the safety of the treatments and did not establish the appropriate organizational measures to guarantee the security of the

themselves, all with the added consequence of violating the principle of confidentiality of personal data related to "family income, economic score and social score" of the families of the students of the aforementioned CEIP.

However, although the manager has stated that he has implemented the measures adequate corrective measures to avoid the repetition in the future of the analyzed facts, there is no evidence that said corrective measures have been implemented.

In view of the foregoing, the following is issued

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST:

TO IMPOSE THE MINISTRY OF EDUCATION, CULTURE AND SPORTS OF THE GENERALITAT VALENCIANA, with NIF S4611001A, for violation of Article 32.1.b) of the RGPD typified in Article 83.4 of the RGPD and for infringement of the C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

17/17

article 5.1.f) of the RGPD typified in article 83.5 of the RGPD, the sanction of warning.

REQUEST the DEPARTMENT OF EDUCATION, CULTURE AND SPORTS OF THE GENERALITAT VALENCIANA, with NIF S4611001A, to contribute within the period of three months to this AEPD, accreditation of the measures it has implemented in the platform information system "****PLATAFORMA.1" to avoid the

repetition in the future of the facts analyzed in this proceeding

sanctioning

SECOND: NOTIFY this resolution to the DEPARTMENT OF EDUCATION,
CULTURE AND SPORTS OF THE VALENCIAN GENERALITAT, with NIF S4611001A.

THIRD

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

: COMMUNICATE this resolution to the Ombudsman,

FOURTH: 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 month from

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

contentious-administrative appeal before the Contentious-Administrative Chamber of the

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

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

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

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

aforementioned Law.

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

may provisionally suspend the firm resolution in administrative proceedings if the

The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

web/], or through any of the other registers provided for in art. 16.4 of the
aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the
documentation proving the effective filing of the contentious appeal-
administrative. If the Agency was not aware of the filing of the appeal
contentious-administrative within a period of two months from the day following the
notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

938-300320

www.aepd.es

sedeagpd.gob.es