

□ Procedure No.: PS/00390/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated April 11, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are the reuse of paper with data
personal, specifically for using the claimed one, on two occasions, to summon
the tenants of a property, a sheet of paper on the back of which third-party data appears
referring to proceedings in which the respondent has worked as a lawyer,
so that the use of said documents containing data from third parties by their
reverse, makes said data accessible to third parties, without the consent of the owners
of said personal data.

Together with the claim, a copy of two pages is provided summoning the tenants of the
property one dated 08/20/2018 and another dated 02/13/2019.

On the back of both documents you can read the names and surnames of several
people, one of them a minor.

SECOND: Upon receipt of the claim, the Subdirector General for
Data Inspection proceeded to carry out the following actions:

On May 30 and July 9, 2019, the claim was transferred to the defendant.
submitted for analysis and communication to the claimant of the decision adopted
regard.

The respondent has not responded to any of the requests made by the

Spanish Agency for Data Protection, being these returned by post,

claiming "absent distribution".

THIRD: On January 13, 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: Notification of the aforementioned agreement to initiate this procedure

sanctioning party is given a hearing period of TEN WORKING DAYS to formulate

the allegations and present the evidence it deems appropriate, in accordance with the

stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure

Common of Public Administrations.

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

WHO

This resolution is issued taking into account the following:

FACTS

FIRST: Reuse of documents with personal data, specifically to be used

the one demanded, on two occasions, to summon the tenants of a building, a

folio on whose back appear data from third parties referring to procedures in which

the respondent has participated as a lawyer.

The use of said documents, to meet with the tenants of a property, when

contain data from third parties on its back, makes said data accessible to third parties,

without the consent of the holders of said personal data.

SECOND: The AEPD has notified the respondent of the agreement to initiate this sanctioning procedure, but it has not presented allegations or evidence that contradict the alleged facts.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 6.1 of the RGD establishes the assumptions that allow considering lawful processing of personal data.

For its part, article 32 of the RGD 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;

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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. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article.

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.

III

It is considered that known facts -reuse of documents in which

The reverse side shows data from third parties referring to procedures in which the claimed has worked as a lawyer, thus allowing access to data of third parties, without their consent- are constitutive of an infringement, attributable to the claimed, for violation of art. 32 of the RGPD, transcribed at point

II, which states that "the person responsible and the person in charge of the treatment will apply

appropriate technical and organizational measures to guarantee an adequate level of security”.

IV

Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

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

warning when the processing operations have violated the provisions of

this Regulation;

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 way and within a specified period;

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

instead of the measures mentioned in this paragraph, depending on the circumstances

of each individual case.

The art. 83.4 of the RGPD establishes that "violations of the provisions

following will be sanctioned, in accordance with section 2, with administrative fines

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EUR 10,000,000 maximum or, in the case of a company, an amount

equivalent to a maximum of 2% of the total global annual turnover of the

previous financial year, opting for the highest amount:

a) the obligations of the person in charge and the person in charge in accordance with articles 8, 11,

25 to 39, 42 and 43;

b) the obligations of the certification bodies under articles 42 and

43;

c) the obligations of the supervisory authority pursuant to article 41, section 4.”

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional negligent action, but above all significant data that allows the identification of a person (article 83.2

b)

☐ Basic personal identifiers are affected (article 83.2 g)

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 B.B.B., with NIF ***NIF.1, for an infraction of article 32 of the RGPD, typified in article 83.4 of the RGPD, a fine of €2,000 (two thousand euros).

SECOND: NOTIFY this resolution to B.B.B..

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

Received the notification and once executed, if the date of execution is
is between the 1st and 15th of each month, both inclusive, the term to carry out the
voluntary payment will be until the 20th day of the following month or immediately after, and if

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is between the 16th and last day of each month, both inclusive, the term of the
payment will be until the 5th of the second following month or immediately after.

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 [<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.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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