

□ Procedure No.: PS/00425/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: DG OF THE ETPJ CIVIL GUARD OF TUDELA VEGUIN (hereinafter, the claimant) dated May 24, 2019 filed a claim with the Agency

Spanish Data Protection. The claim is directed against CENTRO DE

DELTA DIRECTED STUDIES, S.L. with NIF E74345679 (hereinafter, the claimed).

The reasons on which the claim is based are that the claimant sent by Whatsapp to a third party a document containing the personal data (names, surnames and DNI) of three people (a mother and her two children; ages unknown, but could be minors), without the knowledge or consent of those affected.

Along with the claim, provide a copy of the aforementioned document and a diligence in which the claimant certifies the terms and content of the conversation (although the phone number from which the shipment is made).

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

On July 15, 2019, the claim filed for analysis and communication to the claimant of the decision adopted in this regard.

The respondent has not responded to any of the requirements made by the Spanish Agency for Data Protection, despite being recorded as delivered on the 22nd of July 2019.

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 5.1.f) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: On January 23, 2020, the aforementioned start-up agreement is notified of this sanctioning procedure, a hearing period of TEN

WORKING DAYS to formulate the allegations and present the evidence that you consider convenient, in accordance with the provisions of articles 73 and 76 of Law 39/2015 of Common Administrative Procedure of Public Administrations.

FIFTH: The Spanish Data Protection Agency sends its notifications and electronic communications through the Notific@ platform that sends the

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

2/5

notifications to the Citizen Folder and Authorized Electronic Address systems of the Ministry of Finance and Public Administration.

Having sent the attached document in relation to the file

E/09358/2019 through the Notific@ system, according to art. 43.2 and 43.3 of the aforementioned LPACAP,

the notification will be deemed rejected when ten calendar days have elapsed

from the time the notification is made available without accessing its content,

understanding fulfilled the obligation to notify with the availability of the

notification in the electronic headquarters or in the unique authorized electronic address.

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

This resolution is issued taking into account the following:

FACTS

FIRST: The respondent sent a document to a third party via Whatsapp in which

The personal data (names, surnames and DNI) of three people (a mother and her two sons; ages unknown, but could be minors), not counting with the knowledge or consent of those affected.

SECOND: On July 15, 2019, the claim filed was transferred to the defendant for analysis and communication to the claimant of the decision adopted in this regard.

The respondent has not responded to any of the requirements made by the Spanish Agency for Data Protection, despite being recorded as delivered on the 22nd of July 2019.

#### FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD 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 RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

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

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

C/ Jorge Juan, 6

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of processing the personal data; the personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

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

including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility")."

### III

It is considered that the facts denounced, that is, sending the claimed by

Whatsapp to a third party a document containing personal data (names,

surnames and DNI) of three people without their consent, supposes the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of the personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

#### IV

Article 72.1.a) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe the 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

#### v

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 a warning when the treatment operations have violated the provisions of this Regulation;

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

4/5

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

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

the measures mentioned in this section, according to the circumstances of each case

particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum or,

in the case of a company, an amount equivalent to a maximum of 4% of the volume

of total annual global business of the previous financial year, opting for the one with the highest

amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with

the following criteria established by article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional, but significant, negligent action.

goes (article 83.2 b)

☐ Basic personal identifiers are affected (name, surnames,

domicile), according to 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 CENTRO DE ESTUDIOS DIRIGIDOS DELTA, S.L., with NIF

E74345679, for an infringement of article 5.1.f) of the RGPD, typified in article

83.5a) of the GDPR, a fine of €5,000 (five thousand euros).

SECOND: NOTIFY this resolution to CENTRO DE ESTUDIOS

DIRIGIDOS DELTA, S.L.

THIRD

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

: COMMUNICATE this resolution to the Ombudsman,

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

C/ Jorge Juan, 6

28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)

5/5

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 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  
C/ Jorge Juan, 6



28001 – Madrid

[www.aepd.es](http://www.aepd.es)

[sedeagpd.gob.es](http://sedeagpd.gob.es)