

□ Procedure No.: PS/00260/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated December 24, 2020

filed a claim with the Spanish Data Protection Agency.

The claim is directed against CLUB DEPORTIVO SANSUEÑA, S.L. with NIF

B14398051 (hereinafter the claimed).

The reason on which the claim is based is that the respondent has added his number to  
phone to a WhatsApp group without requiring your consent.

The claimant states that she was a former user of the sports center that is the subject of this  
claim, but he hasn't had any relationship with it for 10 years.

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), with reference number E/01388/2021, transfer of

said claim to the claimed party on March 5, 2021, so that he could proceed with his

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations.

No response has been received to this request.

THIRD: On May 26, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the

claimant.

FOURTH: On July 19, 2021, 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 RGD, Article 5.1.e) of the RGD, Article 6 of the RGD, typified in Article 83.5 of the RGD.

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

In this proceeding, the following are considered proven facts:

## FACTS

FIRST: The claimant has added the claimant's phone number to a

WhatsApp group without requiring your consent.

SECOND: On July 31, 2021, the claimant is notified of the settlement agreement

beginning of this procedure, turning said agreement into a resolution proposal

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in accordance with articles 64.2.f) and 85 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (LPACAP), to the

not make the claimed allegations within the indicated period.

## FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGD 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.

II

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights, in its article 4.11 defines the consent of the

interested party as "any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns you".

In this sense, article 6.1 of the RGPD establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, it is understood as consent of the affected party, any manifestation of free will, specific, informed and unequivocal by which it accepts, either by means of a declaration or a clear affirmative action, the processing of personal data that concerns you".

Article 72.1 b) 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 after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

c) The processing of personal data without the concurrence of any of the conditions of legality of the treatment in article 6 of Regulation (EU) 2016/679."

The principles relating to the processing of personal data are regulated in the Article 5 of the RGPD where it is established that "personal data will be:

III

"a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, 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, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

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

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

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the

interested party ("limitation of the retention period");

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").

The data controller will be responsible for compliance with the provisions of

section 1 and able to demonstrate it ("proactive responsibility")."

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

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".

#### IV

Security in the processing of personal data is regulated in article 32 of the RGPD where the following is established:

"one. 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 confidentiality, integrity, availability and resilience permanent 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.

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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.

Article 73.g) of the LOPDGDD, under the heading "Infringements considered serious has:

"According to article 83.4 of Regulation (EU) 2016/679, they will be considered serious and Infractions that suppose a substantial violation will prescribe after two years.

of the articles mentioned therein, and in particular the following:

g) The breach, as a consequence of the lack of due diligence, of the technical and organizational measures that have been implemented as required by article 32.1 of Regulation (EU) 2016/679."

v

In the present case, it is considered that the respondent has processed personal data of the claimant (mobile phone number) without their consent, thereby contravening article 6 of the RGPD, and that despite not being a client for more than ten years, still keep your personal data, violating article 5.1 e) of the RGPD, since in This precept establishes that the data may not be kept for more than the time necessary for the purpose for which they were taken, and in this case 10 years ago

that the claimant is not a client of the respondent.

In addition, providing the mobile phone number of the claimant to third parties, by including in a WhatsApp group supposes a violation of their confidentiality, as consequence of some security measures of the requested one that are not adequate to the data protection regulations, assuming such facts two more infractions to the contravene articles 32.1 b) and 32.1 d) of the RGPD respectively.

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

SAW

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b) send a warning to any person responsible or in charge of the treatment when the treatment 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 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 global total annual turnover of the previous financial year, opting for the

of greater 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, considering that we are facing an unintentional but significant negligent action (article 83.2 b) since despite the fact that the claimant has not been a client for more than ten years, the claimed entity still retains your personal data.

SAW

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 CLUB DEPORTIVO SANSUEÑA, S.L., with NIF B14398051, for infringement of article 6 of the RGPD, typified in article 83.5.b) of the RGPD, a fine of 1000 euros (one thousand euros)

SECOND: IMPOSE CLUB DEPORTIVO SANSUEÑA, S.L., with NIF B14398051, for infringement of article 5.1.e) of the RGPD, typified in article 83.5.a) of the RGPD, a fine of 1000 euros (one thousand euros)

THIRD: IMPOSE CLUB DEPORTIVO SANSUEÑA, S.L., with NIF B14398051, for violation of article 32.1 b) of the RGPD, typified in article 83.4.a) of the RGPD, a fine of 1000 euros (one thousand euros)

FOURTH: IMPOSE CLUB DEPORTIVO SANSUEÑA, S.L., with NIF B14398051, for violation of article 32.1 d) of the RGPD, typified in article 83.4.a) of the RGPD, a fine of 1000 euros (one thousand euros)

FIFTH: NOTIFY this resolution to CLUB DEPORTIVO SANSUEÑA, S.L..

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SIXTH: Warn the sanctioned party that he must enforce the sanctions imposed

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

Article 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 article 62 of the Law

58/2003, of December 17, through its entry, indicating the NIF of the sanctioned and

the procedure number that appears at the top of this document, in

restricted account number ES00 0000 0000 0000 0000 0000, opened in the name of the

Spanish Agency for Data Protection in the banking entity CAIXABANK, S.A.

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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 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 article 90.3 a) of the LPACAP,

The firm resolution may be provisionally suspended 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-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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.

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