

□ Procedure No.: PS/00124/2020

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 October 16, 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 that the respondent (physiotherapist who
attended the Physiotherapy Clinic, Dr. Physio) has used the data from his file in
this clinic to send you a friend request on Facebook and send you whatsapps
from your personal phone.

SECOND: On December 30, 2019, this document is transferred

claim within file E/11218/2019, to C.C.C. (DR. PHYSIO CLINIC)

work center of the claimed, requiring him so that within a month

forward to this Agency, information on the response given to the claimant by the

facts denounced, as well as the causes that have motivated the incidence and the
measures taken.

On January 15, 2020, in response to the aforementioned request, the following is stated:

Next:

In our organization we have carried out all the actions aimed at

comply with the regulations, that the necessary security measures were adopted, that

had signed written agreements with employees and freelancers on

confidentiality of the information, that the compromised data was basic, and that

only one user was affected, we request that this Agency consider

proven that our company acted with due diligence and that in no case was it will of this organization cause harm to the user.

Consequently, no fault can be seen in our actions, since the failure in the improper use of the data, corresponded to the autonomous physiotherapist who treated the patient.

Disciplinary action has been taken against Mr. B.B.B.: he has been warned to irrefutably, informing him that the next reiteration of this type of behaviors, he will stop providing his services at the Dr. Fisio Clinic.

THIRD: On June 16, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the C/ Jorge Juan, 6
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alleged infringement of Article 5.1.b) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: On August 10, 2020, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency impose on B.B.B., with NIF ***NIF.1, for an infringement of article 5.1.b) of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

Of the actions carried out in this proceeding and of the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: the respondent used the personal data of the claimant, which she had facilitated when going as a patient to a physiotherapy clinic, to send you a

friend request on Facebook and forward WhatsApp from your personal phone.

SECOND: the respondent states that the use of the telephone number of the claimant was only for professional reasons and regarding the friend request of Facebook states that it was not aware that it was sending such a request to one of my patients.

FOUNDATIONS OF LAW

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The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of art. 58.2 of the RGD and in the art. 47 and 48.1 of LOPDGD.

II

Article 6.1 of the RGD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGD 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) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

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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

Therefore, it is considered that the use of the personal data of the

claimant, recorded in the database of the Clinic where the claimed person works,

to send you a friend request on Facebook and send you whatsapps from your

personal telephone, supposes the violation of the principle of "limitation of the purpose"

regulated in art. 5.1 b) of the GDPR.

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 a warning

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 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;

The art. 83.5 of the RGPD establishes that infractions that affect:

"a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22."

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Among the corrective powers contemplated in article 58 of the RGPD, in its

section 2 d) establishes that each supervisory authority may "order the

responsible or in charge of the treatment that the treatment operations are

comply with the provisions of this Regulation, where appropriate, in a

certain manner and within a specified period...". The imposition of this

measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

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On the other hand, article 83.7 of the RGPD provides that, without prejudice to the corrective powers of the control authorities under art. 58, paragraph 2, each Member State may lay down rules on whether and to what extent impose administrative fines on authorities and public bodies established in that Member State.

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

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body the compliance that proceeds to the adoption of all the measures necessary for the respondent to act in accordance with the principle of "purpose limitation" of art. 5.1 b) of the GDPR.

THIRD: NOTIFY this resolution to B.B.B.

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-

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through the

Electronic Registration of

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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