

Procedure No.: PS/00282/2019

## 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) on 02/27/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directs against ADOPTAGAT with NIF G66357518 (hereinafter, the claimed). The

The reasons on which the claim is based are, in short, the following: that the website  
adoptatigualada.wixsite.com, omits the data of its owner/s, as well as its policy of  
privacy, making it impossible to identify the data controller;

In addition, it requires filling out an adoption form where a large amount of information is requested or collected.

amount of personal data, without the legitimacy being made explicit at any time.

for this, nor the use that will be given to the data; In addition, personal data is collected from  
through a contact form.

SECOND: In view of the facts denounced and the documents provided by

the claimant of which this Agency has become aware, the Subdirectorate

General Data Inspection proceeded to carry out actions for the

clarification of the facts in question.

On 03/28/2019, the claim submitted was transferred to the defendant for analysis

and decision adopted in this regard, although it is true that there is no evidence that it was notified.

On the same date, the claimant was informed of the receipt of the claim and its  
transfer to the claimed entity.

The respondent has not responded to any of the requirements made by the  
Spanish Data Protection Agency.

THIRD: On 07/04/2019, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed.

FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

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2/8

FIFTH: Of the actions carried out in this proceeding, they have been

accredited the following:

#### PROVEN FACTS

FIRST: On 02/27/2019 you have entry in the Spanish Agency for the Protection of

Written data of the claimant in which he states that the web page

[adoptatigualada.wixsite.com](http://adoptatigualada.wixsite.com), completely omits the data of its owner, as well as

its privacy policy, making it impossible to identify the person responsible for the

treatment. In addition, it requires filling out an "adoption form", where it collects great

amount of personal data, without the legitimacy being made explicit at any time.

for it nor the use that will be given to the data and the same happens with the form of

Contact.

Screen impressions of the website are provided

SECOND:

adoptagatigualada.wixsite.com, where there is a link to access the application form

contact for personal data collection and adoption form. not identified

to the person in charge, nor is there a privacy policy and there is no more contact information than multiple phone numbers.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

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

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Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the regulatory norms of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what

result of the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed

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3/8

responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in case of not doing

allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to

interested parties” (the underlined corresponds to the AEPD).

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

ADOPTAGAT is charged with the violation of article 13 of the RGPD that

establishes:

III

“Article 13. Information that must be provided when personal data is

obtain from the interested party.

1. When personal data relating to him is obtained from an interested party, the

responsible for the treatment, at the time these are obtained, will provide

all the information indicated below:

a) the identity and contact details of the person in charge and, where appropriate, of their

representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment to which the personal data is destined and the basis

legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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d) when the treatment is based on article 6, paragraph 1, letter f), the

legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data,

in your case;

f) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a

adequacy decision of the Commission, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

reference to adequate or appropriate safeguards and means of obtaining

a copy of these or the fact that they have been loaned.

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4/8

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;
- c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.

In the present case, the respondent has violated the right to information that must be provided to the interested party when their data is obtained or intended to be obtained personal, materialized in the absence of adaptation of the privacy policy of the website [adoptatigualada.wixsite.com](https://adoptatigualada.wixsite.com) to the current regulations regarding protection of personal data, specifically there is no information in the meaning indicated in article 13 of the RGPD and, in addition, data is collected through an adoption form and questionnaires without determining the treatment, destination and purpose that will be given to them.

#### IV

Article 83.5 b) of the RGPD considers that the infringement of “the rights of those interested in accordance with articles 12 to 22”, is punishable, in accordance with the “with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation, administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 71, Violations, states that:

“The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

The LOPDGDD in its article 72 indicates for prescription purposes: "Infringements considered very serious:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

(...)

h) The omission of the duty to inform the affected party about the treatment of their

personal data in accordance with the provisions of articles 13 and 14 of the Regulation

(EU) 2016/679 and 12 of this organic law.

(...)"

However, article 58.2 of the RGPD provides the following: "Each authority

of control will have all the following corrective powers indicated below:

continuation:

(...)

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;

(...)”

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations.

In the case that concerns us, the present sanctioning procedure came from motivated by the presumption that the respondent did not have adapted the information offered on its website to the provisions of the RGPD and, in addition, collecting data of the users through the completion of both the form of adoption questionnaires

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6/8

(<https://secure.jotformeu.com/lreneadoptagat/voluntaris>

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<http://form.jotformeu.com/form/50854252555356>), which was linked from the website contact section.

In accordance with such evidence, said conduct constitutes

infringement of the provisions of article 13 of the RGPD.

Now, as indicated above, this infraction can be

sanctioned with a warning. By collecting basic data from interested parties through

of the adoption form and the indicated questionnaires to which it is linked from the

website of the entity and consider that the administrative fine that could fall with

in accordance with the provisions of article 83.5.b) of the RGPD would constitute a burden

disproportionate for the claimed party, in accordance with article 58.2.b) of the RGPD

warning proceeds.

Also, for the purposes provided in article 58.2. d) of the RGPD is ordered to

responsible for the treatment that the treatment operations comply with the

provided in article 13 of the RGPD, especially adapting the information that has

to be offered to users to the requirements contemplated in the aforementioned article, as well

such as the provision of means of proof accrediting compliance with the

indicated.

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7/8

It should be noted that the respondent has not responded to the request for

information formulated by the Inspection Service.

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At this point, it is necessary to inform that not meeting the requirements

of the Agency may constitute a very serious infringement in accordance with the

indicated in article 72 of the LOPDGDD, which establishes:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

(...)

ñ) Failure to facilitate access by data protection authority personnel

competent to personal data, information, premises, equipment and means of

treatment that are required by the data protection authority for the

exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the

competent data protection authority.

(...)"

At the same time, notification of the start agreement and after the term granted

to formulate allegations, he has not submitted any brief.

It is necessary to point out that if the claimed incident is not corrected or

reiterate the behavior revealed in the claim and that is the cause of the

this procedure, as well as not immediately informing this AEPD of the

measures adopted could proceed to the exercise of possible actions before the

responsible for the treatment in order to apply effectively the measures

appropriate to guarantee and not compromise the confidentiality of the data of

personal character and the right to privacy of individuals.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ADOPTAGAT, with NIF G66357518, for an infraction of the

article 13 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of

Warning in accordance with article 58.2 of the RGPD.

SECOND: NOTIFY this resolution to ADOPTAGAT, with NIF G66357518,  
and require it to inform the AEPD of the measures adopted to prevent  
a new infringement of article 13 of the RGD of the RGPD may occur in the future,  
seeking to effectively adopt measures so that the operations of  
treatment comply with the provisions of the aforementioned article, adapting the information  
that must be offered to users according to the requirements contemplated therein, as well as

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8/8

such as the provision of means of proof accrediting compliance with the  
required.

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.

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