

□ Procedure No.: PS/00440/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on April 26, 2019 filed  
claim before the Spanish Data Protection Agency.

The claim is directed against the SECRETARY OF STATE FOR PUBLIC FUNCTION  
with NIF S2833002E (hereinafter, the claimed one).

The reasons on which the claim is based are that the website of the claimed \*\*\*URL.1  
is not updated in accordance with data protection regulations.

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

On May 17, 2019, the claim filed for its review was transferred to the respondent.  
analysis and communication to the claimant of the decision adopted in this regard.

However, the respondent has not responded to any of the requirements  
formulated by the Spanish Agency for Data Protection, despite the extension of the term  
granted for resolution, notified on September 30, 2019.

THIRD: On January 20, 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 13 of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: Notification of the aforementioned initiation agreement, on February 7, 2020, the claimed  
presented a brief of arguments in which, in summary, it stated that most

As soon as possible, we will proceed to update and review all the information  
contained on its website as well as its "Privacy Policy" in accordance with the regulations

in terms of data protection to adapt it to the changes produced as consequence of the new royal decrees of departmental structures.

FIFTH: On February 25, the instructor of the procedure agreed to open a period of evidence practice, taking into account the actions preliminary investigations, E/04885/2019, as well as the documents provided by the reclaimed.

SIXTH: On March 5, 2020, a resolution proposal was formulated, proposing that it be imposed on the SECRETARIAT OF STATE FOR PUBLIC FUNCTION with NIF S2833002E, for an infringement of article 13 of the RGD, typified in article 83.5 of the RGD, a sanction of warning.

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SEVENTH: On March 16, 2020, this Agency is sent the policy of privacy of the defendant entity, where it is reflected among other aspects, who is the person responsible for the processing of personal data, the Data Protection Delegate, the purpose of the treatment and how to exercise the rights of access, rectification, deletion and portability of your data, limitation and opposition to its treatment, as well as not being object of decisions based solely on the automated processing of your data, when appropriate, before the Data Protection Delegate of the Ministry of Political Territorial and Public Function, Plaza Juan Zorrilla 1, 28071-Madrid, through the address email address \*\*\*EMAIL.1

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven facts the following,

## PROVEN FACTS

FIRST: It is reported that the website of the respondent is not up to date in accordance with data protection regulations.

SECOND: The respondent states that the update and review of the all the information contained on its website in accordance with the regulations in matter of data protection, to adapt it to the changes produced as consequence of the new royal decrees of departmental structures.

THIRD: On March 16, 2020, the updating of the website by part of the claimed entity.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by means of a identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

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2) “processing”: any operation or set of operations carried out on

personal data or sets of personal data, whether by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use, communication

by transmission, broadcast or any other form of authorization of access, collation or

interconnection, limitation, suppression or destruction;”

Therefore, in accordance with those definitions, the collection of data from

personal character through forms included in a web page constitutes a

data processing, in respect of which the data controller must give

compliance with the provisions of article 13 of the RGPD, a precept that has moved from

on May 25, 2018 to article 5 of Organic Law 15/1999, of December 13, of

Personal data protection.

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of the duty of

report

(<https://www.aepd.es/media/guias/guia-Modelo-clausula-informativa.pdf>) and, in

case of carrying out low-risk data processing, the free tool Facilitates

(<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGPD, a precept that determines the information that must be

provided to the interested party at the time of collecting their data, it has:

“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 you with all the information listed 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 applicable;

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

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their 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 decision to adequacy 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 guarantees or appropriate and the means to obtain a copy of them or the fact that they have been borrowed.

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 information, the following information necessary to guarantee fair data processing and transparent:

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- a) the period during which the personal data will be kept or, when it is 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 the portability of the data;
- 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 consent in any time, without affecting the legality of the treatment based on the 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 the personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

### 3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information referred to refers to the following section and indicating an electronic address or other means that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at

less:

a) The identity of the data controller and his representative, if any.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the concerned must be informed of their right to oppose the adoption of individual decisions. automated viduals that produce legal effects on him or affect him significantly-

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similarly, when this right concurs in accordance with the provisions of art.

Article 22 of Regulation (EU) 2016/679."

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of powers corrective measures in the event of a violation of the provisions of the RGPD.

Article 58.2 of the RGPD provides the following:

“2 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 responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time;”

“i) impose an administrative fine under article 83, in addition to or instead of of the measures mentioned in this section, according to the circumstances of each particular case;”

In this sense, article 77.1 c) and 2, 4 and 5 of the LOPGDD, indicates:

1. The regime established in this article will be applicable to the treatments of which are responsible or in charge:

c) The General Administration of the State, the Administrations of the Communities autonomous and the entities that make up the Local Administration.

2 “When those responsible or in charge listed in section 1 committed any of the infractions referred to in articles 72 to 74 of this organic law, the competent data protection authority will issue a resolution sanctioning the themselves with warning. The resolution will also establish the appropriate measures



adopt to stop the behavior or correct the effects of the infraction that had occurred.

task.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which depends hierarchically, where appropriate, and to those affected who had the status of interested party, in your case.”

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4. The data protection authority must be notified of the resolutions that fall in relation to the measures and actions referred to in the preceding sections.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the autonomous communities the actions carried out and the resolutions issued under the this article.”

Article 74.a) of the LOPDGDD, under the heading "Infringements considered minor has:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year. merely formal of the articles mentioned in sections 4 and 5 of article 83 of the Regulation (EU) 2016/679 and, in particular, the following:

a)  
Failure to comply with the principle of transparency of information or the right data subject of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679.”

v

In this case, it is reported that through the website of the defendant:

\*\*\*URL.1 is not provided, prior to the collection of personal data, all the information required in terms of data protection provided for in article 13 of the reviewed GDPR.

However, it has been accredited by virtue of the documents provided with the arguments presented to the initial agreement by the respondent, that the respondent has adopted a series of appropriate measures to proceed with the updating and revision of the entire information contained on its website in accordance with the regulations on data protection, to adapt it to the changes produced as a result of the new royal decrees of departmental structures.

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: WARN the SECRETARY OF STATE FOR PUBLIC FUNCTION, with NIF S2833002E, for an infringement of article 13 of the RGPD, typified in article 83.5 of the GDPR.

SECOND: NOTIFY this resolution to the SECRETARY OF STATE OF PUBLIC FUNCTION.

THIRD  
with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, in accordance

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. 114.1 c) of the LPACAP, and in accordance with the provisions of article 123 of the LPACAP,  
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Interested parties may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with 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 two months from the day following the notification of this act, according to the provisions of 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 decision may be provisionally suspended in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Registry

Electronic 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 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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