

936-031219

□ Procedure No.: PS/00466/2019

## RESOLUTION R/00084/2020 TERMINATION OF THE PROCEDURE FOR PAYMENT

### VOLUNTEER

In sanctioning procedure PS/00466/2019, instructed by the Agency

Spanish Department of Data Protection to COLEGIO ARENALES CARABANCHEL, given the complaint filed by A.A.A. (B.B.B.), and based on the following,

### BACKGROUND

FIRST: On January 29, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against COLEGIO

ARENALES CARABANCHEL (hereinafter, the respondent), through the Agreement that

is transcribed:

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Procedure No.: PS/00466/2019

935-240719

### AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency before

the entity, COLEGIO ARENALES CARABANCHEL, with CIF: G85885291 (in

hereinafter, "the entity claimed"), by virtue of a complaint filed by B.B.B. (in

hereinafter, "the claimant"), represented by A.A.A., and based on the

following:

### FACTS

FIRST: On 11/22/18, you entered this Agency in writing, submitted by

the claimant, in which he stated, among other things, the following:

"On 09/01/17, he filed a claim with the Colegio Arenales center

Carabanchel for the improper transfer of images of his children to third parties outside the

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2/12

center, as well as for the use and publication of photographs in which their children appear having expressly revoked the consent for it.

That as of 10/09/18, as we attach in the attached annex, a

again two photos in which their children appear.

That by means of this document we serve to attach the same to the purpose of

included in the claim made, and is taken into account when assessing the

punishable conduct of the denounced school center, which continues to publish photos of

minor children of the declarant despite their express lack of consent, manifested

in various

occasions by multiple means.

- Report of photographs is provided, from the following sequence:

1 On the website \*\*\*URL.1

2 Clicking on the "news" tab, in the option, "Carabanchel News"

that appears in the dropdown.

3 You arrive at:\*\*\*URL.2 where as of today's date, \*\*\*DATE.1, the entry for date \*\*\*DATE.2 with the title "Comiqueros en Arenales Carabanchel".

4 If said news is accessed: \*\*\*URL.3, where in the first photo of the exhibition appears one of the minor children of the decedent.

SECOND: In view of the facts set forth in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded

to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD). A) Yes, dated 12/17/18 and 03/15/19, an information request is addressed to the entity claimed.

THIRD: On 03/21/19, the entity claimed, sends to this Agency, between others, the following information:

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3/12

“That the same facts that are the object of this claim via telematics (N/Ref.: E/09934/2018), were already resolved by that Agency through RESOLUTION: R/00987/2018 in Procedure No.: A/00007/2018 (document no. 1).

That, as stated in the aforementioned Resolution, that Agency was able to verify: (...) the measures already adopted by the entity responsible for it, such as the withdrawal of the photographs on its website and having established systems for requesting consent for the use of images of students, removing them from your Web; (...) What led the Director of the AGPD “to resolve the filing of the actions, without making any warning or requirement to the entity denounced, in application of the interpretation of article 45.6 of the LOPD, attended its systematic and teleological interpretation” and, consequently, to agree:

- FILE (A/00007/2018) the actions carried out at Colegio Arenales Carabanchel, in accordance with the provisions of article 45.6 of the Organic Law 15/1999, of December 13, on the Protection of Personal Data,

in relation to the complaint for infraction of its articles 6.1 and 10, infractions classified as serious in article 44.3 letters b) and d).

That this center has proceeded to review the images on its website, verifying that do not exist in it, images of the claimant's children.

That the claimant has been informed of this fact, as well as of the aforementioned Agency Resolution R/00987/2018 (although this party understands that the claimant was already notified and, therefore, should have proof of it) by letter dated 03.20.2019, sent by certified mail with acknowledgment of receipt (doc. nº2)

That this School, in its zeal for compliance with current regulations in terms of data protection, has addressed during the past year a process of adaptation to the new regulations on data protection, the RGPD.

That, for this purpose, this School Center has:

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4/12

- a. A Risk Assessment (document nº3),
- b. A Risk Treatment Plan (document nº4) that is being executed
- c. A Record of Treatment Activities (document nº5)

And it has also proceeded to review and update its application systems for consent for the use of images of students, using for this two separate authorization documents depending on whether the student is younger or older 14 years old (documents nº6 and nº7)".

FOURTH: Dated 05/09/19, has entry in this Agency, new letter of the

claimant, where he reports:

“That on September 1, 2017, he filed a claim with the Colegio

Arenales Carabanchel for the improper transfer of images of their children to third parties outside the center, as well as for the use and publication of photographs in which their children having expressly revoked the consent for it.

That since the College continued to indiscriminately publish photos of their children despite the express disavowal manifested by this party, they submitted subsequent briefs in order to include them in the claim.

These documents are attached hereto duly dated and numbered:

- September 1, 2017 – document number one.
- September 14, 2017 – document number two.
- November 28, 2017 – document number three.
- November 22, 2018 – document number four.

That this party has received a letter from the College denounced, attached as document number five, which mentions the existence of a resolution in the

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5/12

procedure of which this party has not had any news, and that despite indicating that attached as an annex do not.

Confirmation of the existence of said resolution in the indicated file is requested, and we report of the same in order to be able to exercise our rights in legal form.

FIFTH: On 06/04/19, the requested copy is sent to the interested party, in accordance with

The provisions of the art. 53.1.a) of the LPACAP, of Resolution R/00987/2018 dated

05/29/18, corresponding Procedure No.: A/00007/2018 and where it is agreed

FILE the actions carried out at Colegio Arenales Carabanchel, in accordance with the provisions of article 45.6 of Organic Law 15/1999, of December 13, of Protection of Personal Data, in relation to the complaint for infringement of its articles 6.1 and 10.

SIXTH: Dated 06/04/19, from the General Subdirectorate of Data Inspection of this Agency, the existence of the photograph denounced by the

“(3- You arrive at:

interested in point 3 of the FIRST section: (...)

<http://carabanchel.colegioarenales.es/actualidad-carabanchel/10/> where as of the date of

Today, November 21, 2018, the entry dated September 21, 2018 appears

with the title "Comiqueros en Arenales Carabanchel", is still published in

<http://carabanchel.colegioarenales.es/noticia-educacion->

the following addresses:

primary/8/

and <http://carabanchel.colegioarenales.es/comiqueros-en-arenales->

carabanchel/

SEVENTH: In view of the reported facts, in accordance with the evidence that is available, the Data Inspection of this Spanish Agency for the Protection of Data considers that the treatment of personal data that is carried out by the reported does not meet the conditions imposed by the regulations on the protection of data, for which the opening of this sanctioning procedure proceeds.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of

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6/12

Natural Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (General Data Protection Regulation, hereinafter RGPD) recognizes each Control Authority and, as established in articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and Guarantee of Digital Rights (hereinafter LOPDGDD), the Director of the Spanish Data Protection Agency is competent to initiate this procedure.

Sections 1) and 2), of article 58 of the RGPD, list, respectively, the investigative and corrective powers that the supervisory authority may provide to the effect, mentioning in point 1.d), that of: "notifying the person in charge or in charge of the treatment of alleged infringements of these Regulations" and in 2.i), that of: "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."

In the present case, of resolution R/00987/2018 dated 05/29/18, corresponding Procedure No.: A/00007/2018, it follows that:

II

1º.- On 12/01/16, the parents of the children signed the corresponding authorizations for the use of images of each of them, but after a problem arose at the College, with the recording of a video by a third, the parents of the three minors opposed the treatment of the

images of their children, requesting their cancellation.

2º.- On 03/23/17, the Center proceeded to delete the photos, but the

The claimant again denounced that, on 07/16/17, 09/13/17, and 11/30/17, some image of his children still appeared published. However, after the search of the images of the children of the complainant on the website of the Colegio Arenales were not found, so on 05/29/18 we proceeded to issue a decision to file procedure A/00007/18.

Time after having issued the resolution R/00987/2018, the claimant returns to Contact this Agency. In this case:

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7/12

3º.- On 11/22/18, the claimant filed a complaint with this Agency again

“that as of \*\*\* DATE.3, two photos have been published once again in which their children appear”, providing the web address where they are published.

4º.- On 03/21/19, the entity claimed indicates to this Agency that, "this

The center has proceeded to review the images on its website, verifying that there are no images of the claimant's children in it.”

5º.- On 06/04/19, from the Subdirector General for Inspection of

Data from this Agency, the existence of the reported photograph is verified by the interested party, with the title "Comiqueros en Arenales Carabanchel", in the addresses:\*\*\*URL.4 and \*\*\*URL.3

III

Thus, the known facts could constitute an infraction,



attributable to the claimed party, due to violation of article 6.1.a) of the RGPD, which establishes the unlawfulness of the processing of personal data when the interested party did NOT give his consent for their treatment.

For its part, article 72.1.b) of the LOPDGDD considers it very serious, for the purposes of prescription, "The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation".

This infraction can be sanctioned with a maximum fine of €20,000,000 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.b) of the RGPD.

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD:

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8/12

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The nature, seriousness and duration of the offence, taking into account that the

The first complaint is dated 7/16/17, (section a).

The intentionality or negligence in the infringement. In the present case we are

before unintentional negligent action (paragraph b).

The categories of personal data affected by the infringement,

The data processed in this case, are of a markedly personal nature and therefore person identifiers (section g).

The way in which the supervisory authority became aware of the infringement. In this case, it became known through several complaints (paragraph h).

In accordance with the precepts indicated, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 76.2 of the LOPDGDD:

- The continuing nature of the offense (section a).

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The link between the activity of the offender and the performance of treatment of personal data, (section b).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with regarding the infraction committed by violating the provisions of article 6.1.a) allows setting a penalty of 5,000 euros (five thousand euros), considered "very serious", for the purpose of prescription thereof, in 72.1.b) of the LOPDGDD.

Therefore, in accordance with the foregoing, By the Director of the Agency Spanish Data Protection,

HE REMEMBERS:

START: PUNISHMENT PROCEDURE against the entity COLEGIO ARENALES

CARABANCHEL with CIF: G85885291, for the violation of article 6.1.a) of the RGPD, punishable in accordance with the provisions of art. 83 of the aforementioned standard.

APPOINT: as Instructor to C.C.C., and Secretary, if applicable, to D.D.D., indicating

that any of them may be challenged, where appropriate, in accordance with the provisions of

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9/12

Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector

Public (LRJSP).

INCORPORATE: to the disciplinary file, for evidentiary purposes, the claim

filed by the claimant and his documentation, the documents obtained and

generated by the Subdirector General for Data Inspection during the

investigations, all of them part of this administrative file.

WHAT: for the purposes provided in art. 64.2 b) of Law 39/2015, of October 1, of the

Common Administrative Procedure of the Public Administrations, the sanction that

could correspond would be a fine of 5,000 euros (five thousand euros), without prejudice to

whatever results from the instruction.

NOTIFY: this agreement to initiate sanctioning proceedings to the entity

COLEGIO ARENALES CARABANCHEL, granting it a hearing period of ten

working days to formulate the allegations and present the evidence that it considers

convenient.

If within the stipulated period it does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the

sanction to be imposed was a fine, it may recognize its responsibility within the

term granted for the formulation of allegations to this initial agreement; it which will entail a reduction of 20% of the sanction to be imposed in this procedure, equivalent in this case to 1,000 euros. with the app of this reduction, the sanction would be established at 4,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of the amount of the same, equivalent in this case to 1,000 euros. With the application of this reduction, the sanction would be established in 4,000 euros and its payment will imply the termination of the procedure.

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10/12

The reduction for the voluntary payment of the penalty is cumulative with the corresponding apply for the acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate arguments at the opening of the procedure. The voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In In this case, if it were appropriate to apply both reductions, the amount of the penalty would be set at 3,000 euros (three thousand euros).

In any case, the effectiveness of any of the two reductions mentioned will be conditioned to the abandonment or renunciation of any action or resource in via administrative against the sanction.

If you choose to proceed to the voluntary payment of any of the amounts indicated

above, you must make it effective by depositing it in account number ES00

0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for the Protection of

Data in Banco CAIXABANK, S.A., indicating in the concept the number of

reference of the procedure that appears in the heading of this document and the

cause of reduction of the amount to which it is accepted.

Likewise, you must send proof of payment to the General Subdirectorate of

Inspection to proceed with the procedure in accordance with the quantity

entered.

The procedure will have a maximum duration of nine months from the

date of the start-up agreement or, where appropriate, of the draft start-up agreement.

Once this period has elapsed, it will expire and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP,

There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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11/12

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: On February 4, 2020, the claimant has proceeded to pay the

SECOND

sanction in the amount of 3000 euros making use of the two reductions provided

in the Startup Agreement transcribed above, which implies the recognition of the

responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or resource in via administrative action against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Initiation Agreement.

## FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction the infractions that are committed against said Regulation; infractions of article 48 of Law 9/2014, of May 9, General Telecommunications (hereinafter LGT), in accordance with the provisions of the article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and 38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the information and electronic commerce (hereinafter LSSI), as provided in article 43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter, LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least 20% of the amount of the proposed sanction, these being cumulative each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

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12/12

The reduction percentage provided for in this section may be increased regulations.

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00466/2019, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to COLEGIO ARENALES CARABANCHEL.

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 as prescribed by the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure Common of the Public Administrations, the interested parties may file an appeal contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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