 Procedure No.: PS/00297/2020

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., on behalf of B.B.B. (hereinafter, the claimant) with

On October 28, 2019, he filed a claim with the Spanish Agency for

Data Protection. The claim is directed against CLINICA INDEMTAL S.L

(CLÍNICA DENTAL COLÓN) with NIF B26511584 (hereinafter, the claimed). The

The grounds on which the claim is based are as follows:

"[…] That my client was dismissed in an improper manner on the 19th

September 2019 by CLÍNICA INDEMTAL S.L […]

[…] on October 9, 2019, my client sent an email to the representative

of the clinic, [...] requesting their right to delete/cancel all their

personal data except for those that must be kept by legal obligation. This pe-

suppression, included of course removing his image from the website www.clinicaden-

talcolon.es, as well as its social networks on Facebook and any other that could

contain your image. […]

[…] That said request has not been answered or exercised, nor have any

type of measures.

[…] That in addition the website of the entity www.clinicadentalcolon.es does not comply with the regulations

It adapts to the new LOPD and RGPD (EU) 2016/679, although it lacks a plugin for

initial cookies and privacy policy is outdated. […]""

Attach the following documents:

1. Letter of October 9, 2019 requesting the deletion of personal data

addressed by the claimant to the respondent.

2. Mail dated October 9, 2019 sending the data deletion request

by the claimant and the claimant's response requesting 14 to

days to carry out the deletion.

3. Document dated October 23, 2019 in which the claimant urges compliance with

its exercise to the one claimed for not having been attended.

4. Screenshots of the website www.clinicadentalcolon.es and the Facebook profile

where the image of the claimant is shown and he is mentioned as a member of the

company team. Also, screenshot of the privacy policy of the

Web page.

SECOND: Prior to the acceptance of this claim for processing, it is

transferred the claimed, in accordance with the provisions of article 65.4 of the Law

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

digital rights (hereinafter, LOPDGDD).

The respondent filed a reply brief on December 19, 2019 in the

which reveals the following:

- On October 29, 2019, he proceeded to eliminate images on the web and that

the existence of images on the social network Facebook had not been noticed.

- That a new website maintenance company has been contracted

is carrying out the changes for the adaptation and updating of the texts of

Legal Notice and Privacy Policy and Cookies Policy and have been incorporated and im-

planted fully within the activity of the company the action protocols

of the personnel for the exercise of the rights of the interested parties.

 That the image has been suppressed on the website and on social media

by informing the claimant and her lawyer by burofax from 13 and

December 14, 2019.

Attach the following documents:

1. Copy of burofaxes sent.

2. Protocol of action for the exercise of rights.

3. Confidentiality protocols for the use of files.

3. Screenshots of the website and the social network to prove that it has been removed

the image of the claimant and his mention as a member of the clinic team.

THIRD: On January 10, 2020, after analyzing the documentation that

was in the file, a resolution was issued by the director of the AEPD, agreeing to the

non-admission to process the claim.

FOURTH: On January 14, 2020, the claimant files a potestati-

replenishment stating that the claimant has not complied with the right of deletion

urged.

FIFTH: On August 19, 2020, the appellant provides the representation re-

dear and a notarial act dated June 17 and 18, 2020, which records

evidence that the name of the appellant continues to be linked to the Colón Dental Clinic

in GOOGLE and BING search engines. Specifically, there are some tips on hi-

oral hygiene offered by the appellant with the following tenor: "Our Nurse Au-

xiliar B.B.B., teaches us how to brush our teeth correctly", which demonstrates

I would say that the requested right of suppression has not been heeded.

SIXTH: The Director of the Spanish Data Protection Agency issued a resolution estimate on September 7, 2020, and the admission for processing of the claim submitted by the claimant.

SEVENTH: On November 17, 2020, a check is made in the search engine GOOGLE about linking the name of the claimant with the Dental Clinic Colon, resulting in the first place the result of the notice published on November 5 by the clinic that the claimant no longer works there.

EIGHTH: On November 27, 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 17 of the RGPD, typified in article 83.5 of the RGPD.

NINTH: Once the aforementioned start-up agreement was notified on November 30, 2020, the The defendant filed a pleadings statement in which he stated:

"[…]

The civil trial has already been carried out and a sentence has been handed down in October 2020, without has not been appealed by any of the parties (I am sending you an attached sentence, document 3).

Once the sentence has been read and in response to this request, we want to allege and specify:

– There has been no intention of benefit or laziness in the elimination of the information of said worker and our collaboration has been the maximum possible to achieve said end. Of the demand of the party requesting €9,000 euros in concept of compensation has been reduced to €100 in sentence.

– There have been multiple technical difficulties in completely eliminating the

information linking B.B.B. with Clínica dental Colón because he has been

involved a third web page outside of us, and without any relationship of any

type, whose server is in India and who copies information from other pages without

authorization to generate traffic and profit in this way.

– Due to the persistence of this information on that third website, we are sentenced to

100 euros of compensation and committing a series of measures that were carried out on

days after the sentence and duly presented in court for

correct this situation (attached report of measures adopted document 4).

– Despite this, and as an additional measure, we have added to our website a

section where we specify that B.B.B. does not work in our dental clinic.

– As of the date of this writing there is no link present on the internet between

BBB and Clínica Dental Colón with which we conclude that the measures we carry out

finally took effect.

As a last reflection and after my personal experience in this process, I wanted to comment

that we abide by the decision that was adopted in the sentence because it is manifestly

pragmatic and our will has always been this, but we do not understand how far

The responsibility of a company in the treatment of data of its

employees as third parties are involved in the incorrect treatment of the same and

finally see ourselves as the ones harmed by said situation."

TENTH: On February 22, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

claim filed and its documentation, the documents obtained and generated

by the General Subdirectorate of Inspection Data before the claimed party that are part

of file E/11352/2019 and the file of the appeal for reconsideration

RR/00034/2020

Likewise, they are considered reproduced for evidentiary purposes, the allegations to the agreement

of initiation PS/00297/2020 presented by the claimed party, and the documentation that

accompanies.

ELEVEN: On June 25, 2021, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency direct the

CLÍNICA INDEMTAL S.L, with NIF B26511584, for an infringement of article 17 of the

RGPD, typified in article 83.5 of the RGPD, a warning.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: B.B.B. requested CLINICA INDEMTAL S.L CLÍNICA DENTAL COLÓN), the

day October 9, 2019, the deletion / cancellation of your personal data as

former employee of the company.

SECOND: The respondent stated on December 19, 2019 that he had proceeded

to the removal of the images of the claimant on the company's website and on

social networks.

The claimant was informed of these extremes through burofaxes dated 13 and 14

December 2019.

THIRD: According to the screenshots of the Google search engine dated 17

and December 18, 2019 presented in the filing of the appeal for

replacement, the image and the name of the linked claimant continue to appear

linked to social networks of the respondent.

FOURTH: The respondent acknowledges the facts that are the subject of this claim, as

It follows from the judgment of October 2020, where the defendant is accused of

not delete data of the claimant from the aforementioned web page, since against said

judgment, no appeal has been filed by any of the parties.

The respondent, however, alleges the existing technical difficulty to achieve that

all the data of the claimant disappears.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD) recognizes each

control authority, 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 solve this procedure.

II

Article 17 of the RGPD, regarding the right to erasure (“the right to be forgotten”),

establishes that:

"1. The interested party shall have the right to obtain, without undue delay, from the person responsible for the

treatment the deletion of personal data that concerns you, which will be

obliged to delete personal data without undue delay when any

of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for which

were collected or otherwise treated;

b) the interested party withdraws the consent on which the treatment is based in accordance

with article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), and this is not

based on another legal basis;

c) the interested party opposes the treatment in accordance with article 21, paragraph 1, and does not

other legitimate reasons for the treatment prevail, or the interested party opposes the

treatment according to article 21, paragraph 2;

d) the personal data has been illicitly processed;

e) the personal data must be deleted for the fulfillment of a legal obligation

established in the Law of the Union or of the Member States that applies to the

data controller;

f) the personal data has been obtained in relation to the offer of services of the

information society referred to in article 8, paragraph 1.

2. When you have made the personal data public and are obliged, by virtue of the

provided in section 1, to delete said data, the data controller,

taking into account the available technology and the cost of its application, it will adopt

reasonable measures, including technical measures, with a view to informing users

Responsible for processing the personal data of the interested party's request for

deletion of any link to such personal data, or any copy or replica of

the same.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for the fulfillment of a legal obligation that requires the processing of data
imposed by the law of the Union or of the Member States that applies to the
responsible for the treatment, or for the fulfillment of a mission carried out in the interest
public or in the exercise of public powers vested in the controller;
c) for reasons of public interest in the field of public health in accordance with
article 9, section 2, letters h) and i), and section 3;
d) for archival purposes in the public interest, scientific or historical research purposes or
statistical purposes, in accordance with Article 89(1), insofar as
the right indicated in section 1 could make it impossible or hinder
seriously the achievement of the objectives of said treatment, or
e) for the formulation, exercise or defense of claims."

III

In this sanctioning procedure, the presumed illegality of the
breach, by the claimed, of the deletion of all data
that was requested by the claimant on October 9, 2019.
According to the exposed facts, the respondent informed the claimant and his
lawyer, by sending two burofaxes dated December 13 and 14,
2019, that all your personal data responsibility of the claimed person had been
deleted. The same response was sent to this Agency in the letter of
response to the transfer filed on December 19, 2019.
Notwithstanding these statements, the claimant files an appeal for reconsideration before
the inadmissibility of processing the claim arguing that it had not been addressed
the right of deletion and attaching some screenshots of the Google search engine
dated December 17 and 18 in which the image and the name of
the claimant linked to web pages of the claimed party.

It is verified, by means of a notarial act drawn up on June 17 and 18, 2020 that

this situation was maintained at that time. Thus, in some results obtained in the

GOOGLE AND BING search engines, there are some tips on oral hygiene offered

by the appellant with the following tenor: "Our Auxiliary Nurse B.B.B.,

teaches how to brush your teeth properly

IV

Therefore, the facts described would imply a violation of the provisions of the

article 17 of the RGPD, typified in article 83.5 of the same legal text that provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 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 largest amount:

b) the rights of the interested parties according to articles 12 to 22; […]”

For the purposes of the limitation period for infractions, the infraction indicated in the

previous paragraph is considered very serious and prescribes after three years, in accordance with

Article 72 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

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:

k) The impediment or the obstruction or the repeated non-attention of the exercise of the

rights established in articles 15 to 22 of Regulation (EU) 2016/679."

v

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

corrective powers in the event of an infraction of the precepts of the

GDPR.

Article 58.2 of the RGPD provides the following:

"2 Each supervisory authority shall have all of the following corrective powers

listed below:

(…)

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 responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner 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

particular case;"

Article 83.5.b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 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 largest amount:

a) the rights of the interested parties pursuant to articles 12 to 22;"

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In the present case, it has been taken into account that the obtaining of

benefits as a result of committing the offense.

Therefore, a warning is directed against this infraction, in accordance with the

article 58.2.b) of the RGPD, considering that the administrative fine that could fall

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

disproportionate for the respondent, whose main activity is not directly

linked to the processing of personal data, since there is no record of the commission of any

previous breach of data protection.

7th

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.

In view of the foregoing, the following is issued

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: ADDRESS CLÍNICA INDEMTAL S.L, with NIF B26511584, for a

infringement of article 17 of the RGPD, typified in article 83.5 of the RGPD, a

warning.

SECOND: THAT CLÍNICA INDEMTAL S.L, with NIF B26511584 proceed to adopt the

necessary measures to guarantee the suppression of the image of the claimant, in the

website and on social networks, in accordance with article 17 of the RGPD.

Said measures must be adopted within a period of one month computed from the date

in which this sanctioning resolution is notified, and the means must be provided

proof of compliance.

THIRD: NOTIFY this resolution to CLÍNICA INDEMTAL S.L.

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 art. 90.3 a) of the LPACAP,

may provisionally suspend the firm resolution 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-

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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