

□ File No.: EXP202200447

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claiming party) dated December 10,
2021 filed a claim with the Spanish Data Protection Agency.

The claim is directed against EL RACO DEL PIS INVERSIONES S.L. with NIF
B66906652 (hereinafter, the claimed party).

The reasons on which the claim is based are the following:

The claimant states that the entity claimed by email sent to
a plurality of people on November 24, 2021, exhibited without his
consent your email address to third parties.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
forward LOPDGDD), on January 26, 2022, the claim was transferred to
the claimed party, to proceed with its analysis and inform this Agency in the
period of one month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of the Administrations
Public (hereinafter, LPACAP) by electronic notification, was not collected by
the person in charge, within the period of availability, understood as rejected
in accordance with the provisions of art. 43.2 of the LPACAP dated February 6, 2022,
as stated in the certificate that is in the file.

THIRD: On March 4, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On June 9, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of article 6 of the GDPR and article 32 of the GDPR, typified in

Article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP) and after the period granted

for the formulation of allegations, it has been verified that no allegation has been received

any by the claimed party.

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Article 64.2.f) of the LPACAP -provision of which the claimed party was informed

in the agreement to open the procedure - establishes that if no

arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility,

may be considered a resolution proposal. In the present case, the agreement of

beginning of the disciplinary file determined the facts in which the

imputation, the infringement of the GDPR attributed to the defendant and the sanction that could

impose. Therefore, taking into consideration that the claimed party has not

made allegations to the agreement to start the file and in attention to what

established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement is

considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The claimed entity has sent an email, to a plurality

of recipients, without using the blind copy modality, which allows third parties to

outside your person have knowledge about the email address of the

claimant.

SECOND: On June 24, 2022, the claimant is notified of the

initiation of this procedure, converting said agreement into a proposed resolution

in accordance with article 64.2 f) of Law 39/2015, of October 1, of

Common Administrative Procedure of Public Administrations (LPACAP), to the

not make the claimed allegations within the indicated period, despite having been this

extended to your requirement in a timely manner.

FUNDAMENTALS 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 articles 47 and 48 of the LOPDGDD, the Director

of the Spanish Data Protection Agency is competent to initiate and to

solve this procedure.

II

The principles related to the processing of personal data are regulated in the

Article 5 of the GDPR which establishes that "personal data will be:

"a) treated in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with said purposes; according to article 89,

paragraph 1, the further processing of personal data for archiving purposes in

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public interest, scientific and historical research purposes or statistical purposes shall not be

considered incompatible with the initial purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which that are processed ("data minimization");

d) accurate and, if necessary, up-to-date; all measures will be taken

Reasonable reasons for the erasure or rectification without delay of the personal data

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in such a way that the identification of the interested parties is allowed during longer than necessary for the purposes of processing personal data; the

personal data may be retained for longer periods as long as

processed exclusively for archiving purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with article 89, paragraph 1,

without prejudice to the application of appropriate technical and organizational measures that

imposes this Regulation in order to protect the rights and freedoms of the

data subject ("retention period limitation");

f) processed in such a way as to guarantee adequate data security

personal data, including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or organizational ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions of

paragraph 1 and able to demonstrate it ("proactive responsibility")."

Article 72.1 a) of the LOPDGDD states that "according to what is established in the

Article 83.5 of Regulation (EU) 2016/679 are 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:

a) The processing of personal data in violation of the principles and guarantees

established in article 5 of Regulation (EU) 2016/679".

II

Security in the processing of personal data is regulated in article 32 of the

GDPR where the following is established:

"1. Taking into account the state of the art, the application costs, and the nature of

nature, scope, context and purposes of processing, as well as probability risks

and variable severity for the rights and freedoms of natural persons, the responsibility

responsible and the person in charge of the treatment will apply appropriate technical and organizational measures.

measures to guarantee a level of security appropriate to the risk, which, where appropriate, will include

yeah, among others:

a) the pseudonymization and encryption of personal data;

b) the ability to ensure confidentiality, integrity, availability and resilience

permanent treatment systems and services;

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c) the ability to restore the availability and access to the personal data of

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When assessing the adequacy of the security level, particular account shall be taken of

The risks presented by the data processing, in particular as a consequence

of the destruction, loss or accidental or illegal alteration of personal data transmitted

collected, preserved or processed in another way, or the unauthorized communication or access

two to said data.

3. Adherence to a code of conduct approved under article 40 or to a mecha-

certification document approved in accordance with article 42 may serve as an element to

demonstrate compliance with the requirements established in section 1 of this

article.

4. The controller and the processor shall take measures to ensure that

any person acting under the authority of the controller or processor and having

ga access to personal data can only process such data following instructions

of the controller, unless it is required to do so by Union law or by

the Member States."

Article 73.f) of the LOPDGDD, under the heading "Infringements considered serious

has:

"Based on article 83.4 of Regulation (EU) 2016/679, serious and

Offenses that involve a substantial violation of the law shall prescribe after two years.

of the articles mentioned therein, and in particular the following:

f) The lack of adoption of those technical and organizational measures that result

appropriate to guarantee a level of security appropriate to the risk of the treatment,

in the terms required by article 32.1 of Regulation (EU) 2016/679

IV.

It is considered that the claimed entity when sending an email in a plural without using the blind copy modality, you have transferred your data to third parties without cause that legitimizes it and therefore has processed your personal data contrary to law.

Thus, this Agency considers that the claimed entity has infringed the Articles 5.1 f) and 32 of the GDPR, by violating the principle of integrity and confidentiality, as well such as not adopting the necessary security measures to guarantee the protection of the personal data of its clients, by not using the copy modality hidden in the email referral.

V
Article 58.2 of the GDPR provides the following: "Each control authority shall have of all of the following corrective powers listed below:

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d) order the person in charge or person 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;

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

SAW

The violation of article 5.1 f) of the GDPR, can be sanctioned with a fine of 20,000 €000 maximum or, in the case of a company, an amount equivalent to 4%

maximum of the overall annual total turnover of the financial year

above, opting for the one with the highest amount, in accordance with article 83.5 of the GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the GDPR, considering as aggravating circumstance according to article 76.2 b) LOPDGDD, the relationship of the person responsible with the processing of personal data.

VII

The violation of article 32 of the GDPR can be sanctioned with a fine of 10,000,000

€ maximum or, in the case of a company, an amount equivalent to 2%

maximum of the overall annual total turnover of the financial year

above, opting for the one with the highest amount, in accordance with article 83.4 of the GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the GDPR, considering as aggravating circumstance according to article 76.2 b) LOPDGDD, the relationship of the person responsible with the processing of personal data.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: IMPOSE EL RACO DEL PIS INVERSIONES S.L., with NIF

B66906652, in accordance with the provisions of article 58.2.i) of the GDPR, for a infringement of article 5.1 f) of the GDPR typified in article 83.5 a) of the GDPR, a fine of €6,000 (six thousand euros).

SECOND: IMPOSE EL RACO DEL PIS INVERSIONES S.L., with NIF

B66906652, in accordance with the provisions of article 58.2.i) of the GDPR, for a

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infringement of article 32 of the GDPR typified in article 83.4 a) of the GDPR a

fine of €3,000 (three thousand euros).

THIRD: NOTIFY this resolution to EL RACO DEL PIS INVERSIONES

S.L.

FOURTH: Warn the sanctioned party that he must enforce the sanction imposed

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment period

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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 through

writing addressed to the Spanish Data Protection Agency, presenting it through

of the Electronic Registry of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

web/], or through any of the other registries 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

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contentious-administrative proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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