

□ File No.: EXP202208513

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On 07/21/2022, a document submitted to this Agency was entered
by A.A.A. (hereinafter, the claiming party), through which the claim is made
against INVERTIA TENERIFE 2019, S.L. with NIF B76813419 (hereinafter, the part
claimed), for a possible breach of the provisions of the regulations of
Personal data protection.

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

“[...]

The claimant contacted the respondent company inquiring about a
apartment located at (...), having visited it on 07/08/2022. talking to a person
identified as B.B.B. on behalf of said company, with mobile number

***TELEPHONE 1.

Given the interest shown by him, all the economic documentation is sent to him.
to the email ***EMAIL.1 on 07/10/2022.

After two weeks, and without having received an answer from any of the
media, including a WhatsApp sent on 07/13/2022, he was reiterated on the day
07/18, where it indicates that it had already been rented to another person. At this, the
claimant requests that you identify the person responsible for the file to proceed to exercise
their rights related to data protection, which has not had a response to it or
answered your calls to provide you with information (...). there is none
web page nor was any document delivered at any time during the visit where

inform the person responsible for the file.

[...]"

Attach the following documentation:

- WhatsApp conversations held between the complaining party and a

employee of the claimed entity in July 2022.

- Copy of the email sent by the complaining party to the address

email ***EMAIL.1 in which the date of sending is 07/10/2022. He

content is as follows:

"Hello,

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/12

Last Friday 07/08 I went to see the reference apartment and I wanted to

let them know that I would be interested in it because I have to move to

Tenerife for work reasons on a permanent basis, for which I attach the

following documentation, namely:

IRPF solidarity guarantor nº1.

1. Copy of my permanent employment contract.

- 2.

3. Last payroll of solidarity guarantor nº2.

4. CCPP of the home policy that I have subscribed and that would cover content and

Civil liability up to €600,000.

5. Bank receipts for the rental payment of the house in which I am

now, where you can see the punctuality in the payment of rent.

I await your news.

Greetings."

In the section "Attachments" the documents appear as annexes listed above.

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 08/03/2022 the claim was transferred to the party claimed, so that it proceeds to its analysis and informs this Agency within the term of one month, of the actions carried out to adapt to the foreseen requirements 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 08/14/2022, as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming that carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under information was sent to you on 08/29/2022 and 09/23/2022 a copy by postal mail that resulted in "Returned to origin" and "Returned to origin due to excess (not withdrawn in office)" on 09/21/2022 and 10/13/2022. In them he was reminded of his obligation to interact electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, from now on, you will be would notify exclusively by electronic means.

No response has been received to this letter of transfer.

THIRD: On 10/17/2022, in accordance with article 65 of the LOPDGDD,

The claim presented by the complaining party was admitted for processing.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/12

FOURTH: On 12/13/2022, the Director of the Spanish Protection Agency of Data agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of article 13 of the GDPR, typified in article 83.5.b) of the GDPR.

FIFTH: There was an attempt to notify through postal mail that resulted in "Returned to origin by Unknown" on 12/29/2022. Thus, the notification is produced by means of an announcement published in the Official State Gazette on the 01/04/2023 and a hearing period of TEN BUSINESS DAYS is granted so that formulate allegations and present the evidence it deems appropriate, in accordance with the provisions of articles 73 and 76 of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

SIXTH: Once the period granted for the formulation of allegations has elapsed, this Agency has not received any allegation from the claimed party.

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 to initiate the sanctioning file determined the

facts in which the accusation was specified, the infringement of the GDPR attributed to the claimed and the sanction that could be imposed. Therefore, taking into consideration that the claimed party has not made allegations to the agreement to start the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to open the procedure agreed in the fourth point of the operative part "INCORPORATING into the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the General Sub-directorate of Data Inspection in the phase of information prior to the agreement to admit the claim for processing".

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: On 07/08/2022 the complaining party holds a conversation via

WhatsApp with a person who identifies as B.B.B., with mobile number

+***TELEPHONE.1, and that he would be an employee of the claimed entity. The content is the following:

Good morning. I'm B.B.B. of Invertia. We have an appointment today at 6:30 to visit the apartment at ***ADDRESS.1. Please RSVP.

Good morning, yes. Can you leave me the full address please?

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/12

It is in the same ***ADDRESS.1 at the end of the street. Call me when you are there and

I go out to receive them.

Thumb up emoticon.

***ADDRESS 1. Let me know when you're around.

Already

Hello. Down right now.

When you can so that you provide me with the email address to send the documentation please. Thank you so much.

***EMAIL.1

Thank you!

SECOND: On 07/10/2022 the claimant sends an email to the address email ***EMAIL.1, whose content is indicated in the first point, of the "Background" section of this resolution.

THIRD: On 07/13/2022 the claimant sends a new message via Whatsapp to the mobile number ***PHONE.1. The content is as follows:

Good morning, on Sunday we send the documentation. I don't know if they have had the opportunity to Check with the owners.

FOURTH: Subsequently, the complaining party holds a conversation via Whatsapp with the mobile number ***TELEPHONE.1. The content is as follows:

Good morning, except for error, we do not have an answer.

Good morning. The owners have decided on someone else. Thank you.

Thanks for not warning. Please provide me with the necessary information to exercise our right to cancel.

FIFTH: This Agency has notified the agreement to open this sanctioning procedure against the claimed party, but has not presented allegations nor evidence that contradicts the denounced facts.

FUNDAMENTALS OF LAW

Competition and applicable regulations

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/12

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

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

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

previous questions

Article 4 "Definitions" of the GDPR defines the following terms for the purposes of the

Regulation:

"1) "personal data" means any information about an identified natural person or

identifiable ("the data subject"); An identifiable natural person shall be considered any person

whose identity can be determined, directly or indirectly, in particular by means of

an identifier, such as a name, an identification number, data of location, an online identifier or one or more elements of identity physical, physiological, genetic, mental, economic, cultural or social of said person;”

"2) "processing": any operation or set of operations carried out on personal data or sets of personal data, either by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;”

"7) "responsible for the treatment" or "responsible": the natural or legal person, public authority, service or other body which, alone or jointly with others, determines the purposes and means of processing; if the law of the Union or of the Member States determines the purposes and means of processing, the controller or the Specific criteria for their appointment may be established by Union law or of the Member States;”

The claimed entity carries out this activity in its capacity as the person responsible for the treatment, since it is who determines the purposes and means of such activity, by virtue of of article 4.7 of the GDPR.

II

Transparency in the treatment

Article 5 "Principles relating to processing" of the GDPR establishes that:

“The personal data will be:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

a) Treated in a lawful, loyal and transparent manner in relation to the interested party

("lawfulness, loyalty and transparency");

(...)"

Manifestation of the principle of transparency is the obligation incumbent on the

data controllers to inform, under the terms of article 13 of the GDPR, the

owner of the personal data when they are obtained directly from the interested party:

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

responsible for the treatment, at the time they 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, their representative;

b)

c)

the contact details of the data protection officer, if applicable;

the purposes of the processing for which the personal data is used 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;

and)

recipients or categories of recipients of 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

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 the adequate or appropriate guarantees and to the means to obtain a copy of these or the fact that they have been provided.

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

a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this term;

b) the existence of the right to request the data controller access to personal data relating to the interested party, and its rectification or deletion, or the limitation of your 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(2)(a), the existence of the right to withdraw the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/12

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 control 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

not to provide such data;

F)

the existence of automated decisions, including profiling, to referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and expected consequences of such processing for the data subject.

3. When the person responsible for the treatment plans the subsequent processing of data personal information for a purpose other than that for which it was collected, will provide the data subject, prior to said further processing, information about that other purpose and any additional information relevant under section 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."

In this sense, Recital 60 of the GDPR says that "The principles of treatment fair and transparent demand that the interested party be informed of the existence of the treatment operation and its purposes. The data controller must provide the interested party, as much complementary information as is necessary to guarantee a fair and transparent treatment, taking into account the circumstances and context in which the personal data is processed. You must also inform the concerned of the existence of profiling and the consequences of said elaboration. If personal data is obtained from data subjects, it is also must inform them of whether they are obliged to provide them and of the consequences in case that they didn't."

In the present case, it is evident that between the complaining party and the claimed there was a pre-contractual relationship that the claiming party sought, since Only in this way can it be explained that it would have sent to the entity claimed diverse documentation that concerns you, such as the employment contract; documentation that

It was necessary in order to lease one of the properties offered by the entity claimed. Consequently, the claimed party, as the party responsible for the treatment, was obliged, at the time it obtained the personal data of the claimant, to inform the owner of the same about the issues listed in the article 13 of the GDPR; among which is the obligation to inform the users on the possibility of exercising the rights of access, rectification, deletion, limitation of its treatment, opposition to treatment and portability of the data.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

8/12

Therefore, according to the evidence available in this moment of resolution of the disciplinary procedure, it is considered that the facts known are constitutive of an infringement, attributable to the entity claimed, for violation of article 13 of the GDPR.

Classification of the infringement of article 13 of the GDPR

IV.

The aforementioned infringement of article 13 of the GDPR implies the commission of the infringement typified in article 83.5.b) of the GDPR that under the heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the section 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, an amount equivalent to 4% of the turnover global annual total of the previous financial year, opting for the highest amount:

(...)

b) The rights of the interested parties in accordance with articles 12 to 22; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that

"The acts and behaviors referred to in sections 4,

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

For the purposes of the limitation period, article 72 Offenses considered very serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, 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."

Penalty for infringement 13 of the GDPR

V

The corrective powers available to the Spanish Agency for the Protection of data, as a control authority, are established in article 58.2 of the GDPR. Between they have the power to impose an administrative fine in accordance with the article 83 of the GDPR -article 58.2 i)-, or the power to order the person responsible or processor that the processing operations comply with the

C / Jorge Juan, 6

28001 – Madrid

provisions of the GDPR, where applicable, in a certain way and within a certain specified term -article 58. 2 d)-.

According to the provisions of article 83.2 of the GDPR, the measure provided for in article 58.2

d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

In the present case, taking into account the facts exposed and without prejudice to what results from the instruction of the procedure, it is considered that the sanction that

It would be appropriate to impose an administrative fine. The fine imposed shall be, in each individual case, effective, proportionate and dissuasive, in accordance with the Article 83.1 of the GDPR. In order to determine the administrative fine to be imposed, to observe the provisions of article 83.2 of the GDPR, which indicates:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well as such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infraction;

c) any measure taken by the controller or processor to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42,

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

10/12

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement”.

For its part, in relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in

its article 76, "Sanctions and corrective measures", provides:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation

(UE) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing.
personal information.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have included the commission
of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the
infringement, which cannot be attributed to the absorbing entity
- f) Affectation of the rights of minors
- g) Have, when it is not mandatory, a data protection delegate.
- h) Submission by the person responsible or in charge, on a voluntary basis, to
alternative conflict resolution mechanisms, in those cases in which
there are controversies between those and any interested party”.

The balance of the circumstances contemplated allows setting an administrative fine
of €2,000.00 (two thousand euros) for the violation of article 13 of the GDPR.

SAW

Corrective measure

Under the provisions of article 58.2 d) of the GDPR, the party is ordered to
denounced that, within a month from the date on which the resolution in which
if so agreed, be notified, certify:

- To have adopted all the measures that are essential to guarantee
the correct fulfillment of the obligation to inform the interested parties of
who collects personal data, at the time of collection, in the

terms of article 13 of the GDPR.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

11/12

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 INVERTIA TENERIFE 2019, S.L., with NIF B76813419, for an infringement of article 13 of the GDPR, typified in article 83.5.b) of the GDPR, a Administrative fine of €2,000.00 (two thousand euros).

SECOND: ORDER INVERTIA TENERIFE 2019, S.L., with NIF B76813419, that, in accordance with article 58.2.d) of the GDPR, proceed, within a period of one month computed from the notification of the resolution of this disciplinary procedure, to adopt all the measures that are essential to guarantee that it informs in the terms provided in article 13 of the GDPR to the interested parties of whom collect personal data, at the time of collection.

THIRD: NOTIFY this resolution to INVERTIA TENERIFE 2019, 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

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESBBXXX), opened on behalf of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in 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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

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

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

938-181022

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es