

□ Procedure No.: PS/00315/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated February 19, 2019

filed a claim with the Spanish Data Protection Agency. The

The claim is directed against the SPANISH ASSOCIATION FOR THE PREVENTION

SCHOOL HARASSMENT with NIF G86432226 (hereinafter, the claimed.

The reasons on which the claim is based are that the association's website does not have
personal data privacy policy.

SECOND: In view of the facts denounced in the claim and the

documents provided by the claimant, the Subdirector General for Inspection of

Data proceeded to carry out preliminary investigation actions for the

clarification of the facts in question, by virtue of the investigative powers

granted to the control authorities in article 57.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter RGPD), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of
digital rights (hereinafter LOPDGDD).

The aim is to inform the respondent of this claim on March 15

of 2019, requiring you to send this Agency, within a period of one month, information

on the response given to the claimant for the facts denounced, as well as the causes

that have motivated the incidence and the measures adopted to adapt its "Policy of

Privacy" to article 13 of Regulation (EU) 2016/679 of the European Parliament and of the

Council of April 27, 2016 (RGPD).

However, such request was returned by mail, alleging "address incorrect"

Subsequently, investigation actions were carried out on the website of the claimed, <http://aepae.es/> checking that to access its privacy policy must

cookie policy link

<https://automattic.com/cookies/>, and following this second link through the link

<https://automattic.com/privacy/>.

be made to

through the

Analyzing its privacy policy, it should be noted that regarding the exercise of

rights does not say anything, nor in relation to the right to present a

claim before the AEPD, nor is it expressly indicated the regulations by which it is governed regarding the protection of personal data.

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THIRD: On December 18, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: Notification of the aforementioned agreement to initiate this procedure

sanctioning party is given a hearing period of TEN WORKING DAYS to formulate

the allegations and present the evidence it deems appropriate, in accordance with the

stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure

Common of Public Administrations.

TO: Not having made allegations or presented evidence within the given period,

SEX

This resolution is issued taking into account the following:

FACTS

FIRST: The personal data privacy policy of the association's website

claimed is not governed by the current regulations on this matter.

SECOND: It is about making the claimed party aware of this claim

but it was returned by post, claiming "wrong address"

Subsequently, investigation actions were carried out on the website of the claimed and analyzing its privacy policy, it should be noted that regarding the exercise of rights does not say anything, nor in relation to the right to present a claim before the AEPD, nor is the regulation expressly indicated by which governs the protection of personal data.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

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 relation to 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 an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity

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

2) "processing": any operation or set of operations carried out about 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, broadcast or any other form of enabling 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 displaced from May 25, 2018 to article 5 of Organic Law 15/1999, of May 13, December, Protection of Personal Data.

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

Data Protection has at the disposal of citizens, the Guide for the compliance with the duty to inform (<https://www.aepd.es/media/guias/guia-model-clause-informative.pdf>) and, in case of low-risk data processing, the Facilita free tool (<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 all the information indicated 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 any;

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 legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data, in your 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 the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to 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

personal, the following information necessary to guarantee data processing

fair and transparent

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a) the period during which the personal data will be kept or, when 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

data portability;

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 personal data and is informed of the possible consequences of

not provide such data;

f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 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 person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in 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 in charge of the treatment may comply with the duty of information established in the Article 13 of Regulation (EU) 2016/679 providing the affected party with basic information referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must be contain at least:

- a) The identity of the data controller and his representative, in his case.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of 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 In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

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IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency of 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 powers corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing 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 in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

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

“They are considered minor and the remaining infractions of merely formal character of the articles mentioned in sections 4 and 5 of the Article 83 of Regulation (EU) 2016/679 and, in particular, the following:

a)

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

In this case, it is claimed that the web page of the claimed party does not have personal data privacy policy.

v

This Agency has confirmed the difficulty of access to the policy of privacy of the claimed, on its website, <http://aepae.es/> since it must be done through the cookie policy link <https://automattic.com/cookies/>, and then,

link
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following this second link to
through the

In addition, analyzing your privacy policy, it should be noted that regarding the exercise of rights nothing is indicated, nor in relation to the right to present a claim before the AEPD, nor is the regulation expressly indicated by which governs the protection of personal data.

It should also be noted that taking this context into account, and the fact that that the claimed party collects the personal data of its users, it is clear that the www.aepd.es

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claimed contravenes article 13 of the RGPD, since it does not provide them with prior to its collection, all information on data protection provided for in said provision.

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: IMPOSE THE SPANISH ASSOCIATION FOR THE PREVENTION OF SCHOOL HARASSMENT, with NIF G86432226, for a violation of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning

SECOND: TO REQUIRE the SPANISH ASSOCIATION FOR THE PREVENTION OF SCHOOL HARASSMENT, with NIF G86432226, in accordance with article 58.2.b) of the RGPD so that within one month from the notification of this resolution, prove:

☐ the adoption of the necessary measures to update its "Privacy Policy".

Privacy" to current regulations on the protection of personal data,

-Regulation (EU) 2016/679 (RGPD)-, adapting the information offered to the requirements contemplated in article 13 of the RGPD, and must provide users,

Prior to the collection of their personal data, all the

information required in the aforementioned precept, for which the claimed association must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment, as well as what is indicated in article 5 of the RGPD in relation to the purpose of the treatment and term of conservation of the data.

THIRD: NOTIFY this resolution to the SPANISH ASSOCIATION FOR THE PREVENTION OF BULLYING.

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 (article 48.2 of the

LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, the 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

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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