

□ File No.: EXP202205353

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claiming party) dated April 15, 2022

filed a claim with the Spanish Data Protection Agency. The

claim is directed against ASSOCIACIO DE CAÇADORS D'ALZIRA with NIF

G96965223 (hereinafter, the ASSOCIATION). The reasons on which the claim is based
are the following:

The person in charge of the association of hunters of Alzira makes public in a group of

WhatsApp made up of 195 partners, the brief submitted by the claimant

requesting the account books from the association, emphasizing that the partner who

had requested it is the number XXX known because according to what he indicates in his messages that
they lost the elections.

In the conversation held in the WhatsApp group, the person responsible for the said

association indicates that the events that occurred are intended to attack and

threaten the current board of directors, and he himself makes a copy and paste spreading

in the group the private conversation, without the authorization of the complaining party.

Whereupon, the complaining party in the same WhatsApp group puts in

knowledge of all partners that there has been a violation of rights,

Therefore, it will proceed to file a claim with the Spanish Protection Agency
of data.

Together with the notification, screenshots of the conversation held in the

WhatsApp group mentioned.

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), said claim was transferred to the ASSOCIATION, for to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

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, which was not collected by the person in charge, within the period of making them available, meaning

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2/8

rejected in accordance with the provisions of art. 43.2 of the LPACAP dated May 22 of 2022, as stated in the certificate that is 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 informative, a copy was sent by certified postal mail that was returned by “absent”, after two delivery attempts.

THIRD: On June 28, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On July 15, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of article 5.1.f) of the GDPR and article 32 of the GDPR,

typified in article 83.5 and 83.4 of the GDPR.

The initiation agreement, which was carried out in accordance with the norms established in the Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) by means of electronic notification, that it was not collected by the person in charge, within the period of making it available, being understood rejected in accordance with the provisions of art. 43.2 of the LPACAP in dated July 18 of that same year, as stated in the certificate that is in the proceedings.

Although the notification was validly made by electronic means, it was reiterated by Certified postal mail that was returned "absent" after two delivery attempts.

Finally, and given the impossibility of making the notification, it was done through announcement published in the "Official State Gazette" on October 21, 2022.

in accordance with the provisions of art. 44 of the LPACAP.

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.

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.

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3/8

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: It is accredited in the file that the personal data of the party claimant were improperly disseminated to third parties through a conversation from a WhatsApp group created by the ASSOCIATION.

SECOND: It is accredited in the file that was disseminated by WhatsApp the conversation with the documentation that member no. XXX of the previous board of directors chaired by Mr. José Antonio Ferrer sent to the ASSOCIATION by the claimant

FUNDAMENTALS OF LAW

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

Article 5.1.f) of the GDPR

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of personal data; personal information, including protection against unauthorized or unlawful processing and against its accidental loss, destruction or damage, through the application of technical or appropriate organizational procedures ("integrity and confidentiality")."

In the present case, it is clear that the personal data of the complaining party, obtained in the ASSOCIATION's database, were improperly disseminated to third parties through through a conversation in a WhatsApp group, violating the principle of

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4/8

confidentiality; although there is no record of whether or not subsequent use has occurred, for part of third parties, of the personal information of the complaining party.

Classification of the infringement of article 5.1.f) of the GDPR

II

The aforementioned infringement of article 5.1.f) of the GDPR supposes the commission of the infringements typified in article 83.5 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 paragraph 2, with administrative fines of 20 000 000 EUR maximum or, treating- of a company, of an amount equivalent to a maximum of 4% of the volume of overall annual total business of the previous financial year, opting for the one with the highest amount:

a) the basic principles for the treatment, including the conditions for the consent lien under articles 5, 6, 7 and 9; (...)"

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 are contrary to rias to the present organic law".

For the purposes of the limitation period, article 72 "Infringements considered very serious" you see" 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:

a) The processing of personal data in violation of the principles and guarantees established two in article 5 of Regulation (EU) 2016/679. (...)"

Penalty for violation of article 5.1.f) of the GDPR

IV.

For the purposes of imposing an administrative fine and its amount, it is considered that the infringement in question is serious for the purposes of the GDPR and that it is necessary to graduate the

sanction to be imposed in accordance with the criteria established in article 83.2 of the GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the criteria established in section 2 of article 76 "Sanctions and corrective measures" of the LOPDGDD.

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5/8

The balance of the circumstances contemplated in article 83.2 of the GDPR and the Article 76.2 of the LOPDGDD, with respect to the offense committed by violating the provisions established in article 5.1.f) of the GDPR, allow a penalty of €2,000 (TWO THOUSAND EURO).

V

GDPR Article 32

Article 32 "Security of treatment" of the GDPR establishes:

"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 guarantee the confidentiality, integrity, availability and re-permanent silence of treatment systems and services;

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

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of effectiveness

technical and organizational measures to guarantee the security of processing

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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”.

In the present case, at the time of the security breach, there is no record

that the ASSOCIATION have reasonable security measures based on

the estimated possible risks.

It is noteworthy that the WhatsApp group of the ASSOCIATION must be limited only

to disseminate the information necessary for the fulfillment of the purposes of the association.

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6/8

Consequently, broadcast the conversation via WhatsApp with the documentation that the partner no. XXX of the previous board chaired by D. B.B.B. sent to the ASSOCIATION by the claimant requesting the association's accounting book, does not guarantee maintains the confidentiality, integrity and availability of treatment systems and services. I lie.

Classification of the infringement of article 32 of the GDPR

SAW

The aforementioned infringement of article 32 of the RGPD supposes the commission of infringements ti-classified in article 83.4 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 paragraph 2, with administrative fines of a maximum of 10,000,000 EUR or, in the case of of a company, of an amount equivalent to a maximum of 2% of the volume of overall annual total business of the previous financial year, opting for the one with the highest amount:

5)

the obligations of the controller and the person in charge under articles 8, 11, 25 to 39, 42 and 43; (...)"

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

The acts and behaviors referred to in sections 4, 5 and 6 have infractions of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

For the purposes of the limitation period, article 73 "Infractions considered serious"

of the LOPDGDD indicates:

"Based on what is established in article 83.4 of Regulation (EU) 2016/679, the

They are considered serious and will prescribe after two years the infractions that suppose a vulnerability.

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

...

g) The breach, as a consequence of the lack of due diligence, of the

technical and organizational measures that have been implemented as required

by article 32.1 of Regulation (EU) 2016/679".

Penalty for violation of article 32 of the GDPR

VII

For the purposes of imposing an administrative fine and its amount, it is considered that

the infringement in question is serious for the purposes of the GDPR and that it is necessary to graduate the

sanction to be imposed in accordance with the criteria established in article 83.2 of the

GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

criteria established in section 2 of article 76 "Sanctions and corrective measures"

of the LOPDGDD.

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7/8

The balance of the circumstances contemplated in article 83.2 of the GDPR and the

Article 76.2 of the LOPDGDD, with respect to the offense committed by violating the provisions

established in article 32 of the GDPR, allow setting a penalty of €1,000 (THOUSAND EU-

ROS).

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 ASSOCIACIO DE CAÇADORS D'ALZIRA, with NIF

G96965223, for a violation of Article 5.1.f) of the GDPR typified in article

83.5 of the GDPR, a fine of €2,000 (TWO THOUSAND EUROS).

TO IMPOSE ASSOCIACIO DE CAÇADORS D'ALZIRA, with NIF G96965223, for a

violation of Article 32 of the GDPR typified in Article 83.4 of the GDPR, a fine

of €1,000 (THOUSAND EUROS).

SECOND: NOTIFY this resolution to ASSOCIACIO DE CAÇADORS

D'ALZIRA.

THIRD: Warn the penalized person that they must make the imposed sanction effective

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 term

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

XXXXXXXXXXXX), opened on behalf of the Spanish Agency for Data Protection 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

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8/8

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-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

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