

□ Procedure No.: PS/00397/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. with NIF ***NIF.1 (hereinafter, the claimant) dated December 21,
July 2020 filed a claim with the Spanish Data Protection Agency.

The claim is directed against Ms. B.B.B. with NIF ***NIF.2 (hereinafter, the
claimed).

The claimant states that she contacted the respondent to acquire
a cat, paying an amount as a reservation.

Well, the respondent sent him a confirmation document, in which
collected your personal data. However, there is no information regarding the
treatment of these, despite the fact that he requested them in an email dated 30
May of this year.

Provide confirmation document of the reservation of April 6, 2020.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights
(LOPDGDD), which has provided a mechanism, prior to the admission for processing of the
claims made before the Spanish Agency for Data Protection,
consisting of transferring them to the Data Protection Delegates designated by
those responsible or in charge of the treatment, for the purposes provided in article 37
of the aforementioned norm, or to these when they had not been designated, the transfer of the
claim submitted by the respondent to proceed with its analysis and give
response to this Agency within a month.

On September 16, 2020, the claim was transferred to the claimed
submitted for analysis and decision adopted in this regard, being notified on the 7th
October of the same year, through the postal service.

The respondent has not responded to any of the requirements
formulated by the Spanish Agency for Data Protection.

On October 27, 2020, in accordance with article 65 of the LOPDGDD,
The Director of the Spanish Agency for Data Protection agreed to admit for processing the
claim filed.

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THIRD: On November 26, 2020, 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
GDPR.

FOURTH: Once the initiation agreement has been notified, the claim at the time of this
The resolution has not presented a written statement of allegations, for which reason the
indicated in article 64 of Law 39/2015, of October 1, on the Procedure
Common Administrative Law of Public Administrations, which in section f)
establishes that in the event of not making allegations within the period established on the
content of the initiation agreement, it may be considered a proposal for
resolution when it contains a precise statement about the responsibility
imputed, reason why a Resolution is issued.

FIFTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: On July 21, 2020, it has entry into the Spanish Protection Agency of data written by the claimant in which she states that she came into contact with the claimed to acquire a cat, paying an amount as a reservation.

The defendant sent him a confirmation document, in which his data was collected personal. However, there is no information regarding their treatment, despite the fact that he requested them in an email dated May 30 of this year.

SECOND: Confirmation document of the reservation of April 6 has been provided of 2020, where there is no information regarding data processing.

FOUNDATIONS OF LAW

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

II

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

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Likewise, the initiation will be communicated to the complainant when the regulatory norms of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.
- c) Identification of the instructor and, where appropriate, secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.
- e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.
- f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

III

The defendant is charged with the violation of article 13 of the RGPD that establishes:

"Article 13. Information that must be provided when personal data is obtain from the interested party.

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 applicable;

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- c) the purposes of the treatment to which the personal data is destined and the basis legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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- 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

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 adequate or appropriate safeguards and means of obtaining

a copy of these or the fact that they have been loaned.

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

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 the

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 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 providing 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,

significant information about the applied logic, as well as the importance and

anticipated consequences 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.

In the present case, the respondent has violated the right to information that

must be provided to the interested party when their data is obtained or intended to be obtained

personal, materialized in the absence of adaptation of the privacy policy of

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the one claimed given that no information is offered regarding the treatment of

personal information. The claimant expressly requested this information in the mail

email dated May 30, 2020, providing a copy of that message, sent to

the address that appears in <http://montericmei.es/inicio.html>, not having given

response. The respondent has also not responded to the request made

by the Spanish Agency for Data Protection, nor has it made allegations to the

present sanctioning procedure.

Specifically, there is no information in the sense indicated in the article

13 of the RGPD and, as it does not have adequate Privacy Policies where

The user is provided with clear and complete information about the treatment of their personal data according to the provisions of the aforementioned article.

IV

Article 83.5 b) of the RGPD considers that the infringement of “the rights of those interested in accordance with articles 12 to 22”, is punishable, in accordance with the “with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation, administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 71, Violations, states that:

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

The LOPDGDD in its article 72 indicates for prescription purposes: "Infringements considered very serious:

"1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particularly 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.

(...)"

However, article 58.2 of the RGD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

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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 in charge or 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;

(...)"

Therefore, the RGD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations.

In the case that concerns us, the present sanctioning procedure comes motivated by the lack of information in the sense indicated in article 13 of the RGD and, since the claimed party does not have adequate Privacy Policies where provide the user with clear and complete information about the processing of their data according to the provisions of the aforementioned article.

In accordance with such evidence, said conduct constitutes

infringement of the provisions of article 13 of the RGD.

Now, as indicated above, this infraction can be

sanctioned with a warning. Considering that the administrative fine that could

fall in accordance with the provisions of article 83.5.b) of the RGD would constitute a

load disproportionate to that claimed, in accordance with article 58.2.b) of the

RGD proceeds the warning.

Also, for the purposes provided in article 58.2. d) of the RGD is ordered to

responsible for the treatment that the treatment operations comply with the

provided in article 13 of the RGD, especially adapting the information that has

to be offered to users to the requirements contemplated in the aforementioned article, as well

such as the provision of means of proof accrediting compliance with the

indicated.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: Ms. B.B.B. with NIF ***NIF.2, for a violation of article 13 of the RGD,

typified in Article 83.5 of the RGD, a sanction of Warning in accordance

with article 58.2 of the RGD.

SECOND: NOTIFY this resolution to Ms. B.B.B. with NIF ***NIF.2, and

require him to inform the AEPD of the measures adopted, within a period of

month, to prevent a new infringement of article

13 of the RGD, trying to effectively adopt measures so that the

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treatment operations comply with the provisions of the aforementioned article, adapting the information that must be offered to users to the requirements contemplated in the same, as well as the provision of means of evidence accrediting compliance of what is required.

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

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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency were not aware of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Electronic Registration of
through the
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