

□ Procedure No.: PS/00256/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Mrs. A.A.A. (hereinafter, the claimant), dated March 30, 2020,
filed a claim with the Spanish Data Protection Agency. The
claim is directed against the former administrator of the commercial company UGECOR ZONA
SUR S.L. The grounds on which the claim is based are as follows:

“DATED MARCH 30, I RECEIVED A COPY OF AN EMAIL ADDRESSED TO MY
WORK CENTER (UNIVERSITY *** UNIVERSITY.1) FROM A COMPANY
SA UGECOR ZONA SUR SL BY ITS FORMER ADMINISTRATOR, IN WHICH
THEY MAKE ME CERTAIN REQUIREMENTS, WHICH INCLUDE TAKING ACTION
NES CRIMINAL AGAINST MY PERSON.
IN SAID MAIL, WITH THE SOLE INTENTION OF DAMAGING MY REPUTATION IN
MY FIELD OF WORK, THEY ASK MY WORK CENTER, BOTH MANAGE-
TÓN AS A SECRETARY, PLEASE SEND ME THE SAME. IS ABOUT
FINANCIAL AND PROPERTY DATA, THEREFORE, WITH A
MEDIUM LEVEL OF PROTECTION, AS ARE MY PARTICIPATION IN THE CAPITAL
OF A HERITAGE COMPANY WITH THE NUMBER OF PARTICIPATIONS AND
BALANCE IN THE ACCOUNTS. [...]”.

Along with the claim, provide:

1. Copy of the burofax sent by the respondent to the attention of the claimant, on the 24th
March 2020, to your workplace.
2. Screenshot of March 30, 2020 of an email sent at 1:14 p.m.

ras by the claimed from the address <***EMAIL.1> to the email address of the user <***USER.1> of the University ***UNIVERSITY.1, with a copy to the claim so that the notification is transmitted to the latter that the bu-rofax indicated in a post office, while this is attached in pdf format.

SECOND: On April 2, 2020, a new document is received from the claimant in the that identifies Mr. B.B.B. as claimed, with NIF ***NIF.1, where he states the Next:

“Dated March 30 I received (a copy) an email addressed to my work center jo (Universidad ***UNIVERSIDAD.1) in which a copy of a bureau-fax from a company UGECOR ZONA SUR SL by its former administrator.

In said mail, under the pretext, absurd, that they send me the information held in a burofax, and with the sole intention of damaging my reputation in my field of work, they put me in a copy in an email. And they ask my workplace, both

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management as a secretary, and to the decanted, that they send me that email. [...]. I know deals with financial and patrimonial data.

[...]

This email has also been sent to people in my circle of friends, in addition to more than to the workplace. To groups of friends, through WhatsApp. [...]

[...]

The assignment has been made, therefore, without authorization, without a legitimate purpose and with bad faith. The disclosure of personal data is made with the sole intention of producing

damages and directly violates my right to honor.”

[...]”

Attach the following documents:

1. The same email attached to the brief filed on March 30.
2. Screenshots of two WhatsApp profiles showing the reception of two communications from the respondent about the sent burofax.
3. Screenshot of another email sent on March 30, 2020 at 11:16 a.m.

hours by the claimed from the address <***EMAIL.1> to the email addresses

of the users <***USER.2> and <***USER.3> of the University ***UNIVERSI-

DAD.1 and <***EMAIL.2>, with a copy to the claimant, with the same content as

the one to which reference has been made above and where the burofax is attached in

Pdf format.

THIRD: Prior to the acceptance of this claim for processing, the

transferred the claimed, in accordance with the provisions of article 65.4 of the Law

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

digital rights (hereinafter, LOPDGDD).

The respondent filed a reply brief on June 29, 2020 in which

reveals the following:

“[...] Ms. A.A.A. goes to the AEPD and makes a claim intentionally treating

mind to confuse this Agency, simulating a supposed infringement of the right

to data protection, which has not been committed, and improperly using this service

vice, with the sole purpose of avoiding their own breaches and responsibilities, in

fraud of my legitimate right to credit, for the amounts that you owe me.

[...] at no time have I revealed data that was in my possession in my condition.

sole administrator of the patrimonial and family company of which both

We were partners, [...], nor have I violated any secret, nor have I revealed

aside any personal information about my sister.

I have limited myself to addressing my sister, through Burofax, in my own name and

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right and as a natural person a REQUIREMENT OF PAYMENT OF AN EX-

TRAJUDICIAL in defense of my legitimate right to credit against who is the new

SOLE ADMINISTRATOR of the company UGECOR ZONA SUR S.L.U. Mrs. A.A.A.

[...]

Indeed, on March 24, 2020, I sent my sister in my own name

and right and as a natural person a BUROFAX requiring payment and compliance

of what corresponds to me by virtue of the Notarial Public Deed signed dated 6

February 2020 and registered in the Mercantile Registry and this prior to inter-

take legal action and resort to my legitimate right to exercise legal action

that correspond to me before the judicial bodies.

The sender of the burofax, as stated in the postal certification, is myself.

mo, DON B.B.B. and so I send and sign it in my own name and right and not as

former sole administrator, since the credit corresponds to me as a natural person.

The recipient of the burofax and to whom I am addressing it is DOÑA A.A.A. as new ADMI-

SOLE NISTRADORA of the company UGECOR ZONA ZUR S.L.U., self-appointed

that she herself did, by remaining as the sole partner of the aforementioned company, after the re-

capital reduction, which was formalized before a Notary through the aforementioned Public Deed

dated February 6, 2020.

[...] if the aforementioned burofax is read carefully, no information about me is being revealed

sister, but on the contrary, it is my data that is contained in it.

[...] said burofax I address it to your place of work simply and simply because it is the only one domicile that I know of her, because in the new registered office of the company I do not re- take no communication and as for his home address, after having moved do to another house, I also do not know it, therefore and without other remedy I direct it to your work address. There being no intentionality on my part or intention of cau- do her any harm, I simply send it to the only address I know of hers and where you could record your receipt.

Subsequently, and after sending the BUROFAX and when the postal notice of the burofax, I try to contact the University by phone and due to the state of alarm decreed by the Government, calls are not answered nor is there pre- essential and a phone message jumped where they directed you to the website where the email addresses to contact the University, and effectively I send an email to the address published on the Web and it is the Uni- which responds to me by email and provides me with the email address. where I can communicate, referring me to the Deanery, which effectively I do, following the instructions of the center, being therefore the University itself the that gives the location data and email of the claimant.

[...]

In other words, my burofax is sent to that address because the University itself sent it to me that way. expressly indicates, email address that I did not know or was published in the University website.

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[...] it turns out to be a fact that the treatment I make of the data in my claim economic, they are not personal data of the claimant but they are my own data and in addition said treatment is totally necessary for the legitimate defense of my claim and in short for the exercise of my credit right and for the sole purpose of trying to exhaust the extrajudicial route before having to go without further legal aid remedy.

In addition, my performance does not reveal in any way that I am violating secrets or damages. data that are in my possession for the time that I have been Sole Administrator of the market. cantil and therefore owner of the data file of the aforementioned company but rather that it is my data and a simple claim for the amount that corresponds to me in my legitimate my right to defend my credit.

I have not violated any right of the claimant nor have I disclosed data personal property of yours, not having been committed on my part by any infraction of the pre-views in the Data Protection Law, I have limited myself to claiming my right of credit I issue in my own name and right as a natural person before the new Administration. Sole proprietor of the company at the only address that I know of and know in order to leave proof of receipt.

Likewise, the treatment of the data contained in my claim is necessary.

Cesaria and in accordance with the provisions of art. 9.2 f) of EU Regulation 2016/679 to which tenor "The treatment is necessary for the formulation, exercise or defense of re-cries"

[...]"

Attach as documents:

1. Public deed of appointment of sole administrator of the commercial CGU-

COR ZONA SUR, S.L.

2. Content of the burofax dated March 24, 2020.

3. Screenshot of the response email from <***USER.3> from the University

***UNIVERSIDAD.1 to the email sent on March 30 at 11:16 a.m. and in which

indicates that you can contact <***EMAIL.3>.

FOURTH: The Director of the Spanish Protection Agency agreed to admit the

the claim on July 10, 2020.

FIFTH: On November 5, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the

GDPR.

SIXTH: On November 25, 2020, the respondent files a written allegation

in which he reiterates what was stated in his brief in response to the transfer of the claim.

mation, requesting the file of the procedure or, alternatively, a warning

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unto

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On March 30, 2020, the respondent submits at 11:16 a.m.,

from address <***EMAIL.1> to the user's email address

<***USER.2>,

<***USER.3>, from the University ***UNIVERSITY.1, and

***EMAIL.2, with a copy to the claimant, so that the notice of

that you have at your disposal the indicated burofax in a post office, at the same time that

The burofax is attached in pdf format.

SECOND: On March 30, 2020, the respondent sends at 1:14 p.m.,

from the address <***EMAIL.1> to the email address of the user <***USER.1>

of the University ***UNIVERSIDAD.1, with a copy to the claimant, to be transmitted

The latter is notified that they have at their disposal the burofax indicated in an office.

na mail, while this is attached in pdf format.

THIRD: The burofax, which was included in the emails, recalls the split of a

society in which the claimant and the respondent participated, and the financial obligations

cas assumed by the claimed; adding that, if they are not addressed within a period of

five days, it will initiate judicial actions, including criminal ones.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 Regulation (EU) 2016/679 (Regulation

General Data Protection, hereinafter RGPD) recognizes each authority of

control, and as established in articles 47 and 48 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(hereinafter, LOPDGDD), the Director of the Spanish Agency for the Protection of Data

cough is competent to solve this procedure.

II

Article 5 of the RGPD, whose rubric is entitled Principles related to the treatment

establishes in letter f) of its section 1 that personal data will be "processed

in such a way as to ensure adequate security, including protection against

unauthorized or unlawful treatment and against loss, destruction or accidental damage,

through the application of appropriate technical or organizational measures ("integrity and

confidentiality”)”. In relation to this principle, Considering 39 of the aforementioned GDPR states that “[...] Personal data must be treated in a way that guarantees adequate security and confidentiality of personal data, including for prevent unauthorized access to or use of such data and of the equipment used in the transaction. treatment”.

For its part, the LOPDGDD, in its article 5 provides that:

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"1. Those responsible and in charge of data processing, as well as all persons

Those who intervene in any phase of this will be subject to the duty of confidentiality.

ity referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when the relationship between the obligor and the person in charge or in charge of the transaction had ended. treatment”.

III

The claim is based on the presumed unlawfulness of informing third parties ros, by the claimed party, of data of a financial and patrimonial nature of the claim. mante via emails sent to email addresses from his workplace, as well as through WhatsApp messages sent to two people from their immediate environment.

The claimant provided, as evidence of these statements, the documents to which

reference has been made in the first and second antecedents of this resolution.

Thus, in the provided screenshots, it can be seen that in the emails

sent by the claimed party on March 30 at 11:16 a.m. to the addresses of

mail <***USER.2>, <***USER.3> and ***EMAIL.2, and at 13:14 to <***USER-

RIO.1>, in which the burofax is made available at an office of

mail, this is attached in .pdf format. An examination of the content of the burofax itself

shows that it contains data about participation and claim status.

within a company or the cash allocated to it after an operation

reduction of capital, in addition to the fact that the object of the burofax itself ("Requirement

compliance process") already refers to a position held by the claimant

in an economic relationship. It is important to point out that the complainant appears as

recipient in a copy of these emails (something that is also observed in the mail of the

11:16 attached by the respondent in his response to the transfer). This would show that

the respondent knew the email address of the claimant, without it being

necessary, if the purpose of the communication was to send you the notice, send to third parties

ros outside the aforementioned emails (neither the one sent at 11:16 nor the one after the

13:14 after the answer provided by <***USER.3>)

The dissemination of these data by whoever was a partner and administrator of the company and res-

pect to which their legitimacy to dispose of them is not questioned and

treat them in the exercise of the rights that may correspond to third parties unrelated to

the person to whom the request is addressed, supposes a violation of the principle of

confidentiality established by the RGPD in the processing of personal data, obli-

general regulation that highlights article 5 of the LOPDGDD, without it being understood

reduced to the duty of professional secrecy.

On the other hand, the exposed facts would not be covered, as the claim indicates.

do, due to the exception to the prohibition of treatment contained in article 9.2.f) of the

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RGPD, due, first of all, to the fact that the categories of data to which it refers this article are, as indicated in section 1, those “that reveal the ethnic origin racial or cultural background, political opinions, religious or philosophical convictions, or affiliation trade union membership, and the processing of genetic data, biometric data aimed at identifying unambiguously identify a natural person, data relating to health or data relating to to the sexual life or sexual orientation of a natural person.”, and secondly, gar, because the exception refers to “treatment necessary for the formulation, the exercise or defense of claims or when the courts act in exercise of its judicial function;”, and not to the communication to third parties that are not involved in said claim.

In relation to the information provided to people close to the claimant through WhatsApp, of which screenshots have been provided, it should be noted that Whatsapp is an instant messaging service through which you can send text messages and documents, among others, and, in this specific case, it was used by the claimed as a partner of a company, providing details of the capital reduction made and outstanding debts; Therefore, in this case, you cannot considered to be a treatment of personal data that is carried out in the exercise of exclusively personal or domestic activities.

The respondent alleges that he is not responsible for files or processing. In this sen- tion, it should be noted that article 4, paragraph 2 of the RGPD, defines the treatment of personal data such as:

“processing”: any operation or set of operations performed on data

personal information or sets of personal data, either by automated procedures

two or not, such as the collection, registration, organization, structuring, conservation, adaptation

tation or modification, extraction, consultation, use, communication by transmission,

dissemination or any other form of authorization of access, collation or interconnection, limitation

tion, deletion or destruction.

The data of the claimed party have been processed by the claimed party, for

which had to comply with all the requirements established in the RGPD when carrying out said

treatment.

IV

In accordance with the available evidence, it is considered that the facts

claimed would breach the provisions of article 5.1.f) of the RGPD, so they could

suppose the commission of an infringement typified in article 83.5 of the RGPD, which

put the following:

“The infractions of the following dispositions will be sanctioned, in accordance with the

section 2, with administrative fines of a maximum of EUR 20,000,000 or, treating-

of a company, of an amount equivalent to a maximum of 4% of the volume of

Total annual global 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 pursuant to articles 5, 6, 7 and 9; [...]”

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For the purposes of the limitation period for infractions, the infraction indicated on the previous paragraph is considered very serious and prescribes after three years, in accordance with article Article 72.1 of the LOPDGDD, which establishes that:

“Based on the provisions of article 83.5 of Regulation (EU) 2016/679, it is con-

They are considered very serious and the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following following:

a) The processing of personal data violating the principles and guarantees established two in article 5 of Regulation (EU) 2016/679. [...]»

v

The corrective powers available to the Spanish Data Protection Agency These, as a control authority, are established in article 58.2 of the RGPD. Among them are the power to issue a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the person in charge or in charge of the treatment that the operations ns of treatment comply with the provisions of the RGPD, where appropriate, of a certain manner and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of an administrative fine. treat.

Without prejudice to the provisions of article 83, the aforementioned GDPR provides for the possibility of punish with a warning, in relation to what is stated in Considering 148:

“In the event of a minor infraction, or if the fine likely to be imposed would constitute be a disproportionate burden on a natural person, rather than sanction by fine, a warning may be imposed. However, special attention must be paid tion to the nature, seriousness and duration of the infringement, to its intentional nature, to

the measures taken to mitigate the damages and losses suffered, to the degree of responsibility
bility or any relevant prior violation, to the manner in which the enforcement authority
control has been aware of the infraction, to the fulfillment of ordered measures
against the person in charge or person in charge, adherence to codes of conduct and any
any other aggravating or mitigating circumstance.

SAW

In the present case, it has been taken into account, in particular, that it is a person
physical whose main activity is not linked to the processing of personal data
(article 76.2.b) of the LOPDGDD).

For all these reasons, it is considered that the sanction that corresponds to direct is of APERCIBI-
I LIE, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to

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with what is stated in Considering 148, cited above; and require that if you perform work
processing of personal data complies with the regulations to that effect.

Therefore, in accordance with the applicable legislation and after assessing the graduation criteria
tion of the sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS Don B.B.B., with NIF ***NIF.1, for a violation of Article
5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to Don B.B.B..

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 in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the resents may optionally file an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the date of the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, in accordance with the provisions of article 25 and section 5 of the additional provision Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-administrative, within a period of two months from the day following the notification of this act, as provided for 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, may provisionally suspend the firm resolution in administrative proceedings if the interested party do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or to through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

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