

□ Procedure No.: PS/00071/2021

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. (hereinafter, the claimant) on 01/08/2020 filed

claim before the Spanish Data Protection Agency. The claim is

directed against Ms. B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one). The reasons in

on which the claim is based are that, on numerous occasions, the academy sends him

emails without a blind copy, being able not only to see the names of the email addresses

of other people, if not that others can see yours and attached proof of 5

emails sent in the course of this last year.

SECOND: Upon receipt of the claim, the Subdirector General for Inspection

tion of Data proceeded to carry out the following actions:

On 02/05/2020, the claim submitted was transferred to the defendant for analysis

and communication to the affected party of the decision adopted in this regard. Likewise, he is re-

I wanted him to send the Agency certain information within a month:

- Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that

the claimant has received communication of that decision.

- Report on the causes that have motivated the incidence that has originated the

claim.

- Report on the measures adopted to prevent incidents from occurring.

similar quotes.

- Any other that you consider relevant.

Dated 03/04/2020 (check-in date 06/01/2020, 06/11/2020 and 07/01/2020) the respondent responded to the AEPD stating in summary that the incidence claimed does not constitute practice or habitual action in the operation of the demic, recognizing that although the facts constitute a breach of the duty of confidentiality are due to a specific human error, having breached the protocol established for these cases by the acting teacher and adopting a series of measures measures to prevent this type of incident from happening again in the future.

THIRD: On 06/02/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the re-claim filed by the claimant against the respondent.

FOURTH: On 02/18/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged in-
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fraction of articles 5.1.f) and 32.1 of the RGPD, sanctioned in accordance with the provisions in article 58.2.b) of the aforementioned regulation.

FIFTH: Notified of the initiation agreement, the respondent, on 03/03/2021, manifests It contained, in summary, the following: that at all times it has shown its willingness to collaborate boration towards this organism; that the constitutive facts of the in-fraction indicating its punctual character and lack of intentionality; that was sent teachers and staff communicated through which the obligation to follow the protocol for those and the obligation to use the blind copy functionality that allows to maintain the confidentiality of electronic addresses; was reviewed

implementation that in 2018 that carried out a consultancy on the Protection of Data contracted for this purpose, reviewing again all the procedures and treatments and update them, which is why a specialized consultant was commissioned gives the realization of a new implantation; which last June completed the review and update of the implantation, being able to consult on the web page: www.emplea-te.com and its privacy policy; that recently, in addition, has proceeded to voluntarily appoint a Data Protection Officer for the company limited EMPLEA-TE, S.L. in order to make the control of regulatory compliance more effective. and ensure efficiency and quality in data processing and attention to information. interested.

SIXTH: On 03/13/2021, a period of practice tests began, in accordance with do the following

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated by the Inspection Services that are part of file E/00881/2020.
- Consider reproduced for evidentiary purposes, the allegations to the initial agreement cio presented by the claimed and the documentation that accompanies them.

SEVENTH: On 03/31/2021, a Resolution Proposal was issued in the sense that sanction the claimant for infringement of articles 5.1.f) and 32.1 of the RGPD, typifying das in articles 83.5.a) and 83.4.a) of the RGPD, with a warning of conformity with article 58.3 of the RGPD.

After the term legally indicated at the time of this Resolution, the re-claimed had not submitted a pleadings brief.

EIGHTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: On 01/08/2020 the claimant submitted a letter to the Spanish Agency for

Data Protection, stating that, on numerous occasions, the academy in the

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who prepares sends you emails without a blind copy, being able not only to see the names of the

email addresses of other people, if not that others can see yours

and attached as proof of 5 emails sent in the course of this last year.

SECOND: A copy of the emails sent to the claimant is provided.

te on 02/19, 21, 26, 27 and 02/29/2019 without blind copy.

THIRD: The respondent in writing dated 06/01/2020 has stated that “it must be

In the first place, note that the incident that motivates the facts that are the subject of the claim

It is not constituted as a habitual practice within its normal operation. In this

sense, the Academy recognizes, as it could not be otherwise, that the facts

constitute a violation of the duty of confidentiality, and that, being aware of

This point reiterates that the practice is not normal, but that it is due to a human error.

not punctual”.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate

and to solve this procedure.

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers

corrections listed below:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the treatment operations have infringed the

provided in this Regulation;

(...)"

In the first place, article 5 of the RGPD establishes the principles that must be

govern the processing of personal data and mentions among them that of "integrity and

confidentiality".

The cited article states that:

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the

personal data, including protection against unauthorized processing or

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against its loss, destruction or accidental damage, through the application

of appropriate technical or organizational measures ("integrity and

confidentiality)").

(...)

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

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

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment".

III

Second, article 32 of the RGPD "Security of treatment",

establishes that:

"1. Taking into account the state of the art, the application costs, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of individuals physical, the person in charge and the person in charge of the treatment will apply technical measures and appropriate organizational measures to guarantee a level of security appropriate to the risk, which in your case includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure the confidentiality, integrity, availability and permanent resilience of treatment systems and services;
- c) the ability to restore availability and access to data quickly in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and evaluation of the effectiveness technical and organizational measures to guarantee the security of the

treatment.

2. When evaluating the adequacy of the security level, particular consideration shall be given to taking into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the

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present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that any person acting under the authority of the controller or the manager and has access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States”.

The violation of article 32 of the RGPD is typified in the article 83.4.a) of the aforementioned RGPD in the following terms:

"4. Violations of the following provisions will be sanctioned, in accordance with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43.

(...)"

IV

The proven facts show the disclosure of email addresses
email when sent to the claimant emails without a blind copy with
breach of the technical and organizational measures and violating the
data confidentiality.

It has been credited through the screenshots of the emails
emails provided by the claimant that were sent from the address Info
Emplea-te info@emplea-te.com, on dates 19, 21, 26, 27 and 02/29/2019 without a copy
hidden, to a plurality of email addresses among which is the
address owned by the claimant and through which information about the
activities of the academy, which supposes the violation of the regulations regarding
protection of personal data.

Said action constitutes a violation of the principles of confidentiality and
of data security, regulated in articles 5.1.f) and 32.1 of the RGPD, and
typified in articles 83.5.a) and 83.4.a) of the RGPD.

In addition, it is observed that in the bottom of the aforementioned emails when it is done
reference to the privacy policy refers to the LOPD 15/1999 rule that in said
date was already repealed by the RGPD.

However, in order to clarify the terms of the claim
presented and that has led to the opening of this sanctioning procedure, the
claimed by letter of 03/03/2020 indicated that at all times it has
shown their willingness to collaborate with this Control Authority indicating that

It was not true, as stated in the initial agreement, that he did not answer the request formulated by the AEPD since it responded to it and that the incidence

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object of the claim does not constitute the usual practice in its operation normal and, although he recognizes that the facts constitute an infringement of the on protection of personal data, everything is due to human error punctual and involuntary and that the teacher who gave the classes to the group in question breached the protocol established for these cases, for which a series of measures to avoid this type of incident:

The referral to all teachers and administration staff a statement informing and reiterating the obligation to follow the protocol for these cases, and the obligation to use the blind copy functionality that allows you to keep the confidentiality of electronic addresses.

The review of the implementation of the GDPR that was carried out in 2018, and that It was more convenient to reexamine all the procedures and treatments and update them, which is why a specialized consultant was entrusted with the performing a new implementation.

The appointment of DPD to make compliance control more effective regulations, and ensure efficiency and quality in the treatment of data and attention to interested.

v

The violation of article 5.1.f) of the RGPD is typified in article 85.5.a)

of the aforementioned Regulation.

Article 83.5 a) considers that the infringement of “the basic principles for the treatment, including the conditions for consent under articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the cited RGPD, “with administrative fines of €20,000,000 maximum or, in the case 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”.

For its part, 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.

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates that: “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:

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

(...)”

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The violation of article 32 of the RGPD is typified in the article

83.4.a) of the RGPD in the following terms:

"4. Violations of the following provisions will be sanctioned, in accordance

with paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43.

(...)"

For its part, 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.

And in its article 73, for the purposes of prescription, it qualifies as "Infringements

considered serious":

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679

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

substantial violation of the articles mentioned therein and, in particular, the

following:

(...)

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

of the technical and organizational measures that have been implemented in accordance with

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

(...)"

7th

However, article 58.2 of the REPD provides the following:

"two. Each supervisory authority will 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;

(...)”

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Therefore, the RGPD, 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 this proceeding, as indicated previously, it has been

accredited the disclosure of email addresses when referred to the

claimant emails without blind copy with violation of the measures

technical and organizational and violating the confidentiality of the data.

In accordance with the evidence available to said conduct

constitutes by the claimed the violation of the provisions of articles 5.1.f)

and 32.1 of the GDPR.

However, the person claimed in writing sent to this Agency, in addition to

to recognize the events that occurred, pointing out that everything had been a consequence of

a punctual human error and the absence of intentionality, has proceeded to adopt a series of measures informing and communicating the academy staff about the obligation to follow the established protocol regarding emails; the review of all the procedures and treatments implemented, updating them and commissioning a specialized consultant to carry out said work, etc., and to in order to make the control of regulatory compliance more effective the appointment of DPD, so it is not appropriate to urge the adoption of additional measures since It has been proven that the respondent has adopted adequate and reasonable measures to avoid incidents such as the one claimed.

In addition, it must be taken into account that there is no recidivism, for not record the commission in the term of one year of more than one infraction of the same nature and that the respondent is a small business.

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 B.B.B., with NIF ***NIF.1, for an infraction of article 32.1 of the RGPD, typified in Article 83.4.a) of the RGPD, a sanction of warning in accordance with article 58.3 of the RGPD.

SECOND: IMPOSE B.B.B., with NIF ***NIF.1, for an infraction of article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD, a sanction of warning in accordance with article 58.3 of the RGPD

THIRD: NOTIFY this resolution to B.B.B..

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.

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48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPA-CAP, 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 counting from the day following the notification of this resolution or directly contentious-administrative case before the Contentious-administrative Chamber of the Autonomous 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 Jurisdiction Contentious-administrative diction, within a period of two months from the day following 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 LPA-CAP, the firm resolution may be provisionally suspended 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the city tada Law 39/2015, of October 1. You must also transfer to the Agency the documentation certifying the effective filing of the contentious-administrative appeal. Yes the Agency was not aware of the filing of the contentious-administrative appeal nistrative within two months from the day following the notification of the pre- This resolution would end the precautionary suspension.

Sea Spain Marti

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