

□ File No.: EXP202105319

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant party) dated November 9,  
2021 filed a claim with the Spanish Data Protection Agency.

The claim is directed against B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the part  
claimed).

The grounds on which the claim is based are as follows:

The complaining party states that on September 1, 2021, it enters into a contract  
lease of a property and previously a reservation of a flat, through  
Real Estate Agent, B.B.B., belonging to the BARCELONA DREAM AGENCY  
HOUSE, documentation that does not include adequate information regarding  
data protection, given that the data controller is not sufficiently identified.  
data processing, the purpose of data processing is not sufficiently identified.  
data, nor is it included how to properly exercise the different rights in  
data protection matters provided by the regulations in this regard.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5  
December, of Protection of Personal Data and guarantee of digital rights (in  
hereinafter LOPDGDD), on December 23, 2021 said claim was transferred  
to the claimed party, so that it could proceed with its analysis and inform this Agency in  
within a month, of the actions carried out to adapt to the requirements  
provided for in the data protection regulations.

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

(hereinafter, LPACAP) by electronic notification, was not collected by

the person in charge, within the period of making available, understanding rejected

in accordance with the provisions of art. 43.2 of the LPACAP dated January 9, 2022,

as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of

information was sent again by mail to the address of registration

of the claimed, which was returned with the indication unknown.

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In said notification, he was reminded of his obligation to relate electronically

with the Administration, and he was informed that, in the future, he would be notified

exclusively by electronic means.

THIRD: On February 9, 2022, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On May 27, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the

GDPR.

FIFTH: Notification 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 the

Public Administrations (hereinafter, LPACAP) and after the term 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 respondent was informed in the agreement to open the procedure - establishes that if no allegations within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal. In the present case, the agreement beginning of the sanctioning file determined the facts in which the imputation, the infraction of the RGPD attributed to the claimed and the sanction that could prevail. Therefore, taking into consideration that the respondent has not formulated allegations to the agreement to initiate the file and in attention to what established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is considered in this case proposed resolution.

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

In this proceeding, the following are considered proven facts:

#### PROVEN FACTS

FIRST: On September 1, 2021, claimant and respondent entered into a contract lease of a property and previously a reservation of a flat, through Real Estate Agent, B.B.B., belonging to the BARCELONA DREAM AGENCY house,

The personal data contained in said contracts do not include adequate information in terms of data protection, given that:

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the data controller is not sufficiently identified

nor is the purpose of data processing indicated,  
nor is it included how to properly exercise the different rights in  
data protection matters provided by the regulations in this regard.

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SECOND: The Spanish Agency for Data Protection has notified the claimed  
the agreement to initiate this sanctioning procedure, but it has not  
presented allegations or evidence that contradicts the facts denounced.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the  
European Parliament and of the Council of April 27, 2016, regarding the protection of  
individuals with regard to the processing of personal data and the free  
circulation of these data (General Data Protection Regulation, hereinafter  
RGPD) recognizes each control authority, and according to what is established in the articles  
47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection  
Personal and guarantee of digital rights (hereinafter LOPDGDD), the  
Director of the Spanish Data Protection Agency is competent to initiate  
this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the  
Spanish Agency for Data Protection will be governed by the provisions of the  
Regulation (EU) 2016/679, in this organic law, by the provisions  
regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

## 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 what

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

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

2) “processing”: any operation or set of operations carried out on

personal data or sets of personal data, whether by procedures

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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 these definitions, the collection of personal data

through forms constitutes data processing, for which the data controller must comply with the provisions of article 13 of the RGPD, a precept that has moved from May 25, 2018 to article 5 of Organic Law 15/1999, of December 13, on the Protection of Character Data Staff.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

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, provides that:

III

"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;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;
- e) the recipients or the categories of recipients of the personal data, in their case;

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f) where appropriate, the intention of the controller to transfer personal data to a third party 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

- a) the period during which the personal data will be kept or, when it is 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 relating 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 portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or 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 which 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 controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

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4. The provisions of sections 1, 2 and 3 shall not apply when and in the 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 responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to 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 contain, at less:



- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the 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 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.”

#### IV

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

(...)

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;”

(...)

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“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 under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each particular case;”

Article 83.5.b) of the RGPD establishes that:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

b) the rights of the interested parties pursuant to articles 12 to 22;”

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

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year. merely formal of the articles mentioned in paragraphs 4 and 5 of 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 of information of the affected party for not providing all the information required by Articles 13 and 14 of Regulation (EU) 2016/679.”

v

In this case, it is denounced that the defendant, when drafting a previous contract of

reservation to carry out the lease of a property, in said document

personal data should be provided to the claimed person without including information regarding about the processing of such data by the claimed party, such as who is responsible for the data processing, nor is the purpose of data processing sufficiently identified.

data, nor is it included how to properly exercise the different rights in data protection matters provided by the regulations in this regard.

Only in clause 18 is there a very brief mention of data protection but without indicating the aspects indicated or the regulations that govern them, despite the requirement of article 13 of the RGPD, as indicated in the foundation of right III.

Therefore, it is considered that the exposed facts constitute, on the part of the claimed, a violation of the provisions of article 13 of the RGPD.

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In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

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“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the processing operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular

whether the person in charge or the person in charge notified the infringement and, if so, to what extent.

gives;

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under Article 40 or to certification mechanisms

fication approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or indirectly.

mind, through infraction.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76,

“Sanctions and corrective measures”, provides:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of treatment of personal information.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process subsequent to the commission of the

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infringement, which cannot be attributed to the absorbing entity.

- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at the amount of €2,000 for the infringement of article 58.2 of the RGPD.

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 13 of the RGD, typified in article 83.5 of the RGD, a fine of 2,000 euros (two thousand euros).

SECOND: ORDER to B.B.B., with NIF \*\*\*NIF.1, that in accordance with the provisions in the aforementioned article 58.2.d) of the RGD, proceed to the adequacy of the information offered to users, whose personal data is collected, to the requirements contemplated in article 13 of the RGD, as well as the provision of means of supporting evidence of compliance with the requirements within a month from the notice of this resolution.

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

FOURTH: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common 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, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution 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 month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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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

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

counting 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,

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 by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or 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 proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal-contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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