

□ File No.: EXP202103425

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 complaining party) dated August 13, 2021

filed a claim with the Spanish Data Protection Agency.

The claim is directed against ADADE BURGOS, S.L. with NIF B09289679 (in
hereafter, the party claimed).

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

The claimant states that on 3/10/21 he was disciplinarily dismissed from the entity
claimed.

On April 21, 2021, the entity sent an email to customers who were
attended by the claimant and informed them that he had ceased to provide service upon being
disciplinary dismissal for professional malpractice.

On May 13, 2021, the claimant exercised the right of access before the entity,
requesting information about the recipients to whom your data was communicated,
by what means and the terms used to report matters relating to your
dismissal.

On June 9, 2021, the respondent entity addresses the right and informs you that the
termination of the employment relationship has been communicated by email to customers
with whom the claimant had a professional relationship.

The claimant considers that this answer does not satisfy his right to the extent
in which they have not indicated the clients and suppliers to whom the
email indicating that you had been fired, nor the terms

used to describe the aforementioned situation.

Together with the claim, it provides the burofax sent to exercise the right and its reply.

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 October 22, 2021, said claim was transferred to the party claimed, so that it proceeded to its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

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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), was collected on November 3, 2021 as

It is stated in the acknowledgment of receipt that is in the file.

On December 10, 2021, this Agency received a written response indicating the claimed entity that only communicated the name, first surname and Claimant's corporate email to clients he came to rendering his services as an employee of the claimed entity

The total number of customers to whom these personal data were communicated were twenty four.

It is stated by the claimed entity that said communication of the name, first surname and corporate email of the claimant was made in legitimate interest,

of both the claimed entity and the clients of said entity, to whom the claimant was providing tax advice.

The complainant states that his exercise of the right of access to correctly because you have not been informed of the customers who have been communicated the data, clients well known by himself when lending them the claiming their services.

Article 15.1. c) of Regulation (EU) 2016/679 establishes that the controller has to inform of the recipients or category of recipients to whom they have been communicated personal data.

The entity claimed states that, in compliance with this article, it reported the category of recipients (CUSTOMERS) to whom their name had been communicated, first name and corporate email. Attached as Document 2 is the response to the access exercise.

However, if the Spanish Agency for Data Protection considers it so and does not see problems to safeguard the privacy and confidentiality of clients, the entity claimed has no problem in communicating the clients (well known by the claimant because they were the clients he served) who were communicated the name, first surname and corporate email of the claimant.

THIRD: On November 13, 2021, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant was admitted for processing.

FOURTH: On March 18, 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 5.1.c) of the RGPD, typified in article 83.5 of the GDPR.

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FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made 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 to initiate the disciplinary proceedings determined the

facts in which the imputation was specified, the infraction of the RGPD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

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: The respondent entity sent an email to customers who were

attended by the claimant, a total of twenty-four, to inform them that he had

disciplinary dismissal for professional malpractice, giving more data

of those necessary to fulfill the intended purpose.

SECOND: On March 29, 2022, the claimant is notified of the settlement agreement beginning of this procedure, turning said agreement into a resolution proposal in accordance with article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (LPACAP), to the not make the claimed allegations within the indicated period.

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 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 resolve this procedure.

II

Article 5 of the RGPD establishes that "personal data will be:

"a) processed in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

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b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which

that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) kept in a way that allows the identification of the interested parties during

longer than necessary for the purposes of the processing of personal data; the

Personal data may be kept for longer periods provided that it is

processed exclusively for archival purposes in the public interest, research purposes

scientific or historical or statistical purposes, in accordance with Article 89, paragraph 1,

without prejudice to the application of the appropriate technical and organizational measures that

This Regulation is imposed in order to protect the rights and freedoms of the

interested party ("limitation of the retention period");

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

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational ("integrity and confidentiality").

The data controller will be responsible for compliance with the provisions of

section 1 and able to demonstrate it ("proactive responsibility")."

We must also take into account that, in relation to the right of access of the

interested, article 15 of the RGPD, establishes the following:

"1. The interested party shall have the right to obtain from the data controller confirmation

whether or not personal data concerning you is being processed and, if so,

right of access to personal data and the following information:

a) the purposes of the treatment;

b) the categories of personal data in question;

c) the recipients or categories of recipients to whom they were communicated or will be

communicated the personal data, in particular recipients in third parties or organizations

international tions;

d) if possible, the expected term of conservation of the personal data or, if not

if possible, the criteria used to determine this period;

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e) the existence of the right to request from the controller the rectification or deletion of

personal data or the limitation of the processing of personal data related to the interest

sado, or to oppose said treatment;

f) the right to file a claim with a supervisory authority; g) when

personal data have not been obtained from the interested party, any information available

ble about its origin;

h) the existence of automated decisions, including profiling, to which

referred to in article 22, sections 1 and 4, and, at least in such cases, significant information

on the applied logic, as well as the importance and the foreseen consequences

of said treatment for the interested party.”

III

In the present case, a claim is filed because on April 21, 2021 the entity

complained sent an email to customers who were served by the

claimant, a total of twenty-four, and they were informed that he had stopped

provide services for the claimed entity upon being dismissed disciplinary for

professional malpractice.

In this sense, it should be noted that it is not that there is no lack of legitimacy, but that

more data than necessary to fulfill the intended purpose have been transferred, not it being justifiable that the reason why the claimant no longer provides services with the claimed entity, considering that the causes of the cessation of the employment relationship between employee and employer is a private matter that only concerns to both parties and not to third parties.

In the response given by the respondent party in this regard, it is recognized that communicated the reason for cessation to customers, but there is no indication of the will to adopt measures so that it does not happen again.

Thus, in accordance with the available evidence, it is considered that the reported facts could violate article 5.1 c) of the RGPD, indicated in the foundation of law II, since we are faced with an illicit treatment of the personal data, by violating the principle of minimization of personal data treaties, which requires that the processing of personal data is adequate, relevant and limited to what is strictly necessary in relation to the purposes for which its treatment is required, in accordance with article 5.1 c) of the RGPD.

Conclude by pointing out that, in relation to the right of access invoked by the claimant, this has been answered by the claimed party, in accordance with the Article 15 of the RGPD, indicated in the legal basis II.

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Article 72.1 a) of the LOPDGDD states that “according to what is established in the article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe

after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, 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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Article 58.2 of the RGPD provides the following: "Each control authority will have of all the following corrective powers indicated below:

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;

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 case particular;

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This infraction can be sanctioned with a fine of €20,000,000 maximum 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 of greater amount, in accordance with article 83.5 of the RGPD.

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.”

“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, scope or purpose of the processing operation in question as well such as the number of interested parties affected and the level of damages that have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to alleviate the damages suffered by the interested parties;

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d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under of 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, in what measure;

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 mechanisms of

certification 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, through the infringement.”

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

infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when not mandatory, a data protection delegate.

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.”

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In accordance with the transcribed precepts, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 83.2 of the RGPD, considering as an aggravating circumstance the intentional action of the claimed to use the personal data of the claimant to cause him harm, by using his personal data to indicate the termination of the employment relationship between the claimant and claimed (article 83.2 b).

In order to set the amount of the penalty to be imposed in this case on the entity claimed for an infringement typified in article 83.5.a) of the RGPD, it proceeds grade the sanction to be imposed on the claimed party and set it at the amount of €5,000 of in accordance with 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 ADADE BURGOS, S.L., with NIF B09289679, for a infringement of article 5.1.c) of the RGPD, typified in article 83.5 of the RGPD, and to prescription effects, by article 72.1 a) of the LOPDGDD, a fine of €5,000 (FIVE THOUSAND euros).

SECOND: NOTIFY this resolution to ADADE BURGOS, S.L.

THIRD: 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.

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

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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->

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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