

□ File No.: EXP202302302

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On March 2, 2023, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against WILLOUGHBY
COLLEGE, S.A. (hereinafter, the claimed party), through the Agreement that
transcribe:

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File No.: EXP202302302

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency, and in
based on the following

FACTS

FIRST: As a consequence of a claim filed with the Spanish Agency
of Data Protection against WILLOUGHBY COLLEGE, S.A. with NIF A28407518
(hereinafter, the claimed party), appreciating indications of a possible non-compliance
of the provisions of Regulation (EU) 2016/679 (General Regulation of Protection
of Data, hereinafter GDPR), proceedings were initiated with file number
EXP202207320.

In accordance with the provisions of article 65 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights
(LOPDGDD hereinafter), the claim was transferred to the person in charge or to the Delegate

of Data Protection that in his case has been designated, requesting him to send to this Agency the information and documentation indicated. This request for information was not answered in time. The claim was admitted for processing on September 7, 2022.

SECOND: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter GDPR), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of the aforementioned LOPDGDD.

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Within the framework of the investigation actions, they were sent to the claimed party two requests for information, related to the claim outlined in the section first, so that within ten business days and five business days respectively, submit to this Agency the information and documentation that they were pointed out. The first of them was registered for departure on the 21st of September 2022 while the second was registered on December 9, 2022.

THIRD: The information requirements, which were notified in accordance with the norms established in Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), were collected by the claimed party on September 30, 2022 and December 9, 2022.

December 2022, as stated in the Notific@ certificates that are in the proceedings.

FOURTH: Regarding the required information, the claimed party has not submitted any response to this Spanish Data Protection Agency.

FIFTH: According to the report collected from the AXESOR tool, the entity WILLOUGHBY COLLEGE, S.A. is an SME (Small), established in 1975, which has a turnover of 1,414,287 euros and 31 employees in the year 2021. It belongs to an economic group whose global parent company, AVANTYA IN EDUCATION SOCIEDAD LIMITADA, has a turnover of 2,000,001 to 5,000,000 euros and from 26 to 49 employees.

FUNDAMENTALS OF LAW

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

breached obligation

In accordance with the evidence available at the present time of

agreement to start the disciplinary procedure, and without prejudice to what results from the

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instruction, it is considered that the claimed party has not procured to the Agency

Spanish Data Protection Agency the information requested.

With the indicated conduct of the claimed party, the investigative power that the

Article 58.1 of the GDPR gives the control authorities, in this case, the AEPD,

has been hampered.

Therefore, the facts described in the "Facts" section are considered to constitute

an infraction, attributable to the claimed party, for violation of article 58.1 of the

GDPR, which provides that each control authority will have, among its powers of

investigation:

“a) order the person responsible and the person in charge of the treatment and, where appropriate, the

representative of the manager or manager, who provide any information

that it requires for the performance of its functions; b) carry out investigations in

form of data protection audits; c) carry out a review of the

certificates issued under article 42, paragraph 7; d) notify the

responsible or the person in charge of the treatment the alleged infractions of the present

Regulation; e) obtain from the person in charge and the person in charge of the treatment access to

all personal data and all the information necessary for the exercise of their

functions; f) obtain access to all the premises of the person in charge and of the person in charge of the

processing, including any data processing equipment and means, of
accordance with the procedural law of the Union or of the Member States.”

Classification and classification of the offense

II

In accordance with the evidence available at the present time of
agreement to start the disciplinary procedure, and without prejudice to what results from the
investigation, it is considered that the facts exposed could constitute a
infringement, attributable to the claimed party.

This infringement is typified in article 83.5.e) of the GDPR, which considers as such: "no
facilitate access in breach of article 58, section 1.”

The same article establishes that this infraction can be sanctioned with a fine.
twenty million euros (€20,000,000) maximum or, in the case of a
company, of an amount equivalent to four percent (4%) maximum of the
total annual global business volume of the previous financial year, opting for the
of greater amount.

For the purposes of the limitation period for infringements, the alleged infringement
prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as
the following behavior is very serious:

"ñ) Failing to facilitate access by data protection authority personnel
competent to personal data, information, premises, equipment and means of
treatment that are required by the data protection authority for the
exercise of its investigative powers.

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o) The resistance or obstruction of the exercise of the inspection function by the authority of competent data protection.”

IV.

Sanction proposal

In accordance with the facts exposed, without prejudice to what results from the instruction of the procedure, it is considered that it corresponds to charge the party claimed by the violation of article 58.1 of the GDPR typified in article 83.5 e) of the GDPR. The sanction that should be imposed is an administrative fine.

The fine imposed must be, in each individual case, effective, proportionate and dissuasive, in accordance with the provisions of article 83.1 of the GDPR. In Consequently, the sanction to be imposed must be graduated according to the criteria established in article 83.2 of the GDPR, and with the provisions of article 76 of the LOPDGDD, with respect to section k) of the aforementioned article 83.2 GDPR. In the initial assessment, it can be seen that no mitigation or mitigation is applicable. aggravating.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency, IT IS AGREED:

FIRST: INITIATE SANCTION PROCEDURE against WILLOUGHBY COLLEGE, S.A., with NIF A28407518, for the infringement of article 58.1 of the GDPR, typified in the art. 83. 5 e) of the aforementioned GDPR.

SECOND: ORDER WILLOUGHBY COLLEGE, S.A. that, according to the power of investigation provided in article 58.1.a) of the GDPR, is provided, in the within ten business days, the information required in the requirements made within the framework of actions with file number EXP202207320 and to which referred to in the description of the facts of this initiation agreement.

THIRD: APPOINT as instructor R.R.R. and, as secretary, to S.S.S.,

indicating that they may be challenged, if applicable, in accordance with the provisions of the

Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sector

Public (LRJSP).

FOURTH: INCORPORATE into the disciplinary file, for evidentiary purposes, the

information requirements issued by the Sub-directorate General of Inspection of

Data in the framework of actions with file number EXP202207320; and the

accreditation of having made your notification.

FIFTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1

October, of the Common Administrative Procedure of Public Administrations

(LPACAP, hereinafter), the corresponding sanction would be, for the alleged

violation of article 58.1 of the GDPR, typified in article 83.5 of said regulation,

Administrative fine amounting to 1,500.00 euros.

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SIXTH: NOTIFY this agreement to WILLOUGHBY COLLEGE, S.A., with NIF

A28407518, granting a hearing period of ten business days to formulate

the allegations and present the evidence it deems appropriate. In his writing of

allegations must provide your NIF and the procedure number that appears in the

heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article

64.2.f) of the LPACAP.

The procedure will have a maximum duration of nine months from the Commencement agreement date. After that period, it will expire and, in consequently, the file of actions; in accordance with the provisions of the Article 64 of the LOPDGDD.

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 1,200.00 euros, resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 1,200.00 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if both reductions were to be applied, the amount of the penalty would remain set at 900.00 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts

indicated above (1,200.00 euros or 900.00 euros), you must make it effective by entering the account number IBAN: ES00-0000-0000-0000-0000 (BIC/SWIFT Code: CAIXESBBXXX) opened in the name of the Spanish Agency for Protection of Data in the banking entity CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for the reduction of the amount to which it accepts.

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Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

In compliance with articles 14, 41 and 43 of the LPACAP, it is noted that, as regards successively, the notifications that are sent to you will be made exclusively in a electronically, through the Unique Authorized Electronic Address (dehu.redsara.es) and the Electronic Notification Service (notifications.060.es), and that, if you do not access their rejection will be recorded in the file, considering the process completed and following the procedure. You are informed that you can identify before this Agency an email address to receive the notice of making available to the notifications and that failure to practice this notice will not prevent the notification be considered fully valid.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On March 23, 2023, the claimed party has proceeded to pay of the penalty in the amount of 900 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

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regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature but the

inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202302302, in

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to WILLOUGHBY COLLEGE, S.A..

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the

referred Law.

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