

□ File No.: PS/00221/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 01/08/2021, it had entry in this Spanish Agency of
Data Protection a document presented by A.A.A. (hereinafter, the claimant),
through which he makes a claim against PRIVATE SECURITY ADVISERS,
SL with CIF B91846774.

The claim indicates the following, in relation to the matter of protection of
data:

“On February 6, 2019, I hired the professional services of XXXX Detectives. In

At no time was a copy of the contract provided to me, nor were the
agreements. In addition, during the service some recordings were made that were
hidden from this party by the accused, delivering insufficient content and
adulterated, which according to the own statements of the commercial representative of
said company was eliminated a few hours after finishing the service, contravening
In this way, what is established in Law 5/2014 of April 4 on private security, the
which requires that the hiring of a private detective must be formalized in writing
must also include in said contract the accredited legitimate interest of the
applicant.

[...]

By not complying with the legal obligation of the existence of a contract, not only do I not
informed about the treatment of the data, both regarding the conditions of the
treatments that affected me as in the answers to the exercises of rights

who assist me, but neither was the claim authentically legitimated

to start providing its services or process personal data.

The previous action is contrary to the regulatory principles of the treatment of the personal data provided for in art. 5.1 of the RGD, proceeding the sanction provided for in article 83.5 GDPR.

The RGD obliges data controllers to offer interested parties a

More information about the treatments that are carried out and the way to exercise the

Rights. The information to the interested parties, both regarding the conditions of the

treatments that affect them as in the answers to the exercises of rights,

must be provided in a concise, transparent, intelligible and easily accessible manner.

For its part, Recital 40 of the RGD establishes that..."

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Together with the claims, it provides, among others, a copy of the following documents:

- "WhatsApp" conversations dated 02/6, 8, 9, 11 and 02/13/2019 with the reclaimed.

- A copy of the Expert Opinion issued by Mr.

B.B.B., collegiate

*** COLLEGIATE.1 of the Official College of Technical Computer Engineers of the Valencian Community (COITICV), in which it certifies the authenticity of the WhatsApp conversations. Specifically, in the "Conclusions" section indicates the following:

"This expert witness states that, taking into account the knowledge in the

subjects studied, their experience and the results obtained, in addition to the data provided by D. AAA, it follows:

That the 152 messages exchanged in the "Whatsapp" conversation, between 02/05/2019 and 03/11/2019, between D. AAA and the number phone number ***PHONE.1 listed as a contact (was removed)

"DETECTIVE C.C.C.", it is stated that there are no signs of manipulation".

- A copy of the written claim sent to XXXX DETECTIVES with the corresponding notice of return of Correos for "Wrong address", as well as as, a copy of the claim filed by the claimant with the

Municipal Consumer Information Office (OMIC) and the answering of XXXX DETECTIVES. Regarding the latter, it should be noted that it is D. C.C.C. who, on behalf of XXXX DETECTIVES, responds to the claim presented assuming in it the performance of the assignment related to recordings.

SECOND: In view of the reported facts, on 02/08/2021 the Subdirector General Data Inspection accessed the website ***URL.1.

in which he appears as the owner of the website ASESORES DE SEGURIDAD PRIVADA, S.L.

Prior to admitting this claim for processing, the Agency gave transfer of it to ASESORES DE SEGURIDAD PRIVADA, S.L. on date 02/16/2021, in accordance with the provisions of article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantees of digital rights (hereinafter, LOPDGDD). There was a first notification attempt through the Electronic Notification Service, being rejected on 02/27/2021 a once the established ten-day period has elapsed. However, on 03/09/2021 he received the notification through postal mail, as stated in the Receipt Notice issued by Post.

The entity filed a reply brief on 03/16/2021, stating the

Next:

“The commercial name of XXXX DETECTIVES, since 2014, belongs to the detective D. C.C.C., with detective license No. XXXX, as stated on the web

***URL.1 and mobile number ***PHONE.1, with whom I have contacted

phone, confirming that Mr. A.A.A. is his client, and on the subject

denounced Mr. AAA, is fully aware because he did so in writing to

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OMIC of ***LOCALIDAD.1 that the legal representative of XXXX DETECTIVES is Mr.

C.C.C., who neither has nor has ever had a relationship with the company ASESORES DE PRIVATE SECURITY, S.L.

Due to the foregoing, we state that Mr. A.A.A. is not and has not been

client of ASESORES DE SEGURIDAD PRIVADA, S. L. for which we request that you remain filed the complaint filed with the aforementioned company.

THIRD: On 05/07/2021, the Director of the AEPD agrees to the admission to claim processing.

FOURTH: On 07/23/2021, the Director of the Spanish Protection Agency of Data 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 RGPD.

FIFTH: The agreement to initiate this sanctioning procedure was notified to the claimed through postal mail on 11/22/2021, as stated in the Notice issued by Post.

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received 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:

FACTS

FIRST: A claim is filed against the entity SECURITY ADVISORS

PRIVATE, S.L. (XXXX DETECTIVES) for the lack of consent for the

treatment of the claimant's personal data, as well as for the lack of

information about said treatment. However, it is found that the name

commercial of XXXX DETECTIVES no longer corresponds to the aforementioned entity, but to the

claimed, C.C.C., against whom this sanctioning procedure is directed.

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With respect to the absence of consent, it is accredited that there is legitimacy for the processing of personal data, the basis being article 6.1 b) of the GDPR. Well, there is an order by the claimant to the claimed.

Regarding the lack of information on treatment, it has been found that there is a violation of article 13 of the RGPD by not making available to its clients all the information required by the aforementioned precept.

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

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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

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 the GDPR, under the heading "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 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 the above definitions, data collection personal in order to carry out the entrusted order supposes a treatment of

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data, with respect to which the data controller must comply with the provided for in article 13 of the RGPD.

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>).

III

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, indicates that:

"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.

tant;

b) the contact details of the data protection delegate, if any;

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 legitimate interests swindles 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;

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 of adequacy Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, reference to the adequate guarantees adequate or appropriate and the means to obtain a copy of them or the fact of that have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, them, the following information necessary to guarantee fair data processing and transparent:

a) the period during which the personal data will be kept or, when this is not possible,

ble, the criteria used to determine this term;

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

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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 any time, without affecting the legality of the treatment based on consent.

lien prior to 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 re-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 providing tar 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, significant information on the applied logic, as well as the importance and the foreseen consequences of said treatment for the interested party.

3. When the data controller plans the further processing of personal data personal data for a purpose other than that for which they were collected, will provide the received, prior to such further processing, information about that other purpose and

any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent measure in which 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 data controller must comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to which refers to the following section and indicating an electronic address or other means 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 least:

- 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 person were to be processed for the elaboration of them, the basic information will also include this circumstance. In this case, the concerned shall be informed of their right to oppose the adoption of decisions automated individuals that produce legal effects on him or affect him significantly. Similarly, when this right concurs in accordance with the pre-
seen in article 22 of Regulation (EU) 2016/679.”

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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:

"two. Each supervisory authority will have all of the following corrective powers listed below:

a) (...)

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

(...)

d) order the person responsible or in charge of 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 particular case".

Article 83.5 b) of the RGPD establishes that:

"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, 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 72.1 h) of the LOPDGDD, under the heading "Infringements

considered very serious" provides:

"They are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

h) The omission of the duty to inform the affected party about the processing of their data

personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU)

2016/679 and 12 of this organic law."

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In this case, the respondent has not presented arguments or evidence that

contradict the facts denounced within the period given for it.

This Agency has confirmed that the actions of the defendant are not in accordance with the

data protection regulations, since it did not inform users of all the

issues listed in article 13 of the RGPD indicated in the foundation of

right III.

Thus, the exposed facts constitute, on the part of the claimed, a

infringement of the provisions of article 13 of the RGPD.

SAW

In order to determine the administrative fine to be imposed, the

provisions of article 83, sections 1 and 2 of the RGPD, a provision that states:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case

effective, proportionate and dissuasive.”

2. 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;
- 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;

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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 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.”

In accordance with the precepts indicated, in order to set the amount of the penalty to

impose in the present case, it is appropriate to grade it according to the following criteria

aggravating factors established in article 83.2 of the RGPD:

- The nature, seriousness and duration of the offence. The defendant, by not facilitating the information required by article 13 of the RGPD prevents those affected from contacting the responsible for the treatment to exercise their rights and know the purposes of the treatment. treatment, among other damages.

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- Negligence in the infringement. In the present case, we cannot say that the claimed has acted maliciously, although his conduct reveals a serious lack of diligence.

- The way in which the control authority became aware of the infraction. The shape in which the AEPD has been aware has been due to the filing of the claim by the claimant

The balance of the circumstances contemplated, with respect to the infraction committed by violating the provisions of its article 13 of the RGPD, it allows to set the amount of the fine of €2,000 (two thousand euros).

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution is required to the claimed, as responsible for the treatment, the adequacy of the information offered to customers whose personal data is collected from the

themselves to the requirements contemplated in article 13 of the RGP, as well as the provision of supporting evidence of compliance with the requirements.

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 C.C.C., with NIF ***NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a fine of €2,000 (two thousand euros).

SECOND: REQUEST C.C.C., with NIF ***NIF.1, under the provisions of the article 58.2 d) of the RGPD, so that within ten business days from this act of notification accredits before this body the adoption of measures to facilitate information to the people whose personal data it collects, in accordance with the provisions of the article 13 of the RGPD.

THIRD: NOTIFY this resolution to C.C.C.

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

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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

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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Director of the Spanish Data Protection Agency

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