

Procedure No.: PS/00096/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection
before OVANIE AGENCY, S.L., by virtue of a claim filed by Mr. A.A.A., and
based on the following:

BACKGROUND

FIRST: On November 13, 2018 Mr. A.A.A., (hereinafter the
claimant), filed a claim with the Spanish Agency for Data Protection
against the entity OVANIE AGENCY, S.L., (hereinafter, the claimed party) for having
found that the privacy policy of the ***URL.1 website did not inform users
stakeholders on the aspects provided for in 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
GDPR).

The claimant, among other documents, attaches a copy of the current Legal Notice to
dated November 13, 2018 on the website ***URL.1, where it is observed that the
Data Protection Policy shown by the claimed party in section I of the Notice
Legal of said web page,- referring to the personal data collected by said
company "In the contact forms or raters.-", it is not updated to the
RGPD, since instead of containing the information required in article 13 of
This rule refers to the requirements established in Organic Law 15/1999, of
December 13, Protection of Personal Data.

In the outlined section it is reported that the automated data files

are the responsibility of Ovanie Agency, SL, whose current address is

***ADDRESS 1).

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

Data Inspection proceeded, on December 3, 2018, to transfer said

claim to the aforementioned company through the Notific@ system for analysis and

communication to the claimant of the decision adopted in this regard, as well as so that in

Within one month, send it to the Spanish Agency for Data Protection

certain information to clarify the facts indicated. Is

notification was rejected after ten calendar days from the date of

provision thereof without accessing its content.

Subsequently, an attempt was made to transfer said claim by postal mail

sent, dated December 17, 2018, to the address *** ADDRESS.1 and with

dated January 18, 2019 to the address ***ADDRESS.2, being in both cases

returned shipments by "Unknown" at those addresses.

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: Consulted, on February 26, 2019, the application of the AEPD

THIRD

that shows information about the history of sanctions and warnings

precedents, there are no previous records for violation of article 5 of the Law

Organic 15/1999, of December 13, Protection of Personal Data,

(hereinafter LOPD) or article 13 of the RGPD associated with the entity OVANIE

AGENCY, S.L.

FOURTH: On March 4, 2018, it is verified that in the Mercantile Registry

Central appears as the registered office of the aforementioned company: ***ADDRESS.3

Also, dated March 4, 2018, access to the Legal Notice published in

the website ***URL.1, verifying that the information contained in section I

of the same coincides with the one that appeared in the document presented by the claimant.

Likewise, the existence of several contact forms in said

web page, at the end of which a blank button appears next to the text "I accept the

Privacy Policy", which refers to the document without updating already reviewed, and another

button with the text "Submit".

One of the forms is to subscribe to the offers newsletter.

Another form is to request information on health insurance

which will be provided by a Sanitas agent contacting the user

who completes the form, where he is required to indicate whether or not he is a client of

Sanitas and obligatorily provide your age, name and email and in

voluntarily your phone, as well as fill in the sections of the subject and

message.

The other form is to obtain information, for which it is required to provide

the name and email of the user in mandatory form and the telephone in the form

volunteer, also filling in some boxes about preferred contact times.

FIFTH: On March 27, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate sanctioning proceedings for the alleged

Violation of article 13 of the RGPD, in accordance with the provisions of article 58

section 2 of the same rule, considering that the sanction that could

to correspond would be a WARNING, without prejudice to what resulted from the

instruction.

The agreement was notified through certified postal delivery to both addresses

of the street ***ADDRESS.1 and ***ADDRESS.2, being in both cases returned the shipments by “Unknown” at those addresses.

Subsequently, it was published in the bulletin board of the Official State Gazette, in date May 9, 2019.

PROVEN FACTS

FIRST: On November 13, 2018, you have entered the AEPD in writing the claimant in which she denounces OVANIE AGENCY, S.L., because on the website URL.1 personal data is collected from people who access it and

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they want to register, without the RGD policy.

SECOND: The claimant submitted a copy of the Legal Notice published, dated December 13,

November 2018, on the website ***URL.1, where it is noted that the Privacy Policy

Data protection shown by the claimed party in section I of the Legal Notice of

said web page,- referring to the personal data collected by said company "In

contact forms or raters."-, is not updated to the RGD, since in

Instead of containing the information required in article 13 of said regulation, it refers

to the requirements established in Organic Law 15/1999, of December 13, of

Personal data protection.

In the outlined section it is reported that the automated data files

are the responsibility of Ovanie Agency, SL.

THIRD: On March 4, 2018, the Legal Notice published in the

website ***URL.1, verifying that the information contained in section I of the

It coincides with the one that appeared in the document presented by the claimant.

Likewise, the existence of several contact forms in said

web page, at the end of which a blank button appears next to the text "I accept the

Privacy Policy", which refers to the document without updating already reviewed, and another

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Sanitas and obligatorily provide your age, name and email and in

voluntarily your phone, as well as fill in the sections of the subject and

message.

The other form is to obtain information, for which it is required to provide

the name and email of the user in mandatory form and the telephone in the form

volunteer, also filling in some boxes about preferred contact times.

FOURTH: As of August 19, 2019, on the website sanitasinfo.com, in the

privacy policy, the same information is maintained as at the beginning of this

process.

FOUNDATIONS OF LAW

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

control authority, and as established in art. 47 of the Organic Law 3/2018, of

December 5, Protection of Personal Data and guarantee of rights

(hereinafter LOPDGDD), the Director of the Spanish Agency for

Data Protection is competent to initiate and resolve this procedure.

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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 relation to 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 about personal data or sets of personal data, either 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 those definitions, the collection of data from personal character through forms included in a web page constitutes a data processing, in respect of which the data controller must give

compliance with the provisions of article 13 of the RGD, a precept that has displaced from May 25, 2018 to article 5 of Organic Law 15/1999, of May 13, December, Protection of Personal Data.

III

Ovanie Agency, SL. is accused of violating the provisions of article 13 of the RGD that determines:

"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 basis legal treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;

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- e) the recipients or categories of recipients of the personal data, in your case;

- f) where appropriate, the intention of the controller to transfer personal data to a third 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 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 related 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 data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the 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 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 person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

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“Article 11. Transparency and information to the affected

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 be contain at least:

a) The identity of the data controller and his representative, in his case.

b) The purpose of the treatment.

c) The possibility of exercising the rights established in articles 15 to 22 of 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

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.”

Ovanie Agency, SL., has incurred in infringement of the regulations on protection of data, materialized in a collection of personal data of users who fill in the contact forms included in the website ***URL.1 without the claimed provides them with all the information provided for in article 13 of the aforementioned RGPD, since the information offered refers to the Organic Law 15/1999, of 13 of December, Protection of Personal Data.

The exposed facts constitute an infraction attributable to the claimed, Ovanie Agency, SL., for violation of article 13, Information that It must be provided when the personal data is obtained from the interested party, of the RGPD.

IV

Article 83.5 b) of the RGPD considers that the infringement of “the rights of interested parties under articles 12 to 22” is punishable, in accordance with the “with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation, administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

At the same time, in the LOPDGDD its article 74 "Infringements considered mild", states that "They are considered mild and the remaining ones will expire after a year. infractions of a merely formal nature of the articles mentioned in the 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

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right to information of the affected party for not providing all the information required by the

Articles 13 and 14 of Regulation (EU) 2016/679”.

However, article 58.2 of the REPD provides the following: "Each authority

of control will have all the following corrective powers indicated below:

continuation:

(...)

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

warning when the processing operations have violated the provisions of

this Regulation;

(...)

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. About

when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD

or the corrective measure of warning of article 58.2.b), the rule itself in its

Recital 148 of Regulation 2016/679, which establishes the following:

“In the event of a minor offence, or if the fine likely to be imposed

would constitute a disproportionate burden for a natural person, rather than

sanction by means of a fine, a warning may be imposed. must however

Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.”

It should be noted that since it was not possible to notify any document to the reported party, it has not had the option to modify the privacy policy that appears on the web page denounced, adapting it to the norm in force for more than one year, article 13 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 OVANIE AGENCY, S.L., for an infringement of article 13 of the RGPD, sanctioned in accordance with the provisions of article 83.5.b) of the aforementioned RGPD and, classified as mild, for prescription purposes, in article 74. a) of the LOPDGDD, a penalty of WARNING, in accordance with the provisions of article 58.2.b) of the GDPR.

SECOND: ORDER OVANIE AGENCY, S.L., under the provisions of the article 58.2 d) of the RGPD, the adoption of the necessary measures to adapt the information offered to the requirements contemplated in article 13 of the RGPD, must provide users, at the time they collect personal data

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of the same via form, all the information required in the aforementioned precept, to what the claimed must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment. Said measure would have to be adopted, where appropriate, within one month from the date on which the resolution is notified sanctioning, having to provide the means of evidence accrediting its compliance.

the modification of the privacy policy that appears on the website.

THIRD: NOTIFY this resolution to OVANIE AGENCY, S.L.

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.

114.1 c) of the LPACAP, 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 period of

month 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, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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