

□ Procedure No.: PS/00064/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on October 4, 2019 filed
claim before the Spanish Data Protection Agency.

The claim is directed against AGENCY OF PRESS AND PUBLICITY IMAGINE, S.L.
with NIF B48979231 (hereinafter, the claimed).

The reasons on which the claim is based are the receipt of an email without
blind copy, sent to a plurality of recipients and that the privacy policy of the
website does not comply with data protection regulations.

Provide screenshots of it.

SECOND: Upon receipt of the claim, the Subdirector General for Inspection of
Data proceeded to carry out the following actions:

On November 25, 2019, the claim was transferred to the entity claimed.
presented by the claimant, for its analysis as well as for it to inform this
Agency as to whether the claimant had been contacted, and the decision
taken in this regard to resolve the situation.

The respondent has not responded to any of the requests made by the
Spanish Data Protection Agency.

THIRD: On June 8, 2020, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against the claimant, for the
alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, in
relation to article 72.1 a) of the LOPDGDD

FOURTH: On June 20, 2020, the agreement to start this procedure, becoming the same in resolution proposal in accordance with Articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure Common Administrative System of Public Administrations (LPACAP), by not carrying out claims within the specified period.

In view of everything that has been done, by the Spanish Agency for the Protection of Data in this procedure are considered proven facts the following,

FACTS

FIRST: receipt of an email without a blind copy, sent to a plurality of recipients and that the privacy policy of the website does not conform to the data protection regulations.

SECOND: the investigated has not presented any allegation.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each authority of control, and according to what is established in arts. 47 and 48.1 of the LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

II

Article 6.1 of the RGD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, 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

("legality, loyalty and transparency");

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,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

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

those that are processed ("data minimization");

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

reasonable for the erasure or rectification without delay of the personal data that is

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

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

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to

the application of the appropriate technical and organizational measures imposed by this

Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term

of conservation");

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

including protection against unauthorized or unlawful processing and against their

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

appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions

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

On the other hand, article 13 of the RGPD, a precept in which the

information that must be provided to the interested party at the time of collecting their data,

establishes 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 you with all the

information listed below:

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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 any;

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 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;

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 articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or 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 information, the following information necessary to guarantee fair data processing 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 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 the portability of the data;
- 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 the personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 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 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 in the to the extent that the interested party already has the information.

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

“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 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 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 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 in a similar way, when this right concurs in accordance with the provided for in article 22 of Regulation (EU) 2016/679.”

III

In accordance with the evidence provided, that is, sending an email promotional email with no blind copy, sent to a multitude of recipients, means the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

On the other hand, the fact that the privacy policy of the website of the claimed does not comply with data protection regulations, constitutes, on the part of the claimed, an infringement against the provisions of article 13 of the RGPD.

In relation to its privacy policy, it should be noted that when you entered this claim, within the legal notice the following was indicated:

“This message is addressed, exclusively, to the recipient and contains confidential information protected by law. If you receive this email by mistake, please notify us as soon as possible or indirectly, use, distribute, reproduce, print or copy, in whole or in part, this message. According to the provisions of Law 34/2002 of the Information Society and Electronic Commerce, as well as in the EUROPEAN DATA PROTECTION REGULATION (RGPD) 2016/679 of 27 of April, your personally identifiable information is in our public files. Their purpose is to send you information about our promotions, solutions and services and they are not nor will they be supplied to third parties under any circumstances. If pees to be all correct and under the law does not wish to receive information from IMAGINE GRUPO and the firms that make up: Imagine S.L, Mass Media, GCI or Mass More, send us an email to imagine@imaginegroup.com”

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However, at present, after carrying out the corresponding actions of investigation, it has been found that the respondent has corrected his privacy policy and following the following link <http://www.imaginegrupo.com/politica-de-privacidad/> this Agency verifies that its content has been updated, mentioning the Law Organic 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights (LOPD GDD), in addition to Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 on the protection of natural persons (RGPD), identifies the data controller with name, NIF, address and email, indicates how to exercise the recognized rights in terms of data protection, as well as the purpose of the treatment of the data that open in your database.

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 powers corrective measures in the event of a violation of the provisions of the RGPD.

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;"

(...)

“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 accordance with a specified manner and within a specified time;”

“i) impose an administrative fine under article 83, in addition to or instead of of the measures mentioned in this section, according to the circumstances of each particular case;”

Article 83.5. a) of the GDPR it is established that:

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

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

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 the three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

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a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

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 AGENCY OF PRESS AND PUBLICITY IMAGINE, S.L., with NIF

B48979231, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5

of the RGPD, in relation to article 72.1 a) of the LOPDGDD, a sanction of

warning.

SECOND: TO REQUIRE the claimed party so that within one month they certify

before this body the fulfillment of:

☐ the adoption of appropriate technical or organizational measures to ensure

adequate security regarding the personal data it processes, including the

protection against unauthorized or unlawful processing and against loss,

accidental destruction or damage, in accordance with article 5.1 f) of the RGPD

THIRD: NOTIFY this resolution to the PRESS AND ADVERTISING AGENCY

IMAGINE, S.L.

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 period of one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

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 two months from the day following the notification of this act,

according to the provisions of 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 decision may be provisionally suspended in administrative proceedings if the interested party states its intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Registry of the Electronic 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 1 October. You must also transfer to the Agency the documentation that accredits the effective filing of the contentious-administrative appeal. If the Agency did not have knowledge of the filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, I would consider the precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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