

□ File No.: PS/00039/2022

## RESOLUTION OF SANCTIONING PROCEDURE

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

### BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 04/17/2020 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against FEDERATION OF SERVICES TO THE CITIZENSHIP OF CCOO with NIF  
G85699460 (hereinafter, the claimed). The reasons on which the claim is based are,  
in short: "That B.B.B., (...) (hereinafter ICHH), with email address EMAIL.1  
sends a communication on 04/16/2020 to the following email accounts:

Company Committee province of Las Palmas,

Company Committee province of S/C de Tenerife, Union section of Cobas in the  
ICHH

CCOO trade union section at the ICHH

With a copy to: C.C.C., D.D.D., E.E.E., (...), F.F.F., (...)

In the following terms:

"Good afternoon.

(...)

Today we are notified of the positive in Covid-19 of an ICHH worker, for  
what following the instructions received from the telephone coordination of the  
Covid-19, this incident has been transferred to the Prevention Service  
of Occupational Risks of the Ministry of Health so that the measures can be taken  
deemed appropriate by it.

In view of this and waiting to receive instructions regarding this service, the

ICHH has taken as a preventive measure to cancel blood draws in

Fuerteventura keeping the team in preventive quarantine and the rest of

ICHH workers with whom the affected person was in contact. [...]"

That on April 17, 2020, G.G.G., (...), from the email address

\*\*\*EMAIL.2 sends an email to the following recipients:

D.D.D., (...), C.C.C., (...), E.E.E., (...), B.B.B., (...), H.H.H., (...) with the following text:

"(...) On the other hand, ask if some kind of traceability is going to be carried out with the

donors of the last fifteen days or the time that the Ministry of Health or (...)

D.D.D.D. deems appropriate and if some type of measure is going to be taken with the personnel of

ICHH with whom Mrs. I.I.I., wife of the worker affected by

Covid-19, who last week was at the ICHH in direct contact with the

staff."

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That, given these facts, he claims that G.G.G. has given information about data

related to health, when relating the "positive in Covid-19 of an ICHH worker"

under the name "I.I.I.", wife of the worker affected by Covid-19, which

We consider that it could constitute a crime by identifying by name and

surnames to the wife of said worker with a positive result for Covid-19.

SECOND: In accordance with the provisions of article 65.4 of the LOPDGDD, the

04/23/2020 the claim was forwarded to the defendant to proceed with its

analysis and give a response within a month on the claimed incident.

On 05/14/2020, the defendant responded to the previous request in which

pointed out the following:

1. That Mrs. G.G.G. is (...) from the ICHH of the Province of Las Palmas and (...) from the same Autonomous Organization and the Occupational Health Committee of the Department of Health of the Government of the Canary Islands, and is the one who sends all the following information.

2. "On March 16, 2020, the following meetings meet urgently

people: (...) (Ms. F.F.F.) , (...) (D. D.D.D.), (...) (D. L.L.L.), (...) (Ms. H.H.H.) (...)

(Ms. C.C.C.), and (...) (Ms.E.E.E.), also absent almost during the entire meeting since

who was carrying out telephone negotiations in the President's office, and I,

Mrs. G.G.G. (...), to carry out the first guidelines on prevention

in relation to COVID19. Without being present at all the discussions of this meeting,

joins it, almost finishing, D. B.B.B., (...), alleging absence

justified.

In this meeting (...), D. D.D.D., tells us that the worker D. J.J.J. is found in

quarantine situation for presenting symptoms of COVID-19. hence, (...),

transfer to those present (as established by RESOLUTION 313/2020 dated 12

March 2020 FROM THE GENERAL DIRECTORATE OF PUBLIC SERVICE BY THE

APPROVING THE INSTRUCTION OF MEASURES TO BE ADOPTED IN THE

WORK CENTERS DEPENDENT ON THE ADMINISTRATION OF THE

AUTONOMOUS COMMUNITY OF THE CANARY ISLANDS ON THE OCCASION OF COVID-19 which is of

It is vitally important to inform the workforce that there is a worker

quarantined by COVID-19 in the Agency and that measures must be taken

necessary isolation to those who had contact with said worker.

Therefore, the situation of the worker was already known and it is the (...) of the ICHH, who gives

know its name at the meeting convened for this purpose by the President of the

ICHH to the members present on 03/16/2020.

3. That on 04/16/2020 mail is received from D. B.B.B. aimed at workers

and their representatives (including Mrs. G.G.G.) reporting that there is a worker who has tested positive for COVID-19 at the center. What will proceed to put in quarantine all workers who were in contact with him. That

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company already knew the identity of this person, who had been in quarantine since mid March.

4. That this communication causes a wave of calls to Ms. G.G.G., (...), concerned about a possible massive contagion due to the fact that the worker Ms. I.I.I. is part of the workforce, is the wife of the worker who is in quarantine and has been presented at the ICHH facilities during the week of \*\*\*DATE.1 (in addition to not being working) breaching the instructions of (...) D. D.D.D.. His Family relationship with the worker is known by all the employees of the ICHH.

5. That given the scope of Ms. G.G.G.'s powers, as (...) is her obligation to remind the company of the duty they have with the workers to ensure for your safety and health, which is why you decide to send an email dated 04/17/2020 to all the people who were present at the meeting on 16 April March, all aware of the identity of the worker and with the aim of prioritizing proper preventive action.

THIRD: On 05/27/2020, after analyzing the documentation that was in the file, it was verified the lack of rational indications of the existence of a infraction in the area of competence of the Spanish Agency for Data Protection,

in accordance with the provisions of article 65.2 of the LOPDGDD, for which reason the Director of the Spanish Agency for Data Protection agreed not to admit for processing the claim presented by the claimant, against the FEDERATION OF SERVICES TO THE CITIZENSHIP OF CC.OO.

The resolution was notified to the appellant on 06/12/2020.

FOURTH: On 07/05/2020, the appellant filed an optional appeal for replacement against the resolution relapsed in file E/03688/2020, showing its disagreement against it and invoking that at the meeting held on 03/16/2020 the name of any worker who was in quarantine was not given, attached two statements from attendees that affirm so. On the other hand, on the part of the defendant, no evidence has been provided that the wife of said worker would have attended his workplace.

FIFTH: Analyzed the new documentation provided together with the appeal for replacement, among which is a letter signed by the president of the ICHH in which informs that, at no time, personal data of workers have been provided with possible contagion by COVID-19 and, therefore, they were not communicated in the meeting held on 03/16/2020 as stated by the defendant. Also in

The report provided by the claimed party refers to the presence of (...) of the ICHH at the aforementioned meeting in full and without interruptions, resolving Estimate the appeal for reversal filed against the resolution of this Agency issued on 06/12/2020, and agree to admit the claim for processing presented against FEDERATION OF SERVICES TO THE CITIZENSHIP OF CCOO.

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SIXTH: The General Sub-directorate of Data Inspection proceeded to carry out investigation actions to clarify the facts, by virtue of the powers of investigation granted to control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Section second, of the LOPDGDD:

On 11/22/2021, a request for information was sent to the claimant on whether had some protocol for action against positive COVID-19 as well as that provide the list of people who have access to email \*\*\*EMAIL.2, source address of the email of April 17 where the text "[...] Mrs. I.I.I., wife of the worker affected by Covid-19[...]".

The notification is delivered on 11/23/2021, with no response some.

SEVENTH: On 02/09/2022, the Director of the Spanish Protection Agency of Data agreed to start a sanctioning procedure against the person claimed by the alleged infringement of article 5.1.f) of the GDPR, typified in article 83.5.a) of the aforementioned Regulation.

EIGHTH: Once the initiation agreement was notified, the defendant submitted a written statement of allegations on 02/23/2022 stating, in summary: the absence of responsibility in the facts demands of the union organization, in addition; employee data is ownership of the controller, ICHH, responsible for taking the measures technical and organizational to guarantee the confidentiality of the data.

NINTH: On 04/18/2022, the procedure instructor agreed to open a period of practice tests, agreeing on the following:

- Consider reproduced for evidentiary purposes the claims filed by

the claimants and their documentation, the documents obtained and generated by the Inspection Services that are part of the file.

- Consider reproduced for evidentiary purposes, the allegations to the agreement of beginning presented by the defendant and the documentation that accompanies it.

TENTH: On 09/30/2022, a Resolution Proposal was issued in the sense of that the Director of the Spanish Data Protection Agency sanction the claimed for infringement of article 5.1.f) of the GDPR, typified in the Article 83.5.a) of the aforementioned Regulation with a penalty of €3,000 (three thousand euros).

Likewise, an Annex was attached containing the list of the documents in hand.

in the file in order to obtain a copy of those deemed appropriate.

On 10/17/2022, the defendant submitted a brief of allegations stating in summary the following: the non-existence of responsibility of the defendant in the events that occurred not being any of the subjects referred to in article 70 of the LOPDGDD and being exempt from the responsibilities imputed to him; that the data controller

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is the ICHH and that the other persons who process the data are authorized persons to treat them under the direct authority of the person in charge; that the recipients of the mail sent were already informed and were aware of the health data of the complainant and all of them were persons authorized to process the data as they were summoned to the meeting to discuss the measures derived from the situation before the COVID; that in terms of confidentiality the people who have intervened in the Data processing are persons subject to the duty of confidentiality, some of which are

of these those who have breached this duty, since they have sent or disclosed the content of an internal email to the claimant, which was not among the the recipients of the email, not being (...) who has disclosed or has not saved the confidentiality of the data, but one of the recipients of the shipment, knowing also of said information since they were present at the meeting of the 03/16/2020 where this matter was discussed.

ELEVENTH: Of the actions carried out in this procedure, have the following have been accredited:

#### PROVEN FACTS

FIRST. On 04/17/2020 it has entry into the Spanish Agency for the Protection of Written information from the claimant, stating that (...) said Union had sent a mail to third parties, providing information on health-related data, by relating the "positive in Covid-19 of an ICHH worker", providing the name and surname of the latter's wife.

SECOND. The defendant has stated in writing dated 05/14/2020 that "On the 16th of March 2020, the following people meet urgently: (...) (Ms.

F.F.F.), (...) (D. D.D.D.), (...) (D. L.L.L.), (...) (Ms. H.H.H.) (...) (Ms. C.C.C.), and (...) (Ms. E.E.E.), also absent almost throughout the meeting as she was carrying out telephone negotiations in the President's office, and I, Ms. G.G.G. (...), for carry out the first guidelines on prevention in relation to the

COVID19. Without being present in all the discussions of this meeting, he joins the same, almost ending, D. B.B.B., (...), alleging justified absence.

In this meeting (...), D. D.D.D., tells us that the worker D. J.J.J. is found in quarantine situation for presenting symptoms of COVID-19. hence, (...), transfer to those present (as established by RESOLUTION 313/2020 dated 12

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APPROVING THE INSTRUCTION OF MEASURES TO BE ADOPTED IN THE  
WORK CENTERS DEPENDENT ON THE ADMINISTRATION OF THE  
AUTONOMOUS COMMUNITY OF THE CANARY ISLANDS ON THE OCCASION OF COVID-19 which is of

It is vitally important to inform the workforce that there is a worker  
quarantined by COVID-19 in the Agency and that measures must be taken  
necessary isolation to those who had contact with said worker.

Therefore, the situation of the worker was already known and it is the (...) of the ICHH, who gives  
know its name at the meeting convened for this purpose by the President of the  
ICHH to the members present on March 16, 2020.

THIRD. A copy of the email dated 04/16/2020 sent by Mr.

B.B.B., (...), from your EMAIL.1 address to the following recipients:

Las Palmas Works Council,

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S/C de Tenerife Works Council,

Cobas union section at the ICHH

CCOO trade union section at the ICHH

With a copy to: C.C.C., D.D.D., E.E.E., (...), F.F.F., (...).

In the following terms:

"Good afternoon.

Following instructions from the ICHH Presidency, we contacted the  
in order to report the incident detected in relation to ICHH staff.

Today we are notified of the positive in Covid-19 of an ICHH worker, for

what following the instructions received from the telephone coordination of the Covid-19, this incident has been transferred to the Prevention Service of Occupational Risks of the Ministry of Health so that the measures can be taken deemed appropriate by it.

In view of this and waiting to receive instructions regarding this service, the ICHH has taken as a preventive measure to cancel blood draws in Fuerteventura keeping the team in preventive quarantine and the rest of ICHH workers with whom the affected person was in contact.

Negotiations are also being made with the health authorities to request that all these personnel are tested for Covid-19, as soon as possible.

Our request includes that all ICHH staff be tested for Covid-19, as is being done with the rest of the CAC toilets. For another On the other hand, the disinfection of the facilities has also been contracted affected, which will take effect starting tomorrow.”

ROOM. A copy of the email sent on 04/17/2020 by Mrs.

G.G.G., (...), from the address \*\*\*EMAIL.2 to the following recipients:

D.D.D., (...), C.C.C., (...), E.E.E., (...), B.B.B., (...), H.H.H., (...):

"Thank you very much for the information. We wish from this Union Section the prompt recovery of the worker affected by Covid-19.

We await the measures indicated by the Ministry of Health.

On the other hand, check if some type of traceability is going to be carried out with the donors of the last fifteen days or the time that the Ministry of Health or (...), D.D.D.D. deems appropriate and if any type of measure is going to be taken with the ICHH personnel with the one who was in contact Ms. I.I.I., wife of the worker affected by Covid-19, who last week was at the Instituto Canario de Hemodonación and Hemotherapy in direct contact with the staff.”

FIFTH. (...) of the CCOO union has indicated in writing of allegations to the agreement beginning of 02/23/2022 that: "As a union and health and safety representative of the union organization of the Federation of Services to the Citizenship of Canary Islands Workers Commissions (FSCCCOO CANARIAS) the functions are developed in the field of representation protected by the rights and guarantees that attend according to Organic Law 11/1985, of August 2, on Freedom of Association (LOLS), LAW 31/1995, of November 8, on Occupational Risk Prevention (BOE nº 269 www.aepd.es

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10-11-1995), Royal Legislative Decree 1/1995, of March 24, which approves the revised text of the Workers' Statute Law, Royal Legislative Decree 5/2015, of October 30, which approves the consolidated text of the Law on Basic Statute of the Public Employee, and other regulatory norms.

(...)

From the facts recounted by the representative, the people to whom (...) refers the email dated April 17, 2020 and cited (...), does not reveal that worker are talking, since they were all knowledgeable and had been informed by (...) D D.D.D. about the positive at the meeting held on March 16, 2020 (one month before the event).

The (...), in the exercise of its position, notifies the same members that the positive has been reported, that the worker's wife (kinship status known to all ICHH employees, for many years), has been in the facilities so that the measures that

proceed.

(...)”

SIXTH. The union of Base Commissions of the Canary Islands in writing of 07/03/2020 provided with a writ of appeal has stated "That on March 16, 2020, the at a meeting (...) of the Canary Institute of Hemodonation and Hemotherapy and that in the During said meeting, the ICHH did not give the name of any worker who was in a quarantine situation due to symptoms related to Covid-19, nor was it suggested that it was necessary to adopt isolation measures for workers who had had close contact with a worker in a situation of quarantine for symptoms related to Covid-19”.

SEVENTH. The president of the Canarian Institute of Hemodonation and Hemotherapy in brief of 07/03/2020 provided with a brief of appeal has indicated that "In relation to the public health emergency situation caused by COVID-19 declared by the World Health Organization and the state of alarm for the management of the Health crisis situation caused by COVID-19 decreed in Spain by Royal Decree 463/2020, of March 14, it is reported that considering that Prevention Delegates have the right to know, only anonymously, the statistical reports and the conclusions of the medical examinations and, in general, of the controls of the health status of the workers and be informed by the employer for damages caused to the health of workers (LPRL arts. 22 and 23 and LPRL art. 36.2.b.), at no time have the ICHH provided personal data of workers with possible contagion, since the data health are specially protected in the Organic Law on Data Protection (LOPD).

EIGHTH. The medical report of the wife of the affected worker is provided.

FUNDAMENTALS OF LAW

Yo

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 [www.aepd.es](http://www.aepd.es)

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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 of Regulation (EU) 2016/679, in this organic law, for the regulatory provisions dictated in its development and, as soon as they are not contradict, on a subsidiary basis, by the general rules on the administrative procedures."

The facts claimed are specified in the sending of an email to third parties from the email address of the claimant \*\*\*EMAIL.2 providing information on data related to health, violating the regulations on the protection of data.

II

Article 5, Principles relating to processing, of the GDPR establishes that:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the personal data, including protection against unauthorized processing or illicit and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

(...)"

On the other hand, article 4 of the GDPR, Definitions, in its sections 1, 2 and 11, notes that:

"1) "personal data" means any information about an identified natural person or identifiable ("the data subject"); Any identifiable natural person shall be considered person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person;

"2) "processing": any operation or set of operations carried out on 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, diffusion or any other form of authorization of access, collation or interconnection, limitation, deletion or destruction;

"11) "consent of the interested party": any manifestation of free will, specific, informed and unequivocal for which the interested party accepts, either through

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a statement or a clear affirmative action, the processing of personal data that concern him."

II

1. The documentation in the file offers clear indications that the defendant, violated article 5 of the RGPD, principles related to the treatment, to the send email in which they reveal personal data to third parties of the wife of a worker affected by Covid-19 at the Instituto Canario de Hemodonation and Hemotherapy.

The new LOPDGDD also regulates confidentiality in its article 5 as a duty that concerns those responsible, managers and any other personnel who intervene at any stage of treatment. This obligation will be complementary to the duties of professional secrecy in accordance with its applicable regulations and will maintain even when the relationship of the obligor with the person responsible or in charge.

Report 0017/2020 of the AEPD indicated that data processing personnel in situations such as a health emergency, must continue to being treated in accordance with the personal data protection regulations (RGPD and LOPDGDD), since these regulations have provided for this eventuality, so Its principles are applicable to it, and among them that of treating personal data with legality, loyalty and transparency, limitation of the purpose (in this case, safeguarding the interests of people in this pandemic situation), principle of accuracy, and the principle of data minimization and that of integrity and confidentiality.

On the other hand, the dissemination or disclosure of health data, being considered these as a special category of personal data, the processing of which implies the requirement of reinforced guarantees, poses a risk to privacy and rights and freedoms of the interested parties. The GDPR, in recital 75, states that the risks to the rights and freedoms of natural persons, serious and variable probability, may be due, among other things, to the processing of data relating to health, such as a treatment of the data on immunity against COVID-19.

19.

(75) The risks to the rights and freedoms of natural persons, of variable severity and probability, may be due to data processing that could cause physical, material or immaterial damages, in particular in cases where the processing may give rise to problems of discrimination, identity theft or fraud, financial loss, damage to reputation, loss of confidentiality of data subject to professional secrecy, reversion not of pseudonymization or any other economic or social harm significant; in cases in which the interested parties are deprived of their rights and freedoms or are prevented from exercising control over your personal data; In the cases in which the personal data processed reveal ethnic or racial origin, opinions political, religious or philosophical beliefs, union membership, and treatment of genetic data, data relating to health or data on sexual life, or the criminal convictions and offenses or related security measures; in cases where in which personal aspects are evaluated, in particular the analysis or prediction of aspects related to work performance, economic situation, health, preferences or personal interests, reliability or behavior, situation or movements, in order to create or use personal profiles; in cases where



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personal data of vulnerable people, in particular children, are processed; or in the cases in which the processing involves a large amount of personal data and affect a large number of stakeholders.

2. It is on record that on 04/16/2020 the ICHH Legal Service sent e-mail in order to report the incident detected among ICHH staff, informing of a case of Covid-19; Among the recipients of the information was the CCOO Union Section.

It is also on record that, the following day, 04/17/2020 from the address

\*\*\*EMAIL.2 an e-mail was sent to various recipients stating:

"(...) On the other hand, ask if some kind of traceability is going to be carried out with the donors of the last fifteen days or the time that the Ministry of Health or (...), D.D.D.D. deems appropriate and if any kind of measure is going to be taken with the ICHH personnel with whom Mrs. I.I.I.I., wife of the worker, was in contact affected by Covid-19, who last week was at the Instituto Canario de Hemodonation and Hemotherapy in direct contact with the staff."

The sender of the email has stated in writing dated 05/14/2020

that: "As a trade union and occupational health and safety representative of the organization union of the Federation of Services to the Citizenship of Workers Commissions Canarias (FSCCCOO CANARIAS) the functions are carried out in the field of representation...

(...)

From the facts recounted by the representative, the people to whom (...)

sends the email of April 17, 2020 and cited (...), does not reveal to them which worker they are talking about, since they were all knowledgeable and had been informed by (...) D D.D.D. about the positive at the meeting held on the 16th of March 2020 (one month before the event).

The (...), in the exercise of its position, notifies the same members to those who have been reported positive, that the wife of the worker (situation of relationship known to all ICHH employees, for many years), has been in the facilities to be taken urgently the measures that proceed”.

Regarding what happened at the meeting to which reference is made, it appears in the proven facts that the defendant has stated that on 03/16/2020 in the aforementioned meeting called urgently by the President of the ICHH, the (...) of the same informed to those appearing that the claimant was in a situation of quarantine for have symptoms of COVID-19.

However, from the testimonies provided by the union of Commissions of Base de Canarias and the president of the ICHH, the opposite can be deduced and they contradict what stated by the defendant; the first, one of the recipients of the mail email sent on 04/16/2020, has stated that at the meeting of 03/16/2020 no the name of any worker who was in a situation of quarantine for Covid-19 and the second, has indicated that on March 14, the Delegates were informed of Prevention of statistical reports, the conclusions of the medical examinations and, in general, of the controls of the state of health of the workers but that in

At no time were personal data of workers with possible contagion provided,

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since health data is specially protected in the Organic Law of Data Protection.

The duty of confidentiality, previously the duty of secrecy, must be understood that its purpose is to prevent leaks of data not consented by the holders of the same.

And it is an obligation that is incumbent not only on the person in charge and in charge of the treatment but to anyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

Article 5.1.f) of the GDPR establishes:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of measures appropriate technical or organizational (integrity and confidentiality) (...).".

Therefore, the conduct examined is contrary to the principle of confidentiality of article 5.1.f) of the GDPR, because by sending the email 04/17/2021

Personal data of the claimant's wife, who appears in said document related to your name and surname in addition to the relationship that united you with the same. With this, it was possible to access the claimant's health data, such as his contagion situation.

That information should/could have been provided without identifying the affected person in order to maintain their privacy. Such sensitive information should

provided respecting the principles of treatment and always within the established in the recommendations or instructions issued by the authorities competent authorities, particularly the health ones.

3. The defendant in his pleadings to the initiation agreement has stated that by virtue of article 5 of Organic Law 11/1985, of August 2, of Freedom of Association (LOLS) the union is not responsible for the acts of its affiliates; but even not taking this into account, facts about data are being imputed employees who are owned by the data controller, which in this case is the ICHH.

However, such statements cannot be admitted.

It should be noted that the union section is the organized group of workers of a company or work center or organization affiliated to the same union, so that in those areas there can be as many union sections as groups of workers affiliated to one or another union. The TC assigns a double nature:

- As an internal organizational instance of the union, as part of its structure, and
- As an external representation, in terms of the functions carried out by the trade union sections outside of it and within the scope of the companies or organizations and for which the Law confers some powers and prerogatives.

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On the other hand, article 5 of the Organic Law 11/1985, of August 2, of

Freedom of Association (LOLS), establishes that.

"1. The unions constituted under the protection of this Law will respond for the acts or agreements adopted by their statutory bodies in the sphere of their respective competencies.

2. The union will not be responsible for individual acts of its affiliates, unless those occur in the regular exercise of representative functions or are prove that said affiliates were acting on behalf of the union.

3. Union dues may not be subject to seizure.

4. The unions constituted under the protection of this Law may benefit from the tax exemptions and rebates that are legally established".

It is true that the defendant has alleged that in light of what is stated in the section 2 of the aforementioned article "the union shall not be liable for individual acts of its affiliates"; that is to say, that he would only be responsible for his own acts, but not for the acts of its affiliates.

However, it is also true that the aforementioned precept establishes in that same section two exceptions: "unless those occur in the regular exercise of representative functions", or "it is proven that said affiliates acted for union account.

Well then, when the acts of its affiliates take place within the scope of that first exception "unless those occur in the regular exercise of the representative functions" we find, among others, what are the functions representative powers attributed to the member by means of a representative mandate recognized by the competent bodies.

In this case we do not find the actions of the sections company unions and union delegates, organizational instances that carry out the representative functions of the union in the company (negotiation

union, strike, collective conflicts) and transfer to the union the responsibility that generated by your activity.

Therefore, the defendant cannot evade the responsibility that corresponds to him for the treatment carried out.

4. The complainant in writing of allegations to the Resolution Proposal has manifested:

- The non-existence of responsibility of the defendant in the events that occurred at the not be located within the subjects referred to in article 70 of the LOPDGDD and be exempt from the responsibility that is imputed to him.

However, such an allegation cannot be admitted; the compliance officer with article 4.7, Definitions, of the GDPR "7) "responsible for the treatment" or "responsible": the natural or legal person, public authority, service or other body that, alone or jointly with others, determines the purposes and means of processing; Yeah the law of the Union or of the Member States determines the aims and means of the treatment, the person responsible for the treatment or the specific criteria for its appointment may be established by the law of the Union or of the Member States.

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And treatment according to article 4.2 "2) "treatment": any operation or set of operations performed on personal data or data sets personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of

authorization of access, collation or interconnection, limitation, deletion or destruction”

On the other hand, Article 70, Responsible Subjects, of the LOPDGDD establishes

who are subject to the sanctioning regime established in the RGPD and the LOPDGDD:

- a) Those responsible for the treatments.
- b) Those in charge of the treatments.
- c) The representatives of those responsible or in charge of the treatments do not established in the territory of the European Union.
- d) Certification entities.
- e) Accredited entities for the supervision of codes of conduct.

Well then, in the present case the defendant, the union organization for

transfer of the responsibility of the union section (indicated (...) sender of the e-

email that "As a trade union and occupational health and safety representative of the

union organization of the Federation of Services to the Citizenship of Commissions

Obreras Canarias (FSCCCOO CANARIAS) the functions are carried out in the field

of representation...), is responsible for the treatment carried out materialized in the

Sending the email dated 04/17/2020 to various recipients: D.D.D., (...),

C.C.C., (...), E.E.E., (...), B.B.B., (...), H.H.H. (...) in which it was indicated:

"(...) On the other hand, ask if some kind of traceability is going to be carried out with

the donors of the last fifteen days or the time that the Ministry of Health or

(...), D.D.D.D. deems appropriate and if any kind of measure is going to be taken with the

ICHH personnel with whom Mrs. I.I.I.I., wife of the worker, was in contact

affected by Covid-19, who last week was at the Instituto Canario de

Hemodonation and Hemotherapy in direct contact with the staff”, when in the

meeting of 03/16/2020 at the request of the ICHH Presidency had not been disclosed

any personal data of workers affected by COVID-19 infection.

- Secondly, the defendant insists that the data controller is

the ICHH and that the other people processed personal data because they were authorized

By himself.

However, the defendant himself contradicts himself by indicating that the people who intervene and attend the meeting on 02/16/2020 were subject to the duty of confidentiality and that some of them have breached the aforementioned principle disclosing the content of the internal email of 04/16/2020, not being responsible (...) disclosure, but one of the recipients thereof, aware also of said information and who were present at the meeting where dealt with this matter.

However, the proven facts prove that it was (...) who through the email sent on 04/17/2020 I carry out the dissemination of the character data personal, as is also evidenced by the briefs of 07/03/2020 presented by Base Commissions of the Canary Islands and the Presidency of the ICHH testifying that the 03/16/2020 at the meeting convened by the ICHH Presidency, the name was not given

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of any worker who was in a situation of quarantine due to symptoms related to Covid-19 and that at no time did the ICHH provided personal data of workers due to possible contagion.

What increases the contradiction of what was stated by the defendant that the recipients of the email sent on 04/17/2020 were already informed and were aware of the complainant's health data and that all of them were authorized to process the data related to the contagion of COVID.



IV.

Article 83.5 a) of the GDPR, considers that the infringement of "the principles principles for treatment, including the conditions for consent under of articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, "with administrative fines of €20,000,000 maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the one with the highest amount".

The LOPDGDD in its article 71, Violations, states that:

"Infringements are the acts and conducts referred to in the sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law".

Also, the LOPDGDD in its article 72, for prescription purposes indicates:

Offenses considered very serious:

1. Based on what is established in article 83.5 of the Regulation (EU) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particular, the following:

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

(...)"

V

In order to establish the administrative fine that should be imposed, the observe the provisions contained in articles 83.1 and 83.2 of the GDPR, which point out:

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

administrative proceedings under this article for violations of this

Regulations indicated in sections 4, 5 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, as an addition to or substitute for the measures contemplated

in article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

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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 as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or the person in charge of the

processing, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infringement committed by the person in charge or in charge of the

treatment;

f) the degree of cooperation with the supervisory authority in order to put

remedy the breach and mitigate the potential adverse effects of the breach;

- 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 if the person in charge or the person in charge notified the infringement and, in such a case, what extent;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or to mechanisms approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits obtained or the losses avoided, direct or indirectly, through the infringement.

In relation to letter k) of article 83.2 of the GDPR, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"2. In accordance with the provisions of article 83.2.k) of the Regulation (EU)

2016/679 may also be taken into account:

- a) The continuing nature of the offence.
- b) Linking the activity of the offender with the performance of processing of personal data.
- c) The benefits obtained as a consequence of the commission of the infraction.
- d) The possibility that the conduct of the affected party could have led to the commission of the offence.
- e) The existence of a merger process by absorption after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) The affectation of the rights of minors.
- g) Have, when it is not mandatory, a data protection delegate

data.

h) The submission by the person in charge or in charge, with character voluntary, alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested."

In accordance with the precepts transcribed, for the purpose of setting the amount of the sanction of a fine to be imposed in the present case for the violation of article 5.1.f),

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typified in article 83.5 of the GDPR for which the defendant is held responsible,

consider the following factors concurrent:

They are aggravating circumstances:

- The nature and seriousness of the infraction, since it must not be forgotten that we are facing the principle of confidentiality whose violation is considered very serious, as well as the scope of the processing operation since it deals with data that are subject to special protection (article 83.2.a) GDPR).

- The intent or negligence in the offence. In fulfilling his legal obligations -so here we are interested in the obligation to keep the confidentiality- the defendant must act with the diligence that the circumstances of the case require. Regarding the degree of diligence that the data controller is obliged to display the sentence of the Hearing can be brought up

National, Administrative Litigation Chamber, of October 17, 2007 (rec.

63/2006), which, although issued under the validity of the preceding regulations, is

extrapolated to the matter at hand. The SAN, after indicating that the entities in which the development of its activity entails a continuous treatment of data of clients and third parties must observe an adequate level of diligence, specifies that "...the The Supreme Court has understood that there is imprudence whenever disregards a legal duty of care, that is, when the offender does not behave with the due diligence. And in assessing the degree of diligence, consideration must be especially the professionalism or not of the subject, and there is no doubt that, in the case now examined, when the appellant's activity is of constant and abundant handling of personal data must insist on rigor and exquisite care for complying with the legal provisions in this regard".

The lack of diligence of the defendant must be classified as "serious". The claimed should have been particularly scrupulous in providing such information sensitive at that moment, being infected with Covid, before carrying it out (article 83.2.b) GDPR).

- The person claimed for his activity is linked to carrying out processing of personal data (article 76.2.b) of the LOPDGDD in relation to article 83.2.k).

Extenuating circumstances are:

- A single person has been affected by the infringing conduct (article 83.2.a) GDPR).

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

The Director of the Spanish Data Protection Agency RESOLVES:

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FIRST: IMPOSE the FEDERATION OF SERVICES TO THE CITIZENSHIP OF CCOO, with NIF G85699460, for a violation of article 5.1.f) of the GDPR, typified in Article 83.5.a) of the GDPR, a fine of €3,000 (three thousand euros).

SECOND: NOTIFY this resolution to the FEDERATION OF SERVICES TO CCOO CITIZENSHIP.

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of 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, by means of its income, 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, open in the name of the Agency

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date 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 or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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

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

Against this resolution, which puts an end to the administrative process in accordance with art.

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, interested parties may optionally file an appeal for reversal before the Director of the Spanish Data Protection Agency within a period of one 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 for in article 46.1 of the referred Law.

Finally, it is noted that in accordance with the provisions of art. 90.3 a) of the LPACAP, the firm resolution may be temporarily 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, presenting it 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

Electronic record of through the

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filing of the contentious-administrative appeal within a period of two months from the day following the notification of this resolution, would terminate the injunction suspension

Mar Spain Marti

Director of the Spanish Data Protection Agency

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