

Procedure No.: PS/00366/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A., acting on behalf of Mr. B.B.B., Ms.

C.C.C., Mrs. D.D.D., Mr. E.E.E., Mrs. F.F.F., Mr. G.G.G., Mr. H.H.H. and D.I.I.I. (in hereinafter, the claimant party) on June 23, 2020 filed a claim

before the Spanish Agency for Data Protection. The claim is directed against D.

J.J.J., (APPLY SUPPORT S.L.) with NIF ***NIF.1, (hereinafter, the claimed party).

The complaining party declares the sending of emails by the

claimed, sole administrator of the company Apply Support S.L., disclosing data

claims of the complaining party in the context of a series of facts that are

being the subject of criminal proceedings, without their knowledge or consent or

some other legal basis for it. The receivers of the information are third parties

companies that maintain business relationships with the company for which

claimants currently work, the purpose of the communications being

precisely that of damaging and breaking said commercial relations.

The emails, in addition to containing information in the body of the

personal character, they contain attached a police report in which they clearly appear

personal data of the claimants and information related to a criminal procedure.

Whoever signs them is the claimant party in the referenced police report. The

fact that no attempt was made to prevent the identification of claimants through

the use of a technique or means (for example, crossing out all the information

personal), reveals that the objective is clearly to cause serious harm and to violate the

rights and freedoms of the claimants.

The complaining party provides a copy of two of the emails, although they have knowledge of the existence of more similar emails in the same context, and they maintain that it is possible that others have been sent more than those that are not knowledge.

Relevant documentation provided by the complaining party:

Copy of email sent by D. J.J.J. to third parties with

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date 07/18/2019 with personal data of the claimants and where there is an attachment with name "Police report App FO...sh.pdf". In the body of the email there is the text:

"[...] Attached is 2 Police report with legal documents Will show how I.I.I., (...)

was in parallel working as CTO and COO setting up a competing Company

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(Code-less / App Foundry) and how they manipulated the accounts in Apply to make me look fraudulent[...]

Additional report to Judge in Criminal court 15 in Barcelona where in which FIRA Barcelona testifies against H.H.H. for a fraudulent behavior - Falsifying contract and invoices is alone a crime that can give 2-5 years in prison if convicted.[...]"

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Copy of complaint filed with the police against the claimants dated April 18

of 2019 and where the name, surnames, addresses and where facts are described in relation to the theft of personal property and intellectual property, among others.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party, to to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

No response has been received to this letter.

THIRD: On October 20, 2020, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the party claimant.

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

On August 27, 2020, the Tax Agency Planning Service and Institutional Relations sends to this Agency the fiscal domicile of Apply Support SL this being Rambla Catalunya, number 66, floor 1 08007 Barcelona.

On 03/30/2021, it is verified with respect to Apply Support, S.L. in the web www.axesor.es that:

1.

The company has the ACTIVE status.

The registered office is Rambla Catalunya, 66 1 ABC. Barcelona 08007

two.

(BARCELONA).

On March 30, 2021, a request for information is sent to Apply Support,

SL The notification is done electronically. According to this notification system, automatic rejection has occurred after ten calendar days have elapsed since its provision.

On March 30, 2021, a request for information is sent to J.J.J. The notification is made by postal mail to the address ***ADDRESS.1

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***LOCATION.1 provided by the claimant. The letter is returned by

Postal Service with the notation of "Returned to Origin by Unknown" on 12

April 2021.

Subsequently, on June 11, 2021, a request for information is sent to Apply

Support, S.L. Notification is made by post to the address Rambla

Catalunya, No. 66, 1º ABC 08007 Barcelona. The letter is returned by the Service of

Posts with the annotation of "Returned to Origin by Unknown" on the 23rd of the same month and year.

On 06/15/2021, the Tax Agency Planning and Relations Service

Institucionales sends to this Agency the fiscal domicile and NIF of J.J.J, being its tax domicile ***ADDRESS.1***LOCATION.1.

FIFTH: On July 26, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 6 of the RGPD, typified in Article 83.5 a) of the GDPR. Said agreement was notified through the public postal operator and the board sole edict of the BOE on August 10 and 18, 2021, to the claimed party.

SIXTH: Formal notification of the initiation agreement, the claimed party at the time of this resolution has not submitted a brief of arguments, so it is application of what is stated in article 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, which in its section f) establishes that in the event of not making allegations within the stipulated period on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

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: On June 23, 2020, the complaining party declares the sending of emails by the claimed party, sole administrator of the company

Apply Support S.L., revealing personal data of the complaining party in the context of a series of facts that are being the subject of criminal proceedings, without their knowledge or your consent or any other legal basis for it. receivers of the information are third-party companies that maintain business relationships with the company for which the claimants currently work, the purpose of the claims being communications precisely to damage and break such business relationships.

SECOND: It is accredited that the emails, in addition to containing in the body itself information of a personal nature, contain attached a report which clearly contains personal data of the claimants and

information relating to criminal proceedings.

THIRD: The complaining party provides a copy of two of the emails and copy of police complaint against the claimants dated April 18, 2019

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and where names, surnames, addresses are stated and where facts are described in relation to the theft of personal property and intellectual property, among others.

FOURTH: On July 26, 2021, this sanctioning procedure was initiated by the alleged infringement of article 6 of the RGD, being notified on August 18, 2021.

Not having made allegations, the claimed party, to the initial agreement.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The defendant is charged with the commission of an infringement due to infringement of article 6.1 of the RGD, which indicates the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGD 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, paragraph 1, the further processing of personal data for archiving purposes in public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are 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 for no longer than is necessary for the purposes of data processing personal; personal data may be kept for longer periods provided that they are treated exclusively for archiving purposes in the public interest, purposes of scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of technical and organizational measures measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period");

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f) treated in such a way as to ensure 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").

The data controller will be responsible for compliance with the provided for in section 1 and able to demonstrate it ("proactive responsibility")."

III

In accordance with the evidence available, it is considered proven that the party complained against proceeded to spread data through emails claims of the complaining party, attaching a police report containing their personal data and information relating to criminal proceedings, without a legal basis for it.

The recipients of the information are third-party companies that maintain business relationships with the company for which the claimants work currently, the purpose of communications being precisely that of damaging and break such business relationships.

Therefore, it is verified that the defendant spread through the emails the personal data of the complaining party, and therefore it is responsible for the breach of confidentiality when disseminating said data, therefore that is considered to have violated article 6.1 due to unlawful data processing of the complaining party, in relation to 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 controller to demonstrate its compliance.

IV

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles costs for treatment, including the conditions for consent under the articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article.

Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 at most.

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 of greater amount.”

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly the following:

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a) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679.”

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

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

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period.”

Points out in Considering 148:

“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.”

There are no previous sanctions to the claimed party, its activity is not the

usual data processing.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. J.J.J, (APPLY SUPPORT S.L.) with NIF ***NIF.1, for a

infringement of Article 6 of the RGPD, typified in Article 83.5 a) of the RGPD, a

warning sanction.

SECOND: NOTIFY this resolution to D. J.J.J, (APPLY SUPPORT S.L.)

with NIF ***NIF.1.

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 www.aepd.es

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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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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