

□ File No.: EXP202205826

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 01/24/2022 filed
claim before the Spanish Data Protection Agency. The claim is
directed against D. B.B.B. with NIF ***NIF.1 (hereinafter, the defendant). The reasons in
on which the claim is based are the following: the claim is directed against your
employer who hired her to do cleaning work in the Community of
Owners and the Community of Owners themselves for considering the
responses provided to your requests for access and for the assignment of your number
private phone without your consent.

The claimant states that two members of the Community where she provided her
services, without prior notice and without your consent, included you in a group of
WhatsApp whose purpose was to monitor his work activity, ordering him to
to send images of the tasks carried out at the end of each working day. The
claimant contacted his employer to express his refusal to transfer
to third parties your personal data, informing them that they had the obligation to send
the images of the cleaning tasks performed to the aforementioned WhatsApp group,
which eventually led to his dismissal.

Provide a dismissal letter, as well as a screenshot of the referred WhatsApp group
which states how it was created and the reason for its creation.

Provides the employer's response to the exercise of the right of access in which it is indicated
that the data was deleted at the time of dismissal and that your data will never

They were transferred to third parties.

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

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP) by certified postal mail, was returned by "absent"; reiterating the transfer by the same means, it is notified on 04/08/2022.

THIRD: On 04/24/2022, in accordance with article 65 of the LOPDGDD, The claim presented by the complaining party was admitted for processing.

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FOURTH: On 08/08/2022, the Director of the Spanish Protection Agency of Data agreed to start a sanctioning procedure against the defendant, for the alleged infractions of articles 6.1 and 15 of the GDPR, typified in article 83.5.a) of the cited GDPR.

FIFTH: Once the start agreement has been notified, the claimant at the time of this resolution has not submitted a written statement of allegations, so the following applies indicated in article 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, which in its section f)

establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise pronouncement about the responsibility accused, for which reason a Resolution is issued.

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

PROVEN FACTS

FIRST: On 01/24/2022, an official letter from the COUNCIL OF TRANSPARENCY AND DATA PROTECTION OF ANDALUSIA giving notice to the claim of the affected party together with the corresponding documentation related to a alleged violation of personal data protection regulations. The organism indicated that the documentation provided revealed that knowledge of the question did not correspond to it in the case of a matter whose resolution corresponds to the AEPD.

The claim document is addressed by the affected party against her employer, the defendant, for considering the response provided to the request for access to your data inadequate of a personal nature and for the transfer of your private telephone number without your consent.

SECOND: There is evidence provided by the claimant letter addressed to the defendant exercising right of access to your personal data.

THIRD: The employer's response to the exercise of the right of access in which states that the data was deleted at the time of dismissal and that their data was never transferred to third parties

FOURTH: There are screenshots provided by the claimant of the group of WhatsApp created in the Community of Owners where he provided his services, in which contains messages addressed to the claimant's telephone number and where she was included without

your consent or authorization.

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FUNDAMENTALS OF LAW

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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

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

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations, in its article 64 "Initiation agreement in the

procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with

transfer of any actions that exist in this regard, and the interested parties will be notified,

Understanding in any case as such the accused.

Likewise, the initiation will be communicated to the complainant when the regulatory norms of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may correspond, without prejudice to what results from the instruction.

c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the recusal regime of the same.

d) Competent body for the resolution of the procedure and norm that attributes such jurisdiction, indicating the possibility that the alleged responsible can voluntarily acknowledge his responsibility, with the effects provided for in article 85.

e) Measures of a provisional nature that have been agreed by the body competent to initiate the disciplinary procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to make allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in

In the event of not making allegations within the established term on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise pronouncement about the responsibility accused.

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3. Exceptionally, when at the time of issuing the initiation agreement there are not enough elements for the initial qualification of the facts that motivate the initiation of the procedure, said qualification may be carried out in one phase through the preparation of a Statement of Objections, which must be notified to the interested".

In application of the previous precept and taking into account that no made allegations to the initiation agreement, it is appropriate to resolve the procedure initiated.

II

The denounced facts materialize in the treatment by the defendant of the data of the claimant without her consent, communicating her mobile number to members of the Community of Owners where he provides his services, to be included in a whatsapp group whose purpose is to monitor your activity employment, as well as the undue response to the exercise of the right of access exercised by the claimant.

Article 58 of the GDPR, Powers, states:

"2. Each supervisory authority shall have all the following powers
corrections listed below:

(...)

i) impose an administrative fine in accordance with article 83, in addition to or in instead of the measures mentioned in this paragraph, according to the circumstances of each particular case;

(...)"

In the first place, article 6, Legality of the treatment, of the GDPR in its section 1, states that:

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions:

a) the interested party gave his consent for the processing of his data

personal for one or more specific purposes;

b) the processing is necessary for the performance of a contract in which the

interested party or for the application at the request of this of measures

pre-contractual;

c) the processing is necessary for compliance with a legal obligation

applicable to the data controller;

d) the processing is necessary to protect vital interests of the data subject or

of another physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers conferred on the person responsible

of the treatment;

f) the processing is necessary for the satisfaction of legitimate interests

pursued by the data controller or by a third party, provided that

such interests are not overridden by the interests or the rights and freedoms

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of the interested party that require the protection of personal data,

in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the

treatment carried out by public authorities in the exercise of their functions".

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

a statement or a clear affirmative action, the processing of personal data that

concern him."

It should be noted that data processing requires the existence of a database

law that legitimizes it.

IV.

In accordance with article 6.1 of the GDPR, in addition to consent,

There are other possible bases that legitimize the processing of data without the need for

have the authorization of its owner, in particular, when necessary for the

execution of a contract in which the affected party is a party or for the application, upon request

of this, of pre-contractual measures, or when necessary for the satisfaction of legitimate interests pursued by the controller or by a third party, provided that such interests do not prevail over the interests or rights and fundamental freedoms of the data subject that require the protection of such data. He treatment is also considered lawful when necessary for the fulfillment of a legal obligation applicable to the data controller, to protect interests of the data subject or of another natural person or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers vested in the responsible for the treatment.

There is no accredited basis of legitimacy for the treatment of the data of the claimant, in relation to the mobile telephone number, which was

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communicated to members of the Community of Owners where he lent his services, to be included in a whatsapp group.

V

The infringement attributed to the defendant is typified in the

Article 83.5 a) of the GDPR, which considers that the infringement of "the basic principles for processing, including the conditions for consent under the terms of the

Articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned

Article 83 of the aforementioned Regulation, "with administrative fines of €20,000,000 as

maximum or, in the case of a company, of 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: "They constitute offenses the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

And in its article 72, it considers for the purposes of prescription, which are: "Infractions 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:

(...)

b) 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.

(...)

Secondly, article 15, Right of access of the interested party, establishes SAW

that:

"1. The interested party shall have the right to obtain from the data controller confirmation of whether or not personal data concerning you is being processed and, in such case, right of access to personal data and the following information:

- a) the purposes of the treatment;
 - b) the categories of personal data concerned;
 - c) the recipients or categories of recipients to whom they were communicated
- o personal data will be communicated, in particular recipients in

third countries or international organizations;

d) if possible, the expected period of conservation of personal data or,

if not possible, the criteria used to determine this term;

e) the existence of the right to request from the controller the rectification or

deletion of personal data or limitation of data processing

personal information relating to the interested party, or to oppose said treatment;

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f) the right to file a claim with a control authority;

g) when the personal data has not been obtained from the interested party, any

available information on its origin;

h) the existence of automated decisions, including the elaboration of

profiles, referred to in article 22, sections 1 and 4, and, at least in such

cases, significant information about the logic applied, as well as the

importance and the expected consequences of such processing for the

interested.

2. When personal data is transferred to a third country or to a

international organization, the interested party shall have the right to be informed of the

adequate guarantees under article 46 relating to the transfer.

3. The controller will provide a copy of the personal data

treatment object. The person in charge may receive for any other copy requested

by the interested party a reasonable fee based on administrative costs. when the

The interested party submits the application by electronic means, and unless he requests

otherwise provided, the information will be provided in an electronic format of

Common use.

4. The right to obtain a copy mentioned in section 3 will not affect

negatively to the rights and freedoms of others”.

The GDPR allows you to exercise before the person responsible for the treatment the

rights of access, rectification, opposition, deletion (“right to be forgotten”), limitation

of treatment, portability and not being subject to individualized decisions.

VII

If the person in charge does not process the request, he must inform and no later than

one month, of the reasons for not acting and the possibility of claiming before a

Control Authority, if no response has been obtained.

In the present case, the infringement of the right of access brings cause because of

The documentation provided shows that the claimant exercised the right to

access to the defendant and the latter in his response states that he did not have the

data having been deleted, which proved that he did not give access to them.

It should be noted that, in principle, personal data cannot be

be deleted, if not blocked, in accordance with article 32 of the LOPDGDD,

“for the requirement of possible responsibilities derived from the treatment and only for

the limitation period thereof”, more if possible in the present case where there is

a dismissal.

Therefore, the data must be kept duly blocked as long as

responsibilities arising from the treatment can be derived and only within the period of

prescription of said responsibilities,

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VIII

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The infringement attributed to the defendant is typified in the

Article 83.5 a) of the GDPR, which considers that the infringement of "the rights of the interested in accordance with articles 12 to 22" is punishable, in accordance with the "with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation,

administrative costs 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 business volume of the previous financial year, opting for the highest amount".

LOPDGDD in its article 71,

"constitute

offenses the acts and behaviors referred to in sections 4, 5 and 6 of the

Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law".

Infractions, it indicates that:

The LOPDGDD in its article 74 indicates: "They are considered mild and will prescribe the year the remaining infringements of a merely formal nature of the articles mentioned in sections 4 and 5 of article 83 of Regulation (EU) 2016/679 and, in particular, the following:

(...)

c) Failure to respond to requests to exercise the rights established in the

Articles 15 to 22 of Regulation (EU) 2016/679, unless it results from

application of the provisions of article 72.1.k) of this organic law.

(...)"

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:

IX

"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:

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;

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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 of certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as 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

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."

data.

- In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the fine to impose in the present case for the infringement typified in article 83.5.a) and article 6.1 of the GDPR for which the defendant is held responsible, in an initial assessment, appropriate to establish a penalty of €1,500 (one thousand five hundred euros).

- Secondly, in accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction of a fine to be imposed in the present case for the offense typified in the Article 83.5.a) and Article 15 of the GDPR for which the defendant is held responsible, in

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an initial assessment, it is appropriate to establish a penalty of €500 (five hundred

euro).

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:

FIRST: IMPOSE D. B.B.B., with NIF ***NIF.1, for a violation of article 6.1

of the GDPR, typified in article 83.5.a) of the GDPR, a penalty of €1,500 (one thousand five hundred euros).

SECOND: IMPOSE D. B.B.B., with NIF ***NIF.1, for a violation of article

15 of the GDPR, typified in article 83.5.a) of the GDPR, a penalty of €500

(five hundred euros).

THIRD: REQUIRE D. B.B.B., with NIF ***NIF.1, so that within a month

from the notification of this resolution and in accordance with what is indicated in the

Article 58.2 c) of the GDPR, accredits the adoption of measures to attend in a manner

effective requests to exercise the rights of the interested parties when

proceed to request them, by virtue of what is expressed in the RGPD.

FOURTH: NOTIFY this resolution to B.B.B..

FIFTH: Warn the sanctioned party that he must enforce the sanction imposed

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 deadline for making the voluntary payment will be until the 20th day of the following or immediately following business month, and if is between the 16th and the last day of each month, both inclusive, the term of the Payment will be until the 5th of the second following or immediate 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

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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 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

Electronic record of
through the
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