 File No.: PS/00422/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

to the following

BACKGROUND

FIRST: On April 12, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against A.A.A. (hereinafter the

claimed party). Notified of the initial agreement and after analyzing the allegations

presented, on May 20, 2022, the resolution proposal was issued that

is transcribed below:

<<

File No.: PS/00422/2021

PROPOSED RESOLUTION OF PUNISHMENT PROCEDURE

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

to the following:

BACKGROUND

FIRST: B.B.B. (hereinafter, the complaining party) dated March 27, 2021

filed a claim with the Spanish Data Protection Agency (hereinafter

AEPD). The claim is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the part

claimed). The grounds on which the claim is based are as follows:

The complaining party states that the respondent party has sent him a report of his

daughter, a minor, from the email of a stationery-bookstore, which to her

criteria violates the duty of confidentiality. Subsequently, from your address

personnel, sends the requested report and invoices again, sending some with

personal data of third parties (name and surnames, DNI, postal address and period of

treatment).

Along with the notification are provided:

-Invoices (...) to his daughter.

-Invoices in the name of C.C.C., with your NIF.

-Invoices in the name of D.D.D., with your NIF.

-Invoices in the name of E.E.E., with your NIF.

-Copy of an email sent to the complaining party from the address of

mail ***EMAIL.1 with two attachments.

-Copy of an email sent to the complaining party from the address of

mail ***EMAIL.2, with the same attachments as the previous one.

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 for

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.

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

(hereinafter, LPACAP) by electronic notification, was not collected by

the person in charge, within the period of making available, understanding rejected

in accordance with the provisions of art. 43.2 of the LPACAP on 05/01/2021, as stated

in the certificate that works in the file.

Although the notification was validly made by electronic means, assuming

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of

informative, a copy was sent by mail that was reliably notified in

date 05/10/2021. In said notification, he was reminded of his obligation to relate

electronically with the Administration, and they were informed of the means of access to

said notifications, reiterating that, in the future, it would be notified exclusively

by electronic means.

On 07/22/2021, after having previously requested an extension of the term,

receives in this Agency a written response indicating:

-That prior to issuing a report, it has obtained the necessary consent of the

mother of the minor, daughter of the claimant, to issue a report and send the

invoices requested from the claimant.

-That, due to a computer incident, the required documentation had to be

sent from a punctual service provider, the security measures were taken

timely during the treatment and the incidences produced were resolved, with the

affected interested parties themselves, without, in any case, having had the minimum

risk to information security, due to the quality of the data.

-That at night, from your own computer once the incident has been solved,

had created a folder with the documentation of the requested invoices, (...), and

took, by mistake, the original folder, with the invoices corresponding to the quarter in

vigor.

THIRD: On June 27, 2021, in accordance with article 65 of the

LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On April 12, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party,

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in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1,

of the Common Administrative Procedure of the Public Administrations (in

hereinafter, LPACAP), for the alleged violation of Article 5.1.f) of the RGPD and Article

32 of the RGPD, typified in Article 83.5 of the RGPD.

Dated 04/13/2022 through the Electronic Notifications and Address Service

Electronic Enabled, the start agreement was notified.

FIFTH: Notification of the aforementioned start-up agreement in accordance with the rules established in

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

Public Administrations (hereinafter, LPACAP), the respondent filed a written

of allegations in which, in summary, it states that:

1- The claimant, person in progressive serious conflict with the minor and her guardian

legal, had requested on 03-26-2021, that it be resent, (because it had already been

sent, at the express request of his ex-wife), the report of his daughter and the invoices of the

totality of the professional services of the claimed part of the past years. A

For this purpose, he provided his email. They proceeded to send him again, at the insistence

and allegation of urgency, also the report, made through the stationery

Come and Read, and at night from the computer in the defendant's office, the

bills. The same claimant informed the appellant via WhatsApp, on 03-27-

2021 (the next day), at 10:00 a.m. (Saturday), to say that I had

sent with all the invoices, 3 more invoices and that I was going to put it in

communication from someone. Being a holiday, without being able to verify causes and

affected, because it was a weekend, since the claimed party was not at the consultation,

where the documentation is kept by the administrative office in charge.

- “Although the notification was validly made by electronic means, taking for

carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, by way of

informative, a copy was sent by mail that was reliably notified in

date 05/10/2021. In said notification, he was reminded of his obligation to relate

electronically with the Administration, and they were informed of the means of access to

said notifications, reiterating that, in the future, it would be notified exclusively

by electronic means.”

Not having any document by analog or digital means, on such

communication, having two emails, for the same as they are

***EMAIL.3 and ***EMAIL.2 , in neither of these two does any communication appear, nor

rejected, as is mandatory, when it is not collected.

Furthermore, there is consolidated jurisprudence of our Court

Constitutional and supreme law that call into question the exclusive validity of the

electronic communications not received.

And as clearly indicated, Organic Law 3/2018, of December 5, in its articles

“Article 64. Form of initiation of the procedure and duration.

……

2. When the purpose of the procedure is to determine the possible existence

of an infringement of the provisions of Regulation (EU) 2016/679 and of this law

organic, will be initiated by means of a start-up agreement adopted on its own initiative or as

consequence of claim If the procedure is based on a claim

formulated before the Spanish Agency for Data Protection, in advance, this

will decide on its admission for processing, in accordance with the provisions of article 65 of this

organic Law"

If the prior communication, mentioned above, had reached them, as is mandatory,

had not been admitted for processing or they could have had the option of defending themselves, the

which they didn't have.

- They are manifestly unfounded, the complaining party requested that they be

will send information about some invoices, already sent in the different periods and a

report of his daughter, of the treatment carried out, for which the claimed party is

authorized.

- They are abusive, because at no time has data protection been breached,

with which the procedure did not have to be admitted for processing.

- do not provide rational indications of the existence of an infringement, because it makes

mention, that they were sent from the Ven y Lee stationery (only the

report), which, in accordance with the provisions of the RGPD, and as MANAGER OF

SAD TREATMENT (Without Access to Data), undertakes and obliges to keep secret

of all the personal data that you know and to which you have access in

under this relationship. Likewise, it will guard and prevent access to the data

of a personal nature to any unauthorized user or person outside the

RESPONSIBLE FOR THE TREATMENT The previous obligations are extended in

any phase of the treatment that of these data could be carried out and will still subsist

after they are finished, of what has been informed and complies according to its

commitment, in writing on your:

Privacy Policy (stationery COME AND READ).

1. Identification

Holder: F.F.F. NIF: ***NIF.1

Registered office: ***ADDRESS.1

Email: ***EMAIL.1

……

10. Security measures

The owner will treat the user's data at all times in a

absolutely confidential and keeping the secret of these, in accordance

with the provisions of the applicable regulations, adopting for this purpose the measures

of a technical-organizational nature necessary to guarantee the safety of their

data and avoid its alteration, loss, treatment or unauthorized access,

given the state of the technology, the nature of the data

stored and the risks to which they are exposed.

“Article 65. Admission to processing of claims

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3. Likewise, the Spanish Agency for Data Protection may inadmit the

claim when the person in charge or in charge of the treatment, prior

warning issued by the Spanish Data Protection Agency would have

taken corrective measures aimed at putting an end to the possible

breach of data protection legislation and any of the

the following circumstances:

a) That no harm has been caused to the affected party in the case of infractions

provided for in article 74 of this organic law.”

That no harm has been caused to the interested party or his family, because it has not been

communicated to anyone outside their environment, any personal data, of the affected, or of the

patient.

"Article 65. Admission to processing of claims, point 3. "b) That the

right of the affected party is fully guaranteed through the application of

measures."

Since the information of the report is separated in a folder, filed separately,

outside the business management circuit and patient records, this

ANONYMIZATION, they cannot be associated with a particular individual. Once

the data is really applicable to the GDPR.

In addition, there is a written commitment of the security measures adapted to your

work complying with data protection.

Article 65. Admission to processing of claims

4. Before deciding on the acceptance of the claim for processing, the Agency

Spanish Data Protection Authority may send it to the delegate of

protection of data that would have, where appropriate, designated the person in charge or

in charge of the treatment or to the supervisory body established for the

application of the codes of conduct for the purposes set forth in articles

37 and 38.2 of this organic law.

Which they have not done either, when the appointment of DPO has been communicated

and was listed, since 03/05/2019.

2- With regard to the formal aspect, that an invoice has been sent for a

person, who has made a visit to a psychotherapist, does not mean that they are data

sensitive and that person has no problem, rather than the desire to know more.

“The sine qua non principle in psychotherapy is the conception of the person

from a comprehensive perspective. How to deal with the problem or demand

It not only depends on the nature of it, but also on the person himself.

and their contexts. Each person is unique, as are their characteristics

personal and life circumstances.

Although part of the therapeutic approach consists of discovering the nature of the

problem, the origin and the causes, its peculiarities and the variables

related to it; It is fundamentally about equipping the person with a

greater self-awareness. The search for a solution

conflicts and the technique to apply, will be determined by the characteristics

of these and those of the subject itself.

Psychotherapy, in the sense of inhabiting and appropriating what one can

to become, from their true potentialities of self-realization or

personal development, aspires to crown that maxim of nosce te ipsum (know yourself

yourself) that says the classic proverb.”

There is no communication of any health data, since visiting a professional

psychotherapist, does not indicate any problem, may simply be training, or

knowledge of oneself, in no case is communicated, no data that informs of

otherwise or identify a problem.

Regulation (EU) 2016/679

Article 9, Treatment of special categories of personal data

……

2. Section 1 will not apply when one of the

following circumstances:

a) the interested party gave his explicit consent for the treatment of said

personal data for one or more of the specified purposes, except when the

Law of the Union or of the Member States establishes that the prohibition

mentioned in section 1 cannot be lifted by the interested party;

Indicates the claimed party that has the consent of the legal guardian, since the

patient is a minor, the claimant has requested and consented, again in writing,

he even gave his email for it.

Regulation (EU) 2016/679 Article 9, Treatment of special categories of

personal information

b) the treatment is necessary for the fulfillment of obligations and the

exercise of specific rights of the person in charge of the treatment or of the

interested in the field of labor law and safety and protection

social, to the extent authorized by the Law of the Union of the

Member States or a collective agreement under the law of the

Member States that establishes adequate guarantees of respect for the

fundamental rights and the interests of the interested party;

The communication of invoices and the data contained therein are, in compliance with the

tax and legal obligation, which this entails, which results in the legitimate interest

of that information.

Regulation (EU) 2016/679 Article 9, Treatment of special categories of

personal information

h) the treatment is necessary for purposes of preventive or occupational medicine,

evaluation of the work capacity of the worker, medical diagnosis,

provision of assistance or treatment of a health or social nature, or management of

health and social care systems and services, on the basis of

Law of the Union or of the Member States or by virtue of a contract with

a healthcare professional and without prejudice to the conditions and guarantees

referred to in section 3;

3. The personal data referred to in section 1 may be processed at the

purposes mentioned in section 2, letter h), when its treatment is carried out by

a professional subject to the obligation of professional secrecy, or under his

responsibility, in accordance with the Law of the Union or of the States

members or with the standards established by national bodies

competent, or by any other person also subject to the obligation to

secrecy in accordance with the law of the Union or of the Member States or

of the standards established by the competent national bodies.

Finally, according to point 3, the claimed party is a professional subject to the

obligation of professional secrecy, which would allow you to handle data of categories

special, without having committed any infraction, since they have not been communicated,

more than name data, address, not even emails or phone numbers.

“Organic Law 3/2018, of December 5

Article 92. Data protection of minors on the Internet.

Educational centers and any natural or legal persons that

develop activities in which minors participate will guarantee the

protection of the best interest of the minor and their fundamental rights,

especially the right to the protection of personal data, in the

publication or dissemination of your personal data through services of the

society of Information.

When said publication or diffusion were to take place through services of

social networks or equivalent services must have the consent

of the minor or their legal representatives, in accordance with the provisions of article 7

of this organic law.

Article 7. Consent of minors. 2. Treatment of

data of minors under fourteen years of age, based on consent, will only be

lawful if that of the holder of parental authority or guardianship is stated, with the scope that

determined by the holders of parental authority or guardianship.

According to the respondent, the minor that appears on the invoices is the daughter of the

complaining party, from which he has authorization from the legal guardian, and authorization from the

complaining party in writing.

In addition, the concept of daughter, which appears in another invoice, does not indicate that she has the

consideration of a minor, since it is only the concept to be billed for the service,

carried out and because it is paid, it does not indicate in any case age.

Furthermore, Article 201 of our Penal Code, which must serve

as a teleological basis to how a sanctioning procedure should be understood

criminal, imposes that the complaint must be filed by whoever is

affected; and neither the client, nor the denouncing father nor the mother are. They would be if a

case the three people corresponding to the invoices that were sent to the complainant

by mistake.

Well, those who can be considered affected are neither in the procedure nor

they want to denounce, nor have they been offended; offering testimony of the same, in case

to estimate the instruction. And furthermore, the forgiveness of the person affected aborts the penalty and the crime.

3- The GDPR broadly defines “personal data breaches” as

“all those violations of security that cause the destruction, loss or

accidental or unlawful alteration of personal data transmitted, stored or processed

otherwise, or unauthorized communication or access to such data”.

They will not be considered a personal data breach subject to articles 33 and

34 of the RGPD those incidents that:

• …….

• They do not affect personal data processing carried out by a person in charge or

a manager.

• Occur in treatments carried out by a natural person in the field

domestic.

Therefore, not all security incidents are necessarily security breaches.

personal information. In turn, not every action that involves a violation of the

data protection regulations can be considered a data breach

personal.

For example, the mere fact of receiving emails cannot be considered

itself as a personal data breach when they cannot produce

consequences on the rights and freedoms of individuals. However, they must

be managed as security incidents, including the need to determine

if they have affected personal data. Based on the principle of responsibility

proactively, in the face of any event that may have consequences for the rights and

freedoms of the interested parties, the data controller must react and mitigate

said consequences

In the Guidelines 01/2021 on examples regarding the notification of data breaches

personal data adopted by the European Committee for Data Protection on the 14th of

January 2021 some examples of data breaches can be found

personal.

“A security incident that has not affected personal data or

processing of personal data is not a breach of personal data, given

that could not cause damage to the rights and freedoms of people

individuals whose data are subject to treatment, regardless of other

damages that may occur to the person responsible or in charge of the treatment.”

Even so, the defendant who has communicated the incident to those affected states,

the same Sunday, March 28 to March 31, 2021, by phone and in writing

(whatsapp), only for the indication of committing an erroneous communication, following the

security protocols, implemented in your consultation, with respect to the protection of

the data, not having received at that time and up to 45 days later any

official notification.

4- The investigation of the facts that are the subject of this proceeding continues, along

that you have asked for an opinion as to whether the invoices, as such, should be included OR

NOT within REGULATION (EU) 2018/1807 OF THE EUROPEAN PARLIAMENT AND

OF THE COUNCIL of 14 November 2018 on a framework for the free

circulation of non-personal data in the European Union, Document COM(2017) 7

end of 10.1.2017, COMMUNICATION FROM THE COMMISSION TO THE PARLIAMENT

EUROPEAN AND THE COUNCIL On the exchange and protection of personal data

in a globalized world and the document COM(2019) 250 COMMUNICATION OF THE

COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL, on guidelines on

the Regulation on a framework for the free movement of non-personal data in

the European Union, to strengthen what was previously said.

5- Regarding the procedure and assessment, it must be applied to all

criminal sanctioning procedures the most favorable norm; so you should

The Directive already in force 2019/1937, which establishes in its article 2

that this is the competent authority for complaints (in this case by those not affected) of

breaches of data protection issues. Assessment and procedure that

would be obliged to follow the Agency, if it is deemed competent. Directive

deploys all its effects, predominantly to the state standard, necessarily if it

generates rights to citizens, if this has not been transposed.

6-From the analysis of the resolutions of other data protection agencies of the

European Union, the non-conviction is observed for cases like the present one. Can not

therefore, to be applied a norm, neither in the state nor European space, in a different way

in one territory or another, as it would generate unfair procedures. and the rating of

entry as serious does not correspond, in any case, neither to reality nor to the correct

interpretation of the GDPR.

SIXTH: Attached as an annex is a list of documents in the

process.

Of the actions carried out in this procedure and the documentation

in the file, the following have been accredited:

PROVEN FACTS

FIRST: It is proven that the party complained against sent the complaining party a

email from the email address “***EMAIL.1“ with two files

attached in WORD format, whose titles, as shown in the documentation

provided in the file are as follows:

-“G.G.G Report.”

-“B.B.B. (copy…)"

SECOND: It is proven that, on the same date at a later time, the party

Respondent sent the complaining party an email from the address of

mail "***EMAIL.2", with two attached files, whose titles and format, as specified

can be seen in the documentation provided to the file, are the following:

-“2018-2019 invoice…”, in PDF format

-“G.G.G Report.” in WORD format

THIRD: It is accredited that the claimant party received, in addition to the invoices

(...) to your daughter:

-Invoices in the name of C.C.C., in which, in addition to your name, surnames and NIF,

It also states: “...”.

-Invoices in the name of D.D.D., in which, in addition to your name, surnames and NIF,

It also states: “...”.

-Invoices in the name of E.E.E., in which, in addition to your name, surnames and NIF,

It also states: “...” .

FOUNDATIONS OF LAW

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Competition

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures.”

II

Allegations adduced

In response to the allegations presented by the respondent party, it is proceeded to give

answer to them:

FIRST: The respondent alleges that, having two emails as they are

***EMAIL.3 and ***EMAIL.2, neither of these two contains any communication from the

AEPD, nor rejected, as is mandatory, when it is not collected, and that there is

consolidated jurisprudence of our Constitutional and Supreme Court that put in

question the exclusive validity of electronic communications not received.

That if the prior communication had reached them, as is mandatory, it would not have been

admitted for processing or they could have had the option to defend themselves, which they did not have.

-In this regard, this Agency reports that, although the notification was made

validly by electronic means, considering the procedure carried out in accordance with the

provided in article 41.5 of the LPACAP, for information purposes a copy was sent by

postal mail that was reliably notified on 05/10/202.

According to work in the file:

“The Support Service of the Electronic Notifications Service and Address

Electronic Enabled CERTIFIES:

- That the Ministry of Economic Affairs and Digital Transformation (through

of the General Secretariat of Digital Administration) is currently the head

of the Electronic Notifications Service (SNE) and Electronic Address

Authorized (DEH) in accordance with Order PRE/878/2010 and Royal Decree

139/2020, of January 28. The provider of said service since June 26

of 2015 is the National Currency and Stamp Factory-Royal Mint

(FNMT-RCM), according to the current Management Assignment of the Ministry of

Treasury and Public Administrations.

-That the notification was sent through said service: Reference:

7624066607e96c94c6ae Acting Administration: Spanish Agency for

Data Protection (AEPD) Holder: - ***NIF.1 Subject: "Notification" with the

following result:

Availability date: 04/20/2021 10:55:07

Automatic rejection date: 05/01/2021 00:00:00”

Likewise, it appears in the written file by which the claimed party, on the date

06/18/2021, requested an extension of the term, answering later, on the date

07/22/2021 to the request, so it cannot be argued that he was not aware

prior to the claim filed by the claimant.

SECOND: The respondent alleges that the complaining party requested that it be sent

information of some invoices, already sent in the different periods and a report of

his daughter, of the treatment carried out, for which the claimed party is authorized.

That at no time has data protection been breached, with which it did not have

to admit the procedure.

That there are no rational indications of the existence of an infraction, because it makes

mention, that they were sent from the Ven y Lee stationery (only the

report).

That no harm has been caused to the interested party or his family, because it has not been

communicated to anyone outside their environment, any personal data, of the affected, or of the

patient, since the information of the report is separated in a folder, filed

apart, outside the circuit of business management and patient files, this

ANONYMIZATION, they cannot be associated with a particular individual.

-In this regard, and given that no infraction has been charged for the reasons

adduced, this Agency considers that it is not necessary to analyze such an allegation.

THIRD: The respondent alleges that, according to Article 65. Admission to processing of

the claims

"4. Before deciding on the acceptance of the claim for processing, the Agency

Spanish Data Protection Authority may send it to the delegate of

protection of data that would have, where appropriate, designated the person in charge or

in charge of the treatment or to the supervisory body established for the

application of the codes of conduct for the purposes set forth in articles

37 and 38.2 of this organic law."

Which they have not done either, when the appointment of DPO has been communicated

and was listed, since 03/05/2019.

-In this regard, the Agency considers that, given that the respondent party received the

request and even answered it, he has not been left defenseless, with

Regardless of whether said request is addressed to the controller directly, or to

your DPD, in the latter case, provided that the AEPD has been previously notified

your appointment.

FOURTH: The respondent alleges that the fact that an invoice has been sent

of a person, who has made a visit to a psychotherapist, does not mean that

are sensitive data and that person has no problem, rather than the desire to

know more. There is no communication of any health data, since the visit to a

professional psychotherapist, does not indicate any problem, it may simply be

formation, or knowledge of oneself, in no case is communicated, no data

to report otherwise or identify a problem.

He adds that he has the consent of the legal guardian, since the patient is a minor,

the claimant requested it and consented, again in writing, even gave his email

email for it and that she is a professional subject to the obligation of secrecy

professional, which would allow you to handle data from special categories, without having

committed any infraction, since they have not been communicated, more than data of

name, address, not even emails or phone numbers.

-In this regard, this Agency makes it clear that what is being questioned are not the

invoices in the name of the daughter of the complaining party, but those others that she received in

the same file, corresponding to other people, of which appears:

-Name

-Surnames

-DNI

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-Concept for which the invoice is issued: ...", "..." and amount in euros.

All of them personal data that should not have been disclosed to the party

claimant.

We must mean that invoices are documents that refer to data

personal health and that are issued in favor, in this case, of people who

a psychotherapy service has been provided. In this sense, recital 35 of the

GDPR determines that:

"(35) Personal data relating to health should include all data

related to the state of health of the interested party that give information about their state of

past, present, or future physical or mental health.

The simple fact of showing that a person is attending sessions

of psychotherapy through an invoice, is a health data.

FIFTH: The respondent alleges that Article 201 of our Criminal Code, which

must serve as a teleological basis for how a procedure is to be understood

criminal sanction, imposes that the complaint must be filed

indispensably by who is affected; and neither the client, nor the denouncing father nor the

mother they are. They would be if a case the three people corresponding to the invoices

that were sent to the complainant in error. Well, those who can

consider themselves affected nor are they in the procedure, nor do they want to file a complaint, nor have

insulted; offering testimony of the same, in case the instruction estimates it. Y

furthermore, the pardon of the person affected aborts the penalty and the crime.

In this regard, this Agency recalls the regulation established in article 62 of the

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

Public Administrations, according to which:

"1. Complaint is understood as the act by which any person, in

compliance or not with a legal obligation, informs a body

administrative the existence of a certain fact that could justify the

ex officio initiation of an administrative procedure”

And with regard to the specific matter of Data Protection, according to article

57.1.f) of the RGPD,

"1. Without prejudice to other functions under these Regulations, it shall be the responsibility of

each control authority, in its territory:

(…)

f) deal with the claims presented by an interested party or by an organization,

organization or association in accordance with article 80, and investigate, to the extent

timely, the reason for the claim and inform the claimant about the course and

outcome of the investigation within a reasonable time, in particular if necessary

new investigations or closer coordination with another enforcement authority

control;

(…)

As stated in the file, receipt of the brief presented by the party

claimant, this Agency proceeded to process it, in compliance with the regulations

in force, giving transfer of the same to the claimed party, and initiating Procedure

Sanctioning party for having found a breach of the obligations contained

in the GDPR.

Anyone who considers that their fundamental right has been violated can

file a claim with the AEPD. In this case we have been aware

in addition to facts that violate the RGPD and that are constitutive of infringement

administrative, the AEPD being competent to supervise compliance with the RGPD

and sanction if such facts constitute an administrative infraction attributable to the

claimed party.

Likewise, it is pointed out that the regulation contained in article 102.3 of the Penal Code:

“The forgiveness of the offended party or his legal representative, as the case may be, extinguishes the action

without prejudice to the provisions of the second paragraph of number 5 of section 1

of article 130”, does not apply to the administrative sphere. not even in his own

criminal scope can be applied to all crimes, but is limited to

certain private crimes and with the fulfillment of certain conditions.

SIXTH: The respondent alleges that in terms of the procedure and assessment, it must

apply for all criminal sanctioning procedures the most

favorable; Therefore, the Directive already in force 2019/1937 must be taken as cited, which

establishes in its article 2 that this is the competent authority for complaints (in this case

by those not affected) of infringements on data protection issues. Assessment

and procedure that the Agency would be obliged to follow, in case it is estimated

competent. The directive deploys all its effects, predominantly to the standard

state, necessarily if it generates rights for citizens, if it has not been

transposed.

-In this regard, this Agency points out that Directive 2019/1937 OF THE PARLIAMENT

EUROPEAN AND OF THE COUNCIL, of October 23, 2019, regarding the protection of

persons who report breaches of Union law, also

called whistleblowing, it has a totally different object: art. 1 and 2 offenses

EU law in different areas, not including that relating to infringements

committed by data controllers for breaching the GDPR.

SEVENTH: The respondent alleges that they have communicated to those affected the

incidence, the same Sunday, March 28 until March 31, 2021, by telephone and

in writing (whatsapp), only for the indication of committing an erroneous communication,

following the security protocols, implemented in your consultation, with respect to the

data protection, not having received at that time and up to 45 days

then no official notification.

-In this regard, this Agency recalls that no infraction has been charged for

breach of article 34 of the RGPD, so this allegation is not

considers it necessary to respond.

III

Article 5.1.f) “Principles related to treatment” of the RGPD establishes:

Article 5.1.f) of the RGPD

"1. The personal data will be:

(…)

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

personal data, including protection against unauthorized processing or

against its loss, destruction or accidental damage, through the application

of appropriate technical or organizational measures ("integrity and

confidentiality").”

In the present case, it is stated that the personal data of those affected, contained in the

defendant's database, were unduly exposed to a third party, either

that the claimant party received, together with the invoices corresponding to his daughter

minor, several invoices corresponding to three natural persons, in which

names, surnames and ID number of the interested parties were recorded.

Classification of the infringement of article 5.1.f) of the RGPD

IV

If confirmed, the aforementioned infringement of article 5.1.f) of the RGPD could lead to the

commission of the offenses typified in article 83.5 of the RGPD that under the

The heading "General conditions for the imposition of administrative fines" provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 20,000,000 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 largest amount:

a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9; (…)”

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

“The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

For the purposes of the limitation period, article 72 “Infringements considered very

serious” of the LOPDGDD indicates:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679. (…)”

Sanction for the infringement of article 5.1.f) of the RGPD

v

For the purposes of deciding on the imposition of an administrative fine and its amount,

considers that the infringement in question is serious for the purposes of the RGPD and that

It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the

article 83.2 of the RGPD.

As aggravating factors:

-The category of personal data affected by the infringement. (Art.

83.2.g).

Recital 35 of the RGPD establishes that "Among the personal data

related to health, all data related to the state of health must be included

of the interested party who give information about their state of physical or mental health

past, present or future".

The STJUE of the Lindqvist case, of November 6, 2003, indicates that they are data

health those provided for in art. 8.1 of Directive 95/46/EC that includes

ALL aspects, both physical and PSYCHIC, of a person's health

person.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

criteria established in section 2 of article 76 "Sanctions and corrective measures"

of the LOPDGD.

As mitigating factors:

-Have, when not mandatory, a data protection delegate.

(article 76.2.g)

The art. 34 of the LOPDGDD establishes:

"1. Those responsible and in charge of the treatment must designate a

data protection delegate in the cases provided for in article 37.1

of Regulation (EU) 2016/679 and, in any case, in the case of

following entities:

l) Health centers legally obliged to maintain the

clinical histories of the patients.

Health professionals are excepted who, even being

legally obligated to maintain the medical records of the

patients, exercise their activity on an individual basis."

The balance of the circumstances contemplated in article 83.2 of the RGPD and the

Article 76.2 of the LOPDGDD, with respect to the infraction committed by violating the

established in article 5.1.f) of the RGPD, allows a fine of €3,000 (three

a thousand euros).

SAW

Article 32 of the GDPR

Article 32 “Security of treatment” of the RGPD establishes:

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"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

a)pseudonymization and encryption of personal data;

b) the ability to guarantee the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore the availability and access to personal data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the

treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of

takes into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a

certification mechanism approved under article 42 may serve as an element

to demonstrate compliance with the requirements established in section 1 of the

present article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that

any person acting under the authority of the person in charge or the person in charge and

has access to personal data can only process said data following

instructions of the person in charge, unless it is obliged to do so by virtue of the Right of

the Union or the Member States.

In the present case, at the time of the breach, the claimed party did not

had taken adequate measures to prevent the exposure of personal data to

unauthorized third parties, as you emailed the complaining party

several invoices corresponding to other people.

Classification of the infringement of article 32 of the RGPD

7th

If confirmed, the aforementioned violation of article 32 of the RGPD could lead to the

commission of the offenses typified in article 83.4 of the RGPD that under the

The heading "General conditions for the imposition of administrative fines" provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the

paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or,

in the case of a company, an amount equivalent to a maximum of 2% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,

11, 25 to 39, 42 and 43; (…)”

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that

“The acts and behaviors referred to in sections 4,

5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result

contrary to this organic law.

For the purposes of the limitation period, article 73 “Infringements considered serious”

of the LOPDGDD indicates:

“Based on the provisions of article 83.4 of Regulation (EU) 2016/679,

considered serious and will prescribe after two years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the

following:

(…)

f) The lack of adoption of those technical and organizational measures that

are appropriate to guarantee an adequate level of security when

risk of treatment, in the terms required by article 32.1 of the

Regulation (EU) 2016/679.

(…)

Sanction for the infringement of article 32 of the RGPD

viii

For the purposes of deciding on the imposition of an administrative fine and its amount,

considers that the infringement in question is serious for the purposes of the RGPD and that

It is appropriate to graduate the sanction to be imposed in accordance with the criteria established by the

article 83.2 of the RGPD:

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

criteria established in section 2 of article 76 “Sanctions and corrective measures”

of the LOPDGDD:

The balance of the circumstances contemplated in article 83.2 of the RGPD and the

Article 76.2 of the LOPDGDD, with respect to the infraction committed by violating the

established in article 32 of the RGPD, allows a fine of €2,000 (two thousand

euros).

In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction

A.A.A., with NIF ***NIF.1 with a fine of 3000 euros for the infraction of the article

5.1.f) of the RGPD, and 2,000 euros for the infringement of article 32 of the RGPD, (5,000

euro in total)

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

informs that you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of the amount of the same. With the application of this

reduction, the sanction would be established at 2,400 euros for the infraction of the

article 5.1.f) of the RGPD, and 1,600 euros for the infringement of article 32 of the RGPD,

(4,000 euros in total) and its payment will imply the termination of the procedure. The

effectiveness of this reduction will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

In case you chose to proceed with the voluntary payment of the amount specified above, in accordance with the provisions of article 85.2 cited, must do so effective by depositing it in restricted account number ES00 0000 000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection in the entity banking CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause, for voluntary payment, reduction of the amount of the sanction. Also, you must send the proof of entry to the General Subdirectorate of Inspection to proceed to close The file.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you. so that within TEN DAYS you can allege whatever you consider in your defense and present the documents and information that it considers pertinent, in accordance with Article 89.2 of the LPACAP.

RRR

INSPECTOR/INSTRUCTOR

EXHIBIT

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SECOND: On June 3, 2022, the claimed party has proceeded to pay

the sanction in the amount of 4000 euros making use of the reduction foreseen in the

motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via

against the sanction, in relation to the facts referred to in the

resolution proposal.

FOUNDATIONS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), grants each control authority and as established in articles 47 and 48.1 of the Law Organic 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 Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: “The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures.”

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common to Public Administrations (hereinafter LPACAP), under the rubric "Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in any time prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of

any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased

regulations."

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00422/2021, of

in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A.

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative before the Contentious-administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-Administrative Jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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