

□ File No.: EXP202204748

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 October 31, 2022, the Director of the Spanish Agency for
Data Protection agreed to initiate a sanctioning procedure against SERVICES
INTEGRALES DEL HOGAR TENERIFE, S.L. (hereinafter, the claimed party),
through the Agreement that is transcribed:

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File No.: EXP202204748

AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following

FACTS

FIRST: Dated April 8, 2022 A.A.A. (hereinafter, the claiming party)

filed a claim with the Spanish Data Protection Agency.

The claim is directed against SERVICIOS INTEGRALES DEL HOGAR TENERIFE,
S.L. with NIF B76719459 (hereinafter, the claimed party).

The reasons on which the claim is based are the following:

The claimant states that she was an employee of the claimed party and that, after
dissociate from it, at the headquarters of said entity a notification of
seizure of the payroll of the complaining party, having disseminated said information,
through the WhatsApp mobile messaging application to a relative of the party

claimant, to whom a person from the claimed entity sent an image of said notification.

Provide an image of the message sent and a complaint filed in this regard before the Civil Guard.

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 hereafter LOPDGDD), on April 21, 2022, said claim was transferred to the claimed party, to proceed with its analysis and inform this Agency in the

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period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

The entity claimed in response to the aforementioned requirement states that the person who sent a message, he did so via WhatsApp to a relative of the claimant from his private mobile phone that contained an ex officio document of embargo issued by the Court of First Instance No. 3 of Arona.

As a consequence of such facts, said worker has been notified, in writing, informing you of possible disciplinary measures.

It is indicated that the entity received the embargo decree on January 18, 2021 but did not can be carried out since the employee is hired part-time.

Prior to March 10, 2021, the date on which the claimant filed the complaint to the Civil Guard, (...) the company has a private conversation with the claimant's brother and sends him a photograph of the embargo document.

The claimed party states that all sensitive documentation is under key and only authorized personnel can access it.

The claimed party states that everything related to the protection of personal data has been reviewed. company data including specific instructions to the person who sent the message as well as a Data Protection Officer has been appointed on 18 May 2022.

In addition, data protection training will be provided to all employees who access personal data during the month of June 2022 by reviewing six months and measures will be implemented that do not allow them to happen similar facts.

The entity has provided a document called "Obligations and instructions to the When processing personal data, responsibility of Servicios Integrales del Hogar Tenerife SL", which contains, among other information, the obligations in accessing data, duty of secrecy and confidentiality, obligations in the workplace together with the consequences of non-compliance.

This document is signed, dated May 24, 2022, by the person who has sent the message.

THIRD: On June 10, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: The General Subdirectorate of Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in matter, by virtue of the functions assigned to the control authorities in the article 57.1 and the powers granted in article 58.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter GDPR), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the following extremes:

Regarding the claimant, it is stated that:

☐ Was a part-time worker for the claimed party until May 7,

2021, the date the dismissal occurred. The entity has provided a dismissal letter of said date.

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☐

☐

The company states that access to the company data has been blocked.

claimant on behalf of ***POSITION.1.

The company wants to show that the seizure request reached the office on January 18, 2021 and that it was in May of the same year when caused the dismissal.

☐

Regarding the person who sent the WhatsApp message, it is noted that:

☐ The message was sent by a worker of the claimed entity that occupies the functions of ***POINT.1 and therefore had access to all the information related to the employees, since among its functions was personnel management.

The company states that ***POSITION 1 -A.A.A. with NIF ***NIF.1 -does not have employment contract since he is (...) self-employed collaborator.

In this regard, they have provided a copy of the deed of sale of the company (...).

They have also provided the document of registration as self-employed dated

10/23/2019.

The company states that they have blocked access since it is not necessary for their functions.

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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 and 48.1 of the Law Organic 3/2018, of December 5, 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: "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."

II

Article 4.11 of the GDPR defines the consent of the interested party as "all manifestation of free, specific, informed and unequivocal will by which the The interested party accepts, either through a declaration or a clear affirmative action, the processing of personal data concerning you".

In this sense, article 6.1 of the LOPDGDD establishes that "in accordance with the provided in article 4.11 of Regulation (EU) 2016/679, consent is understood to of the affected party, any manifestation of free, specific, informed and incompetent will.

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equivocal by which he accepts, either by means of a declaration or a clear action affirmatively, the processing of personal data concerning him”.

For its part, article 6 of the GDPR establishes the following:

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

nes:

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

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party

is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with a legal obligation applicable to the responsible for the treatment;

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 the interest

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said interests

the interests or the fundamental rights and freedoms of the interested party do not prevail.

that require the protection of personal data, particularly when the interest

sado be 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.”

II

In this case, the claimant denounces A.A.A., (...) for disseminating the notification of payroll garnishment to third parties without your consent through the WhatsApp mobile messaging application.

However, it should be considered that the company recognizes that among the functions (...) there is people management, despite this we cannot consider as responsible for the treatment object of the infringement claimed to A.A.A. but to the company where he performs his duties, regardless of whether said worker whether or not self-employed.

Thus, in accordance with the available evidence, and without prejudice of what results from the instruction of this disciplinary procedure, considers that we are facing an illegal processing of personal data, which means the infringement of article 6 of the GDPR by the claimed entity, indicated in the basis of law II, since the personal data have been processed without having accredited any type of legitimacy and the claimed party cannot prove that the

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treatment of the data of the complaining party is justified in any of the databases legitimization of art. 6.1 of the GDPR, since the consent of the claimant is not recorded for the processing of your data.

IV.

Article 83.5 of the GDPR establishes that "violations of the provisions following will be sanctioned, in accordance with section 2, with administrative fines

EUR 20,000,000 maximum or, in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent in accordance with articles 5, 6, 7 and 9;"

Article 72.1 b) of the LOPDGDD states that "according to what is established in the Article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years, the infractions that suppose a substantial violation of the articles mentioned therein and in particular, the following:

b) The processing of personal data without the fulfillment of any of the conditions of legality of the treatment established in article 6 of Regulation (EU) 2016/679."

V

Article 58.2 of the GDPR provides the following: "Each control authority shall have of all of the following corrective powers listed below:

d) order the person in charge or person 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;

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

Thus, in attention to what results from the instruction, it will be possible to order the claimed party that within the designated period proceeds to carry out the actions necessary for the processing of the personal data used to comply with the provisions of the GDPR.

SAW

This infraction can be sanctioned with a fine of a maximum of €20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the of greater amount, in accordance with article 83.5 of the GDPR.

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the GDPR, precepts that state:

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"Each control authority will guarantee that the imposition of administrative fines under this Article for infringements of this Regulation indicated in sections 4, 9 and 6 are effective in each individual case, proportionate and dissuasive."

"Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or in lieu of 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 nature, scope or purpose of the processing operation in question as well as the number number of interested parties affected and the level of damages they have suffered;
- b) intentionality or negligence in the infraction;
- c) any measure taken by the person in charge or in charge of the treatment to settle the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, habi- gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the controller or processor;

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

infringement and mitigate the possible adverse effects of the infringement;

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

determine whether the controller or processor notified the infringement and, if so, to what extent

gives;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to certification mechanisms.

fications approved in accordance with article 42, and

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

as the financial benefits obtained or the losses avoided, directly or indirectly.

mind, through infraction.”

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

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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 by absorption process subsequent to the commission of the violation, 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) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party.”

In accordance with the transcribed precepts, and without prejudice to what results from the investigation of the procedure, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in article 76.2 b) of the LOPDGDD, relating to the link between the activity of the infringer and the performance of processing of personal data.

For the purposes of setting the amount of the penalty to be imposed in this case on the entity claimed for an infringement typified in article 83.5.a) of the GDPR, in a initial assessment, it is necessary to adjust the sanction to be imposed on the defendant and fix it in the amount of €5,000 in accordance with article 58.2 of the GDPR.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against SERVICES

INTEGRALES DEL HOGAR TENERIFE, S.L. with NIF B76719459, in accordance

with the provisions of article 58.2.i) of the GDPR, for the alleged violation of article 6.1 of the GDPR, typified in article 83.5 of the GDPR and for prescription purposes, for Article 72.1 b) of the LOPDGDD.

SECOND: APPOINT instructor to R.R.R. and, as secretary, to S.S.S., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of Articles 23 and 24 of Law 40/2015, of October 1, on the Legal Regime of the Sec-public tor (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the claim filed by the claimants and their documentation, the documents obtained and generated by the General Sub-directorate of Data Inspection during the investigation phase, as well as the report of previous inspection actions.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the C / Jorge Juan, 6

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sanction that could correspond would be 5,000 euros (five thousand euros) without prejudice of what results from the instruction.

FIFTH: NOTIFY this agreement to INTEGRAL HOME SERVICES

TENERIFE, S.L. with NIF B76719459, granting a hearing period of ten days

able to formulate the allegations and present the evidence that it considers

convenient. In your statement of allegations you must provide your NIF and the number of procedure that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same

may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed other than a fine, may recognize its responsibility within the term granted for the formulation of allegations to the present initiation agreement; it which will entail a reduction of 20% of the sanction that should be imposed in the present procedure. With the application of this reduction, the sanction would be established at €4,000 (four thousand euros), resolving the procedure with the imposition of this sanction.

In the same way, it 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 its amount. With the application of this reduction, the sanction would be established at €4,000 (four thousand euros), and its payment will imply the completion of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In this case, if both reductions were to be applied, the amount of the penalty would remain established at €3,000 (three thousand euros).

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts

previously indicated €4,000 or €3,000, you must pay it through your deposit in the account number ES00 0000 0000 0000 0000 0000 opened in the name of the Spanish Agency for Data Protection at Banco CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the reason for reducing the amount to which welcomes.

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Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of performances; in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is noted that in accordance with the provisions of article 112.1 of the LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On November 28, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 3000 euros making use of the two reductions

provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

FUNDAMENTALS OF LAW

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Competence

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."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure
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Common for Public Administrations (hereinafter, LPACAP), under the heading

"Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility,

The procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction has only a pecuniary 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 presumed perpetrator, in

any moment 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 offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least

20% of the amount of the proposed penalty, these being cumulative among themselves.

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 resource against the sanction.

The percentage reduction provided for in this section may be increased

according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202204748, in

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

SECOND: NOTIFY this resolution to INTEGRAL SERVICES OF THE

HOME TENERIFE, S.L.

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

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

Against this resolution, which puts an end to the administrative process as prescribed by

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

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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