

Procedure No.: PS/00324/2020

□ RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 04/16/2020 filed  
claim before the Spanish Data Protection Agency. The claim is  
directed against \*\*\*COMPANY.1. with NIF \*\*\*NIF.1 (hereinafter, the claimed one). The  
reasons on which the claim is based are: that the company in which he was working  
sent an email on 10/16/2019, to the Condal transport company  
Express, enclosing the documents of his dismissal and the settlement and accusing him of  
attempted fraud, thus communicating your personal data to a third party not  
authorized.

Along with the claim, provide the police report and email  
sent by the claimed entity to the freight transport company.

SECOND: Upon receipt of the claim, the Subdirector General for  
Data Inspection proceeded to carry out the following actions:

On 06/05/2020, the claim submitted was transferred to the claimant for  
analysis. Likewise, it was required that within a month he send to the  
Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the  
claimant regarding the transfer of this claim, and proof that  
the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the  
claim.

- Report on the measures adopted to prevent the occurrence of similar incidents.

- Any other that you consider relevant.

The defendant has not given any response to the request of the AEPD.

THIRD: On 09/16/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

FOURTH: On 10/26/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 5.1.f) of the RGPD contemplated in article 83.5.a) of the aforementioned Regulation.

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FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in 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 statement about the responsibility

imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been

accredited the following:

## PROVEN FACTS

FIRST: On 04/16/2020 there is an entry in the AEPD written by the claimant manifesting

that the respondent reported to the Local Police of Santander, report \*\*\*NUMBER.1

dated 10/07/2020 for theft of tools; consequence of the complaint

are open Preliminary Diligence \*\*\* NUMBER.2 in the Court of First

Instance of Solares (Cantabria); On 03/06/2020 the claimant appeared at the

Court of First Instance of Solares (Cantabria) within the Preliminary Diligence

\*\*\*NUMBER.2, moment when he knew all the documentation and comments that the

claimed had made to the company CONDAL EXPRESS; the claimed sent

email on 10/16/2019 to CONDAL EXPRESS, to the address

info@condalexpress.es, attaching the documents of your dismissal and the settlement as well

as an accusation of attempted fraud, revealing your personal data to a

unauthorized third party; CONDAL EXPRESS replied to the e-mail on the same date

noting: We acknowledge receipt of your letter.

...We believe that the accompanying documentation, particularly the letter of

dismissal and the corresponding settlement, you should not have sent it to us as long as

How much personal data does it contain?

SECOND: There is an email provided to the address info@condalexpress.es,

containing the documentation indicated in the previous point as well as the response of

Condal Express of the same date.

THIRD: A copy of the complaint filed by the respondent before the

Local Police of Santander, report \*\*\* NUMBER.1 dated 10/07/2020, XIII zone of

the Civil Guard of Cantabria.

FOURTH: The statement of the claimant before the Court of First

Instance and Instruction No. 2 Valdecilla-Solares in Preliminary Proceedings

\*\*\*NUMBER.2.

## FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

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The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation 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 how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators 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 apply, without prejudice to what result of the instruction.

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

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

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

The denounced facts materialize in the sending by the claimed of a email to the company Condal Express, attaching the dismissal and settlement of the claimant and in which he is accused of attempted fraud, revealing his personal data personal character.

III

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Article 58 of the RGPD, Powers, states in its point 2 that:

"two. Each supervisory authority will have all of the following powers

corrections listed below:

(...)

i) impose an administrative fine under article 83, in addition to or in

Instead of the measures mentioned in this section, according to the

circumstances of each particular case;

(...)"

In the first place, the treatment of the respondent could constitute a

infringement of article 5, Principles relating to treatment, of the RGPD that establishes

that:

"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)").

(...)

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights

(hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment".

IV

The documentation in the file shows that the defendant violated article 5 of the RGPD, principles related to the treatment, in relation to the Article 5 of the LOPGDD, duty of confidentiality, when sending an email to a third party, containing the document of dismissal and settlement, disclosing their data of personal nature and being accessible to third parties without your authorization.

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This duty of confidentiality, previously the duty of secrecy, must be understood that its purpose is to prevent leaks of data not consented to by their owners.

Therefore, this duty of confidentiality is an obligation that falls not only to the person in charge and in charge of the treatment but to everyone who intervenes in

any phase of the treatment and complementary to the duty of professional secrecy.

v

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

On the other hand, the LOPDGDD, for prescription purposes, in its article 72 indicates:

“Infringements considered very serious:

1. Based on the provisions of 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 particularly the following:

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

(...)”

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

SAW

"1. Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this Regulation 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, in addition to or as a 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 will 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;

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c) any measure taken by the controller or processor

to alleviate 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, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

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

treatment;

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

remedying the breach and mitigating the possible 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 case,

what extent;

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

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its Article 76, "Sanctions and corrective measures", establishes that:

"two. 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) The link between the activity of the offender and the performance of treatments of personal data.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the commission of the offence.
- e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of
- h) The submission by the person in charge or person in charge, with voluntary, to alternative conflict resolution mechanisms, in those assumptions in which there are controversies between those and any

interested."

data.

In accordance with the precepts transcribed, in order to set the amount of the sanction of a fine to be imposed in the present case for the infraction typified in the article 83.5.a) of the RGPD for which the claimant is responsible, in an assessment initial, the following factors are estimated concurrent:

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The scope in a local environment of the treatment carried out by the entity claimed.

The number of affected is limited to a single person, the claimant.

The measures adopted by the respondent to prevent him from being produce similar incidents, since before the informative request of the Agency has not responded to it, which in turn affects the absence of cooperation with the supervisory authority in order to remedy the infraction and mitigate the possible adverse effects of the same.

There is no evidence that the entity had acted maliciously, although the performance reveals a serious lack of diligence.

The claimed entity is a small business.

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

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE \*\*\*EMPRESA.1., with NIF \*\*\*NIF.1, for an infraction of the

article 5.1.f) of the RGPD, typified in article 83.5. a) of the RGPD, a fine of

€10,000 (ten thousand euros).

SECOND: NOTIFY this resolution to \*\*\*COMPANY.1.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

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

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

Common 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, through its entry, 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, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

voluntary payment will be until the 20th day of the following month or immediately after, and if

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

payment will be until the 5th of the second following month or immediately after.

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

This Resolution will be made public once it has been notified to the interested parties.

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

48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the

LPACAP, the interested parties may optionally file an appeal for reconsideration

before the Director of the Spanish Agency for Data Protection within a period of

month from the day following the notification of this resolution or directly

contentious-administrative appeal before the Contentious-Administrative Chamber of the

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

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

Contentious-administrative jurisdiction, within a period of two months from the

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

aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally 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,

introducing him 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 two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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