

□ File No.: PS/00289/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On December 29, 2020, the Spanish Agency for the Protection of
Data REQUIRED FUENSANTA S.L.,
what would contribute
documentation related to certain ongoing investigations carried out
carried out by the General Subdirectorate of Data Inspection of this Agency, in relation to
with file E/10435/2020, in the following terms:

with CIF B28062073,

“Within the framework of the actions carried out by the Subdirectorate General for
Inspection of Data in order to clarify certain facts of which it has had
knowledge of this Spanish Agency for Data Protection, and in use of the
powers conferred by article 58.1 of Regulation (EU) 2016/679 of the
European Parliament and of the Council of April 27, 2016, regarding the protection of
individuals with regard to the processing of personal data and the free
circulation of these data and repealing Directive 95/46/EC (Regulation
General Data Protection) (hereinafter RGPD), and art. 67 of the Organic Law
3/2018, of December 5, on the Protection of Personal Data and Guarantee of the
Digital Rights (hereinafter LOPDGDD), it is requested that within ten days
working days, submit the following information regarding the email sent with the
clear recipients (no blind copy):

1.

two.

3.

Four.

Information on the causes that have motivated the sending of the mail with the list of recipients in clear (multiple list revealing the addresses of email to other recipients).

Information about whether they have forwarded more similar emails to other recipient lists or it is a single shipment.

Information on whether the email included other patient data (other identifying data, including health data such as results of tests).

Information on whether they have addressed those affected to communicate the error and copy of the communication if so.

5. Measures adopted to prevent similar incidents from occurring, dates of implementation and controls carried out to verify its effectiveness.”

Likewise, they were informed that the person in charge and the person in charge of processing personal data have the obligation to provide the documents, information and any other collaboration that is required to carry out the function of

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inspection, with the indication that failure to comply with this obligation could involve the commission of the offense typified in art. 83.5.e) of the RGPD, consisting of not providing access in breach of article 58, section 1, which is

will sanction, in accordance with art. 58.2 of the RGPD, with administrative fines of 20 million euros maximum or, in the case of companies, an amount equivalent to a maximum of 4% of the total global annual turnover for the year previous financial, opting for the highest amount.

SECOND: The request for information, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, on Administrative Procedure Common of Public Administrations (hereinafter, LPACAP), was notified in dated January 9, 2021, as stated in the Notific@ certificate that works in the proceedings.

THIRD: After the period granted to answer the aforementioned request for information does not appear in this Agency the answer to it.

FOURTH: On June 11, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 58.1 of the RGPD, typified in article 83.5 of the GDPR.

FIFTH: On August 2, 2021, a resolution proposal was formulated, in which following terms:

<< That the Director of the Spanish Data Protection Agency sanction FUENSANTA S.L., with CIF B28062073, for an infringement of article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, with a fine of €3,000.00 (THREE THOUSAND EURO).>>

SIXTH: On August 24, 2021, the entity submitted a written statement of allegations to the Motion for a Resolution, in which, in summary, it states that it proceeded to answer to the request for information, although not within the terms granted in the notifications after October 21, 2020, that the proposed resolution does not succinctly sets out the facts and legal grounds on which the claim is based.

dismissal, which means defenselessness affecting their right to defense, which does not
there has been an intention not to provide the AEPD with the required information and reiterates
that the situation caused by not attending in a timely manner the requirements of the
AEPD, is the result of a succession of errors and unfortunate events and requests
that the procedure be resolved without imputing an infraction or sanction and the filing of
performances.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The information requirement indicated in the antecedent was first
notified electronically, in accordance with the provisions of article 43 of the LPACAP.

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SECOND: The respondent has not responded to the request for information made
by the Agency within the periods granted for it, namely:

The request made within the framework of the investigative actions
referenced with code E/10435/2020, in which the deadline to respond was
ten business days.

THIRD: After the period granted to answer the aforementioned
request for information does not appear in this Agency the answer to it.

FOUNDATIONS OF LAW

FIRST: By virtue of the powers that article 58.2 of the RGPD recognizes to each
control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to resolve this procedure.

SECOND: Regarding the allegations presented to the Resolution Proposal, it is should point out the following:

As regards the lack of reasons for the motion for a resolution, it is clear sufficiently reasoned the infraction imputed based on the documentation that work on file. The request for information was made in accordance with the regulations established in Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations. Spent too much term granted to respond to the aforementioned request for information, it is not stated in this Agency the answer to it.

The requirement of motivation for administrative actions is directly related to tioned with the principles of a Rule of Law (art. 1.1 of the EC) and with the charac-binding ter that the Law has for the Public Administrations, whose empire is are subject in the exercise of their powers (arts. 103.1 of the CE and 3.1 of the Law 40/2015, of the Legal Regime of the Public Sector).

Thus, all administrative decisions are subject to the requirement of reasons. (art. 88.3 of the LPAC), although it does not presuppose the inexorable obligation to answer one by one to each objection that those interested in a procedure may have expose, because that would go against the principle of speed and compliance with the deadlines. procedural zos.

Articles 35 and 88, all of them of Law 39/2015, of October 1, of the Procedure Common Administrative Law of Public Administrations, require that the "resolution is motivated", albeit briefly, so that the interested party knows the func-foundation of the resolution, without the lack of knowledge being able to produce defenselessness by that of the reasons that assist the Administration that sanctions, pro-

announcing in this sense the Supreme Court, in Judgment of September 30, 1996 or November 19, 2001, according to which, brevity and conciseness should not be confused with lack of motivation.

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The doctrine that the Constitutional Court has been maintaining in relation to the defense is that in order for it to be invoked, it must be an immaterial defense that implies that it has caused real and effective damage. (Come in others, SSTC 90/1988, 43/1989, STC, 105/1995, 118/1997, 91/2004)

In this case, not only are the requirements mentioned amply fulfilled, but that goes further by offering reasoning that justifies the possible qualification of the facts valued at the beginning and, even, the circumstances are mentioned that may influence the determination of the sanction.

Regarding the allegations that state that they proceeded to answer the request of information, although not within the terms granted in the notifications after October 21, 2020, that there has been no intention of not facilitating the AEPD the required information and that the situation caused by not responding in time and forms the requirements of the AEPD, is the result of a succession of errors and unfortunate events, they only come to confirm that the claimed has not procured from the Spanish Agency for Data Protection the information that required, without this argument being excused, since he is responsible, in compliance with their proactive responsibility obligations, who must implement the necessary technical and organizational measures, as expressed in the

articles 24 and 25 of the RGPD.

The denounced fact is accredited by the actions and documentation

in the file, constituting an infringement, since with the

indicated conduct of the defendant, the power of investigation that article 58.1 of the

RGPD confers on the control authorities, in this case, the AEPD, has been seen

hindered, meaning that the allegations presented do not distort the

essential content of the infraction that is declared committed nor do they suppose a cause of

sufficient justification or exoneration. Consequently, the claims must be

dismissed.

Therefore, the events described in the "Events" section are deemed to constitute

an infraction, attributable to the claimed party, for violation of article 58.1 of the RGPD,

which provides that each control authority will have, among its powers of

research:

“a) order the person in charge and the person in charge of the treatment and, where appropriate, the

representative of the person in charge or the person in charge, who facilitate any

information required for the performance of its functions;

b) carry out investigations in the form of data protection audits;

c) carry out a review of the certifications issued under the

article 42, paragraph 7;

d) notify the person in charge or the person in charge of the treatment of the alleged

violations of this Regulation;

e) obtain from the person in charge and the person in charge of the treatment access to all

personal data and all the information necessary for the exercise of their

functions;

f) obtain access to all the premises of the person in charge and of the person in charge of the

processing, including any data processing equipment and means,

in accordance with the procedural law of the Union or of the States

members."

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THIRD: This infringement is typified in article 83.5.e) of the RGPD, which considers

as such: "failure to provide access in breach of article 58, section 1".

In the same article it is established that this infraction can be sanctioned with a fine.

twenty million euros (€20,000,000) maximum or, in the case of a

company, of an amount equivalent to four percent (4%) as a maximum of the

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

of greater amount.

For the purposes of the limitation period for infringements, the infringement charged

prescribes after three years, in accordance with article 72.1 of the LOPDGDD, which qualifies as

very serious the following behavior:

"ñ) Not facilitating the access of the personnel of the data protection authority

competent to personal data, information, premises, equipment and means of

treatment that are required by the data protection authority to

the exercise of its investigative powers.

o) The resistance or obstruction of the exercise of the inspection function by the

competent data protection authority."

FOURTH: The fine imposed must be, in each individual case, effective,

proportionate and dissuasive, in accordance with the provisions of article 83.1 of the RGPD.

Consequently, it is appropriate to graduate the sanction to be imposed in accordance with the criteria

established in article 83.2 of the RGPD, and with the provisions of article 76 of the

LOPDGDD, with respect to section k) of the aforementioned article 83.2 RGPD.

In the initial assessment it was found that no extenuating circumstances were applicable and

The following facts have been considered as aggravating:

- Art. 83.2 b) RGPD: the intention or negligence in the infringement. It is about

of a company that is not newly created and should have

procedures established for the fulfillment of the obligations that

contemplates the data protection regulations, among them, to respond to

the requirements of the supervisory authority.

- Art. 83.2 k) RGPD: any other aggravating or mitigating factor applicable to the

circumstances of the case, such as the financial benefits obtained or the

Losses avoided, directly or indirectly, through the infringement. The

claim refers to the particular case of a person, but the

data processing to which it refers can potentially affect a

very high number of clients of the responsible entity or users of the

service provided by the responsible entity.

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

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

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE FUENSANTA S.L., with CIF B28062073, for an infraction

of article 58.1 of the RGPD, typified in Article 83.5 of the RGPD, a fine of

€3,000.00 (THREE THOUSAND EUROS).

SECOND: NOTIFY this resolution to FUENSANTA S.L.

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

between the 1st and 15th of each month, both inclusive, the term to make the payment

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

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

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

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

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

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

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

Interested parties may optionally file an appeal for reconsideration before the

Director of the Spanish Agency for Data Protection within a month from

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

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

National Court, in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of July 13, regulating the Contentious-administrative jurisdiction, within a period of two months from the day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica->

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web/], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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