

□ Procedure No.: PS/00043/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated August 27, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against the website ***URL.1. The reason in relation to

data protection regulations on which the claim is based is as follows:

“[...] SECOND: The indicated page does not include the PRIVACY POLICY or

LEGAL NOTICE, in breach of existing regulations (art. 13 of the Rules of

Data protection and art. 5 LOPD).”

Along with the claim, it provides screenshots of the aforementioned website.

SECOND: In view of the facts denounced in the claim and the

documents provided by the claimant and documents of which he has had

knowledge of this Agency, the Subdirectorate General for Data Inspection proceeded

to carry out preliminary investigation actions to clarify the

facts in question, by virtue of the powers of investigation granted to the

control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation

General Data Protection, hereinafter RGPD), and in accordance with the

established in Title VII, Chapter I, Second Section, of Organic Law 3/2018,

of December 5, Protection of Personal Data and guarantee of the rights

(hereinafter LOPDGDD).

As a result of the research actions carried out, it is found that the

responsible for the treatment is B.B.B. with NIF ***NIF.1 since the website

claimed is constituted as a platform for the candidacy for the elections of the Official College of Graduates of E.F. and Sciences of Physical Activity and Sport of Community of Madrid held in 2019 to which the respondent applied as president.

THIRD: Prior to the acceptance of this claim for processing, the transferred the claimant to the professional address that advertises the same on the internet, in accordance with the provisions of article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter, LOPDGDD), being returned as "unknown" on 12/20/2019.

In view of the foregoing, the State Tax Administration Agency is requested to tax address of the claimed, being provided on 02/26/2020.

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FOURTH: In view of the facts denounced in the claim and the documents provided by the claimant, it is observed that the web page contains a personal data collection form (name, telephone and email address email) of those people who were interested in the project led for the claimed.

Consulted on February 24, 2020, the website ***URL.1, it is verified that the website is still open and maintains the situation revealed in the claim

Presented August 27, 2019 by A.A.A.

: Consulted on February 25, 2020, the application of the AEPD was

FIFTH

verifies that the only sanctioning procedure in which the mercantile B.B.B. with NIF ***URL.1, is the present procedure.

SIXTH: On March 6, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

SEVENTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on March 20, 2020, in which he stated that:

"[...] First. - That at no time has this party intended to breach with the regulations governing Data Protection.

Second. That as soon as you receive the initial agreement that gives rise to these allegations, for my part the data processing was ended, eliminating the form and those data that had been collected by this means.

Third. - Having said the above, it is worth noting that this part had elaborated the timely form where the requirements of the RGPD were complied with, but when apparently due to a computer error of which we were not warned by anyone, could have occurred the situation with which I am charged. Insist on the lack of intentionality on my part in the commission of the facts. [...]"

EIGHTH: On June 12, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the claim filed by the claimant and its documentation, the documents obtained by the Subdirector General for Data Inspection and the allegations filed by the claimant.

NINTH: On August 5, 2020, the website ***URL.1 is accessed with purpose of verifying what was stated by the respondent in his allegations.

TENTH: On September 18, 2020, a resolution proposal was formulated, proposing that the defendant be imposed a sanction of warning, for a

infringement of article 13 of the RGPD, typified in article 83.5 of the same regulation.

The respondent has not submitted arguments to this proposal.

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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 ***URL.1 website provided me with a data collection form

personal data of possible people interested in the candidacy project for the

elections to the elections of the Official College of Graduates of E. F. and Sciences of

the Physical and Sports Activities of Madrid held on September 6, 2019

without having a Privacy Policy.

SECOND: It appears as the main person in charge B.B.B. with NIF ***NIF.1.

THIRD: The respondent asserts that he has withdrawn the aforementioned form and put

end to data processing.

FOURTH: It is accredited, after the verification carried out on August 4,

2020, that the data collection form has been effectively withdrawn.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

The defendant is imputed the commission of an infraction for violation of article 13 of the RGPD, regarding the information that must be provided when the data is obtained from the interested party, which establishes that:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;

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- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

- e) the recipients or the categories of recipients of the personal data, in their case;

- f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the

interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

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4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.”

The violation of this article is typified as an infringement in article 83.5 of the RGPD, which he considers as such:

“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:

[...] b) the rights of the interested parties under articles 12 to 22; [...]”

For the purposes of the limitation period of the infraction, article 72.1 of the LOPDGDD establishes:

“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:

[...] h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679. [...]”.

III

In accordance with the evidence available in this

penalty procedure,

the website

www.unionccafyde.site123.me, responsibility of the claimed, maintained a form

collection of personal data without providing in any way the information that

establishes article 13 of the RGPD.

it is considered that

As regards the arguments presented by the respondent —in which

points out that there had been no intentionality on his part the form had been

originally designed in compliance with the provisions of the RGPD and that for a

computer error had occurred the events that are the subject of this proceeding (without

provide evidence in this regard) -, it should be noted that article 5.1.a) of the RGPD

enunciates the principle of "legality, loyalty and transparency", a principle that affects the

Recital 39: «All processing of personal data must be lawful and fair. For

natural persons must be made absolutely clear that they are collecting, using,

consulting or otherwise treating personal data that concerns them, as well as

the extent to which such data is or will be processed. The principle of transparency

requires that all information and communication regarding the processing of said data be

easily accessible and easy to understand, and that simple and clear language is used.

This principle refers in particular to the information of the interested parties on the

identity of the data controller and the purposes thereof and the information

added to ensure fair and transparent treatment with respect to people

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physical affected and their right to obtain confirmation and communication of the data personal data that concern them that are subject to treatment. natural persons must be aware of the risks, standards, safeguards and rights regarding the processing of personal data as well as the way to assert their rights in relation to treatment. In particular, the specific purposes of the processing of personal data must be explicit and legitimate, and must be determined at the time of collection. Personal data must be adequate, pertinent and limited to what is necessary for the purposes for which they are treated. This requires, in particular, ensuring that their use is limited to a strict minimum. conservation period. Personal data should only be processed if the purpose of the processing treatment could not reasonably be achieved by other means. To ensure that personal data is not kept longer than necessary, the person responsible for the treatment must establish deadlines for its suppression or periodic review. must take all reasonable steps to ensure that they are rectified or deleted personal data that is inaccurate. Personal data must be treated in a way that guarantees adequate security and confidentiality of the data including to prevent unauthorized access or use of such data and of the equipment used in the treatment.

Recital 60 links the duty of information with the principle of transparency, by stating that “The principles of fair and transparent processing require that inform the interested party of the existence of the treatment operation and its purposes. The The data controller must provide the data subject with as much information supplementary information is necessary to guarantee fair and transparent processing, having regard to the specific circumstances and context in which the

personal information. The interested party must also be informed of the creation of profiles and the consequences of such elaboration. If personal data is obtained from interested parties, they must also be informed if they are obliged to provide them and the consequences in case they do not do it [...]". In this order, article 12.1 of the RGPD regulates the conditions to ensure its effective materialization and article 13 specifies what information must be provided when the data is obtained from the interested. In turn, article 11 LOPDGDD introduces the rule of information by layers when you have:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679. [...]»

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Thus established the duty of information and the obligation, on the part of the person responsible for carry out a transparent treatment, it cannot be ignored that article 5.2

of the RGPD establishes that “the person in charge of the treatment will be responsible for the compliance with the provisions of paragraph 1 and able to demonstrate it (“proactive responsibility”)”. This means that, in accordance with articles 24 and 25 of the same legal text, the person in charge must guarantee the effective application of the principles of treatment both at the time of determining the means of treatment as during the treatment itself through the articulation of a series of measures, which shall be subject to periodic review and updating.

This being the case, and even when in the present case the defendant had proceeded, at the time of determining the means to design and implement measures in accordance with guaranteeing compliance with the principle of transparency and the duty of information, this would not exempt him from continuing to be responsible for the effectiveness of said measures during the entire time in which the collection and processing of personal data, especially when in this case there has been no entrusting treatment to other actors.

IV

The corrective powers available to the Spanish Agency for the Protection of Data, as a control authority, is established in article 58.2 of the RGPD. Among them, they have the power to sanction with a warning -article 58.2 b)-, the power to impose an administrative fine in accordance with article 83 of the RGPD -article 58.2 i)-, or the power to order the controller or processor that the treatment operations comply with the provisions of the RGPD, when appropriate, in a certain way and within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d) of the aforementioned Regulation is compatible with the sanction consisting of a fine administrative.

Likewise, without prejudice to the provisions of article 83, the aforementioned RGPD provides for the possibility of sanctioning with a warning, in relation to what is indicated in the

Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance.

In the present case, when deciding the sanction to be imposed, they have taken into account account the following elements:

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☐ That it is a natural person whose main activity is not linked to the treatment of personal data.

☐ That there is no recidivism, because there is no record of the commission of infractions previous.

For all these reasons, it is considered that the sanction that should be imposed is warning, in accordance with the provisions of article 58.2 b) of the RGPD, in in relation to what is stated in Considering 148, cited above.

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 B.B.B., with NIF ***NIF.1, for an infraction of article 13 of the RGD, typified in article 83.5 of the RGD, a sanction of WARNING.

SECOND: NOTIFY this resolution to B.B.B. and inform 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 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-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.

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