

□ File No.: PS/00367/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On 03/09/2021, it had entry in this Spanish Agency of  
Data Protection a document presented by A.A.A. (hereinafter the part  
claimant), through which he makes a claim against B.B.B. with NIF \*\*\*NIF.1 (in  
hereinafter, the claimed party), as the website <http://carlotagarcia.es/> does not have  
a Privacy Policy appropriate to Regulation (EU) 2016/679 of the Parliament  
European and Council, of April 27, 2016, on the protection of people  
regarding the processing of personal data and the free circulation of  
these data (hereinafter, RGPD).

The claim indicates the following, in relation to the data protection regulations  
personal information:

“After having registered for a job offer through the internet, and consulting your  
privacy policy which is not in accordance with current regulations: RGPD 2016/679  
and LOPDGDD 3/2018. The data controller's privacy policy refers to  
regulations already repealed, so it would be infringing art. 24 GDPR as soon as  
to the responsibility of the data controller”.

Attach the following documentation:

- A copy of the Privacy Policy of the website <http://carlotagarcia.es/> in the  
indicating the following: “B.B.B. guarantees the protection of all data  
of a personal nature provided by the User on the Website and, in  
compliance with the provisions of Organic Law 15/1999, of December 13

Protection of Personal Data, in RD 1720/2007 of 21

December and other applicable regulations, informs you that:

a) All personal data provided to B.B.B. will be treated

by it in accordance with Organic Law 15/1999 of December 13

Protection of Personal Data and RD 1720/2007 of 21

December and will be included in the file USERS OF THE

WEBSITE, created and maintained under the responsibility of B.B.B.,

which has been duly registered with the Spanish Agency for

Data Protection.

b) The data collected for the following purposes: (I) management, study

and resolution of queries and (II) sending advertising and prospecting

commercial by electronic means, about the company, its

activities, products and services, as well as documentation of diverse

nature.

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c) In the collection and processing of personal data,

appropriate security measures have been taken to prevent the loss of

unauthorized access or manipulation thereof, in accordance with

what is established in Royal Decree 1720/2007, of December 21.

d) B.B.B. is committed to protecting the confidential information to which

have access.

e) B.B.B. will not use in any case the personal data that

you put at your disposal to provide services to third parties other than to those referred to in section b) of this document or, where appropriate, to achieve their own profit.

f) The User certifies that he is over 14 years of age and therefore has the necessary legal capacity for the provision of consent in regarding the processing of your personal data and all of this, in accordance with the provisions of this Privacy Policy.

g) The User may, at any time, exercise the rights of access, rectification, cancellation and opposition to your personal data as well such as the revocation of consent for any of the aforementioned purposes, sending to B.B.B. letter duly signed to our postal address, indicated above, where they include clearly the contact details, which must be accompanied photocopy of your DNI/NIF or document proving your identity.

h) The User authorizes the automated processing of personal data supplied under the terms indicated. To do this press the button "SEND" found after the data collection form.

- Two screenshots showing the job offer published by the claimed and the registration and subsequent rejection of the claimant in that offer.

SECOND: On 04/14/2021, the Subdirector General for Data Inspection accessed the web page <http://carlotagarcia.es/> being verified, on the one hand, that the claimed party acknowledges being the owner of the website in the fourth paragraph of the section "Legal Notice" and, on the other hand, that the Privacy Policy remains the same as appears in one of the documents provided by the claimant and indicated in the "Facts" section, first point, of this agreement.

With regard to the collection of personal data, this Subdirector General has verified

that there is a form that, under the heading "Submit your application", collects as name, email and phone number are required. In addition, it should be noted that it is also mandatory to insert the curriculum vitae and accept the Legal Notice and the Policy of Privacy to be able to send the form.

Prior to admitting this claim for processing, the Agency gave transfer of it to the claimed one on 04/21/2021, in accordance with article 65.4 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD). Occurred an attempt to notify the address that appears in the "Legal Notice" section of the website, but it was Returned to Origin by Unknown on 04/28/2021, according to appears in the Notice issued by the Post Office.

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THIRD: On 07/02/2021, the Director of the Spanish Protection Agency

Data agreed to admit the claim filed by the claimant for processing.

FOURTH: On 10/08/2021, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FIFTH: An attempt was made to notify the opening agreement of this

sanctioning procedure by postal mail, which resulted in "Returned to origin by

Unknown", according to the notice issued by the Post Office. In this way, the notification occurred through an announcement published in the Official State Gazette on the day

05/11/2021 and a hearing period of TEN WORKING DAYS is granted so that

formulate allegations and present the evidence it deems appropriate, in accordance with the provisions of articles 73 and 76 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

SIXTH: After the term granted for the formulation of allegations to the agreement of the beginning of the procedure, it has been verified that no allegation has been received by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure Common Public Administrations (hereinafter LPACAP) -provision of which the party claimed was informed in the agreement to open the proceeding- establishes that if allegations are not made within the stipulated period on the content of the initiation agreement, when it contains a precise statement about the imputed responsibility, may be considered a resolution proposal.

In the present case, the agreement to initiate the disciplinary proceedings determined the facts in which the imputation was specified, the infraction of the RGPD attributed to the claimed and the sanction that could be imposed. Therefore, taking into account that the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of beginning is considered in the present case resolution proposal.

SEVENTH: The agreement to open the procedure agreed in the fourth point of the operative part "INCORPORATE to the disciplinary file, for the purposes of evidence, the claims submitted by claimants and the information and documentation obtained by the Subdirectorate General for Data Inspection in the phase of information prior to the agreement for admission to processing of the claim".

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: A claim is filed for non-compliance with the regulations of protection of personal data on the website <http://carlotagarcia.es/>. The agency Spanish Data Protection has verified that the Privacy Policy is not conforms to the provisions of article 13 of the RGD. Well, mention regulations already [www.aepd.es](http://www.aepd.es)

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repealed and, therefore, does not cover all the issues listed in the said precept.

SECOND: The Spanish Data Protection Agency has notified the respondent the agreement to open this sanctioning procedure, but has not presented allegations or evidence that contradicts the facts denounced.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGD 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.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the 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."

Article 4 of the GDPR, under the heading "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

- 1) "personal data": all information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;
- 2) "treatment"; any operation or set of operations performed on data personal information or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"

Therefore, in accordance with the above definitions, data collection through forms included in a web page constitutes a data processing, with respect to which the data controller must give compliance with the provisions of article 13 of the RGD.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty

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to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and,

in case of carrying out low-risk data processing, the free tool

Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

### III

Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, indicates 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;
- 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;

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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 data controller plans further data processing

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.

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.”

For its part, article 11 of the LOPDGDD, provides the following:

"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.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for

Data Protection, as a control authority, has a set of

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corrective powers in the event of an infraction of the precepts of the  
GDPR.

Article 58.2 of the RGPD provides the following:

a) (...)

b) send a warning to any person responsible or in charge of treatment when the  
treatment operations have violated the provisions of this Regulation;

c) (...)

d) order the person responsible or in charge of 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 under article 83, in addition to or instead of  
the measures mentioned in this section, according to the circumstances of each  
particular case".

Article 83.5 b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the  
section 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 pursuant to articles 12 to 22;”

In turn, article 72.1 h) of the LOPDGDD, under the heading "Infringements considered very serious" provides:

“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 processing of their data personal in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.”

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In this case, the respondent has not presented arguments or evidence that contradict the facts denounced in the term for it.

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This Agency has verified that the conduct of the respondent is not in accordance with the data protection regulations, since the Privacy Policy of its website

<http://carlotagarcia.es/> mentions repealed regulations and does not contain all the information required in article 13 of the RGPD, indicated in the legal basis III.

Thus, the exposed facts constitute, on the part of the claimed, a infringement of the provisions of article 13 of the RGPD.

SAW

In accordance with article 58.2 b), for the commission of this infraction, it is appropriate address a warning when collecting personal data from users to through forms and consider that the administrative fine that could fall with in accordance with the provisions of article 83.5 b) of the RGPD would constitute a burden disproportionate to the one claimed, since there is no record of the commission of any previous breach of data protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution is required to the claimed, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collect from them the requirements contemplated in article 13 of the RGPD, as well as such as the provision of means of proof accrediting compliance with the required.

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Agency for Data Protection, RESOLVES:

FIRST: ADDRESS B.B.B., with NIF \*\*\*NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: REQUIRE B.B.B., with NIF \*\*\*NIF.1, under the provisions of the article 58.2 d) of the RGPD, so that within ten business days from this act of notification accredits before this body the adoption of measures to facilitate information to the people whose personal data it collects, in accordance with the provisions of the article 13 of the RGPD.

THIRD: NOTIFY this resolution to B.B.B...

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

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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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