

Procedure No.: PS/00257/2019

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 03/22/2019 filed
claim before the Spanish Data Protection Agency. The claim is
directs against D.B.B.B. (**URL.1), with NIF ***NIF.1 (hereinafter, the claimed one). The
reasons on which the claim is based are in summary: that the website does not have a policy
of privacy nor is the treatment of the data collected in the form specified.
Contact.

SECOND: In view of the facts denounced in the claim and the
documents provided by the claimant, the Subdirector General for Inspection of
Data proceeded to carry out preliminary investigation actions for the
clarification of the facts in question.

- It has been found that the website lacks Legal Notice, Privacy Policy and
box of acceptance of this policy in the contact form where they are collected
Personal data. It is not known, therefore, the treatment that will be given to the
Data collected. Diligence and objects are recorded in the SIGRID system of this Agency.
associated with impressions of the home page and the contact form.

Although a "Privacy and Privacy" tab appears on the website pages.

Cookies policy" when activated it only shows the following:

"We use our own and third-party cookies to improve the browsing experience, and
offer content of interest. By continuing to browse, we understand that
accept our cookie policy. I agree"

Personal data is also collected and sent to third parties. In this case to "mailchimp.com" which is an email distribution list manager located in Atlanta, United States of America.

- Required information about the owner of the domain to the registrar DINAHOSTING S.L., (hereinafter DINAHOSTING), dated 03/22/2019 is received in this Agency, with registration number ***REGISTRO.1, in writing stating that the owner of said domain is:

The defendant, with address at C/ ***DIRIMIENTO.1 - 33402 Avilés (ASTURIAS).

THIRD: On 09/23/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure for the presumed infraction of the article 13 of the RGPD, in accordance with the provisions of article 58 section 2 of the same norm, considering that the sanction that could correspond would be WARNING, without prejudice to what may result from the investigation.

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2/7

FOURTH: Notification of the start agreement of the claimant by means of a document dated 10/15/2019 has stated in summary: that at the time of this response the website had been closed and canceled by its owner, the claimed; than the one mentioned website was intended to be a place for the exchange of opinions without having been treated, used, disclosed or transferred any data; that the defendant has acted in all time moved by good faith, being oblivious to any activity related to the computer or analogous and that in no way did he have the belief that he was violating the GDPR; that in the exercise of that responsibility and to avoid incurring

in any violation is why it proceeds to close as soon as it has had knowledge of the facts.

FIFTH: On 11/13/2019, a Resolution Proposal was issued in which it was indicated that the Director of the Spanish Agency for Data Protection sanctioned the claimed, for an infringement of article 13 of the RGD, typified in Article 83.5 of the RGD, a sanction of warning.

After the period for pleadings, the respondent did not submit any brief.

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

PROVEN FACTS

FIRST: On 03/22/2019 the claimant filed a document with the Spanish Agency for Data Protection, stating that the website <http://cancerintegral.com> did not have privacy policy nor was the treatment of the data collected in the contact form, violating the regulations on data protection.

SECOND: The defendant, on 10/15/2019, in writing of allegations to the agreement of beginning has stated that as soon as he had knowledge of it he had proceeded to close and cancel said page, without at any time having proceeded to the disclosure, transfer, disclosure or treatment of data.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

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3/7

II

The facts denounced are specified in the absence of privacy policy of the website <http://cancerintegral.com/>, in accordance with current regulations in matter of protection of personal data, specifically there is no information any in the sense indicated in article 13 of the RGPD.

This article determines the information that must be provided to the interested party at the time of collecting your data, establishing the following:

“Article 13. Information that must be provided when personal data is obtain from the interested party.

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 any;

c) the purposes of the treatment to which the personal data is destined and the basis legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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

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

f) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

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 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 related 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 data portability;

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4/7

c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on 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 providing such data;

f) the existence of automated decisions, including profiling, to referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the applied logic, as well as the importance and anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

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

The defendant has violated the regulations on data protection materialized in the inappropriate and defective configuration of the web page in what regarding the information offered in terms of data protection of those people accessed and registered in it, as indicated by the claimant, lacking privacy policy and legal notice.

In addition, the website <http://cancerintegral.com> contained a form for the collection of user data, without making any reference to compliance with the established in accordance with the provisions of article 13 of the RGPD above cited, in the sense of determining the identity of the person responsible, the purposes for which will assign the data and the rights that the interested party can exercise before the responsible etc

The exposed facts constitute an infraction attributable to the claimed, for violation of article 13 of the RGPD.

However, it should be noted that the owner of the website in allegations to the agreement at the beginning proves having proceeded to the closure and cancellation of the page object of claim.

III

Article 83.5 b) of the RGPD considers that the infringement of “the rights of those interested in accordance with articles 12 to 22”, is punishable, in accordance with the “with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation, administrative fees of €20,000,000 maximum or, in the case of a company, a amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the highest amount.

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5/7

The LOPDGDD in its article 72 indicates for prescription purposes: "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:

(...)

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 and 12 of this organic law.

(...)"

However, article 58.2 of the REPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)"

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations. About when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD or the corrective measure of warning of article 58.2.b), the rule itself in its Recital 148 of Regulation 2016/679, which establishes the following:

"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."

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6/7

In the case that concerns us, the present sanctioning procedure is opening because the respondent did not have the website adapted to the requirements established in the RGD; Such conduct constitutes a violation of the provisions of the article 13 of the RGD.

At the same time, the adoption of any specific measure to be taken is not urged, since that has been accredited by the claimed party after the notification of the agreement to initiate the sanctioning procedure having proceeded to the withdrawal and cancellation of the website that violated the requirements established by the new RGD.

To conclude, given the absence of intent, the absence of damages, the behavior of the defendant and the diligence displayed immediately communicating to this body the cancellation and removal of the website, further attenuate his guilt in this case, so it is appropriate to sanction with warning.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B. (**URL.1), with NIF **NIF.1, for an infraction of the article 13 of the RGD, typified in accordance with the provisions of article 83.5.b) of the cited RGD and in accordance with the provisions of article 58.2.b) of the RGD, a PENALTY sanction.

SECOND: NOTIFY this resolution to B.B.B. (**URL.1).

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

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 LOPDPGDD, 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

Electronic Registration of

through the

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7/7

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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