

Procedure No.: PS/00195/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On November 19, 2018, this Agency has entered a
complaint filed by A.A.A. (hereinafter, the complainant), in which it states that
was incorporated into a WhatsApp group without his consent.

The person responsible for such events is a real estate agent of a franchisee of
CENTURY 21.

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

On February 1, 2019, the claim filed for
analysis and communication to the complainant of the decision adopted in this regard. Equally,
he was required so that within a month he sent to the determined Agency
information:

- Copy of the communications, of the adopted decision that has sent the claimant to
purpose of transferring 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 similar incidents from occurring.
- Any other that you consider relevant.

On February 1, 2019, the claimant was informed of the receipt of the claim and
its transfer to the claimed entity.

The respondent has not responded to any of the requirements made by the Spanish Data Protection Agency.

THIRD: On May 7, 2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Data Protection Agency agreed to admit process the claim filed by the claimant against CENTURY 21.

FOURTH

O: On June 27, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1 of the LOPDGDD, typified in Article 83.5 of the GDPR.

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FIFTH: On July 12, 2019, the denounced entity makes allegations to the initial agreement stated the following:

The following actions have been carried out:

-Remission of a letter of apology to the affected party, sent by Burofax dated 01/25/2019, informing you of the following:

“We are contacting you to send you our most sincere

apologies for the inconvenience that occurred last November 2018

regarding the inclusion of your phone number in a <<WhatsApp>> chat by

part of one of our collaborating advisors. This merchant has never acted

in bad faith, having proceeded to correct the error, eliminating the aforementioned chat as

He soon expressed his disagreement.

Likewise, we inform you that last November 2018, your

data was removed from our files. For this purpose we have to put manifest, that your address for the remittance of this notification, have been issued from the report of the claim received from the Spanish Protection Agency of data."

-Remission of explanatory letter, of the causes that motivated the incidence of date 02/28/2019, noting that:

"The only object that motivated the incidence is absolutely the ignorance of the grievance that the inclusion in said WhatsApp group and its display of your contact number by all those participants of the said chat.

The affected party correctly filled out our contact form requesting said information about our real estate offer, said form had its relevant information clause about the processing of personal data, was an error of interpretation on the part of our real estate advisor about said data processing clause, since in said paragraph it does not refer to the diffusion through WhatsApp groups. Therefore, our adviser deliberately decided that it had the relevant legitimacy for inclusion and its respective dissemination of said personal data of Mr. A.A.A. and always from Ignorance that would suppose the effects of injury that said diffusion of personal data without consent.

Due to the technological situation to which we all contribute motivated by the current times, always from the good faith we understood that it was a method simple and fast dissemination of information previously requested by the affected party about our real estate, it was not until we became aware of the complaint of the affected, totally legitimate, that we do not calibrate that said decision unequivocal on our part would entail such dissemination of your personal data without your

prior consent and therefore such damage to their personal privacy.”

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- Hiring a company specialized in data protection called

DATAPREV, S.L. located at Paseo de Berio 43, San Sebastián (Guipúzcoa),

(info@dataprev.es)

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: On November 19, 2018, the complainant states to this Agency that he was

added to a WhatsApp group without your consent.

SECOND: On July 12, 2019, the entity denounced, makes allegations in

response to the agreement to initiate this procedure, indicating that it has proceeded

to send a letter of apology to the affected party, dated 01/25/2019. solving the situation,

and to hire the company DATAPREV, S.L., specialized in data protection

personal.

FOUNDATIONS OF LAW

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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 LOPDPGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the

treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, section 1, further processing of personal data for archiving purposes in the interest public, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable for the erasure or rectification without delay of the personal data that is inaccurate with respect to the purposes for which they are processed ("accuracy");

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e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of processing the personal data; the personal data may be kept for longer periods as long as they are processed exclusively for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it ("proactive responsibility")."

III

According to the evidence currently available,

and without prejudice to what results from the investigation, it is considered that the known facts could constitute an infraction, attributable to the defendant, for violation of the principles of "purpose limitation" and "integrity and confidentiality" of art. 5.1 b) and f) of the GDPR.

IV

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in accordance with 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 case particular;

The art. 83.5 of the RGPD establishes that infractions that affect:

"a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22."

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation with what is stated in Considering 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.”

SAW

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each supervisory authority may “order the responsible or in charge of the treatment that the treatment operations are comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period...”. The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

7th

In this specific case, it has been accredited by virtue of the documents provided by the entity denounced on July 12, 2019, that by hiring the company DATAPREV, S.L., specialized in data protection, and send a letter of apology to the affected party, date 01/25/2019, the required measures have been adopted in the agreement to start the

this procedure, consisting of the suppression of the data of the claimant of the

WhatsApp group of the reported entity in accordance with the principles of

purpose and integrity and confidentiality regulated in article 5.1 b) and f) of the RGPD.

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: WARN DESSAU ARTE INMOBILIARIO, S.L. (CENTURY 21

ARQUITECTURA), with NIF B76693894, for an infringement of article 5.1 b) and f) of the

RGPD typified in article 83.5.a) of the RGPD and considered very serious in the article

72.1.d) and i) of the LOPDGDD.

SECOND: NOTIFY this resolution to DESSAU ARTE INMOBILIARIO, S.L.

(CENTURY 21 ARQUITECTURA), with NIF B76693894 and, in accordance with article 77.2 of the

RGPD, and INFORM the claimant about the result of the claim.

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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. 114.1 c)

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

Interested parties may optionally file an appeal for reconsideration before the Director

of the Spanish Agency for Data Protection within a period of one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

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 two months from the day following the notification of this act,

according to the provisions of 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 decision may be provisionally suspended in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry

Electronic 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 1

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

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Director of the Spanish Data Protection Agency