

□ Procedure No.: PS/00213/2021

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 4, 2020, A.A.A. (hereinafter, the claimant)
filed a claim with the Spanish Data Protection Agency. The
claim is directed against the OFFICE WEATHER INFANTS CONSULTANTS
ASESORES, S.L., with NIF B82153610 (hereinafter, the claimed). the claimant
states that your personal data has been transferred to a third party.

Provides two emails sent to a co-worker that contain
your personal data (payroll and extension of working hours).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and Guarantee of Digital Rights
(hereinafter LOPDGDD), said claim was transferred to the respondent, so that
proceed to its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements set forth in the regulations of
Data Protection.

There is no record in this Agency of a reply to the transfer of the claim.

THIRD: On May 5, 2021, in accordance with article 65 of the
LOPDGDD, the director of the Spanish Data Protection Agency agreed to admit
processing the claim filed by the claimant against the respondent.

FOURTH: In view of the facts denounced, in accordance with the evidence of
that is available, the Data Inspection of this Spanish Agency for the Protection of
Data considers that the treatment of personal data that is carried out by the

entity claimed does not meet the conditions imposed by the regulations on data protection, so it is appropriate to open this procedure sanctioning

FIFTH: On June 18, 2021, 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.f) of the RGPD, typified in Article 83.5 of the GDPR.

SIXTH: Having notified the aforementioned initial agreement and not having presented arguments, in accordance with the provisions of article 64.2.f) of Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations, the agreement of start can be considered motion for a resolution. Consequently, this Agency proceeds to dictate Resolution.

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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: On December 4, 2020, the claimant filed a claim before the Spanish Agency for Data Protection, against the WEAVER OFFICE INFANTES CONSULTORES ASESORES, S.L., with NIF B82153610, since its personal data had been transferred to a third party.

Provides two emails sent to a co-worker that contain your personal data (payroll and extension of working hours).

SECOND: There is no record in this Agency of a reply to the transfer of the claim.

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 Agency for Data Protection is competent to resolve this procedure.

SECOND: The defendant is charged with the commission of an infraction for violation of the Article 5.1.f) of the RGPD, Principles related to treatment, which states the following:

"1. The personal data will be:

(...)

f) processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or appropriate organizational ("integrity and confidentiality").

Article 5 of the LOPDGDD, Duty of confidentiality, states the following:

"1. Those responsible and in charge of data processing, as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when the relationship between the obligor and the person in charge or in charge of the transaction had ended.

treatment".

The documentation in the file offers clear indications that the claimed, violated article 5 of the RGPD, principles related to treatment, in relation to article 5 of the LOPGDD, duty of confidentiality, when sending various

emails, disclosing information and personal data to third parties.

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This duty of confidentiality must be understood to have the purpose of preventing leaks of the data are carried out without the consent of the owners of these.

Therefore, this duty of confidentiality is an obligation that falls not only on the responsible and in charge of the treatment, but to everyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

THIRD: The infringement is typified in article 83.5 of the RGPD and is qualified as Serious in article 72 section 1, letter i) of the LOPDGDD.

Article 83.5 of the RGPD provides the following:

"5. Violations of the following provisions 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:

a)

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

For its part, article 71 of the LOPDGDD, under the heading "Infringements" determines what following: Violations constitute the acts and conducts referred to in the sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

Establishes article 72 of the LOPDGDD, under the rubric of infractions considered

very serious, the following: "1. Based on the provisions of article 83.5 of the

Regulation (EU) 2016/679 are considered very serious and will expire after three years

infractions that suppose a substantial violation of the articles

mentioned therein and, in particular, the following:

(...)

Yo)

The violation of the duty of confidentiality established in article 5 of

this organic law.

In the present case, the infringing circumstances provided for in article

83.5 of the RGPD and 72.1 i) of the LOPDGDD, transcribed above.

FOURTH: In order to determine the administrative fine to be imposed, the

provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or as a substitute for the measures contemplated in the

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Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature nature, scope or purpose of the processing operation in question, as well as the number number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa- allocate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, gives an account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular whether the person in charge or the person in charge notified the infringement and, if so, to what extent. gives; i) when the measures indicated in article 58, section 2, have been ordered given previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under Article 40 or to certification mechanisms approvals approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or indirectly. mind, through infraction.”

For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD has:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of treatments

of personal data.

c) The profits obtained as a result of committing the offence.

d) The possibility that the conduct of the affected party could have induced the

commission of the offence.

e) The existence of a merger by absorption process after the commission

of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with

voluntary, to alternative conflict resolution mechanisms, in those

data.

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assumptions in which there are controversies between those and any

interested."

In accordance with the precepts transcribed, in order to set the amount of the penalty for

infraction of article 5.1 f) to the defendant, as responsible for the aforementioned infraction

typified in article 83.5 of the RGPD, it is appropriate to graduate the fine taking into account:

- The merely local scope of the treatment carried out by the entity claimed.
- Only one person has been affected by the offending conduct.
- The damage caused to the claimant having to go to this instance claiming the above facts.
- The entity complained against has not responded to the informative request of the Agency which affects the lack of cooperation with the control authority with the in order to remedy the violation and mitigate the possible adverse effects of the same.
- There is no evidence that the entity had acted maliciously, although the performance reveals a serious lack of diligence.
- The claimed entity is a small business.

Considering the exposed factors, the valuation that reaches the amount of the fine is €2,000 for violation of article 5.1 f) of the RGPD, regarding the violation of the principle of confidentiality.

FIFTH: Establishes Law 40/2015, of October 1, on the Legal Regime of the Sector Public, in Chapter III on the "Principles of the power to sanction", in the Article 28 under the heading "Responsibility", the following:

"1. They may only be sanctioned for acts constituting an infraction. natural and legal persons administratively, as well as, when a Law recognize capacity to act, affected groups, unions and entities without legal personality and independent or autonomous estates, which are responsible for them by way of fraud or negligence."

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 INFANTS CONSULTANTS WEAVER OFFICE

ASESORES, S.L., with NIF B82153610, for an infringement of article 5.1.f) of the RGD, typified in Article 83.5 of the RGD, a fine of 2,000 euros (TWO THOUSAND euros).

SECOND: NOTIFY this resolution to the INFANTES WEAVER OFFICE

CONSULTANTS ADVISORS, S.L.

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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-](https://sedeagpd.gob.es/sede-electronica-web/)

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

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