

□ Procedure No.: PS/00165/2020

938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) dated October 25, 2019
filed a claim with the Spanish Data Protection Agency. The
claim is directed against D. B.B.B. with NIF ***NIF.1 (hereinafter, the claimed one).

The claimant states that, after a discrepancy with the administrator of the
Community of Owners, this has sent you, on August 20, 2019, an email
email related to the non-conformity, where other copies appear
recipients, thus disclosing the personal data of your email without your consent.

The claimant also states that he uses his email for personal use.

The possible violation of the duty of secrecy and the diversion of purpose are claimed.

Along with your written claim, a copy of the email of
date August 20, 2019.

SECOND: In view of the facts set forth in the claim and the documents
provided by the claimant, the General Subdirectorate for Data Inspection proceeded
to carry out actions for its clarification, under the powers of
investigation granted to the control authorities in article 57.1 of the Regulation
(EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD).

Thus, on June 5, 2020, a letter is addressed to the claimant admitting his
claim pending.

It is recorded that on December 10, 2019, the claim was transferred to the

claimed in the actions with reference E/11237/2019, through the service of post office, said shipment being delivered on the 18th of the same month and year.

Requiring the claimed the following information:

Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of this decision.

Report on the causes that have motivated the incidence that has originated the claim.

Report on the measures adopted to prevent incidents from occurring

Similar.

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Any other that you consider convenient.

The respondent has not responded to said request for information from the Spanish Data Protection Agency.

THIRD: On June 24, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 5.1.f) of the RGPD, typified in the Article 83.5 of the RGPD.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it states: "that the recipients of the copy are

habitual suppliers of the Community for 13 years, and that whenever the claimant has promoted an incident in his Community has authorized his data is provided to the referred providers, so it is data that

They have always been and are available to the repairers of the building. attaching copies of the invoices of all of them”.

FIFTH: On July 29, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous actions, E/11237/2019, as well as the documents provided by the reclaimed.

SIXTH: On September 10, 2020, a resolution proposal was formulated in the following terms:

“That by the Director of the Spanish Data Protection Agency, impose D. B.B.B., with NIF ***NIF.1, for a violation of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning”.

In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts.

FACTS

SINGLE: Email dated August 20, 2019, sent by the claimed to the claimant, where other recipients appear on a copy, thus disclosing the data of your email without your consent.

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FOUNDATIONS OF LAW

Yo

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

The defendant is imputed the commission of an infraction for violation of art. 5 of the RGPD that 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,

paragraph 1, the further processing of personal data for archiving purposes in

public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties

for no longer than is necessary for the purposes of data processing

personal; personal data may be kept for longer periods

provided that they are treated exclusively for archiving purposes in the public interest, purposes of scientific or historical research or statistical purposes, in accordance with article

89, paragraph 1, without prejudice to the application of technical and organizational measures

measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period");

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

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

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III

In the present case, it has been found that sending an email no blind copy on August 20, 2019 by the claimed, sent to others recipients, implies the violation of article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the controller to demonstrate its compliance.

The defendant justifies his action by pointing out that the addressees in a copy They have been regular suppliers for 13 years.

This argument is not adjusted to law, since, if the claimed when sending emails to different recipients will use the send option with a hidden copy to avoid transferring information with personal data to all addressees, the facts denounced would be solved, simply using said

option.

According to the available evidence, it is considered

tested, sending an email without a blind copy on August 20, 2019

by the claimed party, sent to other recipients showing the personal data

of the claimant, and therefore it is understood that the claimed party has violated article 5.1 f)

of the RGPD, which governs the principles of data integrity and confidentiality

personal data, as well as the proactive responsibility of the data controller

demonstrate compliance.

IV

Article 72.1.a) of the LOPDGDD states that "according to what is established

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and

Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679

v

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

warning when the processing 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 a certain way and within a specified period;

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i) impose an administrative fine under article 83, in addition to or in
instead of the measures mentioned in this paragraph, depending on the circumstances
of each particular case;

The art. 83.5 of the RGPD establishes that the 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.”

SAW

The exposed facts constitute, on the part of the defendant, an infraction to the
provided in article 5 1 f) of the RGPD.

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD,
in your art. 58.2 b) provides the possibility of sanctioning with a warning, when collecting
through the list of postal mail personal data of officials and consider that
the administrative fine that could fall in accordance with the provisions of article
83.5.b) of the RGPD would constitute a disproportionate burden for the claimed party, whose
main activity is not directly linked to the processing of personal data,
since there is no record of the commission of any previous infringement in terms of protection
of data, in relation to 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.”

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 5.1.f)

of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

SECOND: REQUIRE B.B.B. so that within a month from the notification of this resolution:

2.1 COMPLY with the provisions of article 5.1.f) of the RGPD, for which the called for the adoption of all necessary measures so that when you send

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emails to different recipients use the blind copy option to avoid transferring information with personal data to all recipients.

2.2 REPORT to the Spanish Agency for Data Protection of compliance with as required, providing the documents or other means of proof in which show compliance.

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

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

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.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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