

□ Procedure No.: PS/00075/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The COMMAND of the CIVIL GUARD of the Post of

***LOCALIDAD.1 (hereinafter, the claimant) sends on 08/29/2019 Official Letter as
consequence of the preparation of the report-complaint for possible violation of the aforementioned
in the RGPD and LOPDGDD in relation to D. A.A.A., with NIF ***NIF.1 (hereinafter, the
reclaimed). A copy of the record of the complaint that motivates the intervention is provided
of the aforementioned body and the facts are in summary the following: in the aforementioned position
person a client of the claimed, dedicated to the installation of gas, providing a
document called Perpetual Dietary of red color containing a large number
of annotations of clients with their name, surnames, DNI, divided by parishes and
containing in many cases the address and telephone; that the aforementioned diary was
forgotten by the respondent at his home as he had when he was carrying out
installation of gas; that the acting force has confirmed the extremes manifested
by the declarant, which could entail a processing of personal data without
consent of the interested parties; that every time the claimed after the instructions
of police diligence for alleged crime of fraud and damages followed before the Court
of Instruction of ***LOCALIDAD.1 it is verified that it could be treating data of
personal character of clients without the corresponding consent and without informing them
of the terms indicated in the RGPD.

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

On 10/28/2019, the claim submitted was transferred to the defendant for analysis and communication to the claimant of the decision adopted in this regard. Likewise, it required so that within a month it would send to the Agency determined 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 that decision.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of similar incidents.
- Any other that you consider relevant.

THIRD: On 03/04/2020, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the respondent.

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FOURTH: On 06/08/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the person claimed: a) for the alleged infringement of article 6.1.a) of the RGPD, sanctioned in accordance with the provisions of the article 83.5.a) of the aforementioned RGPD and, b) for the alleged infringement of article 13 of the RGPD, sanctioned in accordance with the provisions of article 83.5.b) of the aforementioned standard.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the

content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

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

accredited the following:

PROVEN FACTS

FIRST: On 08/29/2019 the COMMAND of the CIVIL GUARD of the Post of

***LOCALIDAD.1 (hereinafter, the claimant) sends Official Letter as a result of the

preparation of minutes-complaint for possible violation of what is indicated in the RGPD and

LOPDGDD in relation to the performance of D. A.A.A., with NIF ***NIF.1 (hereinafter, the

reclaimed). They provide a copy of the record of the complaint that motivates the intervention of the

the aforementioned body and the facts are in summary the following: in the aforementioned position

person a client of the claimed, dedicated to the installation of gas, providing a

document called Perpetual Dietary of red color containing a large number

of annotations of people with their name, surnames, DNI, divided by parishes and

containing in many cases the address and telephone; that the aforementioned diary was

forgotten by the respondent at his home as he had when he was carrying out

installation of gas; that the claimant has confirmed the extremes expressed by the declarant, which could entail a processing of personal data without consent of the interested parties; that every time the claimed after the instructions of police diligence for alleged crime of fraud and damages followed before the Court of Instruction of ***LOCALIDAD.1 it is verified that it could be treating data of personal character of clients without the corresponding consent and without informing them of the terms indicated in the RGPD.

SECOND: There is proof of delivery of a copy of the invoice issued by the claimed where the interested parties are not informed about the regulations regarding data protection and rights that assist them.

THIRD: There is proof provided of delivery diligence by private individual of a type book diet, red pastes, providing a descriptive photograph of the same, as well as copy of folios of the same in which they appear linked by parishes, the names, Surnames and DNI of people supposedly clients of the claimed.

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 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.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of

the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the regulatory norms of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.
- e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.
- f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal

when it contains a precise statement about the responsibility

imputed.

3. Exceptionally, when at the time of issuing the initiation agreement

there are not sufficient elements for the initial qualification of the facts that motivate

the initiation of the procedure, the aforementioned qualification may be carried out in a phase

later by drawing up a List of Charges, which must be notified to

the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the procedure

initiated.

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III

The claimed facts are specified in the processing of data of a character

without consent or any other cause that legitimizes said treatment by the

claimed, collecting in its agenda-document called Perpetual Diary the

personal data of the inhabitants of several parishes and, moreover, without informing them of

the rights that assist them in accordance with the provisions of article 13 of the

GDPR.

Article 58 of the RGPD, Powers, states:

"two. Each supervisory authority will have all of the following powers

corrections 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;

(...)

i) impose an administrative fine under article 83, in addition to or in Instead of the measures mentioned in this section, according to the circumstances of each particular case;

(...)"

IV

Infringement of article 6.1.a) of the RGPD

Article 5, Principles relating to processing, of the GDPR establishes:

"1. The personal data will be:

a) processed in a lawful, loyal and transparent manner in relation to the interested party ("legality, loyalty and transparency");

On the other hand, article 6, Legality of the treatment, of the RGPD establishes that:

"1. The treatment will only be lawful if at least one of the following is met conditions:

a) the interested party gave their consent for the processing of their data personal for one or more specific purposes; (...)"

In article 4 of the RGPD, Definitions, in section 11, it states that:

"11) «consent of the interested party»: any manifestation of free will, specific, informed and unequivocal by which the interested party accepts, either through a statement or a clear affirmative action, the processing of personal data that concern him".

Also article 6, Treatment based on the consent of the affected party, of the new Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), indicates that:

- "1. In accordance with the provisions of article 4.11 of the Regulation (EU) 2016/679, consent of the affected party is understood to be any manifestation of will free, specific, informed and unequivocal by which he accepts, either through a declaration or a clear affirmative action, the treatment of personal data that concern.
2. When the data processing is intended to be based on consent of the affected party for a plurality of purposes, it will be necessary to state specific and unequivocal that said consent is granted for all of them.
3. The execution of the contract may not be subject to the affected party consenting to the processing of personal data for purposes unrelated to the maintenance, development or control of the contractual relationship".

v

The documentation in the file shows that the defendant violated article 6 of the RGPD, since it has illicitly processed the data of personal character of the interested parties, as there is no legitimizing cause for the treatment of personal data, materialized in the list containing the name, surnames and DNI of numerous people, grouped by parishes, all collected and contained in the Perpetual Dietary document belonging to the

reclaimed.

It should be noted that respect for the principle of legality of the data requires that accredited record that there is a legitimizing cause for the treatment of the data and display a reasonable essential diligence to prove that point. Not Acting in this way would result in voiding the content of the principle of legality.

SAW

Article 83.5 a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned Regulation, “with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

On the other hand, the LOPDGDD for prescription purposes states in its article 72:

“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:

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b) The processing of personal data without the concurrence of any of the

conditions of legality of the treatment established in article 6 of the Regulation

(EU) 2016/679.

(...)"

In order to establish the administrative fine to be imposed,

observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which

point out:

7th

"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 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, scope or purpose of the processing operation in question

as well as the number of stakeholders affected and the level of damage and

damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor

to alleviate 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, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction 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 put

remedying the breach and mitigating the possible adverse effects of the breach;

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 if the person in charge or the person in charge notified the infringement and, in such case,

what extent;

i) when the measures indicated in article 58, paragraph 2, have been

previously ordered 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 mechanisms

certificates approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the

case, such as financial benefits realized or losses avoided, direct

or indirectly, through infringement.

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In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the 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 assumptions in which there are controversies between those and any interested."

data.

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the sanction to be imposed in the present case for the infringement typified in article 83.5.a) of the RGPD of which the defendant is held responsible, in an initial assessment, it is estimated that the following factors:

The merely local scope of the treatment carried out by the claimed party.

Numerous people have been affected by the offending conduct.

The respondent does not record that he has adopted measures to prevent the occurrence of similar incidents can be avoided, avoiding future effects, since when faced with the requirement informative did not respond to it.

Although there is no evidence that he had acted maliciously, his actions tion reveals a lack of diligence.

The defendant has not been sanctioned previously.

The respondent is a natural person, self-employed.

For all these reasons, a sanction is imposed for violation of article 6.1.a) of the GDPR of 3,000 euros.

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Violation of article 13 of the RGPD

viii

The claimed facts also evidence the violation by the claimed as stated in article 13 of the RGPD, by not reporting the treatment of personal data with the requirements and pronouncements established in the cited article, materialized in the issuance of an invoice to its clients not informing in the former sense.

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

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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;

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

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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.

IX

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.

The LOPDGDD in its article 72 indicates: "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.

(...)"

It should also be noted that taking into account that the respondent collects the

personal data of the interested parties, contravenes article 13 of the RGPD, since it does not

provides them with prior to their collection, all the information regarding

data protection provided for in said precept.

X

According to the evidence revealed, the facts

exposed constitute a violation of the provisions of article 13 of the RGPD.

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This infringement in accordance with article 58.2.b) of the RGPD, is sanctioned with

warning when considering that the administrative fine that could fall under

to the provisions of article 83.5.b) of the RGPD could constitute a burden disproportionate for the defendant, who is already imposed an economic fine for the infringement of article 6.1.a) of the RGPD, and that there is no record of the commission of any previous infraction in terms of data protection, giving the possibility that in your professional activity establishes an information protocol for your clients.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, the claimed party is required, as the data controller, to provide information to users whose personal data is collected from them to the requirements contemplated in article 13 of the RGPD, as well as the contribution of means of evidence accrediting compliance with the requirements.

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: IMPOSE D. A.A.A., with NIF ***NIF.1, for an infraction of article 6.1.a) of the RGPD, typified in article 83.5 of the RGPD and considered very serious to effects of prescription in article 72 of the LOPDGDD, a fine of €3,000 (three a thousand euros).

SECOND: IMPOSE D. A.A.A., with NIF ***NIF.1, for a violation of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

THIRD: REQUEST D. A.A.A., with NIF ***NIF.1, so that within one month from the notification of this resolution, certify: the adoption of the measures necessary and pertinent in accordance with the provisions of article 13 of the RGPD to in order to prevent infractions such as those that have occurred in the future from happening again. place to claim.

FOURTH: NOTIFY this resolution to A.A.A., with NIF ***NIF.1

FIFTH: 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 is between the 1st and 15th of each month, both inclusive, the term to carry out the voluntary payment will be until the 20th day of the following month or immediately after, and if

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is between the 16th and last day of each month, both inclusive, the term of the payment will be until the 5th of the second following month or immediately after.

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
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