

□ Procedure No.: PS/00073/2020

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00073/2020, instructed by the Spanish Agency for Data Protection, before D. A.A.A. (hereinafter, "the defendant"), for alleged infringement to Regulation (EU) 2016/679, of the European Parliament and of the Council, 04/27/16, regarding the Protection of Natural Persons with regard to Trafficking processing of Personal Data and the Free Circulation of these Data (RGPD), and based on to the following:

BACKGROUND

FIRST: Dated 07/09/19, has entry in this Agency, complaint filed by D. B.B.B., (hereinafter, "the claimant"), in which it indicated, among others, the following following:

"On June 5, I received an email from this lawyer in which he attached- I had an act from a community of owners with which I have no relationship (nor personal or professional), in which personal data of owners, suppliers, debts, debts, etc. I think it is a breach of the duty of secrecy since it puts available to unauthorized third parties personal data. attached to the complaint received email.

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 investigative powers tion granted to the control authorities in article 57.1 of the RGPD. Thus, with faith On 08/19/19 and 02/20/20, two information requests are addressed to the person claimed.

THIRD: As stated in the certificate issued by the State Post Office

and Telegraphs, the request sent to the respondent on 08/19/19 to the address ***DI-RECTION.1, was returned to origin for "absent" and not picked up from the "list" server of Correos and the request sent to the claimed party on 02/20/20, to the indicated address above, was returned to origin by "unknown".

FOURTH: In view of the reported facts and in accordance with the evidence that is available, the Data Inspection of this Spanish Agency for the Protection of Data considered that the actions of the entity complained against did not meet the conditions imposed by current regulations. Thus, on 06/01/20, the Director of the Agency Spanish Data Protection Agency agreed to initiate a sanctioning procedure for the claim-do, for violation of articles 5.1.f) of the RGPD, punishable in accordance with the provisions all in art. 83 of the aforementioned rule, with a "warning" sanction, without prejudice of what resulted from the instruction of the same.

FOURTH: On 06/03/20, the initiation of the file was notified to the regulatory entity claimed, who has not submitted to this Agency, any brief or allegation, within of the period granted for this purpose.

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PROVEN FACTS

1.- According to the documentation presented in the claim, it can be verified

note that the claimant received an email from the address <<A.A.A.>>

***EMAIL.1, in which the minutes of a session of a community of pro-

owners, where personal data of the owners, suppliers, debts,

etc., without having any relationship, according to the complaint, with said community.

FOUNDATIONS OF LAW

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

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II

In the present case, the claimant denounces having received an email from the claimed in which an act of a community of owners was attached with which have no relationship, in which personal data of owners, pro-inspectors, debts, etc.

The known facts constitute an infraction, attributable to the defendant, for violation of article 5.1.f) of the RGPD, where it states that personal data will be will: f) be treated 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>>).

In addition, article 5 of the LOPDGDD, "Duty of confidentiality" provides that: 1.

Those responsible and in charge of processing the data, as well as all the persons who intervene in any phase of this will be subject to the duty of confidentiality. ciality referred to in article 5.1.f) of Regulation (EU) 2016/679. 2. The obliga-

The general provision indicated in the previous section will be complementary to the duties of professional secrecy in accordance with its applicable regulations. 3. Obligations are-established in the previous sections will be maintained even when the the relationship of the obligor with the controller or processor.

For its part, section a) of article 72.1 of the LOPDGDD typifies, for the purposes of prescription, as "very serious", the: "processing of personal data violating

the principles and guarantees established in article 5 of the RGPD”.

III

This infraction can be sanctioned with a maximum fine of €20,000,000 or, alternatively, being from a company, of an amount equivalent to a maximum of 4% of the volume overall annual total turnover of the previous financial year, opting for the greater amount, in accordance with article 83.5 of the RGPD.

However, Article 58.2) of the RGPD provides that: "Each control authority will have all the following corrective powers indicated below: b) sanction warn any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation; (...); i) impose an administrative fine under article 83, in addition to or instead of

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of the measures mentioned in this section, depending on the circumstances of each particular case, therefore, the sanction that could correspond would be conduct, without prejudice to what results from the investigation of this file.

As indicated above, it is considered appropriate to impose claims on the entity

A sanction of "Warning" will be issued for the violation of article 5.1.f) of the RGPD.

Therefore, in accordance with the foregoing, by the Director of the Spanish Agency Data Protection Sheet.

RESOLVE

FIRST: NOTICE D. A.A.A., for the infringement of article 5.1.f) of the RGPD, punishable in accordance with the provisions of art. 83 of the aforementioned standard.

SECOND: NOTIFY this resolution to D. AAA, and the claimant about the

result of the claim.

In accordance with the provisions of article 82 of Law 62/2003, of December 30,

bre, of fiscal, administrative and social order measures, this Resolution is

will make public, once it has been notified to the interested parties. The publication is made

will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency

Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the

established in articles 112 and 123 of the LPACAP, the interested parties may interpose

have, optionally, an appeal for reconsideration before the Director of the Spanish Agency

of Data Protection within a period of one month from the day following the notification

fication of this resolution, or, directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions

placed in article 25 and in section 5 of the fourth additional provision of the Law

29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the

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

the provisions of article 46.1 of the aforementioned legal text.

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Director of the Spanish Data Protection Agency

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