

□ Procedure No.: PS/00159/2020

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and in

based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on August 23, 2019 filed

claim before the Spanish Data Protection Agency. The claim is directed

against SOCIEDAD DEPORTIVA DE CAZA DE MARCHENA with NIF G41384306 (in

later, the claimed one).

The reasons on which the claim is based are that said company requests personal data

without establishing the means to, where appropriate, exercise the right to information required by the

data protection regulations.

Together with the claim, provide documentation in which data of a character nature is required.

personal and there is no privacy policy.

SECOND: The present claim was transferred to the respondent on November 14,

2019, requiring you to send this Agency, within a period of one month, information

on the response given to the claimant for the facts denounced, as well as the causes

that have motivated the incidence and the measures adopted.

However, although there is evidence of receipt of the aforementioned request by the respondent,

This Agency has not received a response in this regard.

THIRD: On June 17, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

FOURTH: On June 29, 2020, the agreement to start this

procedure, becoming the same in resolution proposal in accordance with

Articles 64.2.f) and 85 of Law 39/2015, of October 1, on Procedure

Common Administrative System of Public Administrations (LPACAP), by not carrying out claims within the specified period.

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

FACTS

FIRST: the company claimed requests personal data from the claimant, without establishing the means to, where appropriate, exercise the right to information required by the regulations in matter of data protection.

SECOND: the respondent has not presented any allegation.

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2/6

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to what is established in articles 47 and 48 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric

“Definitions”, provides that:

“For the purposes of this Regulation, the following shall be understood as:

- 1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by means of a identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;
- 2) “processing”: any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of authorization of access, collation or interconnection, limitation, suppression or destruction;”

Therefore, in accordance with those definitions, the collection of data from personal character through forms included in a web page constitutes a data processing, in respect of which the data controller must give compliance with the provisions of article 13 of the RGPD, a precept that has moved from on May 25, 2018 to article 5 of Organic Law 15/1999, of December 13, of Personal data protection.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of the duty of report

(<https://www.aepd.es/media/guias/guia-Modelo-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

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3/6

“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 you with all the information listed 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 legal treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their 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 decision to adequacy 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 guarantees or appropriate and the means to obtain a copy of them or the fact that they have been borrowed.

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 information, the following information necessary to guarantee fair data processing and transparent:

- a) the period during which the personal data will be kept or, when it is 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 the portability of the data;
- 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 consent in any time, without affecting the legality of the treatment based on the 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 the personal data and is informed of the possible consequences of not providing such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information about that other purpose and

any additional relevant information pursuant to paragraph 2.

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4/6

4. The provisions of sections 1, 2 and 3 shall not apply when and in the
to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the
treatment may comply with the duty of information established in article 13
of Regulation (EU) 2016/679, providing the affected party with the basic information to which
refers to the following section and indicating an electronic address or other means that
allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at
less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the
Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of
profiles, the basic information will also include this circumstance. In this case, the
concerned shall be informed of their right to oppose the adoption of decisions
automated individuals that produce legal effects on him or affect him
significantly in a similar way, when this right concurs in accordance with what
provided for in article 22 of Regulation (EU) 2016/679."

In accordance with the available evidence, it is verified that the claimed requests personal data without establishing the means for, where appropriate, to exercise the right to information required by the regulations on data protection, therefore that we would be facing an infringement of article 13 of the RGD.

By virtue of the provisions of article 58.2 of the RGD, the Spanish Agency for Data Protection, as a control authority, has a set of powers corrective measures in the event of a violation of the provisions of the RGD.

This infraction is sanctioned with a warning, in accordance with article 58.2.b)

Article 58.2 of the RGD provides the following:

“2 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 responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time;”

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“i) impose an administrative fine under article 83, in addition to or instead of

of the measures mentioned in this section, according to the circumstances of each particular case;"

Article 74.a) of the LOPDGDD, under the heading "Infringements considered minor has:

"They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in sections 4 and 5 of article 83 of the Regulation (EU) 2016/679 and, in particular, the following:

a)

Failure to comply with the principle of transparency of information or the right data subject of the affected party for not providing all the information required by the articles 13 and 14 of Regulation (EU) 2016/679."

In this case, it is taken into account that the respondent collects personal data from users without providing them, prior to its collection, all the information in matter of data protection provided for in article 13 of the aforementioned 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: IMPOSE the MARCHENA HUNTING SPORTS SOCIETY, with NIF G41384306, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body the fulfillment of:

☐ the adoption of the necessary measures to update its "Privacy Policy" to current regulations on the protection of personal data, -Regulation (EU) 2016/679 (RGPD)-, adapting the information offered to the requirements contemplated in article 13 of the RGPD, and must provide users, with

prior to the collection of their personal data, all the information required in the aforementioned precept, for which said company must have taking into account the provisions of article 6 of the RGPD in relation to the legality of the treatment, as well as what is indicated in article 5 of the RGPD in relation to the purpose of the treatment and term of conservation of the data.

THIRD: NOTIFY this resolution to the HUNTING SPORTS SOCIETY
MARCH.

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 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,

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6/6

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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