

□ File No.: EXP202203165

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On October 3, 2022, the Director of the Spanish Agency for
Data Protection agreed to start a sanctioning procedure against A.A.A. (onwards,
the claimed party), through the Transcribed Agreement:

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AGREEMENT TO START THE SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in
based on the following

FACTS

FIRST: B.B.B and C.C.C. (hereinafter, the claiming party) dated June 2,
2021 filed a claim with the Spanish Data Protection Agency. The
complaint is directed against A.A.A. with NIF ***NIF.1 (hereinafter, the part
claimed). The reasons on which the claim is based are the following:

The disclosure of the personal data (name and surname) of the party is requested
claimant in a manifesto headed by the health team of the SUAP Granada-
Metropolitan. The aforementioned document was disseminated on XX/XX/20 in the group of
WhatsApp called SUAP GRANADA. There is no record of who drafted the document.
although it is clear that the person who spread it through the WhatsApp group was the party
claimed.

Along with the notification is provided

- Copy of the manifesto written and sent by WhatsApp,

- Notarial certificate of the transcription of the conversation held in the group of

WhatsApp SUAP GRANADA about the aforementioned manifesto.

- Notarial certificate of the transcription of the WhatsApp conversation held between the complaining party and D.D.D., in which it is stated that the latter forwards the conversation maintained in the WhatsApp group SUAP GRANADA to the claimant.

- Copy of the DNI of the claimant.

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- Complaint filed by the claimant before the General Directorate of Police, Granada North Dependency, in which it refers to the fact that it has been informed that in the chat of the WhatsApp group SUAP GRANADA a letter has been posted in which reference is made to the names and surnames of the complaining party.

On 06/07/2021, the AEPD forwarded the claim to the COUNCIL OF TRANSPARENCY AND DATA PROTECTION OF ANDALUSIA, considering that could be the competence of said Body.

After having carried out the pertinent actions, the TRANSPARENCY COUNCIL AND PROTECTION OF DATA OF ANDALUSIA decrees the archiving of the same, motivating it mainly in the fact that:

“These would be initiatives, carried out on unofficial platforms and through private means, by colleagues of the healthcare professional denounced, who decide to support it voluntarily, for which reason it has

considered an action within the personal and non-professional sphere,
being the people who prepare the manifesto and disseminate the information,
private title...”

and on 02/10/2022 the claim is returned, along with all the documentation in hand
in your file, to the AEPD.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
forward LOPDGDD), said claim was transferred to the claimed party for
to proceed with its analysis and inform this Agency within a month of the
actions carried out to adapt to the requirements established in the regulations of
Data Protection.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of the Administrations
Public (hereinafter, LPACAP) by electronic notification, was not collected by
the person in charge, within the period of availability, understood as rejected
in accordance with the provisions of art. 43.2 of the LPACAP dated 04/03/2022, as stated
in the certificate in the file.

Although the notification was validly made by electronic means, assuming that
carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under
information, a copy was sent by postal mail, which was duly notified in
dated 04/18/2022, being collected by E.E.E.. In said notification, you are
recalled their obligation to interact electronically with the Administration, and
informed him of the means of access to said notifications, reiterating that, as far as
successively, you will be notified exclusively by electronic means.

No response has been received to this letter of transfer.

THIRD: On May 10, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

Article 6 of the GDPR, Lawfulness of the treatment, establishes in point 1 that:

II

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions:

a) the interested party gave his consent for the processing of his data

personal for one or more specific purposes;

b) the processing is necessary for the performance of a contract in which the interested party or for the application at the request of this of measures pre-contractual;

c) the processing is necessary for compliance with a legal obligation applicable to the data controller;

d) the processing is necessary to protect vital interests of the data subject or of another physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible of the treatment;

f) the processing is necessary for the satisfaction of legitimate interests pursued by the data controller or by a third party, provided that such interests are not overridden by the interests or the rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions.”

On the other hand, article 4 of the GDPR, Definitions, in its sections 1, 2 and 11, notes that:

“1) “personal data” means any information about an identified natural person or identifiable (“the data subject”); Any identifiable natural person shall be considered person whose identity can be determined, directly or indirectly, in by means of an identifier, such as a name, a number identification, location data, an online identifier, or one or more

elements of physical, physiological, genetic, psychological,

economic, cultural or social of said person; “

2) "processing": any operation or set of operations carried out

about personal data or sets of personal data, either by

automated procedures or not, such as the collection, registration, organization,

structuring, conservation, adaptation or modification, extraction, consultation,

use, communication by transmission, diffusion or any other form of

authorization of access, collation or interconnection, limitation, deletion or

destruction; “

11) "consent of the interested party": any manifestation of free will,

specific, informed and unequivocal for which the interested party accepts, either

by means of a declaration or a clear affirmative action, the processing of data

personal matters that concern you."

In the present case, the claimed party has processed personal data (name and

surnames) of the complaining party without being able to appreciate the existence of any

of the causes that could legitimize said treatment.

II

In accordance with the evidence available at the present time of

agreement to start the disciplinary procedure, and without prejudice to what results from the

investigation, it is considered that the known facts could constitute a

infringement, attributable to the claimed party, for violation of article 6.1 of the GDPR,

since the data processing carried out, that is, the publication in a group

of WhatsApp of a manifest in which the complaining party is identified with his name and surname, has been made without legitimizing cause.

If confirmed, the aforementioned infringement of article 6.1 of the GDPR could lead to the commission of the offenses typified in article 83.5 of the GDPR that under the

The heading "General conditions for the imposition of administrative fines" provides:

IV.

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

In this regard, the LOPDGDD, in its article 71 "Infractions" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law".

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For the purposes of the limitation period, article 72 "Infractions considered very serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that

a substantial violation of the articles mentioned therein and, in particular, the

following:

b) The processing of personal data without the fulfillment of any of the conditions of

legitimacy established in article 6 of Regulation (EU) 2016/679. (...)”

V

For the purposes of deciding on the imposition of an administrative fine and its amount,

In accordance with the evidence available at the present time of

agreement to start disciplinary proceedings, and without prejudice to what results from the

instruction, it is considered appropriate to graduate the sanction to be imposed in accordance with

the criteria established in article 83.2 of the GDPR.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

criteria established in section 2 of article 76 "Sanctions and corrective measures"

of the LOPDGDD.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

HE REMEMBERS:

FIRST: INITIATE SANCTION PROCEDURE against A.A.A., with NIF ***NIF.1,

for the alleged infringement of Article 6.1 of the GDPR, typified in Article 83.5 of the

GDPR.

SECOND: APPOINT as instructor F.F.F. and, as secretary, to G.G.G.,

indicating that any of them may be challenged, if applicable, in accordance with the

established in articles 23 and 24 of Law 40/2015, of October 1, on the Regime

Legal Department of the Public Sector (LRJSP).

THIRD: INCORPORATE into the disciplinary file, for evidentiary purposes, the

claim filed by the claimant and its documentation, as well as the

documents obtained and generated by the Sub-directorate General of Inspection of

Data in the actions prior to the start of this sanctioning procedure.

FOURTH: THAT for the purposes provided for in art. 64.2 b) of Law 39/2015, of 1 October, of the Common Administrative Procedure of Public Administrations, the sanction that could correspond would be, for the alleged violation of article 6.1 of the GDPR, typified in article 83.5 of said regulation, administrative fine of amount 500.00 euros

FIFTH: NOTIFY this agreement to A.A.A., with NIF ***NIF.1, granting it a hearing period of ten business days to formulate the allegations and present the tests it deems appropriate. In your pleadings you must provide

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your NIF and the number of the procedure that appears in the heading of this document.

If, within the stipulated period, he does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP).

In accordance with the provisions of article 85 of the LPACAP, you may recognize your responsibility within the period granted for the formulation of allegations to the present initiation agreement; which will entail a reduction of 20% of the sanction that should be imposed in this proceeding. With the application of this reduction, the sanction would be established at 400.00 euros, resolving the procedure with the imposition of this sanction.

In the same way, it may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the proposed sanction, which will mean a reduction of 20% of its amount. With the application of this reduction, the sanction would be established at 400.00 euros and its payment will imply the termination of the procedure.

The reduction for the voluntary payment of the penalty is cumulative to the corresponding apply for acknowledgment of responsibility, provided that this acknowledgment of the responsibility is revealed within the period granted to formulate allegations at the opening of the procedure. Voluntary payment of the referred amount in the previous paragraph may be done at any time prior to the resolution. In

In this case, if both reductions were to be applied, the amount of the penalty would remain set at 300.00 euros.

In any case, the effectiveness of any of the two aforementioned reductions will be conditioned to the withdrawal or resignation of any action or appeal via administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the amounts indicated above (400.00 euros or 300.00 euros), you must make it effective by depositing it in the account number ES00 0000 0000 0000 0000 0000 opened to name of the Spanish Data Protection Agency in the bank CAIXABANK, S.A., indicating in the concept the reference number of the procedure that appears in the heading of this document and the cause of reduction of the amount to which it receives.

Likewise, you must send proof of income to the General Subdirectorate of Inspection to continue with the procedure in accordance with the quantity entered.

The procedure will have a maximum duration of nine months from the

date of the initiation agreement or, where appropriate, of the draft initiation agreement.

After this period, its expiration will occur and, consequently, the file of

performances; in accordance with the provisions of article 64 of the LOPDGDD.

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Finally, it is noted that in accordance with the provisions of article 112.1 of the

LPACAP, there is no administrative appeal against this act.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On November 17, 2022, the claimed party has proceeded to the payment of the penalty in the amount of 300 euros making use of the two reductions provided for in the initiation Agreement transcribed above, which implies the recognition of responsibility.

THIRD: The payment made, within the period granted to formulate allegations to the opening of the procedure, entails the waiver of any action or appeal via against the sanction and acknowledgment of responsibility in relation to the facts referred to in the Commencement Agreement.

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Competence

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve this procedure the Director of the Spanish Protection Agency of data.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Data Protection Agency will be governed by the provisions in Regulation (EU) 2016/679, in this organic law, by the provisions regulations dictated in its development and, insofar as they do not contradict them, with character subsidiary, by the general rules on administrative procedures."

II

Termination of the procedure

Article 85 of Law 39/2015, of October 1, on Administrative Procedure Common for Public Administrations (hereinafter, LPACAP), under the heading "Termination in disciplinary proceedings" provides the following:

"1. Initiated a disciplinary procedure, if the offender acknowledges his responsibility, The procedure may be resolved with the imposition of the appropriate sanction.

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2. When the sanction has only a pecuniary nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature but the inadmissibility of the second, the voluntary payment by the presumed perpetrator, in

any moment prior to the resolution, will imply the termination of the procedure, except in relation to the replacement of the altered situation or the determination of the compensation for damages caused by the commission of the offence.

3. In both cases, when the sanction is solely pecuniary in nature, the

The competent body to resolve the procedure will apply reductions of at least 20% of the amount of the proposed penalty, these being cumulative among themselves.

The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or resource against the sanction.

The percentage reduction provided for in this section may be increased according to regulations."

According to what has been stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DECLARE the termination of procedure EXP202203165, in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to A.A.A..

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, interested parties may file an appeal

administrative litigation before the Administrative Litigation 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 for in article 46.1 of the

referred Law.

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