 Procedure No.: PS/00191/2019

938-051119

- RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: On December 28, 2018 Mr. A.A.A., (hereinafter, the

claimant), filed a claim with the Spanish Agency for Data Protection

against Don B.B.B., (hereinafter, the defendant), for sending an email

without hiding the email address of the rest of the recipients of the shipment,

in which he advertises his candidacy for the Governing Board of the Official College of

Technical Industrial Engineers of Madrid in the elections to be held, in that

moment, on January 21, and the one in which the claimant is registered.

The claimant indicates that the respondent “has sent emails in groups of 80-90

collegiate in which he has not hidden the mail of the recipients, as well as with the more than

7,000 members. Specifically, in the mail that I have received, we find a total

of 87 recipients in which we can all see the mails of the others, being our

mail a totally private data, (...)

Just as I can see the mail of said members, all of them can see

mine. (…)

shipments with similar groups (...).”

I understand that this has been done with the more than 7,000 members in different

The claimant attaches a printout of an email sent, dated

***DATE.1, from account ***EMAIL.1 to a total of 87 recipients whose accounts

email addresses are visible to the rest of the recipients of the shipment, with

subject “***SUBJECT.1”. Likewise, it provides an impression of the electoral program of the sender, attached to said mail by means of an attached file.

SECOND: Upon receipt of the claim, dated February 5, 2019, a copy of it was sent to the respondent in order to require, among other things, ends, certain information in relation to the exposed facts. The shipment is sent through the State Post and Telegraph Society, S.A. to the address of the electoral office in Madrid that appeared in the email provided by the claimant, being returned by “Unknown on February 7, 2019” in said home.

On March 1, 2019, the Director of the Spanish Agency for Data Protection agreed to admit for processing the claim presented by the claimant, in accordance with the provisions of article 65.5 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD), and for the purposes provided in article 64.2 of the same standard.

THIRD: Consulted on July 9, 2019, the application that manages the history of sanctions and previous warnings in terms of protection of data, it is verified that there are no previous records associated with the one claimed by violation of data protection regulations other than the one that affects this penalty procedure.

FOURTH: On July 12, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the GDPR.

In said initial agreement it was agreed that, if the existence of the described infringement, and for the purposes provided in article 58.2.d) of the RGPD, in the resolution that, in his case, could fall, the claimed person would be ordered to carry out of certain corrective measures, the details of which were specified in the aforementioned start agreement. Likewise, the deadline for accrediting before this Agency was indicated. its adoption once the sanctioning resolution has been notified.

FIFTH: Attempted to notify the respondent of the aforementioned initiation agreement through the Post and Telegraph State Society, S.A. at the address on the procedure, was absent in the attempts made on July 22 and 30 2019, leaving notice in the mailbox. Subsequently, the shipment was returned to origin on August 7, 2019 for "Sobrante", as it was not withdrawn from the Post Office, as stated in the Certification issued by said Company.

Therefore, in accordance with the provisions of articles 44, 45 and 46 of the Law 39/2015, of October 1, of the Common Procedure of the Administrations Public, proceeded to publish a notification notice of the aforementioned start-up agreement in the Official State Gazette No. 196, dated August 16, 2019. In the announcement published in said Bulletin, it is indicated that the notification will be understood as produced all legal effects from the day following the expiration of the 10-day period working days set to appear, counted from the day following the publication of the ad.

There is no evidence that the defendant has appeared within the period indicated in the outlined announcement nor that produced the notification of said act, has exercised its right to defense by formulating a written statement or presenting evidence in the

period granted for such purposes.

In view of everything that has been done, by the Spanish Protection Agency

of Data in this procedure the following are considered proven facts,

PROVEN FACTS

FIRST: Dated ***DATE.1, the respondent sent an email from the

account ***EMAIL.1, with subject "***SUBJECT.1", to a total of 87 recipients whose

email accounts, including the email address

of the claimant, were visible to the rest of the recipients of the shipment.

SECOND: In the shipment mentioned in the previous proven fact, the one claimed

promoted his candidacy for the Governing Board of the Official College of

Technical Industrial Engineers of Madrid in the elections to be held, in that

moment, on January 21, 2019, and the one in which the claimant is registered.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 55.1, 56.2 and 58.2 of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the

protection of natural persons with regard to data processing

personal information and the free circulation of these data (General Protection Regulation

of Data, hereinafter RGPD) recognizes each control authority, and according to what

established in articles 47 and 48.1 of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), the Director of the Spanish Data Protection Agency is

competent to resolve this procedure.

II

Article 64.2.f) of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, of October 2, 2015, in

hereinafter LPACAP, provides that:

“The initiation agreement must contain at least: (…)

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 the event

of not making allegations within the stipulated period on the content of the resolution of

initiation, it may be considered a resolution proposal when it contains a

precise pronouncement about the imputed responsibility.”

In the present case, the content of the agreement to initiate the procedure

observed the prescription detailed in article 64.2.f) of the LPACAP, which is why

which, in accordance with the provisions of the aforementioned precept, the initial agreement

of this sanctioning procedure is considered a Resolution Proposal,

since it contained a precise pronouncement about the responsibility

imputed, and, after notification in the manner described in the factual record

fifth, the respondent has not made allegations to the same within the period granted to

such effects.

III

Article 4 of the RGPD, under the heading "Definitions", provides that: "For the purposes

of this Regulation 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

an 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

about personal data or sets of personal data, either 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 enabling of

access, collation or interconnection, limitation, suppression or destruction;"

7) «responsible for the treatment>> or <<responsible>>: the natural person or

legal entity, public authority, service or other body which, alone or jointly with others,

determine the purposes and means of the treatment; if the law of the Union or of the

Member States determines the purposes and means of processing, the data controller

treatment or the specific criteria for their appointment may be established by the

Law of the Union or of the Member States; >>

10) <<third party>>: natural or legal person, public authority, service or

body other than the interested party, the data controller, the person in charge of

treatment and of the persons authorized to treat personal data under the

direct authority of the person in charge or the person in charge;

In accordance with these definitions, the treatment of email addresses

e-mail of the recipients of the shipment under study constitutes a

processing of personal data, in respect of which the person responsible for the

treatment, in this case, the sender of the shipment that has used the addresses of

e-mail of the recipients of the same, must comply with the

principles relating to treatment, among which is the principle of

confidentiality contained in article 5.1.f) of the RGPD.

Please note that the email addresses used for the

remission of the aforementioned shipment provide information on natural persons

identified or identifiable, especially considering that their owners are

members of the College of Industrial Technical Engineers of Madrid.

IV

In the present case, the defendant is charged with a breach of article 5.1. of

RGPD, precept that under the heading "Principles related to treatment", establishes in

its section f) that:

“Personal data will be:

(…)

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>>)”

In relation to said precept, article 32.1.b) and 2 of the RGPD, regarding the

“Security of treatment”, establishes:

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

(…)

b) the ability to ensure the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

(…)

2. When evaluating the adequacy of the security level, particular account shall be taken of

takes into account the risks presented by the processing of data, in particular as

consequence of the accidental or unlawful destruction, loss or alteration of data

data transmitted, stored or otherwise processed, or the communication or

unauthorized access to said data. “

For its part, under the heading "Duty of confidentiality", article 5 of the

LOPDGDD provides that:

"1. Those responsible and in charge of data processing as well as all

people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary

of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain

even when the relationship of the obligor with the person in charge or person in charge had ended

of the treatment.”

In the present case, the claimant has provided a copy of an email

sent by the respondent, dated December 21, 2018, to a total of eighty

seven recipients, a group in which the claimant states he is included, without hiding from them

to each of them the email addresses of the rest of the recipients to

which the shipment was also addressed with the subject "*** SUBJECT.1", since the claimed

you did not use the blind copy option.

Said conduct constitutes on the part of the claimed party, in this case sender of the

aforementioned shipment and responsible for the aforementioned processing of personal data, a

violation of the principle of confidentiality contained in article 5.1.f) of the RGPD,

since by being visible the email addresses of all the

recipients of the shipment disseminated that personal information among all of them.

v

Sections b), d) and i) of article 58.2 of the RGPD provide the following:

"2 Each supervisory authority shall 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;"

(...)

"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 a specified manner and within a specified period;”

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

Article 83 of the RGPD, under the heading “General conditions for the imposition of administrative fines”, in sections 1 and 5.a) states that:

""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.”

"5. Violations of the following provisions will be sanctioned, according to paragraph 2, with administrative fines of EUR 20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover 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”

At the same time, article 72.1.a) of the LOPDGDD typifies the infringement of principle of confidentiality as very serious for prescription purposes in following terms: “1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the mentioned articles in that 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.”

In accordance with the facts that have been proven, and in view of the

reasoned on the basis of the previous law, the defendant is responsible for

a violation of the principle of confidentiality contained in article 5.1.f) of the

RGPD, infringement typified in article 83.5.a) of the aforementioned Regulation and qualified

as a very serious infringement for prescription purposes in article 72.1.a) of the

LOPDGDD.

Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation

has in its art. 58.2 b) the possibility of sanctioning with a warning, in relation

with 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.”

In the present case, it is considered appropriate to impose the sanction of warning

provided for in article 58.2.b) of the RGPD in view of the following circumstances: the

The main activity of the respondent is not linked to the usual treatment of

Personal data; that the recipients of the shipment were affected by the

same matter on which they were informed; consider that the administrative fine
that could be imposed in accordance with the provisions of article 83.5.a) of the RGPD
would constitute a disproportionate burden for the respondent, who is not aware of the
Commission of any previous infringement in terms of data protection.
Confirmed the infraction described, it is not accredited in the procedure
that the respondent has implemented technical and organizational measures aimed at
to guarantee the security and confidentiality of the data in treatments that,
like the one studied, affect a group of holders of e-mail addresses
email that are going to be recipients of the same shipment, so as to prevent the
improper access of each of them to the email addresses of the
other recipients. Based on the foregoing, it is considered appropriate to apply the provisions
in the aforementioned article 58.2.d) of the RGPD in order that, by the claimed party,
carry out the necessary actions (technical and organizational measures) to
adapt data processing operations similar to the one studied to the
principle of confidentiality contained in article 5.1.f) of the RGPD.
It is noted that section 6 of article 83 of the RGPD, establishes that “6. The
Failure to comply with the resolutions of the supervisory authority pursuant to article 58,
paragraph 2, will be sanctioned in accordance with paragraph 2 of this article with
administrative fines of a maximum of EUR 20,000,000 or, in the case of a
company, of an amount equivalent to a maximum of 4% of the turnover
global annual total of the previous financial year, opting for the highest amount.”
Article 72.1.m) provides that: “1. According to what the article establishes
83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe to
three years the infractions that suppose a substantial violation of the articles
mentioned therein and, in particular, the following: (...)
m) Failure to comply with the resolutions issued by the authority of

competent data protection in exercise of the powers conferred by article

58.2 of Regulation (EU) 2016/679."

Therefore, in accordance with the applicable legislation and valued the

concurrent circumstances in the facts that have been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Don B.B.B., with NIF ***NIF.1, a sanction of

WARNING in accordance with the provisions of article 58.2.b) of the RGPD,

as responsible for an infringement of the provisions of article 5.1.f) of the RGPD,

typified in article 83.5.a) of the RGPD.

SECOND: NOTIFY this resolution to Don B.B.B.

THIRD: ORDER Don B.B.B., in accordance with the provisions of article

58.2.d) of the RGPD, the adoption and implementation of technical measures and

adequate organizational measures to guarantee the confidentiality of the data

concerning the email addresses of a set of recipients

of the same delivery, using the blind copy delivery option so as not to

disclose their email addresses to others

recipients. These measures must be adopted within a period of one month, counting

from the day following the day on which the claimant is notified of the resolution

sanctioning, having to provide the means of evidence accrediting its

compliance.

In accordance with the provisions of article 50 of the LOPDPGDD, 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 LOPDPGDD, 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 month from counting 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, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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