File No.: PS/00253/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 06/21/2020

before the Spanish Agency for Data Protection that is directed against the MINISTRY OF

EDUCATION, CULTURE AND SPORTS OF THE COMMUNITY BOARD OF CASTILLA

LA MANCHA with CIF S1911001D (hereinafter, the claimed one). The reasons on which the

claim are that on 06/08/2020 he filed a claim against XXXXXXXX that a

teacher named his daughter B.B.B. second year of high school, at the IES ***IES.1 of

LOCALIDAD.1 (LOCALIDAD.2) and on 06/10/2020, you find out that the answer

reasoned in the form of a resolution has been sent to "my daughter and all her colleagues

of lase, who ask him why".

-Contributes:

a) Copy of an IMG image file from a mobile phone, in which in a group

named "***GROUP.1" a person named X greets and sends a screenshot of the

resolution of the claim against XXXXXXXX filed by the claimant, in the

sense that she is keeping her daughter's XXXXXXXX, and asks what is this that has

sent the director?, to which someone, presumably the daughter of the claimant, replies:

"that's mine". The resolution is seen on its first page, with the data of the claimant, and

reports on the meeting held to review the XXXXXXXX and the progress of the two evaluations

previous.

b) Copy a file called "XXXXXXX…", containing a screenshot of an application

informatics: "***SISTEMA.1" by the url address of the Junta de Comunidades de Castilla La

Stain, "GROUP.1", opened in the data of the claimant's daughter. Figure: "message received" "10/06/2020, 08:44", sender, the teacher, also XXXXXXX "Recipients students by groups of the center" "Issue Resolution motivates claim XXXXXXXX" with a attached file, being read in part of the screen, the greeting indicating that it is attached resolution, and can be seen in the "attached files" section reasoned resolution claim ***FILE.1.

Faced with the resolution, the claimant indicates that she filed an appeal, addressed to Inspection, whose resolution "is only sent to me and my daughter." However, he adds that the 06/21/2020, a friend sends her a letter that certain students in the class of his daughter who are "sad because the teacher has resigned" "because of the appeal for raised-in which the Inspection gives us the reason against the teacher", interpreting the claimant who have also been able to access the content of the resolution of this appeal.

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The attached copy of the letter is addressed to the teacher, signed with the name and surname of several students, begins with "we have learned of your recent resignation and the reason for This is such bad news." The writing at no point reflects any aspect referred to or related to access to data derived from the resource.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, on 08/05/2020, the claim is transferred to the claimed.

On 09/07/2020, he replied:

1) The Center has been urged to send a reply to the interested party explaining the facts guys.

2) ANNEX I is attached, report on the causes and the facts object of the claim. The

current address of the center indicates:

-The claim on XXXXXXXX "following instructions from the educational administration

va" was sent through the educational platform "***SISTEMA.1" of the Board, used in all

educational centers for the "academic management and sending of communications and documents

between all members of the educational community-teachers, students and families-within

strictly educational field.

- The system is agile, although "in many cases" it causes problems in sending messages between

all community members, "app clock stays too long

turning" or when you press "send", the system kicks you out of the program", "without knowing if it has been

sent or not" "this happens to all users of the system". The educational administration is

You are aware of these problems. That happened that very morning when the

message with the resolution of the claim against XXXXXXXX, when sending, the watch

started rolling and the system kicked them out of the show. That same morning several

negotiations with students and the same thing happened, "but if there was a student who reported it

to the Director so that the error could be corrected".

- Contrary to what was stated by the claimant, that the resolution reached all the students

from her daughter's class, according to "XXXXXXXXX", the message was sent exclusively for the

claimant, and also as can be seen on the attached screen, they only have one shipment and one

reading by the recipient. Provides a copy-paste in document, of a screen of

messages sent on 06/10/2020, through the platform, at 8:44 a.m., addressed to the claim

mante, in subject, does not appear "

", as stated in other messages addressed

to several, in which you can see the total of the group, and the number of read. In the claim-

mante, in the number of recipients figure "

", and number of recipients 1, read

1.

Regarding the attached screen of the claimant, "it is possible that it was sent by mistake of the

system to all the students in her daughter's class, but it is found that in messages sent

two, the resolution sent to students by group of the center does not appear, therefore it could not be

send rectification since there was no such communication, and no student communicated

nothing in regards".

-Indicates that on XXXXXX, on 06/10/2020, in the presence of the Secretary and another person from the

The center "verbally apologized to the mother for the error caused, explaining what happened.

Give in to the system."

 has been answered no

 center students

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 ", attaches another copy-paste that reveals the sender and recipient and whether or not it has been read.

-"The management has not been aware of or aware of the dissemination of the result of the dissemination.

subsequent review of the result of the resolution of the appeal", resolution that "is en-

viewed through the XXXXXXXX app (hereinafter the app) on 06/17/2020.

-The letter from the students was sent through the aforementioned application, which was received by par-

teacher who taught classes to the second year of Baccalaureate, indicating that the teacher,

at that time he was on medical leave and had requested retirement.

3) Refers to the receipt of a report from the IT staff in charge of maintenance

of the application, which indicates that internally, "in PRE, the message was sent to a single

co-recipient," relates the message identifier "and in the recipient table there is no

sent to any collective, there is only one record for that message."

"The recipient of that message corresponds to the user "B.B.B....", the mother of the

student.

"Entering PRE and simulating the user of the mother, the data shown does not match

the screenshot sent. Provides copy-paste of the message, "educational monitoring" screen.

It adds that "for the mother, in the list of received messages, the GRU- column is empty.

PO

It solves with the confusing literal "it follows that "only the email left the application

to the mother, so it has not been verified that the student's mail was not sent to

All the group".

4) Attached in ANNEX II is a report that refers to protection training measures

of data from 2014 to different education groups, information on the implementation

of the XXXXXXX computer application, communications on different aspects on the occasion

of the entry into force of the RGPD, and preparation of a data protection decalogue for

the educational community. It adds that in 2019, aspects on the treatment of

images and other issues arising from teleworking and corporate email.

THIRD: On 09/16/2020 the claim was admitted for processing.

FOURTH: On 03/22/2021, it is requested "... as a consequence of the dissemination of the re-

solution of a claim for disagreement with the XXXXXXXX of a subject, inter-

placed by the mother of the underage student, among the students of a class on the date

06/10/2020 08:44 a.m. through the Educational Platform ***SISTEMA.1 and motivated by error.

on said platform at the time of sending messages, as manifested in its res-

date setting 09/07/2020:

1. Report on the measures adopted to prevent similar incidents from occurring

(sending messages to recipients other than those intended), implementation dates

and controls carried out to verify its effectiveness.

2. Documentation that proves the date from which they are aware of this type of error

on the platform."

On 04/23/2021, a response letter is received:

"Regarding the information requested on the measures adopted to prevent

1)

similar incidents occur (sending messages to recipients other than those

desired) attaching the dates of implementation and the controls carried out to verify

its effectiveness, as well as supporting documentation of the date on which such errors are known.

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res of the platform, it cannot be answered, since after a more exhaustive investigation

of the origin of the claim by the ICT staff that supports the tool

EducamosCLM, it has been proven that there are, at the same minute, 8:44, two messages from the

XXXXX of the Center, the first to the interested party and the second to all the students of the course.

2) Provide copies of:

- ANNEX II. This is an email sent on 04/16/2021, between people from the

Council

It states "indeed there are two messages with the same sender and subject as the one from

la denuncia" both were sent on June 10 at 8:44 a.m. Specifies that one of them in-

saw at 8:44:14, it only has one recipient, and the other at 8:44:59, it has 21 recipients,

the subject of the text being exactly the same.

"The one that goes to a recipient is sent to a user that seems to correspond to the ma-

student's mother" Both messages have an attached file and the second was seen by va-

recipient rivers.

"Deletion of messages to all recipients was changed at the beginning of this course because

root of the massive use of the platform required this change among others that were also

they put on the internal messaging specifically on April 17, 2020 a petition was registered

work to add a new option, delete for everyone to delete a message for the

user and for all recipients. The switch was put into production on April 28,

2020. The behavior from then on is that the message will continue to be shown to the recipients.

users to the screen of received messages but in the subject column it will show the text

deleted message and it will not be allowed to see the detail of the message the detail option will be disabled

activated we are seeing who sent the second message and when it was deleted"

-ANNEX III: An email between employees of the Board, dated April 20, 2021 that

indicates "I am attaching a document explaining the behavior of the platform that includes

complements the data sent on Friday"

"Description of the behavior of the educational follow-up messaging "the module of

educational follow-up includes an internal messaging functionality for all users.

rivers of said module. It is not an email system and therefore users

Rivers do not require an email address. The operation is based on the definition

tion of groups, so that it is guaranteed that communication can only be carried out

between users who have some kind of relationship. For example, there are defined collectives like

tutors of my students, teachers of my son, or my students, among others and these groups

will be activated for the corresponding profiles. When a user wants to send a

message to another, it always has to be done through one of the groups, never directly.

mind. Only once the group has been selected can one or more people be selected.

nas of said group. It is seen that in the application there is a section "send message to groups".

pos "Group", and below the option in a box to select only some people,

which gives way to another box in which the candidate recipients appear.

"In certain moments in which this platform can have a very

high, sending a message may require a few seconds without being processed, while

this operation is being performed, the user cannot resubmit the same

mo message, since the sending button is disabled until the sending has finished.

previous video."

"On the other hand, when the shipment is complete, the screen deletes all information except

that the check to select some people is marked, if this was marked from the

previous shipment.

"To resend the same message, in addition to refilling the subject fields

and the body of the message, you have to select the recipients again or remove the check

to select some recipients.

Indicates that both sent messages have an attachment and the second message was

seen by several recipients and that this message is deleted only for the sender, not for

all recipients.

-ANNEX IV: indicates an employee of the claimed, in an e-mail to other employees on

 It is ruled out that it was a fault of the

04/21/2021 about who sent the second message, that "

system, as similar behaviors have been attempted to be traced and not found.

For example, the registration of the user who created a message is not correctly registered

in this table, it should collect the sender of the message and we have seen that it does not match

deciding". "We also do not collect when and who deleted that message, but since it is a

individual deletion, only to remove it from the user's mailing list could only be done by the

"Measures have been taken to remedy the issue of internal auditing and to leave a record

of all the actions that are done on the platform on this functionality, we have done this

We have detected it now and it is already being addressed." It indicates that during the confinement,

Modifications were made to messaging, and to the entire tracking module, "for

example, the possibility of deleting messages for everyone to avoid erroneous sendings, was made

on April. However, this user did not use this option but the individual deletion.

dual. This was what got us into confusion in September, when we reported that

There was only one message from this user." I deduce "that the user sent two se-

and deleted the second just for him", and proposes as an improvement that a warning alert appears

I tend that "the rest of the user will continue to have the message".

-ANNEX V. It is an email from 04/22/2021: "subject request improvements in follow-up

to educational". It is about implementing warning systems about the operation of some

n shipping options or with the following content:

Warn that a message is going to be sent to a group of recipients

Warn at the time of attempting to delete it from a recipient's message that there are more

recipient users of the sent message

Include a text in all communications warning the recipients of the messages

of the prohibition of dissemination of the message without authorization of the sending center

- ANNEX I, "report of the person responsible for the treatment based on the information

tempera in the rest of the annexes

. This is a letter from the Deputy Minister that reiterates the

taken in the other annexes.

FIFTH: On 06/11/2021, the Director of the AEPD agreed:

"INITIATE PUNISHMENT PROCEDURE of warning the MINISTRY OF

EDUCATION, CULTURE AND SPORTS OF THE COMMUNITY BOARD OF CASTILLA

LA MANCHA, with CIF S1911001D, for the alleged infringement of the articles:

-32 of the RGPD, as indicated in article 83.4.a) of the RGPD and 73.f) of the LOPDGDD, and

-5.1.f) of the RGPD in relation to article 5 of the LOPDGDD, as indicated in article

83.5.a) of the RGPD, and 72.1 a) of the LOPDGDD

Faced with the agreement, the respondent presents allegations on 06/24/2021, accompanying the

letter of 04/23/2021 from the Data Protection Delegation.

Indicates that two messages were sent from the educational platform with the same sender and

matter, to two types of recipients, to the interested party and to others, not due to the operation

of the system, but to human error of the sender of the message. measures have been strengthened.

security on the platform for sending messages to recipients, facilitating deletion

of erroneous messages and their results.

They consider that before the incident occurred they had adequate technical measures

of article 32 of the RGPD.

They request the file of the procedure.

SIXTH: The claimant files a document on 11/15/2021, stating

1- "We see ourselves in the crosshairs of certain colleagues who, under the influence of what

happened (they find out about my daughter's change of XXXX), and fraudulently (since they

sent on Saturday and taking a good look at the recipients) they send a letter to all the

teachers at my daughter's center."

2- "I understand that the fundamental rights of my daughter were violated by the

director (teacher), and that, as a result of his actions, he should be punished."

Provide a copy of your claim against XXXXXXXX dated 06/08/2020 and a letter from the

Counseling of 06/17/2020, matter communication correction XXXXXXXX, in response to

appeal filed by the claimant.

"The acting inspector understands that they are not exposed by the didactic department

the reasons or foundations on which its decision to ratify the XXXXXXXX is based

granted in the matter to the student".

Proposes to annul the administrative act issued by the didactic department on 06/08/2020

and modify the XXXXXXXX, and so it is resolved.

It also provides a letter dated 05/22/2020 "claim for non-compliance with the law of

data protection and harassment", stamped by the Ministry on 05/22/2020.

SEVENTH: On 02/03/2022 a period of testing practice begins, giving

reproduced the claim and the documentation that accompanies it, as well as that obtained

during the processing of the same, and the allegations and documents provided to the agreement of

beginning.

In addition, they are requested to report or respond to:

a-According to your report on 04/23/2021, the message was sent to two recipients, the first 8

h, 44 min 14 seconds to a single recipient, and the second 8 h 44 min 59 sec, to 21 destinations.

natatories. You are asked, if among those 21 recipients (all the students in the class, it is from

suppose) was also included as the addressee the student referred to in the claim.

mation or was excluded.

Answer that the tables of the databases extracted in Excel and their meaning, which has

have relevant information about sending messages, they are:

-table TLMENUSU: stores the subject and text of the message and another series of fields:

-x Menusu: The one with the internal identifier of the message

-x sender user: The internal identifier of the user who is sending the message-

heh

-x destination collective: The identifier of the collective to which the message is sent. The co-

courses are previously defined in the platform and it is the platform that obtains the

people who make up this group.

-x collective: if the message has been sent to the entire collective, this field has the

same information as x collective destination, but if it is not sent to all the people of di-

group, but are filtered so that only part of them is sent. This field is empty.

uncle

-TLDESMENUSU: The recipient users of each message created in the

MENUSU as long as said message has not been deleted. In this same table, save

yes the message has been read and/or deleted - logical deletion.

- HISTORICAL TLDESMENUSU: contains the same information as the TLDES table.

MENU.

Indicates the internal identifier of the user teacher on the platform, that 06/10/2020

and review of the two emails from that 06/10/2020 related to the complaint:

-The first message in chronological order (each message has an identifier number),

is found in the TLMENUSU table, and details is the one at 8:44:14, in the table X user sender-

It shows you the identifier that corresponds according to the data of the database, with the

professor. The table x group of destination: "18 that corresponds to the fathers and mothers of the

center". Determines that "recipients have been filtered"

In collective x null value, "that is, the message has not been sent to the entire collective".

In the recipient data section in the table ***TABLE.1-"Since these messages

jes have been deleted logical deletion of the platform- related to the message, only

there is a record in which it can be verified that the recipient is the user with identification

intern who corresponds to", the mother of the student.

-The second message in chronological order, which explains it, is found in the TLME table-

NUSU, and details is that of 8:44:59, in the table X sender user the identifier appears

which corresponds, according to the data in the database, to the teacher.

The table x group of destination: "32 that corresponds to the students by groups of

center".

In collective x: null value, "that is, the message has not been sent to the entire collective".

In the recipient data section in the table ***TABLE.1-there are 22.

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"Specifically, the users of the students enrolled in the group of 2 B-C of 2nd

science baccalaureate course 19-20 of the center of the user sender of the messages. Among

these 22 records is one whose recipient is the user that corresponds to the

claimant's daughter.

b-Stated in writing on 04 23 2021, Annex IV: indicates an employee of the respondent,

in an email to other employees on 04/21/2021 about who sent the second message, which

"it is ruled out that it was a system failure, since an attempt has been made to track behavior

similar cough and has not been found. For example, the record of the user who created a message

message is not correctly registered in this table, it should collect the sender of the

message and we have seen that it is not coinciding".

In their brief they indicate that it was not a system error, despite the fact that the center indicated that the system

theme usually fails and delays in the execution of a shipment. To this end, he is asked if

I would consider that it is possible that in a little more than 30 seconds the fields can be completed and

forward the second message and the attachment.

They state that from the DGAD, "the platform has been accessed as a user of it,

and with the user role, two messages have been recorded, filling in all their fields and

have been stored in the database with a time difference of 19 seconds.

two being the difference of the messages analyzed in this case of 45 seconds. Add

that this shipment in this short chronological time can also be seen in the same user

On the same day, June 10, a message at 5:38 p.m. 9 a.m. and at 5:38 p.m. 38 another with an in-

interval of 29 seconds. Provides document 1 Excel tables in which they can be verified

these manifestations.

c-Evidence in which they strongly support that it was not a system failure, (it is said

that similar behavior has been tried to track down, and has not been found…)

Indicates that apart from seeing the provided tables in which the records stored in the

recipients field are different between both messages in the table "TLMENÚSU hay

15 messages registered by other users of the platform and neither in these 15 messages in

those sent minutes before nor those sent minutes after have any anomaly or

no pattern similar to the one analyzed that makes one suspect that the system had a behavior

wrong lie"

"The messaging platform does not send messages over the internet, which

we know as electronic mail, but it is about screens that control the information

tion recorded in the tables. That is, the action of sending a message consists internally

in recording the information in some system tables and the action of reading messages consists of

Read the information in these tables. "

It explains the sequence of code that executes once the accept button is pressed. indicates

that if the system were to execute internally multiple times on that request, both sends would be

would be exactly the same, but in the records it can be verified that the fields x collected

tive and x destination are not the same, and the recipients are also different. I do not know

has verified the entry of some similar complaint, considering that in the table XXXXXXX

"There are more than 20 million messages registered"

d- How it can be interpreted and consequences of the manifestation: "the user registration

creator of a message is not correctly registered in this table"

"The system tables include in their definition four common fields in all of them.

internal audit mode, the fields are:

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C USUCREACION-Stores the internal identifier of the user who creates a record in a

table.

F CREATION; Stores the creation date of a record in the corresponding table.

C USUUPDATES: Stores the internal identifier of the last user who modified the re-

record.

F UPDATE: Stores the date on which the last modification of the record occurred."

These fields are key to data consistency, they have no functionality to

the application, are purely informative internally.

"In order to identify the sender of the messages, the information is registered in the fields

detailed in document 1"

e-Report on the result of the complaint that the claimant filed regarding the protection of

data from 05/22/2020, how it was resolved and if there is any statement from the sender of the message.

message or document not provided until now that you consider of interest, send it.

Indicates that the specific request for data breach was contained in the appeal brief

against XXXXXXXX. It details that the resolution of the appeal does not refer to anything about

Data Protection.

He points out that the professor sent a letter alluding to what happened, appearing in Annex I in

writing sent to the AEPD on 08/25/2020 and in document II. They are again referred to as

document 2. In it, a letter from the professor dated 06/10/2020 indicates "before the de-

Complainant's complaint for alleged violation of the data protection law by the

publication of the resolution to the claim against XXXXXXXX" states, "that the resolution

solution has been sent to the mother through the platform at 8 44 - attached screen, also

mo, it has been sent to the student and this sending does not appear in messages sent in the app-

tion. " It states that the message has been sent exclusively to the student, however

go, the system that today has given many problems, has sent it to the students of 2 baccalaureate-

science mouse. A screen is attached where you can see the messages sent on the day of

06/10/020 and that message does not even appear ".

f- Report if since the last writing 4/2021 the messaging platform has been modified,

planned improvements were introduced etc.

Indicates that it is in development, but not in production, since 06/15/2021, the warning of

sending to groups. It would still be pending:

-Notify, at the time of an attempt to delete a recipient's message, that

there are more recipient users of the sent message.

- Include a text in all communications, warning the recipients of the

messages of the prohibition of diffusion of the message without authorization of the sending center.

g-Regarding the message sent, if the copy was deleted for the sender only, the date on

that it was, and if it was finally decided to delete it for all recipients, date on which it was

performed.

"As has already been mentioned previously and after several emails in which this

subject, finally the DGAD carried out the logical erasure with the consequent step

to the table of historical recipients the records related to this complaint,"

attaching document four.

It ends by indicating that it is proven that the incident that gave rise to the claim

It was caused by a human error, by the sender of the message and not by a technical problem of the

system or due to a failure to adopt adequate technical or organizational measures without

detriment of its improvement in the terms of the proposal.

EIGHTH: On 02/21/2022, a resolution proposal is issued as follows

literal:

"That the Director of the Spanish Data Protection Agency declare the file

of the sanction of warning to the MINISTRY OF EDUCATION, CULTURE AND

SPORTS OF THE COMMUNITY BOARD OF CASTILLA LA MANCHA, with CIF

S1911001D, for an infringement of article 32 of the RGPD, typified in article 83.4.a)

of the RGPD, and for prescription purposes in 73.f) of the LOPDGDD.

That the Director of the Spanish Agency for Data Protection sanction with

warning to the COUNCIL OF EDUCATION, CULTURE AND SPORTS OF THE BOARD

OF COMMUNITIES OF CASTILLA LA MANCHA, with CIF S1911001D, for a

infringement of article 5.1.f) of the RGPD, typified in article 83.5 a) of the RGPD and for the purposes

of prescription in article 72.1.i) of the LOPDGDD."

No claims received

NINTH: Of the actions carried out in this procedure and the

documentation in the file, the following have been accredited:

PROVEN FACTS

1) The claimant is the mother of a second year high school student at IES ***IES.1, in

***LOCATION.2. and made a claim on a XXXXXXXX in a subject of

his daughter on 06/08/2020. On the 10th of the same month, it was received through the platform

XXXXX of the Ministry (the platform) the answer, indicating the resolution of the same.

She claims that this resolution was sent, in addition to her daughter, to other colleagues in the

her daughter's class. According to the platform screen printing, the

message received by the complainant at 8:44 a.m., appearing in recipients: "students by

groups of the center" with an attached file and in subject: "reasoned resolution of claim

XXXXXXXX". Against that XXXXXXXX, the claimant filed an appeal, resolved

on the 17th of the same month, favorable to the revision. The resolution of the resource values, among others

aspects, the lack of motivation for the review of the XXXXXXXX.

2) The complainant provided a screenshot of a telephone chat with a group of students from the class of

his daughter (you can see 2nd high school XXXX" can refer to Science, the same one to which the

claimant's daughter). It is revealed that a partner of the claimant's daughter

received the same resolution of 06/10/2020 containing the response to the claim against

the XXXXXXXX together with the data of the claimant's daughter, as well as the motivation for the

ratification of the XXXXXXXX, based on the evolution of learning.

3) According to what was claimed in the transfer and in evidence, the ICT staff that supports

the tool verified the sending of two messages from the same sender, on the same day

06/10/2020. The first to the claimant, mother of the student (a recipient), at 8:44

minutes, 14 seconds, and the second to the group of students in the class of the claimant's daughter.

keep, including this one: 22 students, 45 seconds later, this is at 8:44:59. Affair

and text and attachment are exactly the same.

4) The claimed, had the platform "***SISTEMA.1", used in all centers

education for the "academic management and sending of communications and documents among all

two members of the educational community-teachers, students and families-within the am-

strictly educational bit". It included internal messaging functionality for all

users of this module. The operation was based on the definition of collectives, or groups.

pos, activated according to profiles. When a user wants to send a message to another, always

pre has to be done through one of the groups, never directly. Just once

Once the group has been selected, one or more people from said group can be selected. I know

see that in the application there is a section "send message to groups" "Group" for example

"teachers of the center "teachers of my son", and below the option in a box to "select

mention only some people", which gives way to another box in which they are displayed

candidate recipients. It continues with the subject field, which must be written, and another bo-

"attach" button, in case you want to send attached files, as was the case. To return to

send the same message, the subject and body fields would have to be filled in again

of the message, attach the file, select the recipients again or remove the check from

select some recipients. The respondent declares that the tool had been used for 10 years

being used by teachers.

5) The respondent indicates that it appears that a "human error" occurred…. produced by the

sender of the message about who sent the second message, which "is ruled out that it was

a system failure, providing tables from its database in which it can be seen that the se-

second mailing is addressed to a group, the students of the class, with a total of XX recipients

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including the claimant's daughter, and the sender is the same. On the other hand, the teacher

He said in his demonstrations against the filing of an appeal by the claimant in

Headquarters of Educational Inspection, that the first shipment is addressed to the mother, and the second to the

daughter, but this second shipment as reflected in the system tables of the Informati-

ca is sent, 45 seconds later to the class group.

6) Both at the beginning of the 20-21 academic year, and during the confinement period, March 2020,

Changes were made in the internal messaging system of ***SISTEMA.1.

According to the respondent stated in the transfer of the claim, "we have pending es-

establish message retention policies" and are going to implement social warning systems.

bre operation of options, such as:

-The one that a message is going to be sent to a group of recipients.

-When trying to delete a message from a recipient, that there are more recipient users-

natatories.

-Warning text to the recipients of prohibition to spread the message.

7) The claimant adds an additional alleged violation to her complaint upon receiving the

06/20/2020 via WhatsApp, a letter (someone sent it to the claimant, since

This indicates that neither she nor her daughter were recipients of the note) signed by several students -

her daughter's classmates- "addressed to the teachers" which also begins with the name of the

teacher (who graded his daughter). In the letter, alluding indirectly to the facts,

they express their opinion that they express to the teachers, and the word resource is not contained,

claim or resolution, nor any personal data that can identify the claimant, or

his daughter. The claimant deduces that the decision has been made known to third parties in order to

of harming her daughter, although it is not proven that this obeys or has a direct relationship with

the processing of data by the controller or any person who treats

the data on your behalf.

FOUNDATIONS OF LAW

Yo

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

(General Data Protection Regulation, hereinafter RGPD), grants each authority

of control and according to the provisions of articles 47 and 48.1 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in

hereinafter, LOPDGDD), the Director is competent to initiate and resolve this procedure.

of the Spanish Agency for Data Protection.

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

by the Spanish Agency for Data Protection will be governed by the provisions of the

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

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

II

The RGPD defines in its article 4

"1) "personal data": any information about an identified or identifiable natural person

("the interested"); An identifiable natural person shall be deemed to be any person whose identity

can be determined, directly or indirectly, in particular by means of an identifier, such as

for example a name, an identification number, location data, an identifier

online or one or more elements of the physical, physiological, genetic,

psychological, economic, cultural or social of said person;

2) "processing": any operation or set of operations performed on data

personal data or sets of personal data, whether 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, suppression or

destruction;"

[…]

"7) "responsible for the treatment" or "responsible": the natural or legal person, authority

public, service or other body that, alone or jointly with others, determines the ends and means

of the treatment; if the law of the Union or of the Member States determines the purposes and

means of treatment, the person responsible for treatment or the specific criteria for its

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 person in charge of the treatment, the person in charge of the treatment and the people

authorized to process personal data under the direct authority of the controller or the

duty manager;"

In this case, the teacher the complainant originally referred to is a person

authorized to process personal data under the responsibility of the person in charge, teacher,

on which the direct administrative responsibility for data processing does not fall

that it executes, without prejudice to the fact that it could respond internally if the

corresponding responsibilities.

The LOPDGDD specifies those responsible in the matter in article 70:

"1. They are subject to the penalty regime established in Regulation (EU) 2016/679 and in

this organic law:

a)

Those responsible for the treatments"

The same responsibility of the RGPD is deducted in articles such as 5.2 responsible for the

compliance with the principles of data protection and 82 referred to the claim for

the damages suffered. This AEPD can only assess whether the regulations have been infringed

of data protection of the claimed as part of the fundamental right of the

natural persons analyzing the context and purpose of the treatment. the valuation,

intentionality and damages alleged by the claimant could be the subject of a claim in the

appropriate way. Article 79 of the GDPR states:

"1. Without prejudice to the available administrative or extrajudicial remedies, including

right to file a claim with a supervisory authority under article 77,

All interested parties shall have the right to effective judicial protection when they consider that their

rights under this Regulation have been violated as a result of a

treatment of your personal data.

2. The actions against a person in charge or in charge of the treatment must be exercised

before the courts of the Member State in which the controller or processor has a

establishment."

Keep in mind that in this case it is a computer application on the

that adjustments were taking place at an exceptional time because there was

a pandemic situation, which without trying to justify the facts, did imply a change

in the uses and intensity also in public employees, in technological media,

issues that need to be taken into account.

III

The initial agreement contained the literal: "Due to the deficiency in the security measures,

for the claim against XXXXXXXX that was notified on 06/10/2020, through the

instant messaging platform, the claimed one has been able to violate article 32 of the

GDPR", which indicates:

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

scope, context and purposes of the treatment, as well as risks of probability and severity

variables for the rights and freedoms of natural persons, the person in charge and the

in charge of the treatment will apply appropriate technical and organizational measures to

guarantee a level of security appropriate to the risk, which, where appropriate, includes, among others:

a) pseudonymization and encryption of personal data;

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

permanent treatment systems and services;

c) the ability to restore the availability and access to personal data in a

fast in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of the

technical and organizational measures to guarantee the security of the treatment.

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

the risks presented by the data processing, in particular as a consequence of the

accidental or unlawful destruction, loss or alteration of transmitted personal data,

stored or otherwise processed, or unauthorized communication or access to such

data.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that

any person acting under the authority of the person in charge or the person in charge and

access to personal data can only process said data following instructions from the

responsible, unless it is obliged to do so by virtue of Union Law or the

Member states."

Recital 74 of the RGPD indicates: "The responsibility of the user must be established.

controller for any processing of personal data carried out by him

yourself or on your own. In particular, the person responsible must be obliged to apply measures

timely and effective and must be able to demonstrate the conformity of the activities of

treatment with this Regulation, including the effectiveness of the measures. These measures

must take into account the nature, scope, context and purposes of the treatment as well

as the risk to the rights and freedoms of natural persons."

Reference to its limitation period is established in article 73 of the LOPDGDD:

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679,

considered serious and will prescribe after two years the infractions that suppose a

substantial violation of the articles mentioned therein and, in particular, the following:

f) The lack of adoption of those technical and organizational measures that result

appropriate to guarantee a level of security appropriate to the risk of the treatment, in the

terms required by article 32.1 of Regulation (EU) 2016/679."

In this case, the security of the Board's educational platform, used for the

academic management and sending communications between members of the educational community

goes.

The level of security measures that must be implemented in the treatment of

data is not defined in the standard, only by reference to "appropriate to the risks that pre-

feel the treatment". In principle, it would be consistent with the nature, scope, context

to and purpose of the treatment. One of the risks analyzed here is the confi-

ciality of treatment systems and services.

Several facts are signs that the application used for communication between the groups

is not the cause of sending the message to the class group of students of the daughter of the claim.

keep.

The defendant has detailed the operation of instant messaging, groups and

database tables that correspond to the shipments, along with the records of the

identifier of the two messages. It must be concluded that the application does not lack the measures

technical or organizational measures to cause a double shipment in the form of a replica of the

itself, since that was not what happened.

A strange or abnormal operation of the application cannot be inferred when there are

records and the professor admitted it, which actually confirms that the same message was duplicated,

not by default in the app, but by the sender.

Analyzed the sending of the messages as it appears in the tables that record the movements

ments of users, and their recipients and group, related aspects of the messaging of

the application, it is verified that in the first shipment only the mother is selected by the sender

of the student, for which he has to select drop-down menus and choose her specifically.

unto The second shipment, sent according to the records by the teacher, with the same content,

is made to the group of students, for which, the same content of the

same message and expressly select the recipients, in this case the class group,

of students, which coincides with the screenshot provided by the claimant.

The ICT staff that supports the EducamosCLM tool, in their responses to

04/23/2021 begins to respond and clarify what happened, and that writing did not contain reference

mentioned in the startup agreement.

In addition to what has been mentioned, during the testing period the set of measures has been specified.

measures that the respondent has that were implemented, and continue to improve,

considering that the application began when the declaration of the pandemic took place.

Also, it has explained the operation of the application, in details such as:

"In certain moments in which this platform can have a very

high, sending a message may require a few seconds without being processed, while

this operation is being performed, the user cannot resubmit the same

mo message, since the sending button is disabled until the sending has finished.

previous video."

"On the other hand, when the shipment is complete, the screen deletes all information except

that the check to select some people is marked, if this was marked from the

previous shipment.

"To resend the same message, in addition to refilling the subject fields

and the body of the message, you have to select the recipients again or remove the check

to select some recipients.

"The messaging platform does not send messages over the internet, which

we know as email, but it is about screens that control the information

tion recorded in the tables. That is, the action of sending a message consists internally

in recording the information in some system tables and the action of reading messages consists of

Read the information in these tables. "

"The defendant tried to trace similar behaviors to verify if it was a fault of the

system", and they were not found"

New improvements have also been introduced such as the deletion for all in the shipments, and for

On the other hand, messaging does not cease to be an email in which human action can select

select or deselect the recipients, with which notices will be implemented that

will send a message to a group of recipients or delete messages.

All of this leads us to consider that the infraction was not due to a possible bad configuration.

ration in terms of application security or the lack or insufficiency of measures,

that are considered reasonable based on their intended use.

Thus, it is not found that in this case there is a violation of article 32 of the RGPD, therefore

that this violation should be filed.

IV

The same facts, by the result that occurs, are likely to be included in a

infringement of article 5.1.f) of the RGPD, which states:

 "Personal data will be:

"processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

accidental loss, destruction or damage, through the application of technical measures or

appropriate organizational structures ("integrity and confidentiality")."

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17/19

The group of fellow students of the claimant's daughter were able to learn of

through the resolution of the claim:

-To the XXXXXXXX that is appealed and the subject in question.

-The previous progress in the matter, something is indicated about the first and second evaluation, and its

result.

-The final ratification of the XXXX.

The claim filed constitutes the exercise of a right and has been transmitted to

uninterested people, even if they are classmates or have some

knowledge of the matter not from the transmission, confidentiality is violated in

data processing.

Article 83.5 of the RGPD indicates:

"5. Violations of the following provisions will be sanctioned, in accordance with the

section 2, 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 total turnover

annual global of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent

tion under articles 5, 6, 7 and 9;"

It is typified in article 72.1 a) of the LOPDGDD, which states:

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679,

considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein 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."

Applicable to this offense, in this case, because the alleged offender is a public entity, the

article 83.7 of the RGPD, indicates:

"Without prejudice to the corrective powers of the control authorities under article

58, paragraph 2, each Member State may establish rules on whether it is possible, and in what

measure, impose administrative fines on authorities and public bodies established

in that Member State."

The Spanish legal system has chosen not to fine entities

public, as indicated in article 77.1. c) and 2. 4. 5. and 6. of the LOPDDGG: "1. The

regime established in this article will be applicable to the treatments that are

responsible or in charge:

c) The General Administration of the State, the Administrations of the communities

autonomous and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed

any of the infractions referred to in articles 72 to 74 of this organic law, the

competent data protection authority will issue a resolution sanctioning

the same with warning. The resolution will also establish the measures that

appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected.

would have committed

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which

depends hierarchically, where appropriate, and those affected who had the status of

interested, if any.

4. The data protection authority must be notified of the resolutions that

fall in relation to the measures and actions referred to in the sections

previous.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of

the autonomous communities the actions carried out and the resolutions issued to the

protection of this article.

6. When the competent authority is the Spanish Agency for Data Protection, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction."

Therefore, in accordance with the applicable legislation,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: SANCTION the MINISTRY OF EDUCATION, CULTURE AND SPORTS OF THE BOARD OF COMMUNITIES OF CASTILLA LA MANCHA, CIF S1911001D, with warning for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 a) of the RGPD and for prescription purposes in article 72.1.a) of the LOPDGDD.

SECOND: FILE the infraction charged to the MINISTRY OF EDUCATION CULTURE AND SPORTS OF THE COMMUNITY BOARD OF CASTILLA LA MANCHA, with CIF S1911001D, by article 32 of the RGPD, typified in the article 83.4.a) of the RGPD, and for prescription purposes in 73.f) of the LOPDGDD.

THIRD: NOTIFY this resolution to the DEPARTMENT OF EDUCATION CULTURE AND SPORTS OF THE COMMUNITY BOARD OF CASTILLA LA STAIN.

FOURTH: COMMUNICATE this resolution to the Ombudsman, in accordance with what is established in article 77.5 of the LOPDGDD.

FIFTH: 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.

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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 13/07, regulating the Contentious-administrative Jurisdiction, in the

period of two months from the day following the notification of this act, as

provided for 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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [https://sedeagpd.gob.es/sede-electronica-web/], or through one of the

remaining records provided for in art. 16.4 of the aforementioned LPACAP. You will also need to transfer

to the Agency the documentation that accredits the effective filing of the appeal

contentious-administrative. If the Agency was not aware of the filing of the

contentious-administrative appeal within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

938-150222

C/ Jorge Juan, 6

28001 – Madrid

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