

□ Procedure No.: PS/00334/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimant) dated December 13,  
January 2020 filed a claim with the Spanish Agency for the Protection of  
Data. The claim is directed against Ms. B.B.B. with NIF \*\*\*NIF.2 (hereinafter, the  
claimed).

The claimant states that a former employee has used the data of her  
clients for their own benefit, after the termination of their contractual relationship.

And, provide the following documentation:

- Data access contract between the parties.
- Notification of the claimed party that it ceases to provide its services.
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Cancellation of appointments of your clients.

Burofax warning the respondent that she cannot use it for profit

own the list of clients provided by the claimant.

- Complaint from a client, expressing her discomfort at being in the group of  
WhatsApp created by the claimed to publish their products.

SECOND: In accordance with article 65.4 of the LOPGDD, which has provided for a  
mechanism prior to the admission to processing of the claims that are formulated before  
the AEPD, consisting of transferring them to the Data Protection Delegates  
designated by those responsible or in charge of the treatment, for the purposes foreseen

in article 37 of the aforementioned rule, or to these when they were not designated, it was given transfer of the claim to the claimed entity so that it proceeded to its analysis and respond to the complaining party and to this Agency within a month.

THIRD: On March 13, 2020, the respondent was asked to provide to this Agency the following information:

1. The decision made regarding this claim.
2. In the event of exercising the rights regulated in articles 15 to 22 of the RGPD, accreditation of the response provided to the claimant.

Report on the causes that have motivated the incidence that has originated the claim.

Report on the measures adopted to prevent the occurrence of similar incidents, dates of implementation and controls carried out to check its effectiveness.

3.

Four.

5. Any other that you consider relevant.

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The petition was notified to the respondent by post, the date of delivery being of the notification on June 15, 2020, as evidenced by the certificate issued by the postal service, so that it could respond to this Agency and to the claimant within a month.

In the response submitted by the respondent on July 13, 2020, the

content mentioned in it.

On August 13, 2020, the request for information is reiterated and on August 1, September of this year, the respondent states that on July 13, 2020, she contributed allegations and supporting documents, not recorded in this Agency.

In accordance with the provisions of article 65.2 of the LOPDGDD, dated September 24, 2020, the Director of the Spanish Agency for the Protection of Data agrees to accept the processing of this claim.

FOURTH: On October 21, 2020, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure for the claim, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of Article 6.1 of the RGPD, typified in Article 83.5 of the GDPR.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that: "I comply with the duty imposed by art. 6.1 of the RGPD, obtaining the consent of the clients when they I request the personal data, through the legal text that is attached as proof and everyone signs at the time".

SIXTH: On December 14, 2020, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous actions, as well as the documents provided by the claimed party.

SEVENTH: On February 16, 2021, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction the claimed party, for an infringement of article 6.1 of the RGPD, typified in the article 83.5 of the RGPD, a sanction of warning.

EIGHTH

: Once the proposed resolution was notified, the respondent filed a written of allegations March 23, 2021, stating: "That I fully abide by said proposal and I accept the sanction of warning. That I have adopted the procedures collection of consent provided for in the law as provided in art. 6.1 GDPR. That there are no data in my files on the claimant's clients who have not been collected in accordance with the legitimizing basis for it, in accordance with the regulations in art. 6.1 a) of the RGPD".

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

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#### PROVEN FACTS

FIRST: On January 13, 2020, the claimant files a claim before the Spanish Agency for Data Protection, stating that a former employee has used the data of its clients, without having legitimacy to do so.

SECOND: There is a Burofax warning the respondent that she cannot use it to own benefit the list of clients provided by the claimant, and complaint of a client, stating "at no time have I given permission to transfer my data, what's more, I thought it was protected by the data protection platform".

THIRD: The defendant has provided in this sanctioning procedure the stockings you have adopted.

FOURTH: On March 23, 2021, the party claimed in his writ of allegations to the proposed resolution recognizes the facts and agrees with

the sanction imposed, and states: "That I fully abide by said proposal and accept

the warning sanction. That I have adopted the collection procedures for

consent provided by law as provided in art. 6.1 GDPR.

That there are no data in my files on the claimant's clients who have not

been collected in accordance with the legitimizing basis for it, in accordance with the regulations

in art. 6.1 a) of the RGPD".

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate

and to solve this procedure.

II

The defendant is accused of committing an infraction for violation of the

Article 6 of the RGPD, "Legality of the treatment", which indicates in its section 1 the

assumptions in which the processing of third party data is considered lawful:

"1. The treatment will only be lawful if at least one of the following is met  
conditions:

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

personal for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

interested party is a party or for the application at the request of the latter of measures

pre-contractual;

(...)"

III

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

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“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;

The infringement is typified in Article 83.5 of the RGPD, which considers as such:

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

with section 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the

global total annual turnover of the previous financial year, opting for

the largest amount:

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

consent under articles 5,6,7 and 9.”

The Organic Law 3/2018, on the Protection of Personal Data and Guarantee of the Digital Rights (LOPDGDD) in its article 72, under the heading "Infringements considered very serious" provides:

"1. Based on the provisions of article 83.5 of the Regulation (U.E.) 2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in it and, in particularly the following:

(...)

a) The processing of personal data without the concurrence of any of the conditions of legality of the treatment established in article 6 of the Regulation (EU) 2016/679."

IV

The documentation in the file offers evidence that the claimed, violated article 6.1 of the RGPD, since it is processing data of the clients of the entity in which he worked, without having the legitimacy to do so.

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In this sense, the claimant submits the complaint made by a client affected by the processing of their personal data without legitimate basis, in the message states "I have never given permission to transfer my data, what's more, I thought it was protected by the data protection platform". Therefore, the defendant does not prove the legitimacy for the treatment of the Claimant's customer data.

Formally notified of the proposed resolution, the respondent presented pleadings brief on March 23, 2021, stating: "That I abide by your said proposal in its entirety and I accept the sanction of warning. that I have adopted procedures for collecting consent provided for in the law as provided by the art. 6.1 GDPR.

That there are no data in my files on the claimant's clients who have not been collected in accordance with the legitimizing basis for it, in accordance with the regulations in art. 6.1 a) of the RGPD".

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

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction let it proceed".

Therefore, based on the foregoing, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: IMPOSE Ms. B.B.B., with NIF \*\*\*NIF.2, for an infraction of Article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

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

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

Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the LOPDGDD, and in accordance with the provisions of article 123 of the LPACAP, the

Interested parties may optionally file an appeal for reconsideration before the



Director of the Spanish Agency for Data Protection within a 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.

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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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