

Procedure No.: PS/00035/2019

RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/0035/2019, instructed by the Spanish Agency for Data Protection to D.A.A.A. (hereinafter the defendant), in view of the complaint presented by D.B.B.B. (hereinafter the claimant), and based on the following

BACKGROUND

FIRST: Ms. C.C.C. on behalf of the claimant dated 10/05/2018

filed a claim with the Spanish Data Protection Agency. The claim is directed against the respondent and the grounds on which the claim is based They are, in short, the following:

The respondent, ***POST.1 of ***ASOCIACION.1, used the mainland database of the e-mails of members of ***ASOCIACION.1 to express through said means that their spouse had maintained an extramarital relationship with the claimant, member of said association.

The claimed party, ignoring all Spanish regulations and without prejudice to the possible criminal repercussions that these acts could have, made use of the data to which he has access due to his position in said sports association, and sent to all the members of ***ASOCIACION.1 an email informing of the infidelities that, in his opinion, his wife was having with one of the members of the committee of said club, the claimant.

The email was sent to 273 association member addresses.

Despite the mistake made by the claimed party to fraudulently use the list of e-mail addresses, he subsequently resent another e-mail with the same purpose dated 06/16/2018.

That the above was not enough 07/02/2018 a letter was sent to the claimant

with the intention of giving an amicable solution to the problem, a letter that was ignored.

This use of the ***ASOCIACION.1 database reveals the total

ignorance of the claimant about the Spanish regulation regarding the protection of

data and makes one suspect that said database is neither registered, nor the members

duly informed of their rights or their consent correctly

obtained.

Attached to this claim are both emails and a copy of the letter sent.

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

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On 11/02/2018, reiterated on 12/19/2018, the claim was transferred to the claimant

submitted for analysis and communication to the claimant of the decision adopted

regard. Likewise, it was required that within a month he send to the

Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the

claimant regarding the transfer of this claim, and proof that

the claimant has received communication of that decision.

- 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.

- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the

claim and its transfer to the claimed entity.

On 01/08/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing filed by the claimant against the respondent.

The respondent has not responded to any of the requests for information formulated by the AEPD.

THIRD: On 01/29/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged Violation of article 5.1.f) of the RGPD, in accordance with the provisions of article 58 section 2 of the same rule, considering that the sanction that could to correspond would be a WARNING.

FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this The resolution has not submitted a brief of arguments.

Of the actions carried out in this proceeding, there have been accredited the following:

PROVEN FACTS

FIRST: On 10/05/2018 there is a written entry in the AEPD from the representative of the claimant, directed against the claimed as a result of the use of the list of email addresses of the "****ASOCIACION.1", to express through said means that your spouse had maintained a relationship extramarital with the claimant; subsequently reused the aforementioned list with the same purpose on 06/16/2018.

SECOND: There is a Certification from the Cartagena Police Station stating indicates the NIE assigned by the Central Registry of Foreigners to the claimant.

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THIRD: The claimant has set aside a copy of the e-mails sent by the claimed

on 06/15/2018 and 06/16/2018.

Likewise, there is a copy of a letter, dated 07/02/2018, sent to the claimant in order to seek a friendly solution to the problem raised, with no response to it.

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in art. 47 of the Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to resolve this procedure.

The defendant in this proceeding is charged with the violation of article 5, Principles related to the treatment, of the RGPD that establishes that:

II

"1. The 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").

(...)"

Likewise, article 5, Duty of confidentiality, of the new Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter LOPDGDD), states 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 accordance with the facts proven in this proceeding, the claimed has violated article 5.1.f), in relation to article 5 of the LOPDGDD, materialized in the use of the list that contained the email addresses emails of the members of ***ASOCIACION.1 to publicize through e-

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emails of the existence of an extramarital relationship in which he was apparently involved the claimant, a member of said association.

III

Article 83.5. a) of the RGPD, considers that the infringement of “the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000 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.

The LOPDGDD in its article 72 indicates: “Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(...)

However, article 58.2 of the RGPD provides the following: "Each authority

of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

(...)

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates

in its article 58.2 b) the possibility of going to the warning to correct the

processing of personal data that do not meet your expectations. About

when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD

or the corrective measure of warning of article 58.2.b), the rule itself in its

Recital 148 establishes the following:

"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.”

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It should be noted that the respondent did not respond to any of the information requirements formulated by the Inspection Service.

IV

At the same time, notification of the start agreement and after the term granted to formulate allegations, I do not present any writing.

At this point, it is necessary to point out that if you do not correct and reiterate the conduct revealed in the claim and that is the cause of this procedure, as well as not immediately informing this AEPD of the measures adopted could proceed to the exercise of possible actions before the person in charge of the treatment in order to apply effectively the appropriate measures to guarantee and not compromise the confidentiality of personal data and the right to personal privacy.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. A.A.A., for an infringement of article 5 of the RGPD, sanctioned in accordance with the provisions of article 83.5.a) of the aforementioned RGPD and, qualified very serious in article 72.1. a) of the LOPDGDD, a sanction of

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

SECOND: NOTIFY this resolution to the D.A.A.A. and, according to art.

77.2 of the RGPD, INFORM the claimant D. B.B.B. about the result of the claim.

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

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.

114.1 c) of the LPACAP, 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

month 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, the firm resolution may be provisionally suspended in administrative proceedings if

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

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writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](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.

Sea Spain Marti

Director of the Spanish Data Protection Agency