 Procedure No.: PS/00364/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on June 26, 2019 filed

claim before the Spanish Data Protection Agency. The claim is directed

against CLUB ATLANTIDA SUB OF SANTA CRUZ DE TENERIFE with NIF G38097754 (in

later, the claimed one).

The reasons on which the claim is based are that on June 25, 2019, the Board

Board of Club Atlántida Sub in Santa Cruz de Tenerife (composed of B.B.B. as

President, C.C.C. as Vice President, D.D.D. as Secretary, E.E.E. as Treasurer and

F.F.F. as Member, as the partners were informed by email on the 17th

June of the current) sent an email at 7:38 p.m. from the address ***EMAIL.1 to all

partners without blind copying, making personal email addresses accessible to

all partners.

On June 26, he requested the Board of Directors by email to the address

***EMAIL.1 to send an email to all partners requesting that they delete the

above with email addresses from both your inbox and trash.

Not having received a response.

Likewise, it states that on ***DATE.1 F.F.F. shared at 17.04 in a forum of the

Discord app a screenshot with email addresses of Club members

Atlantis Sub from Santa Cruz de Tenerife. F.F.F. He is a member of the Board of Directors of said

club and is the user ***USER.1 on the Discord forum.

SECOND: In accordance with the mechanism prior to the admission for processing of the

claims that are formulated before the Spanish Agency for Data Protection, foreseen

in article 65.4 of Organic Law 3/2018, of December 5, on Data Protection

Personal and guarantee of digital rights, which consists of transferring the

same to the Data Protection Delegates designated by those responsible or

in charge of the treatment, or to these when they have not been designated, and with the purpose

indicated in the aforementioned article, on August 23, 2019, transfer of this

claim to the claimed entity, requesting information on the causes that have

motivated the incidence that has originated the claim and the measures adopted to

prevent similar incidents from occurring.

The respondent answered the request for information stating the following:

“On June 25, 2019, an email was sent where the

security incident.

This is an email with no relevant data relating to a partner dinner.

In the shipping addresses, due to human error, a copy is sent to all partners

without using the Bcc tool so senders can see the emails

from the rest of the partners.

The email sending protocol foresees that the sending of emails with

multiple recipients is by BCC to prevent recipients from knowing the

mail from the rest of them.

To solve the incident, the following measures are agreed:

a) Remember the rules of use of the club's e-mail

b) Verbal warning to the person who sent the mail.

c) Preparation of a protocol for action in incidents of the same characteristics for the

sending e-mails with multiple recipients, with the incorporation of a mail model of

communication with those affected.

In relation to the message that was not answered to the member of the claimant Club of the

the present case, the reason is that the action protocol had not been implemented in

incidences of sending emails with multiple recipients, although there were

taking into account the facts reported in said email for the adoption of the measures

by the members of the board.

As far as the Discord application is concerned, it is a chat-application created by an individual

member of the previous board. The current board is aware of said message due to

the notification of the AEPD since the access as administrators of the application is

produced after said message. The message has been deleted by the current board

since it was the only possible measure.

A meeting of partners is planned to apologize to those affected by the

facts included here and inform them of the removal of the Discord application as a means

of communication between the members and the Club. In the event that the partners request the

conservation of said application, the members will be informed that the meeting of The Club will

unlinks from the App proceeding to delete the user linked to the board and losing

with it any control over the messages that were published in that application. “

THIRD: On September 19, 2019, there is a written entry from the claimant

stating that on September 16, 2019, the respondent again sent an email to

all partners without blind copying, sharing the addresses of approximately 300

partners.

FOURTH: On November 29, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate sanctioning procedure to the claimed, 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 5.1.f) of the RGPD, typified in the article 83.5 of the RGPD.

FIFTH: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS to formulate

the allegations and present the evidence it deems appropriate, in accordance with the stipulated in articles 73 and 76 of Law 39/2015 on Administrative Procedure Common of Public Administrations.

TO: Not having made allegations or presented evidence within the given period, SEX

This resolution is issued taking into account the following:

FACTS

FIRST: On June 25, 2019, the Board of Directors of Club Atlántida Sub in Santa Cruz de Tenerife sent an email at 7:38 p.m. from the address ***EMAIL.1 to all partners without blind copying, making personal email addresses accessible to everyone the partners.

SECOND: On August 23, 2019, this claim is transferred to the claimed entity, requesting information on the causes that have motivated the incident that gave rise to the claim and the measures taken to prevent it from occurring. produce similar incidents.

The respondent answered the request for information stating that in order to resolve the

incident, the following measures are agreed:

a) Remember the rules of use of the club's e-mail

b) Verbal warning to the person who sent the mail.

c) Preparation of a protocol for action in incidents of the same characteristics for the

sending emails with multiple recipients, with the addition of a model

email communication with those affected.

THIRD: Despite the measures adopted, on September 16, 2019, the defendant

sent an email again to all partners without a blind copy, sharing the addresses

of approximately 300 members.

FOUNDATIONS OF LAW

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The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of article 58.2

of the RGPD and in articles 47 and 48.1 of the LOPDGDD.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the

treatment of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, section 1, further processing of personal data for archiving purposes in the interest public, scientific and historical research purposes or statistical purposes shall not be considered incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable for the erasure or rectification without delay of the personal data that is inaccurate with respect to the purposes for which they are processed (“accuracy”);

e) maintained in a way that allows the identification of the interested parties during no longer than is necessary for the purposes of processing the personal data; the personal data may be kept for longer periods as long as they are processed exclusively for archival purposes in the public interest, scientific research purposes or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation”);

f) 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 measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions in section 1 and able to demonstrate it (“proactive responsibility”).”

III

This claim denounces that the respondent has sent the claimant

a promotional email, addressed to a multitude of recipients, without a copy

hidden.

This Agency communicates such facts to the respondent, so that he informs

the causes of the incident and adopt the appropriate measures to remedy it.

In response to this, the respondent replies that the email object of the

claim, submitted on June 25, 2019, was due to human error and that the

same June 26, 2019, measures were agreed to correct the facts, such as remembering the

rules of use of electronic mail in the club, the verbal warning to the person who

sent the mail and prepared the action protocol in incidents of

same features for sending e-mails with multiple recipients, with

incorporation of a communication mail model with those affected.

Despite the measures adopted, on September 16, 2019, the respondent sent

again an email to all partners without a blind copy, sharing the addresses of

approximately 300 members.

For all these reasons, it is considered that the violation of article 5.1 f) is confirmed.

of the RGPD, which governs the principles of integrity and confidentiality of personal data,

as well as the proactive responsibility of the data controller to demonstrate its

compliance.

IV

Article 72.1.a) of the LOPDGDD states that “according to what is established in the

article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe the

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

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Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

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

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in accordance with

a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of

the measures mentioned in this section, according to the circumstances of each case

particular;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum or,

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

of total annual global business of the previous financial year, opting for the one with the highest

amount, in accordance with article 83.5 of the RGPD.

Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD,

in your art. 58.2 b) establishes 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."

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 CLUB ATLANTIDA SUB OF SANTA CRUZ DE TENERIFE,

with NIF G38097754, for an infringement of article 5.1.f) of the RGPD, typified in the

article 83.5 of the RGPD, a sanction of warning.

SECOND: REQUEST CLUB ATLANTIDA SUB FROM SANTA CRUZ DE TENERIFE,

with NIF G38097754, so that within a month from this act of notification

accredit before this body the adoption of the technical or organizational measures

appropriate to guarantee adequate security regarding the personal data that

trafficking, including protection against unauthorized or unlawful processing and against loss,

accidental destruction or damage, in accordance with article 5.1 f) of the RGPD

THIRD: NOTIFY this resolution to CLUB ATLANTIDA SUB DE SANTA

CRUZ DE TENERIFE, with NIF G38097754.

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.

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

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 appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

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

records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also

must transfer to the Agency the documentation that proves the effective filing

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Electronic Registration of

through the

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