

□ File No.: EXP202202963

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: On February 11, 2022, A.A.A. (hereinafter, the part
claimant) filed a claim with the Spanish Data Protection Agency.

The claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the part
claimed).

The reasons on which the claim is based are that the defendant, a lawyer for
profession, you have sent documentation containing your personal data, without your
authorization, to other people through WhatsApp with the purpose of
promote yourself professionally.

The documentation sent in pdf format is an original judgment that was in force
power of the defendant in the exercise of his professional work.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights (in
hereafter LOPDGDD), on March 14, 2022, said claim was transferred to
the claimed party, to proceed with its analysis and inform this Agency in the
period of one month, of the actions carried out to adapt to the requirements
provided for in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of
October 1, of the Common Administrative Procedure of the Administrations
Public (hereinafter, LPACAP), was collected on March 25, 2022 as
It appears in the acknowledgment of receipt that is in the file.

No response has been received to this letter of transfer.

THIRD: On May 11, 2022, in accordance with article 65 of the

LOPDGDD, the claim presented by the claimant party was admitted for processing.

FOURTH: On August 25, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate disciplinary proceedings against the claimed party,

for the alleged infringement of article 6 of the GDPR and article 5.1.f) of the GDPR, typified

in article 83.5 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in

Law 39/2015, of October 1, on the Common Administrative Procedure of

Public Administrations (hereinafter, LPACAP) and after the period granted

for the formulation of allegations, it has been verified that no allegation has been received

any by the claimed party.

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/7

Article 64.2.f) of the LPACAP -provision of which the claimed party was informed

in the agreement to open the procedure - establishes that if no

arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility,

may be considered a resolution proposal. In the present case, the agreement of

beginning of the disciplinary file determined the facts in which the

imputation, the infringement of the GDPR attributed to the defendant and the sanction that could

impose. Therefore, taking into consideration that the claimed party has not

made allegations to the agreement to start the file and in attention to what

established in article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case resolution proposal.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The claimed party, a lawyer by profession, has proceeded to send through of WhatsApp a judgment containing personal data of the claimant, with the spirit of professional publicity.

SECOND: The Spanish Data Protection Agency has notified the defendant the agreement to start this disciplinary procedure, but it has not presented allegations or evidence that contradicts the facts denounced.

FUNDAMENTALS OF LAW

Yo

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and as established in articles 47 and 48 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to initiate and to solve this procedure.

II

With the evidence available at this stage of the procedure, it does not seem that there is no legal basis that legitimizes the treatment carried out by the party claimant.

Article 4.11 of the GDPR defines the consent of the interested party as "all manifestation of free, specific, informed and unequivocal will by which the

The interested party accepts, either through a declaration or a clear affirmative action, the processing of personal data concerning you".

In this sense, article 6 of the GDPR establishes the following:

"1. Processing will only be lawful if at least one of the following is fulfilled

conditions:

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/7

a) the interested party gave his consent for the processing of his personal data

for one or more specific purposes;

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

is part of or for the application at the request of the latter of pre-contractual measures;

c) the processing is necessary for compliance with an applicable legal obligation

to the data controller;

d) the processing is necessary to protect vital interests of the data subject or of another

Physical person;

e) the treatment is necessary for the fulfillment of a mission carried out in the interest

public or in the exercise of public powers conferred on the data controller;

f) the treatment is necessary for the satisfaction of legitimate interests pursued

by the person in charge of the treatment or by a third party, provided that on said

interests do not outweigh the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

The provisions of letter f) of the first paragraph shall not apply to the treatment

carried out by public authorities in the exercise of their functions.

2. Member States may maintain or introduce more specific provisions

in order to adapt the application of the rules of this Regulation with respect to the

treatment in compliance with section 1, letters c) and e), setting more specifies specific processing requirements and other measures to ensure a lawful and equitable treatment, including other specific situations of treatment under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

- a) Union law, or
- b) the law of the Member States that applies to the data controller.

The purpose of the treatment must be determined in said legal basis or, as regarding the treatment referred to in section 1, letter e), will be necessary for the performance of a mission carried out in the public interest or in the exercise of powers public rights conferred on the data controller.

This legal basis may contain specific provisions to adapt the application of the rules of this Regulation, among others: the general conditions that govern the legality of the treatment by the person in charge; object data types of treatment; affected stakeholders; the entities that can be communicate personal data and the purposes of such communication; the limitation of the purpose; the terms of conservation of the data, as well as the operations and the processing procedures, including measures to ensure proper processing

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/7

lawful and equitable, such as those relating to other specific situations of treatment to tenor of chapter IX.

The law of the Union or of the Member States will fulfill an objective of interest

public and will be proportional to the legitimate purpose pursued.

4. When the treatment for another purpose other than that for which the data were collected

personal data is not based on the consent of the interested party or on the Law

of the Union or of the Member States which constitutes a necessary measure and

proportional in a democratic society to safeguard the objectives indicated

in Article 23(1), the controller, in order to determine

if the treatment for another purpose is compatible with the purpose for which they were collected

initially the personal data, will take into account, among other things:

a) any relationship between the purposes for which the data was collected

personal data and the purposes of the intended further processing;

b) the context in which the personal data was collected, in particular for what

regarding the relationship between the interested parties and the data controller;

c) the nature of the personal data, specifically when dealing with categories

special personal data, in accordance with article 9, or personal data

relating to criminal convictions and offences, in accordance with article 10;

d) the possible consequences for data subjects of the planned further processing;

e) the existence of adequate guarantees, which may include encryption or

pseudonymization.”

Violation of art. 6 of the GDPR is typified in article 83.5 a) of the GDPR that

has:

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

paragraph 2, with administrative fines of maximum EUR 20,000,000 or,

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

total annual global business volume of the previous financial year, opting for

the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

Article 72.1 b) 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 after three years, the infractions that suppose a substantial violation of the articles mentioned therein and in particular, the following:

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

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

II

5/7

The principles related to the processing of personal data are regulated in the

Article 5 of the GDPR which establishes that "personal data will be:

"a) treated in a lawful, loyal and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency»);

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

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

d) accurate and, if necessary, up-to-date; all measures will be taken

Reasonable reasons for the erasure or rectification without delay of the personal data are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in such a way that the identification of the interested parties is allowed during longer than necessary for the purposes of processing personal data; the personal data may be retained for longer periods as long as processed exclusively for archiving purposes in the public interest, research purposes scientific or historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of appropriate technical and organizational measures that imposes this Regulation in order to protect the rights and freedoms of the data subject ("retention period limitation");

f) processed in such a way as to guarantee adequate data security personal data, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of technical measures or organizational ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions of paragraph 1 and able to demonstrate it ("proactive responsibility")."

Violation of art. 5.1.f) of the GDPR is typified in article 83.5 a) of the GDPR that has:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

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

www.aepd.es

C / Jorge Juan, 6

28001 – Madrid

sedeagpd.gob.es

6/7

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 in violation of the principles and guarantees

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

IV.

In accordance with the available evidence, it is considered that the

The claimant has processed personal data of the claimant without her consent or

no other cause of legitimization of this treatment, thereby contravening the

Article 6 of the GDPR, and has violated the principle of integrity and confidentiality,

violating article 5.1 f) of the GDPR, since it has disseminated by WhatsApp a

sentence in which the claimant is a party, thus carrying out a treatment

illegal use of personal data by not having legitimacy for such dissemination.

V

Article 58.2 of the GDPR provides the following: "Each control authority shall have

of all of the following corrective powers listed below:

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

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

in a certain way and within a specified period;

i) impose an administrative fine pursuant to Article 83 of the GDPR

SAW

Therefore, in accordance with the applicable legislation and assessed the criteria of

graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE B.B.B., with NIF ***NIF.1, for a violation of article 6 of the

GDPR and for a second infringement of article 5.1.f) of the GDPR, typified in the

Article 83.5 of the GDPR, two fines of €2,000 (one thousand euros) each, which makes a

total of €4,000 (four thousand euros)

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

THIRD: Warn the penalized person that they must make the imposed sanction effective

Once this resolution is enforceable, in accordance with the provisions of Article

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, by means of its income, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, open in the name of the Agency

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/7

Spanish Data Protection Agency at the bank CAIXABANK, S.A.. In the event

Otherwise, it will proceed to its collection in the executive period.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from

count 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 for in article 46.1 of the

referred Law.

Finally, it is noted 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 through

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

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

web/], or through any of the other registries provided for in art. 16.4 of the

mentioned 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 proceedings within a period of two months from the day following the

Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

938-120722

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es