 File No.: EXP202103457

RESOLUTION OF SANCTIONING PROCEDURE

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

to the following

BACKGROUND

FIRST: On August 24, 2021, A.A.A. (hereinafter, the claiming party)

filed a claim with the Spanish Data Protection Agency.

The claim is directed against QUALITY-PROVIDER S.A. with NIF A87407243 (in

below, the claimed party).

The reasons on which the claim is based are the following:

The claimant states that he received a telephone call at his home (not

identifies the number) of the TEMPOCASA real estate agency. When asked how they had

obtained the data, they respond that they come from INGLOBALY, an entity with which

has contacted to request that the personal data of the claimant be deleted.

Provides a screenshot of the INGLOBALY database.

The image shows the personal data of the people living in the

address on which the search was carried out.

The complaining party has contacted the person in charge to request the deletion of the

data, and you have been redirected to use the services of a third party, viadenuncia.net, to

do it.

They have requested a copy of the DNI and since he has refused to provide it, they have not processed the

suppression.

SECOND: On November 22, 2021, in accordance with article 65 of

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

THIRD: The General Subdirectorate of Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the functions assigned to the control authorities in the

article 57.1 and the powers granted in article 58.1 of the Regulation (EU)

2016/679 (General Data Protection Regulation, hereinafter GDPR), and

in accordance with the provisions of Title VII, Chapter I, Second Section, of the

LOPDGDD, having knowledge of the following extremes:

The claimant made, on August 16, 2021, an anonymous communication in

the infringement and complaints mailbox of QUALITY PROVIDER, in the system

Viacomplaint, a request to delete your own personal data that

They were in the files of Inglobaly.com.

Because Inglobaly.com is a domain that belongs to QUALITY PROVIDER

S.A., the communication was introduced through the QUALITY complaints mailbox

PROVIDER S.A.

Said communication and complaint indicated the following:

"My personal data appears on their website and I have not given them this data or

I have not consented to their publication either. I don't know how they got

my data, but if they are not removed I will take legal action."

According to the representatives of the requested entity, the complaint was anonymous,

there was no email through which to contact nor did the

name and surname of the complainant, so it was not possible to identify the applicant

nor what data was interested in being deleted.

On the same day, August 16, 2021, the manager and instructor of the QUALITY mailbox PROVIDER, responded to said complaint stating that without the identification of the requesting person, it was excessively complex to establish The management of the requested personal data deletion is underway.

FOURTH: On November 2, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, 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 (in hereafter, LPACAP), for the alleged infringement of article 6 of the GDPR and article 17 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), the claimed party submitted a written of allegations in which, in summary, he expresses the following:

Consider the manifest incompetence of the Spanish Data Protection Agency for the processing of this procedure under the provisions of the Directive (EU) 2019/1937, of the European Parliament and of the Council, of October 23, 2019, regarding the protection of persons who report violations of the Union Law, which entered into force on December 17, 2019, therefore requests that the Agency declare itself incompetent and inhibit itself from the processing of the present file.

Secondly, it points out that, in response to the request to delete the data, It was answered that said exercise requires that a copy of the DNI of the data whose suppression was interested, since without it it was not possible to process the order of deletion, and that since it was not provided it could not be carried out.

SIXTH: On December 15, 2022, the procedure instructor agreed

perform the following tests:

The claim filed by A.A.A. and

your documentation, the documents obtained and generated during the admission phase

processing of the claim, and the report of previous investigation actions that

They are part of procedure E/12442/2021.

Likewise, it is considered reproduced for evidentiary purposes, the allegations to the

initiation of the referenced sanctioning procedure, presented by QUALITY-

PROVIDER S.A., and the accompanying documentation.

Of the actions carried out in this procedure and of the documentation

in the file, the following have been accredited:

SEVENTH: On January 17, 2023, a resolution proposal was issued

proposing that the Director of the Spanish Data Protection Agency sanction

to QUALITY-PROVIDER S.A., for violations of articles 6 and 17 of the GDPR,

typified in article 83.5 of the GDPR impose a fine of 10,000 euros for

sanction, which makes a total of 20,000 euros.

EIGHTH: On February 14, 2023, the party claimed in response to the

proposed resolution issued by this Agency on January 17, 2023, again

expresses the manifest incompetence of the AEPD to take cognizance of this

disciplinary procedure, based on Directive (EU) 2019/1937, of the Parliament

European Union and of the Council, of October 23, 2019, regarding the protection of

people who report violations of Union Law, which entered into

effective December 17, 2019.

It indicates that the entity has a complaints channel as indicated in the Directive that

is external to INGLOBALY subject to the duty of secrecy, which is the one that requested the DNI of the

claimant.

It shows that the data was acquired by QUALITY PROVIDER SA and

obtained from the entity TELEFÓNICA through sources accessible to the public from

the year 2004

It reiterates that there was a factual impossibility of carrying out the requested deletion,

the data whose deletion was sought has not been provided, nor

any authorization for the applicant to make the request for deletion of data

in his father's name. Given this, this party tried, through the means that were

within their reach, obtain the necessary identification of the applicant, who refused

emphatically to identify themselves reliably so that this part could lead to

carry out the request made regarding the deletion of your data.

NINTH: On March 7, 2023, the respondent entity presents new

allegations and requests a copy of the file and extension of the term to present

new allegations to the resolution proposal.

TENTH: On March 23, 2023, the respondent entity submitted a written

response to the proposed resolution issued by this Agency on January 17,

2023, stating that this Agency when opening this sanctioning procedure

is violating article 24 of the Spanish Constitution of December 29, 1078

and Directive (EU) 2019/1937 of the European Parliament and of the 2 Council of October 23

of 2019 on the protection of persons who report violations of the

Union Law.

Specifically, the claimed entity expresses the lack of competence of the Agency

Spanish Data Protection Agency stating the following:

"We maintain and ratify all the writings presented in this proceeding, not

we want to expand on repeating all of the above, it is demonstrated that the AEPD, does not

is competent and that said Spanish Organic Law on Data Protection is without

any effect on all its articles. It was declared unconstitutional by the Court

Constitutional in certain articles, where the beneficiaries were the parties

politicians and private polling companies (Another Law should have been proposed

New organic law, by the Government in Congress and the Senate, a fact that does not

has occurred so far). We find that also the Court

Supreme Court declares illegal, for political reasons, all new appointments, made

ratified by the Court of Justice of the European Union and where it is established that the

AEPD is a nest of CORRUPTION in all appointments."

Of the actions carried out by the Spanish Data Protection Agency and in

based on the following

PROVEN FACTS

FIRST: The complaining party states that they have received a telephone call, and

that the caller informed him that he had canceled his QUALITY data.

It has been verified that the requested entity has not canceled the personal data

of the claimant despite his request.

FUNDAMENTALS OF LAW

Yo

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

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

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

processed by the Spanish Data Protection Agency will be governed by the provisions

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

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

In relation to the lawful processing of personal data, article 6 of the GDPR,

sets the following:

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

conditions:

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 a legal obligation applicable to the

responsible for the treatment;

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."

II

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 the treatment established in article 6 of Regulation (EU) 2016/679."

IV.

In the present case, although the respondent entity has demonstrated that it is

accredited for the treatment of the claimant's data through the printing of

screen provided by the claimant for the registration of their data in the

QUALITY PROVIDER S.A. the defendant has not justified the basis of legitimation

nor has it provided the necessary weighting so that the treatment of the data of the

claimant can be based on legitimate interest, nor is there evidence that the claimant has

been informed of the legitimate interest of the defendant so that he could exercise his

right of opposition.

It should be noted that the concept of "public access sources" does not appear in the current

GDPR, which applies in any case the need to prove a base

legitimizing as established in article 6.1 of the GDPR.

In this regard, it should be noted that, in any case, the party requested to act

According to the law, it should have communicated the data collection to the claimant, either in

the moment they obtained them or when they used them for commercial purposes.

As a consequence, the claimed entity has violated article 6 of the

GDPR, in accordance with the legal basis II, for understanding that we

we are faced with an illegitimate data processing.

V

On the other hand, article 17 of the GDPR establishes the following that:

"1. The interested party shall have the right to obtain without undue delay from the person responsible for the

treatment the deletion of personal data that concerns you, which will be

obliged to delete without undue delay the personal data when any

of the following circumstances:

a) the personal data is no longer necessary in relation to the purposes for which it was

were collected or otherwise processed;

b) the interested party withdraws the consent on which the treatment is based in accordance

with Article 6(1)(a) or Article 9(2)(a) and this is not

based on another legal basis;

c) the interested party opposes the processing in accordance with article 21, paragraph 1, and does not

other legitimate reasons for the treatment prevail, or the interested party opposes the

treatment according to article 21, paragraph 2;

d) the personal data have been unlawfully processed;

e) personal data must be deleted to comply with a legal obligation

established in the law of the Union or of the Member States that applies to the

responsible for the treatment;

f) the personal data have been obtained in relation to the offer of services of the

information society referred to in article 8, paragraph 1.

2. When you have made the personal data public and are obliged, by virtue of the

provided in section 1, to delete said data, the person responsible for the treatment,

taking into account the technology available and the cost of its application, it will adopt

reasonable measures, including technical measures, with a view to informing

responsible who are processing the personal data of the request of the interested party

deletion of any link to such personal data, or any copy or replica of

the same.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;

b) for compliance with a legal obligation that requires data processing

imposed by the law of the Union or of the Member States that applies to the

responsible for the treatment, or for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the person responsible;

c) for reasons of public interest in the field of public health in accordance with Article 9, paragraph 2, letters h) and i), and paragraph 3;

d) for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with Article 89(1), to the extent that the right indicated in paragraph 1 could make it impossible or hinder seriously the achievement of the objectives of said treatment, or e) for the formulation, the exercise or defense of claims."

SAW

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:

k) The impediment or the obstruction or the reiterated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679."

VII

The requested entity considers the manifest incompetence of the AEPD to know of this sanctioning procedure, based on Directive (EU) 2019/1937, of the European Parliament and of the Council, of October 23, 2019, regarding the protection of people who report violations of Union Law, which entered

effective December 17, 2019.

The requested entity considers that the entry into force of the Directive (EU)
2019/1937 implied an important legislative change, since it came to modify
directly, among others, the General Data Protection Regulation. And the
The most significant implications of this Directive are that, firstly, it creates a
conflict resolution system and different administrative simplification; and in
Second, its entry into force renders the LOPDGDD obsolete, which should
have been adapted from the moment the Directive (EU) entered into force
2019/1937.

In this sense, we must point out that article 288 of the Treaty on the Functioning
of the EU establishes the following:

"To exercise the powers of the Union, the institutions shall adopt regulations,
directives, decisions, recommendations and opinions.

The regulation will have general scope. It will be obligatory in all its elements and
directly applicable in each Member State.

The directive shall bind the Member State to which it is addressed as to the result to be
be achieved, leaving, however, to the national authorities the choice of the
form and means.

The decision will be binding in all its elements. When you designate recipients,
It will only be mandatory for them.

The recommendations and opinions will not be binding."

Therefore, it follows from this precept that the directives, unlike the
regulations that are directly applicable, are binding legal acts that
imply an obligation of result to the recipient Member States, that is,
that imply an obligation to transpose on the part of the EU States
recipients of this Directive.

The Directive in question has been transposed into the Spanish legal system,

Through Law 2/2023, of February 20, regulating the protection of people

to report on regulatory violations and anti-corruption, which, if

Although it has modified article 24 of the LOPDGDD, it has not meant that the AEPD has

ceased to be the independent supervisory authority with responsibility for

monitor the application of the GDPR

VIII

In the present case, the claimant denounces the entity claimed because

Despite your request, you do not cancel your personal data, claiming said entity that such

action is not possible because we do not know what data it refers to.

Guidelines 01/2022 on the rights of the interested parties — Right of access-

Version 1.0 adopted on January 18, 2022, it is collected, regarding the identification

of the requesting person, that the data controller must respond to the

requests from the interested parties to exercise their individual rights, unless

can demonstrate, by means of a justification in accordance with the principle of responsibility

proactive (Article 5, paragraph 2), which is not in a position to identify the

interested (article 11).

And in particular on the assessment of proportionality in relation to the

identification of the applicant, the aforementioned Guidelines provide the following:

“69. As indicated above, if the data controller has

reasonable grounds to doubt the identity of the applicant, may

request additional information to confirm the identity of the interested party. However,
the data controller must at the same time ensure that it does not collect more
personal data of those necessary to allow the identification of the person
applicant. Therefore, the data controller will carry out an evaluation
of proportionality, which must take into account the type of personal data that is
are being processed (for example, special categories of data or not), the nature of the
request, the context in which the request is made, as well as any damages
may result from improper disclosure. When assessing proportionality, you should
remind yourself to avoid excessive data collection, while ensuring a
adequate level of security of processing.

70. The data controller must apply an authentication procedure
(verification of the identity of the interested party) to be sure of the identity of the
people who request access to their data28, and guarantee the security of the
treatment throughout the process of processing a request for access to
accordance with article 32, including, for example, a secure channel for the
Interested parties provide additional information. The method used for authentication
It must be relevant, adequate, proportionate and respect the principle of minimization
of data. If the data controller imposes burdensome measures aimed at
identify the interested party, must adequately justify it and guarantee compliance

of all fundamental principles, including data minimization and the obligation
to facilitate the exercise of the rights of the interested parties (art. 12, section 2, of the

GDPR).

73. It should be stressed that the use of a copy of an identity document

as part of the authentication process creates a data security risk

personal and may lead to unauthorized or illegal treatment, so you must

considered inappropriate, unless strictly necessary, appropriate and

in accordance with national law. In such cases, data controllers

must have systems that guarantee an adequate level of security for

mitigate the greatest risks to the rights and freedoms of the interested party when receiving

said data. It is also important to note that identification by means of a

identity document does not necessarily help in the online context (for

example, with the use of pseudonyms) if the person concerned cannot provide

no other evidence, for example, other characteristics that match the account of

user."

Therefore, it must be indicated that the defendant should have requested the representative of the

claimant that accredits his representation and not the DNI of the represented, father of the

representative. The defendant has not proven the proportionality of her request that

can be considered excessive and that it supposes an obstacle to the exercise of the

right of deletion.

This is so, because for the exercise of rights, greater

formalities than those followed to obtain such data.

Therefore, article 17 of the GDPR would have been violated in accordance

on the basis of law v.

VIII

In relation to the infringement of article 6 and 17 of the GDPR and in order to determine the fine

administrative procedure to be imposed, the provisions of articles 83.1 and

83.2 of the GDPR, precepts that indicate:

"Each control authority will guarantee that the imposition of administrative fines

under this Article for the breaches of this Regulation indicated

in sections 4, 5 and 6 are in each individual case effective, proportionate and

deterrents."

"Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or in lieu of the measures contemplated in

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the

nature, scope or purpose of the processing operation in question

such as the number of interested parties affected and the level of damages that

have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to

alleviate the damages and losses suffered by the interested parties;

d) the degree of responsibility of the controller or processor,

taking into account the technical or organizational measures that they have applied under

of articles 25 and 32;

e) any previous infringement committed by the controller or processor;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in

particular whether the person in charge or the person in charge notified the infringement and, if so, in what

extent;

i) when the measures indicated in article 58, paragraph 2, have been ordered

previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or to mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement."

Regarding section k) of article 83.2 of the GDPR, the LOPDGDD, article 76,

"Sanctions and corrective measures", provides:

"2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.

personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the commission

of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between those and any interested party."

In accordance with the precepts transcribed, in order to set the amount of the fines to impose on QUALITY-PROVIDER S.A. with NIF A87407243, as responsible for two offenses typified in article 83.5.a) and 83.5 b) of the GDPR, are estimated concurrent in the present case, as aggravating circumstances, the link of the activity of the offender with the processing of personal data, according to the Article 76.2 b) of the LOPDGDD.

Each of these offenses can be sanctioned with a fine 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, in accordance with article 83.5 of the GDPR.

IX

After the evidence obtained, it is considered appropriate to graduate the sanctions to impose in the amount of €10,000 (ten thousand euros) for the violation of article 6 of the GDPR and €10,000 (ten thousand euros) for violation of article 17 of GDPR.

The text of the resolution establishes which have been the infractions committed and the facts that have given rise to the violation of the regulations for the protection of data, from which it is clearly inferred what are the measures to adopt, without prejudice that the type of procedures, mechanisms or concrete instruments for

implement them corresponds to the sanctioned party, since it is responsible for the

treatment who fully knows its organization and has to decide, based on the

proactive responsibility and risk approach, how to comply with the GDPR and the

LOPDGDD.

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 QUALITY-PROVIDER S.A., with NIF A87407243, for a

infringement of article 6 of the GDPR and article 17 of the GDPR, typified in Article 83.5

of the GDPR, a fine of 10,000 euros for each infraction, which makes a total of

20,000 euros (twenty thousand euros)

SECOND: NOTIFY this resolution to QUALITY-PROVIDER S.A.

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 period

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

IBAN: ES00-0000-0000-0000-0000-0000 (BIC/SWIFT Code:

restricted no.

CAIXESBBXXX), opened on behalf of the Spanish Data Protection Agency in

the banking entity CAIXABANK, S.A. Otherwise, it will proceed to its

collection in 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-
web/], or through any of the other registries 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 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