

□ Procedure No.: PS/00137/2020

938-300320

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated September 23,  
2019 filed a claim with the Spanish Data Protection Agency.

The claim is directed against D. B.B.B. with NIF \*\*\*NIF.1 (hereinafter, the  
reclaimed).

The claimant states that she received a postal mail at her address, with  
numerous personal data of officials of the Department of Justice of the  
Generalitat de Catalunya, which include postal addresses, names, surnames and  
DNI., among which are those of the claimant, not knowing how  
obtained your data by not having any personal or professional relationship with the  
reclaimed.

It provides a list, where, among others, the name, surnames and DNI of the  
claimant.

SECOND: In view of the facts denounced in the claim and the  
documents provided by the claimant, the Subdirector General for Inspection of  
Data proceeded to carry out actions for its clarification, under the protection of  
the powers of investigation granted to the control authorities in article 57.1  
of Regulation (EU) 2016/679 (General Data Protection Regulation, in  
hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I,  
Second section, of Organic Law 3/2018, of December 5, on the Protection of

Personal data and guarantee of digital rights (hereinafter LOPDGDD).

As a result of the research actions carried out, it is confirmed

that the data controller is the claimed party.

The respondent has provided a copy of the aforementioned documents that are

in his power.

He states that at no time did he put names, or checking accounts, or

no information that could bring them family or professional complications.

Personal data, address and your D.N.I. are handwritten in a letter

third, indicating the name of the latter.

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THIRD: On June 16, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, 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 of the RGPD, typified in Article

83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written

allegations in which, in summary, it states that the personal data to which

the plaintiff refers, at no time have they been collected by him, nor used

for any illicit purpose.

FIFTH: On July 9, 2020, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous investigative actions, E/07212/2019, as well as the documents provided by the claimant.

SIXTH: On September 10, 2020, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency imposes B.B.B., with NIF \*\*\*NIF.1, for a violation of Article 6 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

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

#### FACTS

FIRST: It appears in the postal mail sent by the claimed party to the claimant numerous personal data of officials of the Department of Justice of the Generalitat de Catalunya, in which postal addresses, names, surnames and DNI, among which are those of the claimant.

SECOND: The respondent states that the personal data referred to in the claimant, at no time have they been or collected by him, or used for purposes any illegal.

#### 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 as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

The defendant is imputed the commission of an infraction for violation of Article 6 of the GDPR. which states that: "1. The processing will only be lawful if at least one of the following conditions:

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

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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

In the present case, the claim focuses on the fact that the defendant violated the

article 6.1 of the RGPD, since the personal data of the claimant was

treated without legitimacy for it. Consequently, it has carried out a treatment of

personal data without having proven that you have the consent of the

itself for its treatment, nor that it has the legal authorization for it.

However, and this is essential, the defendant does not prove legal standing to

the treatment of your data.

Therefore, there is no doubt, as the respondent acknowledges, the subsequent use of the

personal data of the claimant made by an unauthorized third party.

Respect for the principle of legality that is in the essence of the fundamental right

of protection of personal data requires that it be accredited that the

responsible for the treatment displayed the essential diligence to prove that

extreme. Failure to act in this way -and this Agency, who is responsible for ensuring

for compliance with the regulations governing the right to data protection of

personal character - the result would be to empty the content of the principle of legality.

Therefore, in response to the defendant's allegations, stating that the personal data to which the claimant refers, at no time have they been collected by the defendant, nor used for any illicit purpose, there is evidence of that the claimant received a letter in her mailbox with the personal data of officials of the Department of Justice of the Generalitat de Catalunya, in which include postal addresses, names, surnames and DNI, and among which are find those of the claimant.

Therefore, it must be pointed out in accordance with the precepts indicated in the legal basis II, that the respondent has no legal standing to deal claimant information.

#### IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency of Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

“2 Each supervisory authority shall have all of the following powers corrections listed below:

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(...)

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;

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

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and Infractions that suppose a substantial violation will prescribe after three years.

of the articles mentioned therein and, in particular, the following:

b) 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.

v

The exposed facts constitute, on the part of the defendant, an infraction to the provided in article 6 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) provides the possibility of sanctioning with a warning, when collecting through the list of postal mail personal data of officials and consider that the administrative fine that could fall in accordance with the provisions of article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed party, whose main activity is not directly linked to the processing of personal data, since there is no record of the commission of any previous infringement in terms of protection

of data, in relation to 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.”

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Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of the sanctions whose existence has been proven, the Director of the

Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE D. B.B.B., with NIF \*\*\*NIF.1, for a violation of Article 6

of the RGPD, typified in Article 83.5 of the RGPD, a sanction of warning.

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

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.

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