

Procedure No.: PS/00402/2018

938-0419

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### FACTS

FIRST: HOSPITAL UNIVERSITARIO PUERTA DE HIERRO MAJADAHONDA (in hereinafter, the claimant) on July 5, 2018 filed a claim with the

Spanish Agency for Data Protection, motivated by data processing made through a personal mobile device whose owner is identified as Mrs.

A.A.A. with NIF \*\*\*NIF.1 (hereinafter the one claimed, being subsequently uploaded

According to the complainant to the YouTube platform, without "collecting the consent and having expressly stated the opposition.

The grounds on which the claim is based are "obtaining images of staff of the Hospital Center" without their consent.

Together with the claim, it provides a video with audio of 39 seconds, where sees healthcare professionals, security guards and a patient in stretcher in which the toilets tell her "that they will attend to her at the plant correctly". (Annex I).

SECOND: In view of the reported facts, in accordance with the evidence that is available, the Data Inspection of this Spanish Agency for the Protection of Data considers that the treatment of personal data that is carried out by the denounced through the chambers to which the complaint refers, does not meet the conditions imposed by the regulations on data protection, for which reason the opening of this sanctioning procedure.

THIRD: On September 25, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 6.1 of the RGPD, typified in Article 83.5 of the RGPD.

FOURTH: Having consulted the computer system of this body, it appears as "notified" the agreement of Start of PS/00402/2018, through the announcement corresponding in the B.O.E.

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. On 07/05/18 a claim is received at this Agency through the which translates as done as follows:

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"obtaining images of hospital center personnel" without having the their consent.

Second: It consists identified as the main person responsible for the video the identified like A.A.A.

Third. It is proven that the defendant proceeded to record with her phone laptop a video, proceeding to upload the images of various professionals of the hospital center --Puerta del Hierro-- (Majadahonda), without counting on the consent of the same, with the purpose of exercising a criticism of the "treatment" made on one of his relatives.

A copy of the link is provided on the YouTube platform \*\*\*URL.1

Consulted the link on date (10/18/19) no video is observed in the mentioned platform.

Fourth. The accused party has not made any allegation in this regard, so way that you have not explained the cause/reason for uploading the video to the platform known as Youtube.

## 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 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 initiate and resolve this procedure.

II

In the present case, we proceed to examine the claim dated 07/05/18 through which the following facts are transferred to this Agency:

“obtaining images of hospital center personnel” without having the consent of the same, to be broadcast on the YouTube platform despite staff opposition to it. (folio no. 1).

The RGPD defines consent as a free affirmation of the interested party by which you accept that your data be filed and processed, but only for a specific purpose and under specific conditions with respect to which it must be previously informed.

Article 6.1 of the RGPD establishes the assumptions that allow considering lawful processing of personal data.

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The dissemination of images of public personnel and/or third parties on platforms social, is not protected a priori in the freedom of information, existing channels appropriate to be able to file a complaint, in the event of a hypothetical malfunction of a public service or alleged neglect in the provision of the service.

As a guideline in the Community of Madrid, there is the figure of the Ombudsman of Patient (vgr. Law 12/2001, December 21) as the body in charge of managing the claims and complaints related to the rights and duties of patients.

This Agency has manifested itself in the sense of not considering the images obtained as a "personal and domestic" scope, and should be weighed in attention to the circumstances of the specific case the possible collision between the fundamental right to freedom of information and the right to the image of third parties.

“Only the fact that the recordings are made in the workplace, in the place where public employees provide their services, and without any relation to them that exceeds the purely professional, seems to lead us to the conclusion that in the assumption raised does not apply the domestic exception.

### III

In accordance with the evidence available at the present time of agreement to initiate the sanctioning procedure, and without prejudice to what results from the instruction, it is considered that the person claimed has proceeded to obtain images of Hospital Center personnel to spread it on their social networks.

The art. 58.2 GDPR provides the following. “Each control authority will have of all the following corrective powers indicated below:

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

when the treatment operations have violated the provisions of this Regulation; (...).

The known facts could constitute an infraction, attributable to the claimed, for violation of art. 6.1 RGPD, previously transcribed.

Taking into account the foregoing, the infringement of article 6.1 of the RGPD, may sanctioned with the imposition of an administrative offense as established in the Article 83.5 of the Regulation itself, which provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of €20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount: a) the basic principles for the treatment, including the conditions for consent under articles 5, 6, and 7 9...”

IV

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Without prejudice to the provisions of article 83 of the RGPD, the aforementioned Regulation has in its art. 58.2 b) 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." (\*the underlined belongs to this AEPD).

In the present case, the context and/or circumstances in which that the images are obtained, as well as that there are no prior sanctions associated to the accused, nor does it show that the images are still on social networks, to propose a sanction of warning, having to proceed to restore the situation described to the current legality in case of continuing the images "hanged" in the YouTube platform.

The accused is informed that the receipt of a new complaint for the same "facts" can lead to the opening of a procedure penalty of a pecuniary nature, and it is recommended that in the future use the legal channels to file a "complaint" in case of disagreement with the service provided, being able to present the recordings as evidence in the appropriate instances.

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE Doña A.A.A., with NIF \*\*\*NIF.1, for an infraction of article 6.1 of the RGPD, typified in Article 83.5 of the RGPD, a sanction of WARNING, under the terms of article 58.2 RGPD.

SECOND: NOTIFY this resolution to the accused party A.A.A. and

REPORT the result of the proceedings to the denouncing party HOSPITAL UNIVERSITY IRON DOOR MAJADAHONDA.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

LOPDPGDD, 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 month from counting 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

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day following the notification of this act, as provided in article 46.1 of the aforementioned Law.

Sea Spain Marti

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