

□ Procedure No.: PS/00087/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated May 27, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against B.B.B. (alleged person in charge of the website ***URL.1 according to

declares the claimant) with NIF ***NIF.1 (hereinafter, the claimed). The reasons in

on which the claim is based are as follows:

“The website ***URL.1 in the legal notice section lacks the data to be able to

exercise my rights. It does not indicate who is the owner of the web, nor to whom I must

Contact me to exercise my rights. I have written email and called by phone, but no

there is no answer.”

SECOND: Consulted on 08/06/2019 the web page ***URL.1 printing of

the privacy policy, its content being the following:

""PRIVACY POLICY

In compliance with the provisions of Organic Law 15/1999, of December 13, of

Protection of Personal Data (LOPD) the user is informed that all

Data you provide us will be incorporated into a file, created and maintained under

the responsibility of ***URL.1.

The confidentiality of your personal data will always be respected and will only be

used for the purpose of managing the services offered, responding to requests

that you raise, perform administrative tasks, as well as send information, technical,

commercial or advertising by ordinary or electronic means.

To exercise your rights of opposition, rectification or cancellation you must write to us to the following email ***EMAIL.1 or call us at ***TELEPHONE.1”

THIRD: Prior to the acceptance of this claim for processing, the transferred the claimed, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), being returned by address incorrect on August 9, 2019.

FOURTH: The claim was admitted for processing on October 23, 2019.

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FIFTH: In view of the facts denounced in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out preliminary investigation actions to clarify the facts in question, by virtue of the powers of investigation granted to the control authorities in article 57.1 of Regulation (EU) 2016/679 (Regulation General Data Protection, hereinafter RGPD), and in accordance with the established in Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of the rights (hereinafter LOPDGDD).

In accordance with the investigative actions carried out, a request for information to the claimed, resulting in unsuccessful notification due to the absence of the addressee.

SIXTH: The State Tax Administration Agency is requested to provide the fiscal domicile

of the claimed, being provided on March 26, 2020.

SEVENTH: Consulted on March 31, 2020 the page ***URL.1, it is verified

that the website is active and diligence is carried out in order to

incorporate into the file a screenshot of the main page and the contact form as well

as print cache as of February 19, 2020 of the legal notice page

hosted in the Google search engine (which corresponds to the impression collected in the

Background Second) since the link to the aforementioned legal notice does not work.

EIGHTH: On June 9, 2020, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 13 of the RGPD, typified in article 83.5 of the aforementioned

rule.

NINTH: Since the notification of the initiation agreement was unsuccessful,

proceeded to publish an announcement of notification in the Single Edictal Board of the Bulletin

State Official on June 5, 2020, in accordance with the provisions of the

Article 44 of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter, LPACAP).

The respondent has not submitted a written statement of allegations, so the following applies:

indicated in article 64 of Law 39/2015, of October 1, of the LPACAP, which in

its section f) establishes that, in case of not making allegations within the period established

on the content of the initiation agreement, it may be considered a proposal for

resolution when it contains a precise statement about the responsibility

imputed, reason why a Resolution is issued.

TENTH: On November 3, 2020, the website ***URL.1 is accessed with

in order to check the situation of the aforementioned page in relation to the

diligence carried out on March 23, 2020, capturing the application form

contact located on the main page as well as the result of the notice page

legal. A diligence is carried out to incorporate these verifications into the file.

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In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The ***URL.1 website has a contact form that collects the

name and email of interested users. electronic

SECOND: it had a privacy policy inserted in the legal notice that was not

was adapted to the regulations currently in force (namely, the RGPD and the

LOPDGDD), as stated in the impression collected in the second antecedent and

in the verification procedure referred to in the seventh antecedent.

THIRD: The checks carried out on November 3, 2020 show that

the situation has not changed with respect to the verification carried out on March 31

of 2020 and collected in the seventh antecedent.

FOURTH: The respondent has not presented arguments.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of

The Spanish Agency for Data Protection is competent to resolve this

process.

II

The defendant is imputed the commission of an infraction for violation of article 13 of the RGPD, regarding the information that must be provided when the data is obtained from the interested party, which establishes that:

"1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the interests legitimate of the person in charge or of a third party;

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- e) the recipients or the categories of recipients of the personal data, in their case;
- f) where appropriate, the intention of the controller to transfer personal data to a third party country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in the Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the adequate or appropriate warranties and the means to obtain a copy of these or to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the treatment will facilitate the interested party, at the moment in which the data is obtained personal, the following information necessary to guarantee data processing fair and transparent

- a) the period during which the personal data will be kept or, when it is not possible, the criteria used to determine this period;
- b) the existence of the right to request from the data controller access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to portability of the data;
- c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;
- d) the right to file a claim with a supervisory authority;
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;
- f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose

and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the
to the extent that the interested party already has the information.”

The violation of this article is typified as an infringement in article 83.5 of the RGPD,
which he considers as such:

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“The infractions of the following dispositions will be sanctioned, in accordance with the
paragraph 2, with administrative fines of a maximum of EUR 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:

[...] b) the rights of the interested parties under articles 12 to 22; [...]”

For the purposes of the limitation period of the infraction, article 74 of the LOPDGDD
establishes:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

[...] a) Failure to comply with the principle of transparency of information or the right

of information of the affected party for not providing all the information required by the articles

13 and 14 of Regulation (EU) 2016/679. [...]”

III

In the present procedure, it is necessary to analyze the alleged illegality of the policy of

privacy of the website ***URL.1, motivated by its failure to update the provisions in the GDPR. This analysis is performed assuming that, for reasons that could be techniques, the part corresponding to the privacy policy is not found available, as has been shown in the seventh antecedent and in the done second.

Article 11 of the LOPDGDD, regarding "Transparency and information to the affected", configures a system that allows compliance with the provisions of article 13 of the GDPR. Thus, in its sections 1 and 2 it provides queue:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

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If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this

In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

The proven facts show that the aforementioned page has a section dedicated to the privacy policy inserted in the legal notice and that, although it offers a summarized information on the purposes of the processing of personal data and an indication regarding the exercise of rights (although outdated in its terminology due to the fact that the privacy policy maintains its references to Law 15/1999, of December 5, on the protection of personal data), does not inform about the identity of the person in charge, information that is considered basic in the light of the precept transcribed above.

Likewise, the described privacy policy must provide the rest of the information to be provided to the interested party in accordance with article 13 of the RGPD, for which you can make use of the layer system enabled by article 11 of the LOPDGDD, and must indicate, in this case, the way in which it allows access immediately to the rest of said information.

Finally, it is pointed out that, in the event that consent is considered as one of the legitimizing bases of the treatment, given that one of its requirements is to be informed, the person in charge must enable the measures pertinent techniques that allow proving that said consent has been fulfilled the communication of data has been carried out in an informed manner.

IV

Without prejudice to the provisions of article 83.5 of the RGPD, art. 58.2 b) provides the possibility of sanctioning with a warning, in relation to what is indicated in the

Recital 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.”

In the present case, when deciding the sanction to be imposed, they have taken into account count the following items,

- ☐ That it is a minor infraction.

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- ☐ That even when the economic activity of the person in charge is linked to the processing of personal data due to the nature of the business of the page web ***URL.1 consists precisely in collecting and bringing together data from companies and professionals who offer services that will later be demanded by potential clients, the person in charge is a natural person.

- ☐ That there is no recidivism due to the lack of evidence of the commission of previous infractions.

For all these reasons, it is considered that the sanction that should be imposed is warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

On the other hand, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may "order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a specified period [...]”, the person in charge must prove, within a period of one month, that has proceeded to update the privacy policy.

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 B.B.B., with NIF ***NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the same legal text, a sanction of WARNING.

Likewise, within ONE MONTH from the notification of this act, you must prove the following:

☐ Having updated the privacy policy of the website ***URL.1 to those provided in the article 13 of the RGPD.

SECOND: NOTIFY this resolution B.B.B. and report the results of the performances to A.A.A.

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

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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, 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 by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers 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 within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

Sea Spain Marti

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