

□ Procedure No.: PS/00449/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated June 26, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against PARTIT DELS SOCIALISTES DE CATALUNYA (PSC-

PSOE), with NIF G08564379 (hereinafter the claimed one)

The grounds on which the claim is based are the receipt of a letter addressed to a

family member of the claimant asking to give political support to the candidate of the Socialist Party.

Said letter was headed by B.B.B., a specialist in general and digestive surgery.

The only link that united the recipient of the letter with the aforementioned doctor was

patient-professional, and in no case had express consent been given

to receive this type of political communication.

SECOND: It is about informing the PARTIT DELS SOCIALISTES DE

CATALUNYA (PSC-PSOE), this claim on August 29, 2019,

requiring them to send to this Agency, within a period of one month, information

about the response given to the claimant for the facts denounced, as well as the

causes that have motivated the incidence and the measures adopted for its correction

in accordance with article 5.1 f) of Regulation (EU) 2016/679 of the Parliament

European and Council of April 27, 2016 (RGPD).

On September 19, 2019, the PSC, in response to the aforementioned request from the AEPD,

has stated that the defendant attended the municipal elections forming

part of the electoral coalition Candidatura del Progres (CP) since it had acted as

CP councilor of the Lleida City Council.

During the electoral campaign period, the defendant went to the headquarters of the federation of

PSC carrying a box of already sealed envelopes (without letterhead, logo or sender

any) directly instructing the Federation staff who will process your

Shipping. Said personnel proceeded to send it in response to the fact that the applicant

He was a prominent candidate on the electoral list.

The respondent ignores the origin of the data, although it could be deduced that they came from the personal agenda of B.B.B., a prominent local doctor.

That although he was proclaimed elected, he renounced his act as councilman, because in the

Nothing currently links him to the PSC.

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2/7

In relation to the aforementioned doctor, it is known that the notification sent

on August 29, 2019, has not been delivered due to being absent from the cast, for

so this Agency decides to reiterate said request for information on September 23

of 2019, appearing on this second occasion as unknown.

THIRD: On February 24, 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 5.1.b) of the RGPD, typified in Article 83.5 of the

GDPR.

FOURTH: On June 9, 2020, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the

previous investigative actions, E/07792/2019, as well as the documents

provided by the claimant.

FIFTH: On June 22, 2020, a resolution proposal was formulated, proposing that the PARTIT DELS SOCIALISTES DE CATALUNYA (PSC-PSOE), with NIF G08564379, for an infringement of article 5.1.b) of the RGPD, typified in article 83.5 of the RGPD, a fine of €5,000 (five thousand euros).

Of the actions carried out in this proceeding and of the documentation in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: On \*\*\*DATE.1, it is published at [www.segre.com/noticies/lleida](http://www.segre.com/noticies/lleida), that the Official College of Physicians of Lleida will proceed with the investigation of the letters sent by Dr. B.B.B., on the occasion of the 2019 elections.

The controversy arose as a result of receiving a letter from the aforementioned doctor asking for his electoral support for a relative of a patient of his, who had died in 2002.

SECOND: Receipt of a letter addressed to a family member of the claimant asking to give political support for the candidate of the Socialist Party.

THIRD: On September 19, 2019, the PSC in response to the aforementioned request of the AEPD, has stated that the defendant attended the municipal elections forming part of the electoral coalition Candidatura del Progres (CP) since it had served as CP councilor of the City Council of Lleida.

During the electoral campaign B.B.B., a prominent local doctor went to the headquarters of the PSC federation carrying a box of already sealed envelopes (without letterhead, logo or any sender) directly giving instructions to the staff of the Federation that processed your shipment.

Said personnel proceeded to send it in response to the fact that the applicant

He was a prominent candidate on the electoral list.

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3/7

## FOUNDATIONS OF LAW

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The Director of the Agency is competent to resolve this procedure.

Spanish Data Protection, in accordance with the provisions of art. 58.2 of the

RGPD and in the art. 47 and 48.1 of LOPDGDD.

II

Article 4.1) of the RGPD defines personal data as “all information about  
on an identified or identifiable natural person (“the interested party”); shall be deemed  
identifiable natural person any person whose identity can be determined, directly or  
indirectly, in particular by means of an identifier, such as a name,  
an identification number, location data, an online identifier, or one or more  
various elements of physical, physiological, genetic, psychic, economic identity,  
cultural or social heritage of that person.”

Article 4.2) of the RGPD defines “processing” as “any operation or  
set of operations carried out on personal data or personal data sets  
personal, whether by automated procedures or not, such as the collection, registration,  
tro, organization, structuring, conservation, adaptation or modification, extraction,  
consultation, use, communication by transmission, diffusion or any other form of  
authorization of access, collation or interconnection, limitation, suppression or destruction.”

Thus, it is considered that there is treatment of personal data from the  
moment in which the personal data is communicated or disseminated.

Article 6.1 of the RGPD, establishes that "in accordance with the provisions of the

Article 4.11 of Regulation (EU) 2016/679, means consent of the affected

All manifestation of free, specific, informed and unequivocal will by the

that the latter accepts, either through a declaration or a clear affirmative action, the

processing of personal data concerning you.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those 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 are not considered

will be incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes

for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable to eliminate or rectify without delay the personal data that

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4/7

are inaccurate with respect to the purposes for which they are processed (“accuracy”);

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data.

them; personal data may be kept for longer periods provided

that are treated exclusively for archiving purposes in the public interest, research purposes scientific or historical information or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the technical and organizational measures measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the term of conservation");

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

The data controller will be responsible for compliance with the provisions listed in section 1 and able to demonstrate it ("proactive responsibility")."

### III

In accordance with the evidence available in this time of the sanctioning procedure, it is considered that, it has been accredited that the claimed, has used the data provided by B.B.B., a prominent doctor of the locality, to send a letter to a family member of the claimant, asking for their support politician, by presenting himself as a candidate on the electoral list of the political party claimed, which is clearly a different purpose for which they were given said data, which was none other than that between a patient and his doctor.

Such facts are accredited by the newspaper [www.segre.com](http://www.segre.com), in its publication of \*\*\*DATE.1, following the link: \*\*\*URL.1

In addition, it has also been confirmed that it was from the party's headquarters where the electoral propaganda letters were sent with the data of the patients provided by the aforementioned doctor.

For this reason, the defendant is imputed the commission of an infraction for violation of article 5.1 b) of the RGPD, which governs the principle of limitation of the purpose, as well as

the proactive responsibility of the controller to demonstrate its compliance.

#### IV

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

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and prescribed.

After three years, infractions that suppose a substantial violation of the articles

articles mentioned therein and, in particular, the following:

The processing of personal data violating the principles and guarantees

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

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5/7

v

Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

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 in charge or 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, in addition to or instead of

gar of the measures mentioned in this section, according to the circumstances of

each particular case;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum.

or, in the case of a company, an amount equivalent to a maximum of 4% of the global annual total business lumen of the previous financial year, opting for the of greater amount, in accordance with article 83.5 of the RGPD.

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

In the present case we are dealing with unintentional negligent action, but significant active (article 83.2 b)

Basic personal identifiers (name, surname) are affected.

two, domicile), according to article 83.2 g)

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On the other hand, article 83.7 of the RGPD provides that, without prejudice to the corrective powers of the control authorities under art. 58, paragraph 2, each Member State may lay down rules on whether and to what extent impose administrative fines on authorities and public bodies established in that Member State.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE PARTIT DELS SOCIALISTES DE CATALUNYA (PSC-

PSOE), with NIF G08564379, for an infringement of article 5.1.b) of the RGPD, typified

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in article 83.5 of the RGPD, in relation to article 72.1 a) of the LOPDGDD, a fine of €5,000 (five thousand euros).

SECOND: NOTIFY this resolution to PARTIT DELS SOCIALISTES DE CATALONIA (PSC-PSOE).

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions

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

Common Administrative of Public Administrations (hereinafter LPACAP),

within the voluntary payment period established in art. 68 of the General Regulations

Collection, approved by Royal Decree 939/2005, of July 29, in

relation to art. 62 of Law 58/2003, of December 17, through its

income, indicating the NIF of the sanctioned and the number of the procedure that

appears at the top of this document, in restricted account no.

ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency for

Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

Received the notification and once executed, if the date of execution is

is between the 1st and 15th of each month, both inclusive, the term to carry out the

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

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

payment will be until the 5th of the second following month or immediately after.

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

Electronic Registration of through the

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7/7

filing of the contentious-administrative appeal within two months from the day following the notification of this resolution, it would end the precautionary suspension.

Sea Spain Marti

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