

Procedure No.: PS/00320/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 05/09/2019 filed
claim before the Spanish Data Protection Agency. The claim is
directed against SHOP MACOYN, S.L. (YBL ABOGADOS), with NIF B66987074 (in
later, the claimed one). The reasons on which the claim is based are, in summary:
that the respondent has used the two email addresses of ADAN
ADVOCATS (office of which I am the owner) ***EMAIL.1 and ***EMAIL.2, sending e-
emails without a blind copy, revealing the email accounts to which the
advertising about the services it provides.

Attached to this claim are emails and a copy of the letter sent.

SECOND: Upon receipt of the claim, the Subdirector General for
Data Inspection proceeded to carry out the following actions:

On 06/25/2019, the claim submitted was transferred to the claimant for his
analysis and communication to the claimant of the decision adopted in this regard. Equally,
he was required so that within a month he sent to the determined Agency
information:

- Copy of the communications, of the adopted decision that has been sent to the
claimant regarding the transfer of this claim, and proof that
the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the
claim.

- Report on the measures adopted to prevent the occurrence of similar incidents.

- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

On 08/28/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing filed by the claimant against the respondent.

THIRD: On 10/23/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

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infringement of article 5.1.f) of the RGPD, sanctioned in accordance with the provisions of the article 83.5.a) of the aforementioned RGPD.

FOURTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the

indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event 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.

FIFTH: Of the actions carried out in this proceeding, they have been

accredited the following:

PROVEN FACTS

FIRST: The claimant filed a written claim on 05/09/2019 with the AEPD stating that after receiving advertising-type emails from the defendant, YBL LAWYERS, had asked them to delete their data to send advertising, not receiving any response or form or procedure to request cancellation; Later, he received another advertising mail from the defendant.

SECOND: The claimant has provided a copy of the email sent from the address of YBL ABOGADOS, dated ***DATE.1, received in your email account ***EMAIL.2, as well as a copy of the header of the same, regarding the matter we do assert their rights, advertising and informing about the services it provides without been authorized or consented to do so and without a hidden copy being able to observe dozens of email addresses including addresses, ***EMAIL.1 and ***EMAIL.2 owned by the claimant.

THIRD: The respondent has not responded to the request for information made by the AEPD, nor has it presented a written statement of allegations to the initial agreement.

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 resolve this procedure.

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

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"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.
- e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.
- f) Indication of the right to formulate allegations and to the hearing in the

procedure and the deadlines for its exercise, as well as an indication that, in

case of not doing

allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to interested parties” (the underlined corresponds to the AEPD).

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

In the present case, YBL ABOGADOS is accused of violating article 5.1.f) of the RGPD, which establishes:

III

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the 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").

(...)"

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On the other hand, article 5, Duty of confidentiality, of the new Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

- "1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.
2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.
3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment".

The facts denounced are specified in the violation of the principle of integrity and confidentiality enshrined in article 5.1.f) of the RGPD and materialized in the referral to the email addresses owned by the claimant by the claimed, of e-mail advertising its services without a blind copy revealing the list of dozens of e-mail addresses to which said message would have been sent. information and advertising.

IV

The documentation in the file offers clear indications that the claimed has violated article 5 of the RGPD, principles related to treatment, in relation to article 5 of the LOPDGDD, duty of confidentiality, when disclosing to a third party, in this case the claimant, the data of dozens of email accounts electronically, by sending without a blind copy communications in which he informed and advertised the services it provides and, furthermore, for what it did not have the

consent or authorization of the respondent.

This duty of confidentiality, previously the duty of secrecy, must be understood that its purpose is to prevent leaks of data not consented to by their owners.

Therefore, this duty of confidentiality is an obligation that falls not only to the person in charge and in charge of the treatment but to everyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

v

Article 83.5 a) of the RGPD, considers that the infringement of "the principles basic for the treatment, including the conditions for the consent in accordance with of articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, "with administrative fines 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.

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The LOPDGDD in its article 72 indicates for prescription purposes: "Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that suppose a substantial violation of the articles mentioned in that and, in particular the following:

a) The processing of personal data violating the principles and guarantees

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

(...)”

In order to establish the administrative fine to be imposed,

observe the provisions contained in articles 83.1 and 83.2 of the RGPD, which

point out:

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"1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances

of each individual case, in addition to or as a substitute for 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 will 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 as well

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 suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the

treatment, taking into account the technical or organizational measures that have

applied under articles 25 and 32;

e) any previous infraction committed by the person in charge or the person in charge of the

treatment;

- f) the degree of cooperation with the supervisory authority in order to put remedying the breach and mitigating the possible adverse effects of the breach;
- 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 measure;
- i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in question in related to the same matter, compliance with said measures;

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- j) adherence to codes of conduct under article 40 or mechanisms certificates 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 infringement.

In relation to letter k) of article 83.2 of the RGPD, the LOPDGDD, in its

Article 76, "Sanctions and corrective measures", establishes that:

"two. In accordance with the provisions of article 83.2.k) of the 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 treatments

- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have induced the
of personal data.
commission of the offence.
- e) The existence of a merger by absorption process after the commission
of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when it is not mandatory, a delegate for the protection of
- h) The submission by the person in charge or person in charge, with
voluntary, to alternative conflict resolution mechanisms, in those
assumptions in which there are controversies between those and any interested party.”
data.

In accordance with the transcribed precepts, and without prejudice to what results from the
instruction of the procedure, in order to set the amount of the sanction of fine to
impose in the present case for the infringement typified in article 83.5.a) of the RGPD
for which YBL is held responsible, in an initial assessment, concurrent
the following factors:

The merely local scope of the treatment carried out by the entity
claimed and even if it is only two emails sent to the
addresses of the claimant, they reveal and make known the list of the
email addresses to which the information about the services was sent
provided by the defendant advertising the same.

Only one person has been affected by the offending conduct, as it is the
sole claimant.

There is no evidence that the entity had acted maliciously, although
the performance reveals a serious lack of diligence.

The link between the activity of the offender and the performance of treatment of

Personal data.

The claimed entity is a small business.

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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 SHOP MACOYN SL (YBL ABOGADOS), with NIF B66987074,

for an infringement of article 5.1.f) of the RGPD, typified in Article 83.5.a) of the

RGPD, considered very serious for prescription purposes in article 72.1.a) of the

LOPDGDD, a fine of €5,000 (five thousand euros).

SECOND: NOTIFY this resolution to SHOP MACOYN SL (YBL

LAWYERS), with NIF B66987074.

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

Once this resolution is enforceable, in accordance with the provisions of the

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

Common Public Administrations (hereinafter LPACAP), within the payment term

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, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000, opened on behalf of the Spanish Agency

of Data Protection at Banco CAIXABANK, S.A. Otherwise, it

will proceed to its collection in 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-

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through the

Electronic Registration of

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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