

Procedure No.: PS/00405/2018

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection before THE OLIVER GROUP TORREVIEJA, S.L. (to the attention of D. A.A.A. and Ms. B.B.B.), in under claim filed by D.C.C.C. and based on the following:

BACKGROUND

FIRST: D.C.C.C. (hereinafter the claimant) dated August 7, 2018

filed a claim with the Spanish Data Protection Agency.

The claim is directed against OLIVER GROUP TORREVIEJA, S.L. (to attention of D.A.A.A. and Mrs. B.B.B.) (hereinafter the respondent).

The reasons on which he bases his claim are that the respondent has sent his personal data (personal information and court documents) to different people with which the respondent has no relation, but if the claimant, without his permission or your consent, making the recipients aware of your personal data that or either they are not true or they are provided without giving the truthful information. In addition, they give advertising of the email addresses of all recipients, without be authorized.

Along with your written complaint, a copy of an email from dated August 5, 2018, addressed to 24 recipients with all addresses visible.

SECOND: In view of the facts denounced in the claim, and the documents provided by the claimant, as well as the facts and documents of the that this Agency has been made aware of, the Subdirectorate General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, in accordance with the provisions of the

Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter

RGPD), requiring the claimed the following 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 this decision.

Report on the causes that have motivated the incidence that has originated the claim.

Report on the measures adopted to prevent incidents from occurring

Similar.

Any other that you consider convenient.

Said entity has not responded to said request for information from the Spanish Data Protection Agency.

The respondent receives, on October 15, 2018, a letter from this Agency through which is given transfer of the claim filed by the claimant against said

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entity to proceed with its analysis, respond to the claimant and within the of a month to inform this Agency of the actions carried out to adapt to the requirements set forth in the data protection regulations.

Despite this, there is no record in this Agency of a reply by the respondent, mentioned requirement, so it is appropriate to admit this claim for processing, without prejudice to what is determined in the course of the processing.

THIRD: On January 23, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the infringement of article 5.1. f) of the RGPD, in relation to article 5 of the LOPDGDD; typified in art. 83.5 section a) of the RGPD and qualified as very serious in art. 72.1.i) of the LOPDGDD, being notified by the postal service on January 31, 2019.

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

PROVEN FACTS

FIRST: The respondent has sent, on August 5, 2018, an email addressed to 24 recipients with all addresses visible.

SECOND: THE OLIVER GROUP TORREVIEJA, S.L. (To the attention of D.A.A.A. and Ms. B.B.B.) has not responded to the request for information from the Agency Spanish Data Protection Authority, nor has it submitted any objections to the initial agreement of this procedure, despite the reiterated transfer of the request made by this Agency.

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.

II

Article 5, section 1, letter f) RGPD "Principles related to treatment" provides that 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>>).

Article 5 of the LOPDGDD "Duty of confidentiality" provides that:

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1. Those responsible and in charge of data processing as well as all the 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.

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 Regulation, with administrative fines of €20,000,000 maximum or, in the case of a company, an equivalent amount at a maximum of 4% of the total global annual turnover of the financial year above, opting for the highest amount.

III

By virtue of the provisions of article 58.2 RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers, among which is the power to impose fines, in the event of an infringement of the provisions of the RGPD.

Article 58 section 2 GDPR provides the following:

“Each supervisory authority shall have all of the following powers corrections 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;

i) impose an administrative fine under article 83, in addition to or in instead of the measures mentioned in this paragraph, depending on the circumstances of each particular case;

In the present case, it is taken into account that the mail has been sent by a natural person, acting as administrator of a small company, as well as its referral to persons related to the matter being reported.

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

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

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1.- PROCEED TO NOTICE THE OLIVER GROUP TORREVIEJA, S.L. (to

attention of D.A.A.A. and Ms. B.B.B.), for the infringement of article 5.1. f) of the RGPD, in relation to article 5 of the LOPDGDD, typified in art. 83.5 section a) of RGPD ordering that it proceed by virtue of the provisions of article 58.2 letter d)

GDPR:

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The adoption of all reasonable measures that guarantee: that when send emails to different recipients the send option is used with blind copy to avoid giving information with personal data to all recipients.

2.- NOTIFY this Agreement to THE OLIVER GROUP TORREVIEJA, S.L. (to attention of D.A.A.A. and Ms. B.B.B.) and, in accordance with art. 77.2 of the RGPD, INFORM the claimant about the outcome of the claim.

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. 114.1 c) of the LPACAP, 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

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

Director of the Spanish Data Protection Agency

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