 Procedure No.: PS/00112/2020

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), dated 10/31/2019, filed

claim before the Spanish Data Protection Agency. The claim is

directed against SECREYO SERVICIOS DE TELESCRETARIADO, S.L. with NIF

B14851612 (hereinafter the claimed). The grounds on which the claim is based are:

that without consent to the processing of personal data, or having

maintained any type of commercial relationship with the claimed party, has received a message from

e-mail of commercial content, without mention of the origin of the data. The

message contains a so-called unsubscribe link, but it is completely

inoperative (since it does not link to any page). Also, the information about

protection of personal data included in the message is insufficient and does not comply with

the existing regulations nor does the privacy policy of the website.

SECOND: Upon receipt of the claim, the Subdirectorate General for

Data Inspection proceeded to carry out the following actions:

On 12/11/2019, the claim filed was transferred to the claimant for

analysis and was also required so that within a month he sent to the

Agency certain 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

- Report on the measures adopted to prevent the occurrence of

claim.

similar incidents.

- Any other that you consider relevant.

On 02/28/2020, the respondent indicated in summary not knowing exactly what

where did you get the claimant data; indicates that they carry out recruitment campaigns

of clients and that their addresses are usually obtained or from other satisfied clients

with their work or from bar association listings. You have sent an email

apology email to the complainant.

THIRD: On 03/19/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed by the claimant against the respondent.

FOURTH: On 06/16/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure for the one claimed by a) The alleged

infringement of article 13 of the RGPD, typified in accordance with the provisions of article

83.5.b) of the RGPD and b) the alleged infringement of article 22.1) of the LSSI, punishable

in accordance with the provisions of article 38.4.d) of the aforementioned Law.

FIFTH: 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.

SIXTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: On 10/31/2019, the claimant submitted a letter to the Spanish Agency for Data Protection, stating that without consent for the treatment of personal data or having maintained any type of commercial relationship with the sending company, received email message with commercial content; that the aforementioned message contained a supposed link to unsubscribe, being completely inoperative; that, likewise, the information included in it does not comply with the regulations on data protection (nor does the privacy policy website privacy).

SECOND: The claimant provides a copy of the email sent by the claimant on 10/31/2019, as well as its header, whose object is: SPECIAL OFFER 1 MONTH FREE LAWYERS AND ATTORNEYS, with the following content:

“SPECIAL OFFER FOR THE LEGAL SECTOR:

 WE MANAGE YOUR CALLS AND YOUR APPOINTMENTS IN REAL TIME.

 WE ANSWER WITH THE NAME OF YOUR FIRM IN EXTENSIVE HOURS LABOR.

 WE MAKE CALLS TO REMEMBER AN INVOICE, CHANGE AN QUOTE OR CONFIRM IT, ORGANIZE A MEETING, MAKE A RESERVATION ETC.

 EMAIL MANAGEMENT, SMS SENDING, PERSONALIZED VOICEMAIL

OUTSIDE

SCHEDULE.

 ALL YOUR CALLS ARE ANSWERED IN A PROFESSIONAL WAY AND NO ONE

WILL NOTICE

THAT WE ARE NOT IN HIS OFFICE”.

The Legal Notice included in the e-mail does not contain any reference to the regulations in

matter of protection of personal data.

THIRD: On 02/18/2020, the respondent responded by stating that: "... after the

summer, that's usually when we launch one of our campaigns, and this time,

We look for contacts on Icab pages in Barcelona, looking for addresses of

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3/10

lawyers and mediators, to send you some mails or emails with our

offers in order to work with us.

This was the case of this Mr. Solsona, whose email address we located through

of these web pages of Barcelona del Icab, or Web Cover of the Bar Association,

through the Lawyer search option”.

FOUNDATIONS OF LAW

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

control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection is competent to initiate

and to solve this procedure.

Yo

At the same time, in accordance with the provisions of article 43.1, paragraph second, of Law 34/2002, of July 11, on Services of the Society of the Information and Electronic Commerce (hereinafter LSSI) is competent to initiate and resolve this sanctioning procedure the Director of the Spanish Agency of Data Protection, in relation to the infringement of the LSSI.

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:

II

"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

If you do not make 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

the interested".

In application of the previous precept and taking into account that no

formulated allegations to the initial agreement, it is appropriate to resolve the procedure

initiated.

III

Two infractions are imputed to the defendant: the violation of article 21.1 of the

LSSI and the violation of article 13 of the RGPD.

A) Infringement of the LSSI

The accredited facts consisting of the sending of a communication

unauthorized commercial, via e-mail, to the e-mail address owned by the

claimant evidences the violation of the provisions of article 21.1 of the Law

34/2002, of July 11, on Services of the Information Society and Commerce

Electronic (hereinafter LSSI), which provides the following:

"1. Sending advertising or promotional communications is prohibited.

by email or other equivalent means of electronic communication that

previously they had not been requested or expressly authorized by the

their recipients.

2. The provisions of the preceding section shall not apply when there is a

prior contractual relationship, provided that the provider had legally obtained

the contact details of the recipient and will use them to send communications

commercial references to products or services of your own company that are

similar to those initially contracted with the client.

In any case, the provider must offer the recipient the possibility of

Oppose the processing of your data for promotional purposes by means of a

simple and free procedure, both at the time of data collection and

in each of the commercial communications that you direct.

When the communications have been sent by email,

said means must necessarily consist of the inclusion of a mailing address

email or other valid electronic address where you can exercise this

right, being prohibited the sending of communications that do not include said

address."

The aforementioned infraction is typified as minor in article 38.4.d) of

the LSSI, which qualifies as such "The sending of commercial communications by mail

electronic or other equivalent means of electronic communication when in said shipments do not meet the requirements established in article 21 and do not constitute Serious offense".

In the present case, the infraction of article 21.1 of the LSSI that is imputed to the claimed must be classified as a minor infraction in consideration of the number of commercial messages sent to the complainant (1).

On the other hand, in article 39 bis of the LSSI, under the heading "Moderation of sanctions", stipulates the following:

"1. The sanctioning body will establish the amount of the sanction applying the scale relative to the class of offenses immediately preceding in severity that in which the one considered in the case in question is integrated, in the following assumptions:

a) When there is a qualified decrease in the guilt of the accused or of the unlawfulness of the act as a consequence of the significant concurrence of several of the criteria set forth in article 40.

b) When the infringing entity has regularized the irregular situation of diligent way.

c) When it can be seen that the behavior of the affected party has been able to induce the commission of the offence.

d) When the offender has spontaneously admitted his guilt.

e) When a merger process by absorption has taken place and the infraction was prior to said process, not being attributable to the entity absorbent.

2. The bodies with sanctioning competence, taking into account the nature of the

facts and the significant concurrence of the criteria established in section

above, they may agree not to initiate the opening of the sanctioning procedure and, in its

place, warn the responsible subject, so that within the period that the body

sanctioning determines, proves the adoption of the corrective measures that, in each

case, are pertinent, provided that the following presuppositions concur:

a) That the facts constituted a minor or serious infraction in accordance with the

provided in this Law.

b) That the competent body had not sanctioned or warned

prior to the offender as a result of committing offenses

provided in this Law.

If the warning is not addressed within the period that the sanctioning body

determined, the corresponding procedure will be opened

sanctioned for said non-compliance."

For its part, article 40 of the LSSI, in relation to the "Graduation of the

amount of the sanctions", determines the following:

"Article 40. Graduation of the amount of sanctions.

The amount of the fines imposed will be graduated according to the

following criteria:

a) The existence of intentionality.

b) Period of time during which the infraction has been committed.

c) Recidivism due to commission of infractions of the same nature, when

so it has been declared by firm resolution.

d) The nature and amount of the damage caused.

e) The benefits obtained by the infraction.

f) Billing volume affected by the infraction committed.

g) Adherence to a code of conduct or a system of self-regulation

advertising applicable regarding the infraction committed, which complies with the

provided in article 18 or in the eighth final provision and that has been

favorably informed by the competent body or bodies."

In this case, the requirements set out in letters a) and

b) of the aforementioned section 2 of article 39 bis. Along with this, there is a decrease in the

guilt of the defendant taking into account the number of communications

commercials sent (one) and that the circumstances concur in a significant way

of non-existence of damages and lack of evidence of benefits obtained by the

commission of the offence.

In accordance with these criteria, the sanction of

warning.

B) Violation of the RGPD

IV

The claimed facts also show the violation of the RGPD as

consequence of the lack of information on the protection of personal data

contained in the privacy policy in breach of what is stated in the article

13 of the GDPR.

This article determines the information that must be provided to the interested party

at the time of collecting your data, establishing the following:

"Article 13. Information that must be provided when personal data is

obtain from the interested party.

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 any;

c) the purposes of the treatment to which the personal data is destined and the basis

legal treatment; 4.5.2016 L 119/40 Official Journal of the European Union

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7/10

d) when the treatment is based on article 6, paragraph 1, letter f), the

legitimate interests of the person in charge or of a third party;

e) the recipients or categories of recipients of the personal data,

in your case;

f) where appropriate, the intention of the controller to transfer personal data to a

third country or international organization and the existence or absence of a

adequacy decision of the Commission, or, in the case of transfers

indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph,

reference to adequate or appropriate safeguards and means of obtaining

a copy of these or the fact that they have been loaned.

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 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 related 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 data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the

Article 9, paragraph 2, letter a), the existence of the right to withdraw the

consent at any time, without affecting the legality of the

treatment based on 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 providing such data;

f) the existence of automated decisions, including profiling, to

referred to in article 22, sections 1 and 4, and, at least in such cases,

significant information about the applied logic, as well as the importance and

anticipated consequences of said treatment for the interested party.

3. When the person in charge of the treatment projects the subsequent treatment of

personal data for a purpose other than that for which it was collected,

will provide the interested party, prior to said further treatment, information

for that other purpose and any additional information relevant to the meaning of paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in

to the extent that the interested party already has the information.

The privacy policy of the respondent does not contain any reference to the

compliance with the provisions of article 13 of the aforementioned GDPR,

must establish reference to what is indicated in it as the identity of the

responsible, the purposes for which the data is intended, the rights that the interested party

can exercise before the person in charge, etc.

v

Article 83.5 b) of the RGPD considers that the infringement of “the rights of

those interested in accordance with articles 12 to 22”, is punishable, in accordance with the

“with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation,

administrative fees of €20,000,000 maximum or, in the case of a company, a

amount equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates: “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

particularly the following:

(…)

h) The omission of the duty to inform the affected party about the treatment of their

personal data in accordance with the provisions of articles 13 and 14 of the Regulation

(EU) 2016/679 and 12 of this organic law.

(…)"

However, article 58.2 of the REPD provides the following: "Each authority

of control will have all the following corrective powers indicated below:

continuation:

(…)

b) sanction any person responsible or in charge of the treatment with

warning when the processing operations have violated the provisions of

this Regulation;

(…)"

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates

in its article 58.2. b) the possibility of going to the warning to correct the

processing of personal data that do not meet your expectations. About

when it is appropriate to opt for one or the other route, the application of article 83 of the RGPD

or the corrective measure of warning of article 58.2.b), the rule itself in its

Recital 148 of Regulation 2016/679, which establishes the following:

"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."

However, in the initial agreement the respondent was already told that he had to

provide sufficient supporting documentation to prove correct compliance

of those indicated in the RGPD, among others the information referred to in the

Article 13, without prejudice to making as many allegations as it deems necessary.

Since the respondent has not responded to the initial agreement, it is reiterated that

must adopt the necessary measures in order to adapt its privacy policy to the

provided in article 13 of the RGPD, in order to provide users with the information

required in the aforementioned precept and prevent incidents such as

revealed in the claim made, as well as the contribution of the

means of evidence accrediting compliance with the requirements.

On the other hand, not correcting the aforementioned deficiencies by adopting the measures

adequate to avoid infractions such as those contemplated in articles 22.1 of the

LSSI and 13 of the RGPD or reiterate the behaviors revealed in the

claim and that have been the cause of the opening of this procedure

sanctioning, as well as not immediately informing this AEPD of the measures

adopted could give rise to the exercise of possible actions before the person in charge of the

treatment in order to effectively apply the appropriate measures to

guarantee and not compromise the confidentiality of personal data and the

right to personal privacy.

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 SECREYO SERVICIOS DE TELESCRETARIADO, S.L., with

NIF B14851612:

A) For an infringement of article 21.1 of the LSSI, typified in Article 38.4.d) of the

LSSI, a sanction of warning.

B) Due to an infringement of article 13 of the RGPD, typified in article 83.5.b) of the

RGPD, a penalty of warning in accordance with article 58.2.b) of the

GDPR.

SECOND: REQUEST SECREYO SERVICIOS DE TELESCRETARIADO, S.L.,

with NIF B14851612, so that within a month from the notification of this

resolution, proves: the adoption of the necessary and pertinent measures of

in accordance with both the LSSI and the regulations on the protection of

personal data, RGPD, in order to prevent recurrence in the future

incidents such as those that have given rise to the claim, correcting the effects of

violations, adapting to the requirements set forth in articles 21.1 of

the LSSI and 13 of the RGPD.

THIRD

TELESCRETARIADO, S.L., with NIF B14851612.

: NOTIFY this resolution to SECREYO SERVICIOS DE

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

Electronic Registration of

through the

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