

□ File No.: PS/00456/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On December 16, 2020, it had entry in this Spanish Agency

Data Protection (hereinafter AEPD) written claim, submitted by

A.A.A. against ILUNION SEGURIDAD, S.A. with NIF A78917465.

In particular for the following circumstances:

The appellant stated in the initial claim filed that they sent

business communications to private telephones without having lent their

consent and that personal email addresses have been disclosed

of workers when sending emails without using the option to send with

blind copy to all recipients of the email.

Along with his claim, the appellant party provides a copy of the email sent

to multiple recipients without using the blind copy option, as well as copying the

instant messages from the WhatsApp application received by the recurring party and

other workers and sent by the company in which they provide their services.

Finally, the appellant alleges in his initial claim that at no time

You have given your consent to be included in communication groups of

instant messaging of the WhatsApp application or to receive emails

of a labor nature without using the blind copy option of the senders

having made known to the rest of the workers your email address

without your consent.

SECOND: In accordance with the mechanism prior to the admission for processing of the

claims made before the AEPD, provided for in 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), which consists of transferring the same to the Data Protection Delegates designated by those responsible or in charge of the treatment, or to these when they have not been designated, and with the purpose indicated in the aforementioned article, the claim was transferred to ILUNION SECURITY, S.A. (hereinafter, the party complained against) to proceed with its analysis and gave an answer within a month, which was verified by means of a letter dated entry in this Agency on March 4, 2021.

THIRD: On April 15, 2021, after analyzing the documentation that was in the file, a resolution was issued by the director of the Spanish Agency Data Protection, agreeing to file the claim.

The resolution was notified to the appellant, on April 15, 2021, at through the Electronic Notification Service and Authorized Electronic Address according to the certificate that appears in the file.

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2/5

FOURTH: On April 22, 2021, the appellant files an appeal optional replacement (RR / 00267/2021) through the Electronic Registry of the AEPD, against the resolution issued in file E/00631/2021, in which it shows their disagreement with the contested resolution, arguing that the fact that having shown disagreement to the processing of personal data does not enable the claimed party to use personal data such as email or phone number

private, non-corporate phone for communications made.

It also adds that the communications made by the messaging service of Whatsapp were not on the occasion of an ERTE but for the organization of shifts work communicated outside working hours and the fact that workers carry out their work abroad does not imply that they have to do the communications to private mobile phones since the claimed party has a physical office in the workplace.

FIFTH: Analyzing the allegations of the appellant part of RR/00267/2021, this Agency considers that the respondent has not justified the need or the proportionality of the measure adopted for the purposes of sending communications of labor nature to the workers nor has it justified the need to have more than a contact information.

For all these reasons, on July 30, 2021, the Director of the Spanish Protection Agency of Data resolves to estimate said replenishment resource, thus generating the opening of this sanctioning procedure.

SIXTH: On November 11, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of article 5.1.f) of the RGPD and article 32 of the RGPD, typified in article 83.5 of the RGPD.

SEVENTH Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it states that there is not the necessary consistency between the facts and foundations on which the resolution that revokes the file is based through the optional replenishment appeal (RR/00267/2021) of the activity inspector, so in the opinion of the entity claimed, with the imputations that are carried out in this Agreement to start sanctioning proceedings, it is not possible substantiate the Agreement by which it is intended to sanction him.

EIGHTH: On December 16, 2021, the instructor of the procedure agreed the opening of a period of practice of tests, considering incorporated the previous investigation actions, as well as the documents provided by the reclaimed.

NINTH: On December 22, 2021, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency sanction to ILUNION SEGURIDAD, S.A., with NIF A78917465, for an infraction of article 5.1.f) of the RGPD typified in article 83.5 of the RGPD, with a fine of €100,000 (one hundred thousand euros) and for an infringement of article 32 of the RGPD, typified in article 83.4 of the RGPD, with a fine of €50,000 (fifty thousand euros)

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3/5

TENTH: On December 29, 2021, allegations are presented to the motion for a resolution reiterating the arguments presented before the resolution of beginning, which essentially consist of their opposition to the resolution issued in the appeal of replacement RR / 00267/2021, as well as the non-notification of the aforementioned appeal for replacement.

PROVEN FACTS

FIRST: Communications relating to the workplace have been sent to via personal phone, revealing personal email addresses of the workers, since the option of sending with a blind copy to all the employees is not used. recipients of the email, and all without the consent of the holders of such personal data (phone number and email address)

SECOND: In response to the transfer made by this Agency, on March 4, 2021, the respondent responds alleging that the communications made to the workers brought cause in the need of the same for the maintenance and fulfillment of the employment relationship between the entity and said workers, referring communications to purely labor matters that require timely action and immediate, such as: specific training, communications by ERTE or subrogation communications.

Also adding that security guards by reason of their profession provide usually their services outside the facilities of the entity, so it is done

The establishment of an agile and effective communication channel is essential, especially in the current situation of health crisis, so the legal basis that legitimizes said treatment rests on the need for the same for the execution of the employment contract to which the claimant was a party.

Based on this, on April 15, 2021, the filing of the claim is agreed.

THIRD: On April 22, 2021, an optional appeal for reconsideration is filed against the resolution issued by filing the file, by the appellant, alleging that the communications made by the respondent were not for facts punctual, but for the organization of work shifts and that the fact that workers carry out their work abroad does not imply that they have to do the communications using private mobile phones since the claimed party It has a physical office in the workplace.

After knowing this information, on July 30, 2021, the Director of the Agency Spanish Data Protection Agency resolves to uphold the appeal filed by the claimant, considering that the claimed party has not justified appropriately the necessity or the proportionality of the measure adopted for purposes to send communications of a labor nature to the workers nor has it justified the

need to have more than one contact information.

FOURTH: The claimed entity has presented allegations, denying the necessary congruence between the facts and foundations on which the resolution is based revokes the file of the inspection activity, but without justifying the need to communicate with their workers through their personal telephone, as well as the cause

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4/5

not to use the option to send with a blind copy to all recipients of the mail electronic.

FIFTH: The respondent entity presents new allegations to the proposal of resolution emphasizing the annulment of the appeal for reconsideration object of the initiation of this sanctioning procedure, for not having been notified causing him defenselessness.

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 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 resolve this procedure.

II

This sanctioning procedure has been opened considering that the claimed entity has processed personal data of the claimant, specifically their mobile phone number and email, both for personal use, without justifying the necessity or the proportionality of the reason for which they were sent

communications of a labor nature by the claimed entity to its workers, using means of communication such as the application of WhatsApp and email, without adopting the security measures required by the regulations on the protection of personal data, which guarantee the their confidentiality.

III

Throughout the procedure, the defendant entity has alleged the defenselessness suffered in the appeal for reconsideration (RR/00267/2021) filed by the claimant before this Agency denouncing the facts that are the object of this procedure, which gave rise to its estimation and corresponding opening of this sanctioning procedure.

The entity claimed, alleges that it was not informed of the filing of said appeal optional reinstatement filed by the claimant before the Agency, and that by So he couldn't defend himself.

These allegations have been reiterated throughout the procedure and also in response to the proposed resolution of this sanctioning procedure, alleging In addition, its filing of lawsuit before the contentious administrative.

Thus, in accordance with article 118 of Law 39/2015 of October 1, of common administrative procedure of the Public Administrations, which regulates the right to a hearing of the interested parties, this Agency decides to file this sanctioning procedure and return their actions to the moment in which they were omitted the hearing process in the optional appeal for reconsideration (RR/00267/2021).

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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: PROCEED TO FILE these proceedings.

SECOND: ORDER THE RETROACTION of the actions to the moment in which

He should have been given a hearing procedure in the appeal for reconsideration RR/00267/2021

THIRD: NOTIFY this resolution to the claimant and claimed.

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

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.

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