

□ Procedure No.: PS/00333/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 05/29/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against TECSIBLE, S.L. with NIF B97907992 (hereinafter, the claimed). The

The reasons on which the claim is based are, in short: That on Thursday 01/10/2019, even

Robinson being on the list one of the workers of the company VODAFONE, from

name B.B.B., contacts the complainant on her personal phone to

offer you a change of company and after informing you that you are not interested

end the conversation. On Monday 01/14/2019 you receive a message via WhatsApp

of said person with the following text:

"Hello beautiful.

I am B.B.B. from Vodafone.

It was a real pride to contact you, I love your voice, your sympathy, and your

amiability..

I really would love to be your friend."

At no time did the claimant give this person the opportunity to contact

with her, so I ask VODAFONE to investigate and file this

worker for violating their privacy.

And attach the following documentation:

- Copy of ID.

On 01/21/2019, the same complaint was received by this Agency, but it was

provide more information:

- Regarding the phone call, the calling number is ***PHONE.1
- Regarding the WhatsApp message, the origin number of the message is the ***PHONE.2

And attach the following documentation:

- Screenshots of the conversation via Whatsapp.
- Copy of police report.

SECOND: In view of the facts denounced and the documents provided by the claimant of which this Agency has become aware, the Subdirector General Data Inspection proceeded to carry out actions for the clarification of the facts in question.

On 02/13/2019, the complaint was transferred to VODAFONE in the reference actions, not receiving a response.

On 05/29/2019, VODAFONE sends this Agency the response to the transfer of the complaint:

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/6

1. A copy of the letter sent to the complainant asking for an apology and informing you of the steps taken by VODAFONE. in bliss

letter, the following statements are made, among others:

a. That these practices are totally prohibited in VODAFONE and

They also apply to your service providers.

b. That, upon receipt of the claim, an internal investigation was opened and

They contacted their provider. He told them that there is no
in your bookmarks no outgoing calls from the indicated number
in the claim and from which you received the message via
WhatsApp. In this sense, they understand that said contact took place through
personal title by the agent.

c. That, since this practice is not admissible, they have put it in
knowledge of your supplier so that, as the employer of
said agent, take the appropriate measures.

d. That your provider has been asked to remind all of your
employees that it is strictly forbidden to contact the
recipients of the campaigns in a personal capacity.

and. That they have included the complainant's mobile number on their list
Robinson in order to ensure that he is not included in future campaigns
commercials managed by VODAFONE.

2. States that they have verified that the reported contact has been made by
an agent of a company contracted by VODAFONE to provide
collection services (ATENTO), in a personal capacity and using your number
staff.

3. States that the number through which the agent contacted in a personal capacity
to the complainant does not belong to VODAFONE, that is to say, it does not appear within the
numbers assigned to the ATENTO platform for the provision of services
uptake.

4. States that, after contacting ATENTO, they have verified that the
number ***PHONE.3 was included in a database that was provided
to ATENTO to make recruitment calls but which, according to ATENTO, does not

There are no outgoing or incoming calls associated with that number. Namely,

that said number was not called as a result of the provision

of the service by ATENTO.

On 05/29/2019, VODAFONE sends this Agency the following information

In response to the request for information dated 05/10/2019:

1. States that in their systems there is no client associated with the number ***PHONE.3

It provides screenshots of searches carried out by said number.

1. States that they do not have supporting documentation of consent of the complainant to be contacted for commercial reasons because the number ***PHONE.3 has been randomly generated so that VODAFONE has not associated it with any specific person.

2. States that the numbers ***PHONE.1 and ***PHONE.2 do not belong to VODAFONE.

On 06/04/2019, ADIGITAL sends this Agency the following information:

1. States that the telephone number ***TELEPHONE.3 is registered in the Robinson List in the name of the complainant through the call channel phone since 09/10/2018.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

3/6

Provide certificate.

On 06/07/2019 ORANGE sends this Agency the following information:

1. It states that it confirms the existence of a call from the originating number ***PHONE.1 to the destination number ***PHONE.3 on 01/10/2019 at

6:37 p.m.

On 06/07/2019, LEAST COST ROUTING TELECOM, S.L. refer to this

Agency the following information:

1. States that the end user corresponding to the number ***PHONE.1 is

TECSIBLE whose data has been included in the entities section

investigated.

Provide a copy of the invoice dated 04/30/2019.

On 07/03/2019, a request for information was sent to TECSIBLE,

having received a reply.

On 09/10/2019, it is verified in ***URL.1 that the telephone prefix

***PREFIX.1 corresponds to ***COUNTRY.1

THIRD: On 12/20/2019, the Director of the AEPD the Director of the Agency agreed

initiate a sanctioning procedure against TECSIBLE, for the alleged infringement of article

5.1.b), typified in article 83.5.a) and considered for the purposes of prescription in the

article 72.1.a), a fine of 5,000 euros.

FOURTH: Once the initiation agreement was notified, the respondent submitted a written document on 12/24/2019

of allegations stating, in summary: that he had been notified of an agreement to

beginning and indicated that the telephone number ***TELÉFONO.1, had been transferred

from January 2018 to the company COSMOS CALL CENTER, S.L., and that the second

telephone number that appears in the disciplinary file as well as the owner

We understand that you belong to that company.

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

accredited the following

PROVEN FACTS

1. On 01/15/2019 there is a written entry from the claimant indicating that on 01/10/2019,

Even though Robinson was on the list, one of the workers of the company VODAFONE, from

name Ricardo, has contacted the complainant on her personal phone to offer her a change of company, telling her that she was not interested in the change. On Monday 01/14/2019 he received a message via WhatsApp from said person with the following text:

"Hello beautiful.

I am C.C.C. from Vodafone.

It was a real pride to contact you, I love your voice, your sympathy, and your amiability..

I really would love to be your friend."

2. The claimant provides a copy of her DNI nº ***NIF.1

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/6

3. The claimant has provided a copy of the complaint filed by the claimant before the Police Station of ***DIRECTORY (Madrid) by the aforementioned facts.

4. On 01/21/2019, the claimant sent a letter to VODAFONE informing it of the previously revealed events and to take action against the employee by violating your privacy.

5. VODAFONE has indicated that "After analyzing the complaint and carrying out the timely investigations we have verified that the contact reporting the claimant has been carried out by an agent of a company contracted by Vodafone for the provision of recruitment services (Atento) in a personal capacity and using your personal number.

As has been answered within file 4173/2018, the number through the which the agent contacted the claimant in a personal capacity does not belong to Vodafone is In other words, it does not appear within the numbers assigned to the Atento platform for the provision of collection services.

6. Contained by the claimant are messages received through whatsapp from the phone ***PHONE.2, messages in which the employee identified himself as Vodafone operator, named B.B.B.

7. The company Adigital in writing dated 06/04/2019 has certified "that the number of telephone ***TELEPHONE.3 is registered on the Robinson List in the name of the claimant, with DNI number ***NIF.1,..."

8. The company LEAST COST ROUTIN TELECOM, S.L in writing dated 06/07/2019 indicated that: "...proceeds to provide you with the information that we have in our number files ***PHONE.1

Final user:

TECSIBLE, S.L.

NIF B97907992

Address: ***ADDRESS

***LOCATION

9. ORANGE ESPAGNE S.A.U., in a letter dated 06/06/2019, has indicated that "Regarding making a call on January 10, 2019 between 5 and 8 p.m.

from the calling number ***TELEPHONE.1, we confirm that on that date and time there was an outgoing call whose destination was the line ***TELEPHONE.3;..."

10. TECSIBLE in writing of 12/24/2019 has indicated that:

"..., the telephone number ***TELÉFONO.1, has been assigned since January 2018 to the company COSMOS CALL CENTER SL, with CIF 887708236, whose representative is C.C.C. with DNI ***NIF.2 and telephone number for contact ***TELEPHONE.4, for which

which we provide transfer emails and configuration of said terminal.

Second, the second telephone number that appears in the disciplinary file

as well as the owner, we understand that it belongs to said company (COSMOS CALL

CENTER, S.L.)

FOUNDATIONS OF LAW

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/6

Yo

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

The facts denounced materialize in the sending through the application WhatsApp of a message to the claimant using her data in an inadvertent manner and without authorization, violating the principle of confidentiality.

Article 5, Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(...)

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

deemed incompatible with the original purposes ("purpose limitation");

(...)"

III

Law 40/2015, of October 1, on the Legal Regime of the Public Sector,

establishes in its article 28, Responsibility, the following:

.

"1. They may only be sanctioned for acts constituting an infraction.

natural and legal persons administratively, as well as, when a Law

recognize capacity to act, affected groups, unions and entities without

legal personality and independent or autonomous estates, which result

responsible for them by way of fraud or negligence.

2. The administrative responsibilities derived from the commission of a

infraction will be compatible with the demand to the offender of the reinstatement of the

situation altered by the same to its original state, as well as with compensation

for the damages caused, which will be determined and demanded by the organ to the

that corresponds to the exercise of sanctioning power. If not satisfied

indemnity within the period determined for that purpose based on its amount,

shall proceed in the manner provided for in article 101 of the Law of Procedure

Common Administrative of Public Administrations.

3. When the fulfillment of an obligation established by a norm with

rank of Law corresponds to several people jointly, they will respond in a

in solidarity with the infractions that, where appropriate, are committed and the sanctions that are

impose. However, when the sanction is pecuniary and it is possible

be individualized in the resolution based on the degree of participation of each

responsible.

C/ Jorge Juan, 6

4. The regulatory laws of the different sanctioning regimes may classify as an infraction the breach of the obligation to prevent the commission of administrative infractions by those who are subject to a relationship of dependency or connection. They may also provide for the cases in which Certain persons will be liable for the payment of the pecuniary sanctions imposed those who depend on them or are linked to them”.

In the present case, the agreement to initiate the procedure attributed to the claimed the alleged infringement of article 5.1.b), typified in article 83.5.a) and considered for prescription purposes in article 72.1.a) of the LOPDGDD.

However, after conducting the investigation for the clarification of the facts, it follows that the aforementioned entity is not responsible for the reported facts, since the number of

The telephone from which the messages were issued was transferred in January 2018 to the company COSMOS CALL CENTER, S.L.

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: FILE TECSIBLE, S.L., with NIF B97907992, for an alleged violation of article 5 of the RGPD, typified in Article 83.5.a) of the RGPD.

SECOND: NOTIFY

B97907992.

this resolution to TECSIBLE, S.L., with NIF

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es