

□ Procedure No.: PS/00194/2020

938-0419

RESOLUTION

OF TERMINATION OF THE PROCEDURE FOR ADVANCE PAYMENT

In sanctioning procedure PS/00194/2020, instructed by the Spanish Agency for Data Protection, to the entity, CABRERA & GIL ABOGADOS, S.L.P. with CIF.: B84220193, (hereinafter, "the entity claimed"), by virtue of a complaint filed by A.A.A., (hereinafter, "the claimant") and based on the following:

BACKGROUND

FIRST: On 03/19/19, he entered this Agency, filed a complaint by the claimant in which he indicated, among others, the following:

"On January 11, 2019, a lawyer from the Cabera y Gil office sent the letter that accompanied the company ***EMPRESA.1 and the undersigned, putting in his knowledge of my personal data and home address without my knowledge and consent to do so, said company being totally unrelated to the appearing party, without corporate, employment, shareholding or any other relationship".

Attached to the claim document is a copy of the letter sent by the Firm Lawyers Cabrera & Gil, addressed to the claimant, with a copy ("c/copy"), to the entity ***COMPANY.1, in which they contact him, on behalf of his client, ***COMPANY.2, in relation to the lawsuit filed.

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the General Subdirectorate for Data Inspection proceeded to carry out actions for its clarification, under the powers of investigation granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (GDPR). Thus, on 05/15/19, an informative request is addressed to

the claimed entity.

THIRD: On 06/06/19, the entity claimed, sends this Agency a written

in which, among others, it indicates:

“We expose the facts that are inserted in the claim: -a lawyer from the office-

law firm Cabrera & Gil Abogados, S.L.P. has sent a burofax to the company

***COMPANY.1 addressed to the claimant (their personal data are indicated at the top).

nals: name. surnames and postal address) on behalf of your client, the company

***COMPANY.2, of which he states that he was a partner in the past. The complainant criticizes that

your personal data is being disclosed to the aforementioned company *** COMPANY.1

with which it does not maintain any type of relationship (neither corporate, labor nor shareholder).

The first decision adopted regarding this claim has been to activate the proto-

colo of security breach and/or leakage of confidential information and personal data

implemented by Cabrera & Gil Abogados SLP, which is provided as (document no.

mere 2).

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This protocol contains the following action parameters:

1.- Whoever had knowledge of an incident. related to personal data

them. report the situation internally without delay, informing the management team

tive. 2.- An internal audit will be carried out within the first 6 hours

3.- An external audit will be carried out if deemed necessary

4.- An estimation of the impact will be made.

5.- In the event that we find ourselves faced with a leak of personal data

significant and/or that seriously jeopardizes the rights or freedoms of the person.

In accordance with the RGPD, the security breach will be notified to the AEPD

6.- Taking measures to mitigate the leak or security breach.

7.- Evaluation of the result and the effectiveness of the actions taken.

The corresponding record has been drawn up from the activation of the action protocol

whose certificate is attached as [document number 3) dated May 20,

2019:

The agreements and valuations taken as a consequence of the activation of the protocol of breach and/or leak of information are the following:

The communication has been made by the AEPD. on May 10, 2019; denun-

Cient: A.A.A.; Data Processing Registry. ***COMPANY.2 interposition of there.

Facts: "- A lawyer from the law firm Cabrera & Gil Abogados S.L.P. has

sent a burofax to the company ***EMPRESA.1 addressed to the claimant (in the upper part)

Your personal data is indicated above: name, surnames and postal address) in nom-

name of his client, the company ***EMPRESA.2, of which they state that he was a partner in the past.

The claimant criticizes that his personal data is being disclosed to the aforementioned company ***EMPRESA.1, with which it does not maintain any type of relationship (nor estuary. neither labor nor stock).

After the internal audit was carried out, within the first six hours, it was determined that no information has been stolen. There is no filtering. are not affected entities or people. There is no leak of information so there is no liability.

A.A.A. has been the object of filing a complaint by the company ***EMPRESA.2 cu-

I defend interests. It is attached as (Doc. 4) acknowledgment receipt before the jurisdiction penal. and as (Doc. 5) complaint filed before the criminal jurisdiction.

The filing of said claim with the AEPD against “Cabrera & Gil Abogados.

SLP” is in response and in retaliation for the complaint filed on February 28,

2019 in defense of the rights and interests of our client. one month prior to

claim before the AEPD. A.A.A. is a partner of ***EMPRESA.2 and has been represen-

legal document of the company ***COMPANY.2 is attached as (Doc. 6) power of representation

tion and in direct relationship with ***COMPANY.1 of which he has been and is a representative of

done. The complaint is implemented among other reasons for this in direct relation to

unfair competition.

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Action protocols related to confidentiality agreements are reviewed.

ity and processing of data transferred by the company ***EMPRESA.2 as responsible

of transferred data and Cabrera & Gil SLP as assignee and in charge of the treatment of

data to defend your rights. As well as the internal agreements and other protocols

with the dispatch staff and the person responsible and authorized to carry the

proceedings. It is provided as (Doc. 7) confidentiality and data transfer agreement

between the client as the person in charge and the office as the person in charge of treatment. Be it by-

ta as (Doc. 8), confidentiality agreement and data processing by la-

office attached to the office signed by B.B.B.. Provided as (Doc. 9) Registration of

Client treatment activities with ***COMPANY.2.

All requests made to A.A.A. has been in quality and related to its

representation of legal entities either from ***EMPRESA.2 or ***EMPRESA.1

Article 19 of the LOPD is applicable.

As we have said since February 28, 2019, a petition has been filed
complaint before the criminal courts against A.A.A. so the personal data
object of treatment have been obtained in legitimate interest.

The claim is from March 19, 2019. So this is a month after the
filing of the complaint. The provisions regarding the legality of the
data. both the consent of the interested party who is ***COMPANY.2 as responsible
ble of treatment, such as in relation to A.A.A. to be covered by a provision
legal, as is stipulated in the Law of Criminal Procedure article 277 in re-
relationship with the provisions of the articles of the Criminal Code and legitimacy in the interest of
law determined in the effective judicial protection of article 24 of the CE, all of
in accordance with the articles in article 6.1 RGPD and 8 of the LOPD.

The protection of the information has been carried out correctly, respecting the
three basic principles: confidentiality. integrity and availability.

Confidentiality, the information is accessible only by authorized personnel.

C: B.B.B. and by C.C.C.

The integrity of the information, the information is correct and free of modifications.

nes and errors. The lawsuit is precisely to denounce his responsibility as
de facto representative with the company ***COMPANY.1

Disponibility. The information is accessible to authorized persons or systems.

raised when necessary. The management team does not consider the audit necessary
external depending on gravity. size, filtration level.

The impact estimate is level 0. It has been taken into account in the first place, if in
the leak of the information there is or is not personal data and level of the same.

Reputational damage.- There is no reputational damage. Level 0.

Regulatory consequences that entail pecuniary, administrative,

criminal, civil, ethical. Level 0. Economic valuation - level 0.

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We are not dealing with issues of a significant personal nature and/or that seriously jeopardizes the rights or freedoms of the person, in accordance with the Re-European Data Protection Regulation. Therefore, it is not necessary to notify the violation. security information to the AEPD or notify the interested party.

Taking measures to mitigate the leak or security breach. All measures taken by the management team.

The evaluation of the result and the effectiveness of the actions taken. The effectiveness of The actions taken have been positive and were within the current legality.

people, however, the implementation of more rigorous measures will be valued to avoid Remove as far as possible any affectation.

Second.- It is not found in the cases of exercises of the regulated rights in articles 15 to 22 of the RGPD.

Third.- The facts provided to the contrary, object of the claim dated 19 March 2019 are the following already mentioned:

A lawyer from the law firm CABRERA & GIL ABOGADOS S.L.P. has in-sent a burofax & the company ***COMPANY.1. addressed by the claimant (in the upper part)

Your personal data is indicated above: name, surnames and postal address) in nom-name of his client, the company ***EMPRESA.2, of which they state that he was a partner in the past. - The claimant criticizes that his personal data is being disclosed to the mentioned company *** COMPANY.1 with which it does not maintain any type of relationship (neither corporate, nor labor nor shareholder).

The facts are motivated as a response to the complaint dated February 28, 2019 that this office has presented before the criminal jurisdiction: On February 28, February 2019, the company ***EMPRESA.2 (complainant), filed a complaint, in the form of a demand and with the requirements indicated in article 277 and concordant with the Law of Criminal Prosecution, against A.A.A. (defendant). From the point of view of data protection and its legitimacy to initiate the same is fully justified. From the evidentiary point of view, by the various documents related in the first.

The legitimacy of "Cabrera & Gil Abogados, S.L.P for the possession of personal data sound. and its treatment, is justified from a double point of view, by a side, from the effective judicial protection that our client ***EMPRESA.2 has to the defense arising from the illegitimate actions and omissions carried out by A.A.A. and whose "consent" express ment' is included in the confidentiality and data transfer agreement as data controller; on the other hand, it would be justified according to the interest legitimate. collected in article 6 of the RGPD and 8 of the LOPD, and that the law of prosecution criminal conduct in relation to the criminal code (articles 252, 253 and 248.1) covers the nature to that possession and transfer of personal data to the Judicial Bodies and the investigation of the facts in which other entities or persons are related.

legal or physical entities, as is the case of ***EMPRESA.1, especially when it is the own public administration through the DGT (General Directorate of Traffic) which ' puts on the track' that A.A.A. is using an account of which is the owner together with ***EMPRESA.1 so that, causing deception in the DGT, in-

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enter the same, a money that corresponds to ***COMPANY.2. It is provided as (Doc. 10) email from the D.G.T. The complaint requests as diligence the investigation of holders of said account from Banco BBVA. A.A.A. missing to the truth when he 'insinuates' that he is not a member of ***EMPRESA.2, causing an error in as the data may be inaccurate.

This person has been and is a member of ***EMPRESA.2, and has been, as we have said, re-legal representative of the company *** COMPANY.2. On October 20, 2005, Power of attorney was granted to the defendant today, by the company ***EMPRESA.2, with full powers to manage its assets, by virtue of a deed of power granted on that date, authorized before the Madrid Notary.

The power of representation was revoked because the company detected an inappropriate use and for their own benefit, and their employment relationship was terminated, subject to statement in the complaint. The data is processed in a lawful, loyal and transparent manner in relationship with the interested party. They have been collected for specific purposes. explicit and legitimate rights to defend the rights of our client by filing a complaint with date prior to the filing of the claim with the AEPD and have not been processed subsequently inconsistently.

In addition, the data, as we have seen, are adequate, pertinent and limited. to what is necessary in relation to the purposes for which they have been processed in accordance with the data minimization principle; They are exact and updated data.

The claimant criticizes that his personal data is being disclosed to the aforementioned company *** COMPANY.1 with which it does not maintain any type of relationship or corporate neither labor nor stock. Precisely, the complaint also deals with behaviors of unfair competition 248.1 of the Penal Code by A.A.A. regarding ***EMPRESA.2 and in direct relationship with ***COMPANY.1 of which he has been and is a representative

you in fact

The company ***EMPRESA.2, detected that the defendant was carrying out work for companies companies of the competition, during the period in which he was as proxy, and acted as de facto administrator of the entity ***COMPANY.2. The defendant today, while he was the proxy of the company ***EMPRESA.2, he created a front company, ***COMPANY.1, through a sole partner and administrator, D.D.D. being the object cial and commercial activity of this company, the same as that of my sponsored. For For this, he made use of reserved information that as a partner and proxy of ***EMPRESA.2, had in the sector.

Specifically, and as noted above, ***EMPRESA.2, received on the 2nd of March 2016. email from the DGT (General Directorate of Traffic), in which It was indicated that after checking the bank details of ***EMPRESA.2, these differed of the habitual ones that consisted in said client.

Subsequently. my client detected that said account was owned by A.A.A. and ***EM-DAM.1. That is to say, the account provided by the defendant today to the client of my sponsoreda had the purpose of benefiting from the amount that would be received by the DGT.

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On this occasion, the defendant tried, through the deception and confusion of a third party, in this case from the DGT, of appropriating certain amounts that were intended for sponsored by me for the provision of services in the scope of its activity, facilitating for this an account number of which he was the owner, apparently, together with the company *** COMPANY.1, to charge for such services, without being achieved since by

from the DGT, a certificate was requested so that my client could prove the alleged change of ownership of the account you used regularly.

In the face of unfair competition behaviors and by virtue of article 6 of the RGPD and 8 of the aforementioned LOPD, my client has the right to defend himself and to find out until

Where have fraudulent business practices come from? The data transfers have been on the other hand, those strictly necessary and directly related to their representation data: name, surnames and address not using other data such as your D.N.I or other data related to your physical person. Being within the prescribed therefore by article 19 of the LOPD as business data.

We consider relevant the legal basis for which, in accordance with the article 65 of the LOPD there is no place for the opening of any sanctioning file because the claim is manifestly unfounded and in accordance with article 74 of the LOPD not to have caused damage to the affected party for being protected our legitimacy for the treatment and transfer of data. in article 6 of the RGPD and 8 of the LOPD, falls within the gel established legitimate interest. The conduct before previously described, carried out by the defendant, is included in the crime of fraud of the Article 248.1 of the current CP. Crime with the aggravating circumstance of article 250.1.6º of the CP.

What has been seen so far determines that, if such facts exist, after your verification timely by the consultant, the behavior of the consultant consisting of communicating to the prosecutor or the judges a possible criminal act would not only be protected by the legislation of data protection, but it would be imposed by procedural legislation.

The transfer of data requested would be covered by a law: "(...) if the law contemplates the birth of an obligation between the parties, the necessary corollary is that the law also must also contemplate the need to know the necessary circumstances to be able to right to exercise the subjective rights that arise from said obligation. Consequently my client, before the commission of a crime in his person, assets or property committed

by a third party, it must be able to know the circumstances necessary to exercise its rights.

rights, and if article 24 of the Constitution recognizes the right to judicial protection

effective, developed, among other regulations, by the Law of Civil Procedure, or the Law

of Criminal Procedure will have to go to these, art. 399 of the LEC or 277 of the

Law of Criminal Procedure, to see the circumstances that a decision must have

court order. or in this case a complaint and among them, is, that they have

to include "the data and circumstances of the plaintiff and the defendant, or in this case, that

reilado and the domicile or residence in which they can be summoned", so it is possible

conclude that the transfer of the requested data is covered by the exception

tion provided for in the LOPD and does not require the consent of the interested party.

In the present case. obligations arise between the parties, according to art. 1089 of the Code

civil (Cc), art.1092 Cc. and the art. 1093 CC Therefore. of both the crime and the

Non-contractual liability arises obligations between the parties. In the LEC art.

399 establishes the circumstances that the demand must contain: and among them are

finds that the demand must include "the data and circumstances of the actor and

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of the defendant and the domicile or residence where they can be summoned".

LECr the exercise of the action is exercised by means of a complaint. according to art. 277

LECr. which requires that the name be stated on it. surnames and neighborhood

the defendant, that is, the law establishes the need to provide personal data of the

person against whom the complaint is filed in order to be able to properly identify

(be it the name, surnames, or other circumstances, photography, tattoos. Characteristics)

personal cases etc.-). Although in our specific case, only

surname name and address. Basic data.

The transfer of data has a legitimate interest: A second possibility that excepts

The need for the consent of the interested party is constituted by the existence of an interest

legitimate, provided that in an exercise of weighting between said legitimate interest and the

fundamental rights of those affected prevail the first over the second.

So. the Judgment of the Court of Justice expressly declared the direct effect of the article

Article 7 f) of Directive 95/46/EC. according to which: "Member States shall have

that the processing of personal data can only be carried out if (...) it is necessary

for the satisfaction of the legitimate interest pursued by the data controller

or by the third party or third parties to whom the data is communicated, provided that it does not prevail

the interest or the fundamental rights and freedoms of the interested party that require

are protected under Article 1(1) of this Directive".

The GDPR. contemplates as legitimate cause for data processing the interest

legitimate according to its article 6.1.f). So. to determine if the application would proceed

of the aforementioned precept, the weighting rule foreseen therein must be applied;

that is, it is necessary to assess whether, in the specific case under analysis, there will be a

legitimate interest pursued by the data controller or by the third party

ros to which the data is communicated. that prevails over the interest or rights

and fundamental freedoms of the interested party that require protection in accordance with the

set out in article 1 of the GDPR. or if, on the contrary, the fundamental rights or

The interests of the interested parties to whom the data processing refers must

prevail over the legitimate interest on which the person in charge or the third party intends to base

ment the treatment or transfer of personal data. before the commission

of a crime, it is clear that the interests of my client prevail and not the other way around. You-

Effective judicial fabric: In the present case. the legitimate interest invoked refers specifically

especially to the fundamental right to effective judicial protection (art. 24 CE). as far in that the illicit actions and omissions carried out by the "interested party" and included in the supporting documentation are necessary to file the complaint. The scope of right to judicial protection in relation to the test has been addressed. among other. in STC 212/2013, of December 16. The scope of the right to judicial protection in relationship with the test has been addressed. among other. in the STC 212/2013. of 16 de December. in which reference is made, citing the STC 88/2014. from May 28 to "at intimate relations of the right to proof with other rights guaranteed in art. 24 CE. The relationship between the rights to personal data protection and guardianship court has been. likewise, analyzed in the Report of this AEPD 469/2011 of 30 December December 2011. in which the following is indicated:

"In this point. It should be remembered that the AEPD has already had the opportunity to analyze the possible concurrence in a certain case of data processing of the rights fundamental rights to the protection of personal data and judicial protection effectiveness of the data controller. Thus, it has been considered, for example, that the

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treatment by a lawyer of the data of the opposing party of his client finds its protection in the recognition of the latter by article 24.1 of the Constitution of their right to effective judicial protection. which implies, according to section 2, the defense lawyer and the use of the pertinent means of proof for the defense of his right.

The enforceability of the consent of the opponent, in this case, of A.A.A., for the trafficking storage of your data, or by your lawyer would mean leaving the storage at your disposal

collection of the necessary information so that your client can exercise, fully, their right to effective judicial protection. Thus, the lack of these data may imply, logically, a decrease in the possibility of contribution by the interested party of “the means of relevant evidence for its defense”, violating another of the guarantees derived of the aforementioned right to effective protection and restricting the possibility of obtaining full development of this right.

For all of it, although no provision with the force of Law expressly establishes the possibility of treatment by lawyers and solicitors of data referring to the opposite of his client within a given legal proceeding, it is evident that different

Chances possibility brings direct cause of a norm of constitutional rank. regulatory

In addition to one of the fundamental rights and public freedoms enshrined by the Constitution, and developed by the regulatory laws of each of the Orders

Jurisdictional, in the precepts referring to the representation and defense of the

you. For all of it, it exists, from our point of view, legal authorization for

data processing, which is covered by Article 24 of the Constitution itself.

tion and its development rules.

FOURTH: On 07/20/20, the Director of the Spanish Agency for the Protection of

Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of

the established powers, for failing to comply with the provisions of current regulations and

fining the claimed entity a penalty of 2,000 euros (two thousand euros) for the in-

fraction of article 6 of the RGPD.

FIFTH: On 07/29/20, the entity claimed has proceeded to pay the

sanction in the amount of 1,600 euros (one thousand six hundred euros) using one of the

the two reductions provided for in the Initial Agreement transcribed above,

presenting in this Agency a letter in which, among others, it is indicated:

“Voluntary payment option without acknowledgment of responsibility:

That in accordance with the provisions of article 85 of the LPACAP, in the case of that the sanction to be imposed was a fine, may, at any time prior to the resolution of this procedure, carry out the voluntary payment of the sanction proposal, which will mean a reduction of 20% of the amount thereof, equivalent in this case to €400. With the application of this reduction, the sanction would be established at €1,600 and its payment would imply the termination of the procedure. The effectiveness will be conditioned to the withdrawal or renunciation of any action or administrative appeal against the sanction. (...)

With the application of this reduction, the penalty would be established at €1,600, acknowledges responsibility on the part of "Cabrera & Gil Abogados and desists

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expressly, of any action or resource in the administrative channel against the sanction".

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 as established in art. 47 of the Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to sanction infractions committed against said Regulation. ment.

II

Article 85 of Law 39/2015, of October 1, of the Co-Administrative Procedure of the Public Administrations (hereinafter LPACAP), under the heading "Termination in sanctioning procedures" provides the following:

- "1. Started a sanctioning procedure, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the appropriate sanction.
2. When the sanction is solely pecuniary in nature or it is possible to impose a pecuniary sanction and another of a non-pecuniary nature, but the impropriety has been justified. incidence of the second, the voluntary payment by the alleged perpetrator, in any moment prior to the resolution, will imply the termination of the procedure, except in regarding the replacement of the altered situation or the determination of the indemnity tion for the damages caused by the commission of the infraction.
3. In both cases, when the sanction is solely pecuniary in nature, the competent body to resolve the procedure will apply reductions of, at least, the 20% of the amount of the proposed sanction, these being cumulative with each other. The aforementioned reductions, must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The percentage of reduction provided for in this section may be increased by regulation. mentally."

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

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FIRST: DECLARE the termination of the procedure, PS/194/2020, in accordance with
accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to the entity, CABRERA & GIL
LAWYERS, S.L.P.

In accordance with the provisions of article 50 of the LOPDGDD, this Re-

The solution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure as prescribed by
the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal
contentious-administrative before the Contentious-administrative Chamber of the Audien-
National Authority, in accordance with the provisions of article 25 and section 5 of the

Fourth additional section of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within two months from the day after

to 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

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