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Procedure No.: PS/00218/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: On February 8, 2019, entry is registered in this Agency

letter from the Catalan Data Protection Authority attaching the

claim made by Mr. A.A.A., (hereinafter, the claimant), against the

mercantile ICONDUCE SOY 18, S.L., (hereinafter, the claimed party), on the occasion of some

events that fall under the jurisdiction of the AEPD.

 In the claim, the claimant states that the aforementioned company has sent him

an email, broadcasting, without a blind copy, the email addresses

e-mail from various clients of that entity. Attached to the claim is

printing of an email sent, dated February 6, 2019, from the

account ***EMAIL.1 to a total of 70 recipients whose email accounts,

among which is the email address ***EMAIL.2 of the claimant, are

visible to the other recipients of the shipment. The provided email has

as subject "Expired Driving School Contract" and presents the following text:

"Hello, good afternoon, the reason for this email is to inform you that your

contract has expired, we have carried out a campaign with a special contract for

you, so that you can continue with us and thus obtain your driving license and

with practice gift (car and simulator) if you want to receive the information with everything

detail you can call ***PHONE.1 or by watssap (10:00 a.m. to 1:00 p.m. and from 4:00 p.m. to

21:00), so I can advise you which option is the most recommended and help you

resume it as soon as possible, have a good afternoon.

 Greetings. BBB SOY18 Driving School. Laughter and Card to the First."

SECOND: Upon receipt of the claim, dated March 14,

2019, a copy of it was transferred to the respondent requesting, among other things,

the following information related to the facts set forth in the Precedent

previous: Report on the causes that have motivated the incidence that has originated the

claim; Report on the measures adopted to prevent the occurrence of

similar incidences; Any other that you consider convenient.

The shipment was delivered to the claimed party on March 24, 2019, as

appears in the certificate issued by the Electronic Notification Service and

Authorized Electronic Address of the National Currency and Stamp Factory.

The respondent did not respond to the request for information within a month

counted from the receipt of said notification.

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THIRD: On September 19, 2019, the Director of the Spanish Agency

of Data Protection agreed to initiate a sanctioning procedure of warning to the

claimed, for the alleged infringement of article 5.1.f) of the RGPD, typified in the

article 83.5.a) of the RGPD.

In said initial agreement, it was agreed that, "if the existence of the

described infringement, for the purposes provided in article 58.2.d) of the RGPD the measures

corrective measures that may be imposed on the defendant in the resolution, will consist, in view

of the evidence available at this time, in ORDERING the adoption

appropriate technical and organizational measures to guarantee the confidentiality of

the data concerning the email addresses of the recipients of

the same shipment when there is no legitimacy for its communication or dissemination to

third parties, using the option of sending with a blind copy in order not to reveal the

email addresses of the same to the remaining recipients. sayings

measures must be adopted, where appropriate, within the period indicated computed

from the date on which the sanctioning resolution is notified, and must

provide the means of evidence accrediting its compliance, without prejudice to its

implementation prior to said resolution."

FOURTH: Once the aforementioned initial agreement was notified, on October 1, 2019,

written entry record of the claimant in which a personal error is indicated and

timely as the reason that all email accounts were visible to everyone

recipients of the shipment, since they know that all emails that are sent

to more than one recipient must be sent with a blind copy.

They point out that although work began on the necessary protocols

so as not to generate similar incidents again as soon as it was received, dated

March 24, 2019, the transfer of the claim and request for information, without

However, due to a lack of internal coordination, a report was not sent to the AEPD.

explanation of the causes of the incidence and measures adopted in this regard, whose

detail outlined and figure exposed in the Second Proven Fact.

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: On February 6, 2019, the respondent sent an email

email from the ***EMAIL.1 account, with the subject "Driving School Contract

Expired", to a total of 70 recipients whose email accounts, including

which the claimant's email address was found, resulted

visible to the other recipients of the shipment.

SECOND: The respondent has stated that after knowing in March 2019 the

incident object of the claim I adopt the following measures:

- Reduce to the indispensable minimum the list of people who in the company have

access to student data and are authorized to send communications.

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Train these people to ensure compliance with the GDPR.

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- Use the mailing platform "Mailchimp", whose operation through

default distribution lists prevents sending emails without a blind copy by mistake.

- That regardless of the means used to send any communication, the

treatment of the personal data of the interested parties conforms to the principle of legality

of the treatment, especially with regard to the consent of the interested parties.

FOUNDATIONS OF LAW

By virtue of the powers that article 55.1, 56.2 and 58.2 of the Regulation (EU)

2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the

protection of natural persons with regard to data processing

personal information and the free circulation of these data (General Protection Regulation

of Data, hereinafter RGPD) recognizes each control authority, and according to what

established in articles 47 and 48.1 of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD), the Director of the Spanish Data Protection Agency is

competent to resolve this procedure.

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II

Article 64.2.d) of the Law of the Common Administrative Procedure of the

Public Administrations, (hereinafter LPACAP), referring to the "Initiation Agreement

in procedures of a punitive nature", provides that:

2. The initiation agreement must contain at least:

(…)

d) Competent body for the resolution of the procedure and regulation that

attributes such competence, indicating the possibility that the alleged perpetrator

can voluntarily acknowledge its responsibility, with the effects provided for in the

article 85."

in sanctioning procedures", establishes that:

In turn, article 85.1 of the LPACAP, regarding the "Termination

"1. A sanctioning procedure has been initiated, if the offender acknowledges his

responsibility, the procedure may be resolved with the imposition of the sanction

let it proceed."

In the present case, the content of the agreement to initiate the procedure

notified to the defendant observed the prescriptions detailed in the outlined

precepts. In particular, said agreement warned "that according to the provisions of the

article 85.1 of the LPACAP, may acknowledge its responsibility within the term

granted for the formulation of allegations to this initial agreement, being able,

in that case, resolve the procedure with the imposition of the appropriate sanction.

"

In this case, in accordance with the effects provided in the transcribed article 85.1

of the LPACAP, and taking into account that the respondent in his pleadings brief has

recognized its responsibility in sending the email studied to a

plurality of recipients by not having used, due to a specific error, the option

hidden copy, thus resulting in all email accounts visible to all users.

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recipients of the shipment, it is appropriate to resolve the procedure with the imposition of the

appropriate sanction.

III

Article 4 of the RGPD, under the heading "Definitions", provides that: "For the purposes

of this Regulation shall be understood as:

1) "personal data": any information about an identified natural person or

identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person

whose identity can be determined, directly or indirectly, in particular by

an identifier, such as a name, an identification number,

location, an online identifier or one or more elements of the identity

physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out

about personal data or sets of personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, broadcast or any other form of enabling of

access, collation or interconnection, limitation, suppression or destruction;"

7) «responsible for the treatment>> or <<responsible>>: the natural person or

legal entity, public authority, service or other body which, alone or jointly with others,

determine the purposes and means of the treatment; if the law of the Union or of the

Member States determines the purposes and means of processing, the data controller

treatment or the specific criteria for their appointment may be established by the

Law of the Union or of the Member States; >>

10) <<third party>>: natural or legal person, public authority, service or

body other than the interested party, the data controller, the person in charge of

treatment and of the persons authorized to treat personal data under the

direct authority of the person in charge or the person in charge;

In accordance with these definitions, the treatment of email addresses

e-mail of the recipients of the shipment under study, among which

The e-mail account of the claimant appears, to inform them of the expiration

of the contract signed with the claimed party constitutes a treatment of data of a nature

personal, with respect to which the data controller must comply with

the principles relating to treatment, among which is the principle of

confidentiality contained in article 5.1.f) of the RGPD.

Please note that the email addresses used for the

remission of the aforementioned shipment provide information on natural persons

identified or identifiable, since it is a shipment addressed to students of the

reclaimed.

IV

In the present case, the defendant is charged with a breach of article 5.1. of

RGPD, precept that under the heading "Principles related to treatment", establishes in

its section f) that:

"Personal data will be:

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(…)

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>>)"

For its part, under the heading "Duty of confidentiality", article 5 of the

LOPDGDD provides that:

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

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."

In the present case, the respondent has acknowledged the remission, dated 6

February 2019, from an email to a total of seventy recipients without

hide from each of them the email addresses of the rest of the

recipients to whom the mailing was also addressed with the subject "Driving School Contract

Timed out". since you didn't use the blind copy option.

Said conduct constitutes on the part of the claimed party, in this case sender of the

aforementioned shipment and responsible for the aforementioned processing of personal data, a

violation of the principle of confidentiality contained in article 5.1.f) of the RGPD,

infraction typified in article 83.5.a) of the aforementioned Regulation and classified as

very serious infringement for prescription purposes in article 72.1.a) of the LOPDGDD,

since by being visible the email addresses of all the

recipients of the shipment disseminated that personal information among all

they.

v

Sections b), d) and i) of article 58.2 of the RGPD provide the following:

"2 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;"

(...)

"d) order the person responsible or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner and within a specified period;"

"i) impose an administrative fine in accordance with article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

Article 83 of the RGPD, under the heading "General conditions for the

imposition of administrative fines", in sections 1 and 5.a) states that:

""1. Each control authority will guarantee that the imposition of fines

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive."

"5. Violations of the following provisions will be sanctioned,

according to paragraph 2, with administrative fines of EUR 20,000,000 as

maximum or, in the case of a company, an amount equivalent to 4% as

maximum of the overall annual total turnover of the previous financial year,

opting for the highest amount:

"a) the basic principles for the treatment, including the conditions for the

consent under articles 5, 6, 7 and 9"

At the same time, article 72.1.a) of the LOPDGDD typifies the infringement of

principle of confidentiality as very serious for prescription purposes in

following terms: "1. Based on the provisions of article 83.5 of the Regulation

(EU) 2016/679 are considered very serious and will prescribe after three years the

infractions that suppose a substantial violation of the mentioned articles

in that and, in particular, the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679."

In the present case, it is considered appropriate to impose the sanction of warning

provided for in article 58.2.b) of the RGPD in view of the following circumstances: the

The main activity of the respondent is not linked to the usual treatment of

Personal data; that the recipients of the shipment were affected by the

same matter on which they were informed; consider that the administrative fine

that could be imposed in accordance with the provisions of article 83.5.a) of the RGPD

would constitute a disproportionate burden for the respondent.

Confirmed the infraction described, the defendant has stated that he has put

launched a set of technical, organizational and training measures aimed at

guarantee the security and confidentiality of the data in treatments that, such as the

studied, affect a group of holders of email addresses that

will be recipients of the same shipment, so that access is prevented

misuse of each of them to the email addresses of the rest of

recipients, which is why it is considered appropriate not to apply what is established in the

cited article 58.2.d) of the RGPD.

Therefore, in accordance with the applicable legislation and valued the

concurrent circumstances in the facts that have been proven,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE ICONDUCE SOY 18, S.L., with NIF B66809666, a sanction

of WARNING in accordance with the provisions of article 58.2.b) of the RGPD,

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as responsible for an infringement of the provisions of article 5.1.f) of the RGPD,

typified in article 83.5.a) of the RGPD.

SECOND: NOTIFY this resolution to ICONDUCE SOY 18, S.L. with NIF

B66809666.

THIRD: In accordance with the provisions of article 50 of the LOPDPGDD, 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

LOPDPGDD, 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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