

□ File No.: PS/00319/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party) dated August 26, 2020 filed a claim with the Spanish Data Protection Agency.

The claim is directed against B.B.B. with NIF ***NIF.1 (hereinafter, the claimed part).

The reason on which the complaint is based is that the complainant has requested the deletion of your personal data via email to the claimant, with a copy to "****EMAIL.1" and to attention for

dates 05/19/2016,

05/21/2019, 07/15/2019, 02/04/2020 and 08/25/2020 and despite this has not received a response and continues to receive advertising.

client "****EMAIL.2" in the following

The claimant also states that the facts claimed have occurred since May 19 2016, until August 25, 2020, and that the electronic address in which you receive the advertising (**EMAIL.3) is registered in the Robinson List.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), said claim was transferred to the claimed party on 25 September 2020, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the foreseen requirements in data protection regulations.

On October 23, 2020, this Agency received a letter from SEGURCAIXA

ADESLAS, S.A. OF INSURANCE AND REINSURANCE where it states that the claimant you only submitted two claims to the correct email address, specifically those of the dates 02/04/2020 and 08/25/2020, both being processed and answered to the claimant in a timely manner.

The other two complaints were addressed to the addresses ***EMAIL.4 and ***EMAIL.5 that do not correspond to the Privacy Office and/or Data Protection Delegate of this Company, that is, they are not addresses that correspond to those of SEGURCAIXA ADESLAS.

SEGURCAIXA ADESLAS, S.A. OF INSURANCE AND REINSURANCE also states that in the information systems of SEGURCAIXA ADESLAS there is no record with the email address ***EMAIL.3 to which the communications have been addressed that motivate the claim filed by D. A.A.A.

That is why, as indicated to the complainant in our answers before referred to, it is not possible to delete what does not appear or is housed in our systems.

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2/6

In response to the request of this Agency, SEGURCAIXA ADESLAS, S.A. OF INSURANCE AND REINSURANCE, also points out that the communications that motivate the complaint have been made by insurance agents (mediators) of our Company, which which maintain a commercial relationship with SEGURCAIXA ADESLAS under the provided for in Law 12/1992 on agency contracts and Title I of the Second Book of the real decree-law 3/2020, of February 4, which transposes Directive (EU) 2016/97 of the

European Parliament and of the Council, of January 20, 2016, on the distribution of insurance.

SEGURCAIXA ADESLAS, S.A. OF INSURANCE AND REINSURANCE, in its argumentation alleges that, as established in articles 128 and 129 of Royal Decree Law 3/2020, the The action of the aforementioned mediators is aimed at attracting clients who have interest in contracting insurance policies issued by our Company.

Said activity of promotion or attraction of clients is carried out by the agent of insurance, as established in article 2 of Law 12/1992 on agency contracts, with independent and autonomous character, without dependence or subordination to the insurer (in this case SEGURCAIXA ADESLAS) that hires you.

SEGURCAIXA ADESLAS, S.A. OF INSURANCE AND REINSURANCE also points out that This collection activity is carried out by the agent autonomously, independently and at the same time. margin of SEGURCAIXA ADESLAS, using for this the personal contacts of the that the agent has and whose purpose is to attract potential clients to Our company. Regarding said personal contacts (prior to contracting the insurance and, therefore, outside the insurer) the mediator acts as the authentic responsible for them for the purposes of those established in the legislation on the protection of data.

When the mediator agent is successful in his commercial work and gets his contact formalize and take out an insurance policy from our Entity, it is when the data personal data of said person, now a client of our company, are included in SEGURCAIXA ADESLAS databases

Therefore, SEGURCAIXA ADESLAS, S.A. OF INSURANCE AND REINSURANCE considers that consequently, it will be the mediating agent who, in this previous phase, must observe the legal precautions, in this case in the case of electronic communications advertising, in accordance with the provisions of articles 21 and 22.1 of Law 34/2002,

of July 11, services of the information society and electronic commerce by

application of the provisions of article 204 of Royal Decree Law 3/2020.

Therefore, based on such argumentation, the claimant was told that the exercise of

You should request this right of suppression from the agent who sent you the communication.

THIRD: On October 29, 2020, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the party

claimant.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out

preliminary investigative actions to clarify the facts in question, in

under the investigative powers granted to the supervisory authorities in article

57.1 of Regulation (EU) 2016/679 (General Data Protection Regulation, in

hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Section

second, of the LOPDGDD, having knowledge of the following extremes:

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3/6

The terms of the emails are stated in the documentation provided by the

claimant.

While permission is requested to send you additional information, the emails themselves

are of an advertising nature of SEGURCAIXA ADESLAS appearing as the title of the

message “ADESLAS exclusive agent” with the corporate color of this company

insurance carrier.

They also contain a response sent by the claimant exercising the right of

opposition.

Requested information from ADIGITAL to check if the email address in which it is receive the communications is registered in the Robinson List as indicated by the claimant, dated February 19, 2021, this Agency receives a letter from reply confirming that the email address is registered from the March 29, 2020.

Therefore, all messages except the last one would have been sent earlier. to this record.

Information requested from SEGURCAIXA ADESLAS, S.A. INSURANCE AND REINSURANCE to identify the agents with the sending email addresses of the messages, dated March 5, 2021 is received in this Agency, reply to requirement indicating that the email sent on May 21, 2019 was the addressed to the claimed by the claimant.

Requested information on these facts, dated March 30, 2021 is received in this Agency, brief of allegations stating that the e-mail of the claimed (understood as B.B.B. with NIF ***NIF.1) comes from a public data directory of professional contacts published on the Internet, specifically at the URL: ***URL.1.

The respondent states that due to ignorance and because in the initial communication made by you, the recipient is given the option, among others, to answer the communication indicating the intention not to continue receiving communications, not proceeded to send more information to the claimant once the right of suppression was exercised of your data, but after reading the recipient's response, proceeded to eliminate the mentioned email from your contacts and from all your electronic records.

The defendant states that there was no sending of any advertising email, but that only and only, an "authorization request" was sent to him for the sending of a email with information about promotions.

FIFTH: On September 1, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, on the Procedure Common Administrative of Public Administrations (hereinafter, LPACAP), by the alleged infringement of article 17 of the RGPD, typified in article 83.5 of the RGPD.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that the only email address

The recognized email address is ***EMAIL.4, since the rest of the email addresses email to which the claimant addressed does not correspond to email addresses electronic owners of the claimed entity.

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4/6

The respondent entity notes that May 21, 2019 is the date on which it was

The only message was sent to the claimant, the date on which the email address of the claimant was not inscribed on the Robinson List, since this does not occur until March 29, 2020, a date therefore after the date of shipment.

The entity claimed states that the name of the claimant, so by not knowing who was the owner of the email and domain ***EMAIL.3, it is unknown who requests the right of deletion.

Therefore, the entity claimed upon receiving the email requesting that "the my data" from the generic account ***EMAIL.3, as there is no natural person linked to said email address, it is not possible to document the ownership of who exercises the right of deletion. However, it was removed from the files said email address without it being associated with any

Name.

SEVENTH: On October 6, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigation actions, E/08859/2020, as well as the documents provided by the claimed on September 22, 2021.

EIGHTH: On October 7, 2021, a resolution proposal was formulated, proposing that the Director of the Spanish Data Protection Agency impose on B.B.B., with NIF ***NIF.1, for an infringement of article 17 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The claimant has requested the deletion of their personal data via email to the claimed and despite this has not received a response and continues to receive advertising.

SECOND: The respondent states that the claims were processed and answered in a timely manner to the claimant.

The respondent notes that the name of the claimant has never been recorded in his files.

therefore, not knowing who was the owner of the email and domain ***EMAIL.3,

It is unknown who requests the right of deletion, but despite this, they proceeded to remove said email address from the files.

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FOUNDATIONS OF LAW

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The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and in the art. 47 and 48.1 of LOPDGDD.

II

In the case analyzed here, it has been proven that the claimant exercised her right of cancellation before the claimed on 05/19/2016, 05/21/2019, 07/15/2019, 02/04/2020 and 08/25/2020, and his request did not receive a response, despite the right recognized in article 16 of the LOPD, in force until May 25, 2018, right currently recognized in article 17 of the RGPD, called the right of deletion ("the right to be forgotten") in whose precept the right of deletion is governed of the claimant, affirming that he will have the right to obtain without undue delay from the responsible for the treatment the deletion of the personal data that concerns him.

For these reasons, it was agreed to open this sanctioning procedure, before the alleged violation of article 17 of the RGPD by the claimed party.

However, from the recent investigative actions carried out by this

Agency, it follows that the data controller is not the person claimed, but

SEGURCAIXA ADESLAS, as a result of the existing contractual relationship between said entity and the defendant, the latter as insurance agent of SEGURCAIXA ADESLAS.

This is so, because SEGURCAIXA ADESLAS, in accordance with article 28 of the RGPD, you must adopt the necessary measures to guarantee that each of the processors, that is, each of its insurance agents among the where the claimed party is located, comply with its data protection obligations of a personal nature and proceed to the deletion of the personal data once the

the provision of services.

For all these reasons, it is considered that the present procedure is archived,

consider that the person responsible for the alleged infringement is SEGURCAIXA ADESLAS and not the claimed one.

III

Therefore, after learning of these facts, the Director of the Agency

Spanish Data Protection RESOLVES:

FIRST: PROCEED TO FILE these proceedings.

SECOND: 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.

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6/6

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 to Public Administrations, and in accordance with the provisions of the

art. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may

file, optionally, an appeal for reconsideration before the Director of the Agency

Spanish Data Protection Authority within a month from the day

following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and paragraph 5 of the provision

additional fourth 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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