

937-240719

Procedure No.: PS/00252/2019

RESOLUTION R/00409/2019 TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

In sanctioning procedure PS/00252/2019, instructed by the Agency

Spanish Data Protection Agency to CORREOS Y ESTATAL SOCIEDAD

TELEGRAPHS. S.A., in view of the complaint filed by A.A.A., and based on the

following,

BACKGROUND

FIRST: On July 12, 2019, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the STATE COMPANY

MAIL AND TELEGRAPHS. S.A. (hereinafter, the claimed party), through the Agreement

which is transcribed:

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Procedure No.: PS/00252/2019

935-160419

AGREEMENT TO START A SANCTION PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in

based on the following

FACTS

FIRST: The claim filed by A.A.A. (hereinafter, the claimant) has input

dated 07/26/2018 in the Spanish Agency for Data Protection, and is directed against

STATE POST AND TELEGRAPH COMPANY. S.A., with NIF A83052407 (hereinafter,

the claimed). The grounds on which the claim is based are to deliver correspondence to

erroneous recipient without the CORREOS service itself being able to determine the person

who signed the receipt or the delivery address. According to the claimant, the events took place

on 05/14/2018

Along with the claim, provide:

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2/12

Diligence of the COURT OF FIRST INSTANCE AND INSTRUCTION No. 02 OF

Complaint before the GENERAL DIRECTORATE OF THE POLICE dated 06/08/2018 and

☐

MAJADAHONDA where documents are required for a civil procedure (certificate

of marriage) contained in the letter.

☐

certificate number XXXXX/18.

☐

correspondence sent from Argentina, Córdoba.

Receipt from the post office of origin, Argentina, where the

☐

reference number RR683049663AR. No address to which it is sent is seen, nor

person.

Claim filed on 06/12/2018 in CORREOS indicating that you did not receive the

SECOND: In accordance with article 9.4 of Royal Decree-Law 5/2018 (BOE

07/30/2018) on 10/1/2018 the claim filed was transferred so that the claim

analyze said claim and notify the claimant of the decision adopted.

Likewise, within one month of receipt, he had to send this Agency the

Next information:

1.

Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.

Report on the causes that have motivated the incidence that has originated the two.

claim.

Report on the measures adopted to prevent the occurrence of

3.

similar incidents.

Four.

Any other that you consider relevant.

THIRD: On 10/30/2018, this Agency received a response to the transfer of the claim in which the respondent states:

On 10/26/2018 they sent a burofax to the claimant indicating that the

a.

shipment with the numerical reference that coincides with the one expressed by the claimant, had been delivered to the addressee named on the envelope.

Although the name is the same as the claimant's, A.A.A. that appears in computer typography, the DNI number, also in computer typography computer is different from the one entered by the claimant, does not have eight digits and

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the numeric character does not correspond to the six digits it contains,  
appearing as such, the DNI \*\*\*NIF.1. These data appear in the signature  
digitized on a tablet of the reception of the shipment, which provides the claimed.

b.

Delivery. as document number 3. It consists:

They provide tracking of shipment events from admission to

05/07/2018 Departure from the exchange office of origin. Send course to

04/27/2018-admitted at origin.

05/07/2018 entry into the exchange office of origin, Buenos Aires,

a.

b.

plane, Argentine exchange office.

c.

destiny.

d.

twenty minutes later "delivered to authorized consignee", both

Madrid U 11

and.

of the recipient, appearing marked exclusive delivery "no".

05/14/2018 in distribution for delivery and that same day one hour and

On another page of the same locator, there is no data on the sender, nor

In the data that appears in the shipment locator application,

a.

all the recipient's data appears blank and in the document of

shipping events, only "Madrid District 11" appears. In this sense, they are limited to

inform this Agency that “.... shipment number RR683049663AR was delivered to the address indicated by the sender in the shipment itself...”.

FOURTH: On 11/19/2018, the Director of the Spanish Agency for the Protection of Data agreed to admit the claim filed by the claimant for processing.

#### 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 resolve this process.

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4/12

II

Article 5.1.f) of the RGPD provides:

“Personal data will be:

“processed in such a way as to ensure adequate security of the data including protection against unauthorized or unlawful processing and against their accidental loss, destruction or damage, through the application of technical measures or appropriate organizational structures (“integrity and confidentiality”).”

The LOPDGDD states in its article 5:

"1. Those responsible and in charge of data processing as well as all persons that intervene in any phase of this will be subject to the duty of confidentiality to the referred to in article 5.1.f) of Regulation (EU) 2016/679.”

Article 32 of the RGPD adds:

"1. Taking into account the state of the art, the application costs, and the nature, the scope, context and purposes of the treatment, as well as risks of probability and severity variables for the rights and freedoms of natural persons, the person in charge and the in charge of the treatment will apply appropriate technical and organizational measures to guarantee a level of security appropriate to the risk, which, where appropriate, includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to ensure confidentiality, integrity, availability and resilience permanent treatment systems and services;
- c) the ability to restore the availability and access to personal data in a fast in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken the risks presented by the data processing, in particular as a consequence of the accidental or unlawful destruction, loss or alteration of transmitted personal data, stored or otherwise processed, or unauthorized communication or access to such data."

Regarding prescription, article 72 of the LOPGDD indicates:

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5/12

"1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a

substantial violation of the articles mentioned therein 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.”

### III

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for treatment, including the conditions for consent under articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation, with administrative fines of a maximum of €20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount.”

Article 58.2 of the RGPD indicates: "Each control authority will have all the following corrective powers indicated below:

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time.

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;”

### IV

The determination of the sanction to be imposed in this case requires observe the provisions of articles 83.1 and 2 of the RGPD, precepts that, respectively, provide the following:

"1. Each control authority will guarantee that the imposition of administrative fines in accordance with this article for the infringements of this Regulation indicated in sections 4, 5 and 6, are in each individual case effective, proportionate and dissuasive.”

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6/12

"two. Administrative fines will be imposed, depending on the circumstances of each case individually, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in each individual case shall be duly taken into account:

a)  
the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question, as well as the number of interested parties affected and the level of damages they have suffered.  
suffered;

a)  
the intentionality or negligence in the infringement;  
any measure taken by the person responsible or in charge of the treatment to alleviate

a)  
the damages suffered by the interested parties;  
the degree of responsibility of the person in charge or of the person in charge of the treatment, given

a)  
account of the technical or organizational measures they have applied under articles 25 and 32;

a)  
any prior infringement committed by the controller or processor;  
the degree of cooperation with the supervisory authority in order to remedy the



a)

infringement and mitigate the possible adverse effects of the infringement;

a)

the categories of personal data affected by the breach;

the way in which the supervisory authority became aware of the infringement, in

a)

particular whether the person in charge or the person in charge notified the infringement and, if so, in what measure;

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7/12

i) when the measures indicated in article 58, section 2, have been ordered

previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;

j) adherence to codes of conduct under article 40 or mechanisms of

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or

indirectly, through the infringement.” Within this section, the LOPDGDD

contemplates in its article 76, entitled "Sanctions and corrective measures":

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (EU)

2016/679 will be applied taking into account the graduation criteria established in the section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also

may be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing personal.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have led to the commission of the infringement.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are disputes between them and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of the remaining corrective measures referred to in article 83.2 of the Regulation (EU)

2016/679."

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8/12

For the quantification of the sanction that would be implemented in this initiation agreement, the following factors are considered:

-The data processed have been within the framework of the activity carried out by the claimed party.

state level as a regular task, and in a professional way (83.2.k RGPD in relation to 76

LOPDGDD).

-It is appreciated that there are limited measures in relation to the procedure related to the delivery of shipments to the recipient, since in this case the address of the destination where it is delivered, nor is there any control or protocol for employees regarding of delivery of the shipments, as an example the way of verifying the data of the person to who produces the delivery, stating a non-coherent NIF that does not correspond to the of the claimant (83.2.d) RGPD).

-Personal data is basic, related to marital status (83.2.g) RGPD), contained in a marriage certificate document, which could not be delivered to the Court in the completion of the procedure that was required, suffering clear damages for having to restart the cycle of requesting documents, (83.2.a GDPR).

As a consequence with the elements that are available, without prejudice to what derived from the processing of the procedure, the initial assessment that reaches the fine for the imputed infringement is 40,000 euros without prejudice to what results from the instruction of this procedure.

Therefore, based on the foregoing,

By the Director of the Spanish Data Protection Agency,

HE REMEMBERS:

1. INITIATE PUNISHMENT PROCEDURE against SOCIEDAD ESTATAL CORREOS AND TELEGRAPHS. S.A., with NIF A83052407, for the alleged infringement of article 5.1 f) of the RGPD, typified in article 83.5. a) of the RGPD.

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1. APPOINT R.R.R. as instructor. and, as secretary, to S.S.S., indicating that any of them may be challenged, where appropriate, in accordance with the provisions of the Articles 23 and 24 of Law 40/2015, of 1/10, on the Legal Regime of the Public Sector (LRJSP).

1. INCORPORATE to the disciplinary file, for evidentiary purposes, the claim filed by the claimant and their documentation, and the documents obtained and generated by the General Subdirectorate of Data Inspection.

1. THAT for the purposes provided in art. 64.2 b) of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Public Administrations, the sanction that could correspond would be a fine of 40,000 euros, without prejudice to what results from the instruction.

1. NOTIFY this agreement to SOCIEDAD ESTATAL CORREOS Y TELEGRAFOS. S.A., with NIF A83052407, granting a hearing period of ten business days for formulate the allegations and present the evidence that it deems appropriate. in his writing of allegations must provide your NIF and the number of the procedure that appears in the header of this document.

If within the stipulated period it does not make allegations to this initial agreement, the same may be considered a resolution proposal, as established in article 64.2.f) of Law 39/2015, of 1/10, of the Common Administrative Procedure of the Administrations Public (hereinafter referred to as LPACAP).

In accordance with the provisions of article 85 of the LPACAP, in the event that the sanction to be imposed was a fine, it may acknowledge its responsibility within the term granted for the formulation of allegations to this initial agreement; what it will take coupled with a reduction of 20% of the sanction to be imposed in the present process. With the application of this reduction, the sanction would be established in

32,000 euros, resolving the procedure with the imposition of this sanction.

Similarly, you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which will entail the

reduction of 20% of its amount. With the application of this reduction, the sanction

would be established at 32,000 euros and its payment will imply the termination of the procedure.

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10/12

The reduction for the voluntary payment of the sanction is cumulative to the one

It is appropriate to apply for the acknowledgment of responsibility, provided that this

acknowledgment of responsibility is revealed within the period granted

to formulate arguments at the opening of the procedure. The voluntary payment of the amount

referred to in the previous paragraph may be made at any time prior to the resolution.

In this case, if it were appropriate to apply both reductions, the amount of the penalty would be

set at 14,000 euros.

In any case, the effectiveness of any of the two reductions mentioned

will be conditioned to the withdrawal or renunciation of any action or resource in via

administrative against the sanction.

In the event that you choose to proceed with the voluntary payment of any of the

amounts indicated above 32,000 euros or 14,000 euros, you must make it effective

by depositing it in account number ES00 0000 0000 0000 0000 0000 opened in the name of

the Spanish Data Protection Agency at Banco CAIXABANK, S.A., indicating in the

concept the reference number of the procedure that appears in the heading of

this document and the cause of reduction of the amount to which it avails itself.

Likewise, you must send proof of payment to the General Subdirectorate of Inspection to continue with the procedure in accordance with the amount entered.

The procedure will have a maximum duration of nine months from the date of the start-up agreement or, where appropriate, of the draft start-up agreement. elapsed that term will produce its expiration and, consequently, the filing of proceedings; of in accordance with the provisions of article 64 of the LOPDGDD.

Finally, it is pointed out that in accordance with the provisions of article 112.1 of the LPACAP, There is no administrative appeal against this act.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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SECOND: On July 25, 2019, the respondent has proceeded to pay the sanction in the amount of 32,000 euros making use of one of the two reductions

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11/12

provided for in the Start Agreement transcribed above. Therefore, there is no accredited acknowledgment of responsibility.

THIRD: The payment made entails the waiver of any action or resource in via against the sanction, in relation to the facts referred to in the

Home Agreement.

FOUNDATIONS OF LAW

Yo

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 the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. A sanctioning procedure has been initiated, if the offender acknowledges his responsibility, the procedure may be resolved with the imposition of the sanction to proceed.

2. When the sanction is solely pecuniary in nature or fits

impose a pecuniary sanction and another of a non-pecuniary nature but it has been justified

the inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

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 20% of the amount of the proposed sanction, these being cumulative

each. The aforementioned reductions must be determined in the notification of initiation of the procedure and its effectiveness will be conditioned to the withdrawal or Waiver of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

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12/12

According to what was stated,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00252/2019, of in accordance with the provisions of article 85 of the LPACAP.

SECOND: NOTIFY this resolution to SOCIEDAD ESTATAL CORREOS Y TELEGRAPHS. S.A.

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 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

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.

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