

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Vs

[REDACTED]

COMPLAINT

Reference is made to the complaint (registered internally with file number CDP/IMI/LSA/6/2019) received from the Spanish Data Protection Agency (Agencia Española de Protección de Datos or AEPD) concerning [REDACTED] (“the complainant”) who is alleging that [REDACTED] [REDACTED] (“the controller“ or [REDACTED] breached her data protection rights, as enshrined under the General Data Protection Regulation – Regulation (EU) 2016/679 (“GDPR“ or the “Regulation”). The complainant contended that her personal data were inserted in [REDACTED] without providing her, at the time the data were obtained, the required information in terms of Article 13 of the GDPR.

INVESTIGATION

From the investigation carried out by this Office and from the controller’s submissions, it transpires that the controller took all the reasonable steps to provide the complainant with the required information in terms of Article 13 of the GDPR.

In the general Terms and Conditions of the contract between the [REDACTED] and the complainant, which were accepted by the complainant [REDACTED], clause 11(ii) states (the translation from Spanish to English has been provided by the data controller, and is being reproduced *verbatim*): “*The client is informed and agrees to be required to pay in writing through SMS, email and / or postal mail to the address and phone number provided by him to [REDACTED] or, if he has changed them, to the new address and / or telephone number communicated to [REDACTED] Said requirement shall be prior to the inclusion in the files [REDACTED] in accordance with RD 1720/2007, of December 21*

by which the Regulation of development of the Organic Law 15/1999 of December 13 on protection of personal data is approved, the Maltese Law on data protection and the European Directive 95/46/EC, of the Parliament and the Council of Europe, of 24 October and other applicable regulations.

To this end, taking into account the nature of distance contracting to which the parties agree and to the uses of this type of contract, the client acknowledges that [REDACTED] by using distance techniques means that [REDACTED] can get in touch with him for any matter (including [REDACTED]), arising from the contractual relationship that binds them through any of these channels, especially SMS and electronic mail, expressly stating that the data that client enters in the [REDACTED] application are valid and are operational, especially email.

Once the period established in the previous made [REDACTED] has expired, the client is informed and agrees that, in case of continuing with the [REDACTED] client's data may be included in the [REDACTED]

In addition:

- [REDACTED] was sent by post to the complainant's address by the controller. In the letter the complainant was given ten (10) more days to proceed with the [REDACTED] failing which, she was also informed that her personal data would be included in [REDACTED];
- warning emails and SMSs informing the complainant that [REDACTED] would lead to the inclusion of her personal details [REDACTED] were sent respectively on 11.01.2018 and 10.02.2018 (for emails), and on 17.12.2017 and 29.12.2017 (in case of SMSs).

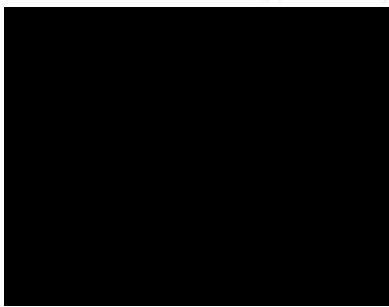
Moreover in the "Terms and Conditions" available on the data controller's website, at paragraph 26.11.4, the following information can be found: "Without prejudice to the generality of the above clauses, you acknowledge that the [REDACTED] shall transfer information regarding your [REDACTED] (including your Personal Data) to third-entities which process information on [REDACTED] of persons, and also that the [REDACTED] shall place information regarding your [REDACTED] (including your Personal Data) on the [REDACTED]

[REDACTED] You also acknowledge that the [REDACTED] shall transfer information

regarding your [REDACTED] (including your Personal Data) to third entities for the purpose of [REDACTED].

DECISION

On the basis of the foregoing the Commissioner considers that the complainant was adequately informed pursuant to Article 13 of the GDPR and thus considers the case as closed.



Saviour Cachia
Information and Data Protection Commissioner

Today, the 5th day of August 2019