

938-0419

Procedure No.: PS/00084/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 07/17/2018, an AAA claim has been received,
owner of an apartment in R.R.R., at ***ADDRESS.1 against her
COMMUNITY OF OWNERS R.R.R., ***ADDRESS.1, to be displayed on the board
closed, in July and also on the stairs a note from the Administration
of the Community where it is specified that the floor Xº A of the stairway YY, has a
non-payment of ZZZ,ZZ euros. Details that the amount comes from the issuance of a receipt
of the first half of 2018, which was returned by mistake by the Fund in January and "already in
July is when they notify me of such a return, correcting the account number so that
they turned it over again" "being an abandonment by the administration in taking 6
months in notifying me of the error.

Provides a photo of a closed board on which the document appears without a seal or
signature, it is an impression in which there is a floor (three floors including the Xº, A and
the amount ZZZ,ZZ euros, as of 06/30/2018.

SECOND: In view of the reported facts, on 09/26/2018, the
claim to the respondent so that it "analyzes said claim and informs the
claimant the decision adopted in this regard.

Also, within a month from the receipt of this letter, you must
send this Agency the following 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.

2. Report on the causes that have motivated the incidence that has originated the claim.

3. Report on the measures adopted to prevent incidents from occurring

Similar.

The shipment resulted in absent in delivery.

THIRD: On 12/10/2018, the shipment is reiterated, with a full copy of the claim, resulting in delivery on 12/13/2018, and without

answered to any extreme.

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FOURTH: On 03/06/2019, the respondent files a document stating that the

claimed has implemented the technical and organizational measures to comply with the

current legislation on data protection, and has informed the interested party

on numerous occasions, to the email registered as the owner, without receiving a response of said reception.

Attach a letter addressed to the claimant, signed by the president of the

Community, dated 01/14/2019 in which they apologize, informs you that they have

I contract data protection services with a specialized company. I don't know

accredits the sending or receipt of said letter.

In addition, they attach information on treatment of the claimed,

registration documents of treatment activities and letter of communication

to the interested

FIFTH: On 03/07/2019, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE for the COMMUNITY OF PROPRIETORS

R.R.R., with NIF ***CIF.1, at ***ADDRESS.1, for the alleged violation of article

5.1 f) of the RGPD, sanctionable in accordance with the provisions of art. 83.5 of the aforementioned RGPD,

and qualified as very serious in article 72.1 a) of the LOPDGDD.” choosing as soon as

to sanction that could correspond to that of WARNING.

SIXTH: Faced with said agreement, the defendant presented on 03/21/2019 the

following allegations:

1) The secretary of the Community, through his secretary, Administrator of

Fincas periodically sends all communications by regular mail

and by email to each owner. Attached in document 1, 2 and 3

copy of writings addressed to the claimant, to the only contact email

registered. Figure in document 1, an email to the address

***EMAIL.1 and mentions that he has called her on the phone ***TELEFONO.1, and the

pending debt for your home, so that you can contact them,

Shipment date 01/16/2019 appears. In a second document, provide email

email sent 03/22/2018 to the same address with a pdf file

attached, and the literal Subject extraordinary general meeting, in which they communicate

Attached is the call for the extraordinary general meeting of 03/31 at

10 hours. In a third document, it provides a copy of the email to the

same address “sent 03/14/2019” with attached pdf file “communication

of the decision adopted to the applicant”, data protection matter in which

give notice of the claim before this AEPD.

2) In the case of the claim, due to the unsuccessful attempt to notify

reliable of the amounts owed to the owner, the system of

notification of article 9 of the LPH to understand it made at the time

of the call to the Board of owners, to warn of the defaulters and that they could catch up to be able to vote. The sign indicating

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Meeting call, with the floor and debtor amount was published on a board closed, located in the private area of the community, on the stairs belonging to the claimant and which can only be accessed by neighbors and persons authorized by them, after not receiving a response within the period voluntary payment, and not having proof of the delivery of the citation of the call in legal form. "At that time no better way was found to send him the summons". In no case the intention that the situation was known to someone outside the circle of the Fellowship.

3) Organizational measures have been established such as compliance with the protocol of communication to the owners where it is established that the communications are made by postal mail, registered e-mail and Assembly corresponding, leaving the notification by bulletin board in cases provided by the LPH.

4) A letter was sent to the claimant by ordinary mail, regretting the inconvenience and informing her of the decisions adopted, contact her by telephone to guarantee receipt of the documentation and that it was presented together with the rest of documentation by electronic headquarters on 03/06/2018.

5) Attach a copy of a letter addressed to the claimant, attaching a copy of list of treatments carried out by the community.

SEVENTH: On 03/27/2019, a resolution proposal was formulated, proposing:

"That by the director of the Spanish Agency for Data Protection, the

COMMUNITY OF OWNERS R.R.R. NIF *** CIF.1, with warning for the infraction

of article 5.1.f) of the RGPD, provided for in article 83.5.a) of the aforementioned RGPD, qualified as

very serious in the article of 72.1.a) of the LOPDGDD.”

Against it, no allegations are received

EIGHTH: Of the actions carried out in this proceeding, they have been

accredited the following proven facts:

1) On the notice board of the Community of owners of the Community

denounced, glazed, locked, exposed figure a note with debts between

other persons, the claimant. The staircase, floor, door, period owed and

amount.

2) The board is located in common areas, not in an area for the exclusive use of

owners. Any non-owner, visitors, friends, maintenance staff

etc. you can go through that place and view the ad.

3) It is unknown whether the reported note continues to appear in the

this procedure on the notice board of the Community, although it refers

acknowledging that "The indicative poster calling the meeting with the flat and amount

debtor was posted on a closed board.”

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4) The method of sending notices of calls to the claimant is usually done

by the community via email, presenting the problem of whether the recipient receives

and open the mail. It is unknown if the accused has a protocol approved by the Community

of said modality of communication of calls, and if the email addresses are

updated.

5) The exposed note does not mention any reason why the

data. It contains "list of receipts pending collection."

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 04/27/2016 on the protection of people regarding the processing of personal data and the free circulation of these data (hereinafter GDPR); recognizes each control authority, and as established in art. 47 of Organic Law 3/2018, of 5/12, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), the director of the Agency Spanish Data Protection is competent to initiate and resolve this process.

II

In this case, the defendant reveals data of three of its owners, one of them the claimant, and not only to these, since the exhibition is made in a place of free transit and public in the sense that they can circulate not only the owners who would be affected by the non-payment, but third parties, visits etc.

It must be taken into account that for the exposure of personal data in Community bulletin board, has to adhere to a number of principles in order to not violate the data protection regulations.

As a means of personal and individualized notification to the owner, the Law of Horizontal Property, indicates the assumptions in which the exposure of data of personal nature related to matters arising from the management of the Community of Owners. Its article 9. h) indicates as an obligation of the owner "Notify whoever exercises the functions of secretary of the community, by any means that allows having proof of receipt, the address in Spain for the purposes of citations and notifications of all kinds related to the community. In the absence of this communication, there will be by address for citations and notifications the apartment or premises belonging to the community,

having full legal effects those delivered to the occupant of the same. If you tried one summons or notification to the owner was impossible to practice it in the place prevented in the previous paragraph, will be understood to be carried out by placing the communication corresponding in the bulletin board of the community, or in a visible place of general use enabled for this purpose, with expressive diligence of the date and reasons for which it proceeds to this form of notification, signed by the person who exercises the functions of Secretary of the community, with the approval of the President. Notification made in this way It will produce full legal effects within three calendar days.

Article 19.3 of the LPH, second paragraph, states: "The minutes of the meetings shall be will send to the owners in accordance with the procedure established in article 9."

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In the present case, there is no evidence that the exposed note comes from a call, meeting or minutes, but rather the desire to want to inform the owners, although the community board should not serve as a board to notify or inform when personal data is exposed, if the requirements indicated in each case are not met for said exhibition and its functions be those of notification or citation.

In the present case, an informative note is being exposed to the owners, making an exhibition in a space or place of transit, becoming identifiable to a person by the neighbors who do not own the property, to be able to also include their name and surnames in mailboxes, claimant to whom the quality of debtor is attributed, may affect your honor. This note with the data as a means of information, in this case does not comply with the LPH and violates the claimant's right to data protection, for not proceeding the exhibition in any of the cases provided for in the aforementioned LPH, nor contain the requirements contemplated by the LPH.

Therefore, it is considered that the COMMUNITY OF OWNERS R.R.R.,

***DIRECTORATE.1, has committed an infraction of article 5.1. f) of the RGPD that states "1.

Personal data will be: f) “treated in such a way as to guarantee security of personal data, including protection against unauthorized processing or illicit and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures (“integrity and confidentiality”). It has been violated confidentiality through exposure on a closed board of ownership and use by the claimant.

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.

The LOPGDD in its article 5.1 indicates: “Duty of confidentiality”:

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.”

Its article 72.1.a) considers it: “Infringements considered very serious

“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”.

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Article 58.2 of the RGPD provides: "Each control authority will have all the

following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

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.

In this sense, the actions taken by the respondent to the

know the claim of which it was informed by this AEPD and the measures adopted,

having to understand from the allegations made that the note with the data of the

claimant was removed from the board, so its removal is not required, notwithstanding that

this procedure serves so that in the future compliance with the regulations is considered

to expose data in spaces such as the community board. Also, you should refrain

to use means of communication or notification on which you cannot prove sending and

reception as a means of relating to the owners of the dwellings due to the absence

accreditation of such shipments.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the COMMUNITY OF OWNERS R.R.R., with NIF ***CIF.1, by

an infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the RGPD, a

AWARD fine.

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SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

R.R.R.

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 period of one month from the day

following the notification of this resolution or directly contentious appeal

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

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 two months from the day following the notification of this act,

according to the provisions of 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, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

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its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the filing

effectiveness of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day

following the notification of this resolution, it would end the suspension

precautionary

Sea Spain Marti

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