

Procedure No.: PS/00346/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 1, 2018, you entered this Agency in writing
claim of the COMMUNITY OF OWNERS R.R.R., (hereinafter, the
claimant) because the company AEA FINCAS ADMINISTRACIONES, S.L, with NIF
B72291875, refuses to send the documentation of a personal nature, files and data
that affects the owners that make up said community.

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), the claimant was informed of the claim with a number of
reference E/08944/2018, to proceed with its analysis and inform this
Agency within a month, of the actions carried out to adapt to the
requirements set forth in the data protection regulations.

THIRD: On January 25, 2019, after analyzing the documentation that
was in the file, a resolution was issued by the director of the AEPD, agreeing on the
filing of the claim, since it was considered that the
issues raised, without the need to purge administrative responsibilities in
the framework of a sanctioning procedure.

The resolution was notified to the appellant on February 12, 2019, according to
notice of receipt that appears in the file.

FOURTH: On March 11, 2019, the claimant files an optional appeal
replacement, arguing that the claimed entity continues without delivering the

documentation requested, despite the presence of the President of the Community and the new estate manager for collection. The claimed entity alleges that it will not deliver said documentation if the claimant does not sign a document drawn up that exonerates you from any civil, criminal liability that may arise from the use of such data.

FIFTH: The Director of the AEPD resolves to uphold the appeal for reconsideration RR/00191/2019, filed by the claimant against the resolution of this Agency issued on January 25, 2019, when it was found that the reported facts did not have been resolved, so it is agreed to admit the claim for processing filed against the claimant, for which the file is opened E/08219/2019.

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SIXTH: The General Subdirectorate for Data Inspection proceeded to carry out preliminary investigative actions to clarify the facts in matter, by virtue of the investigative powers granted to the authorities of control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

SEVENTH: On October 25, 2019, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 28 of the RGD, typified in article 83.4 of the GDPR.

EIGHTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on November 14, 2019, in which he stated the following:

"1. This party ratifies the arguments presented in the Brief dated June 21, December 2018 before this Control Authority.

2. Regarding the fact that Mr. al A.A.A. argues in the optional appeal of replacement, that AEFINCAS ALGECIRAS continues without delivering the documentation requested, we attach as documentary evidence number 1, the emails accrediting the sending of documentation related to the Community of Owners R.R.R, on May 9, 2018, for which we send you all the documentation related to the management of the Community once the Order has been completed of Treatment, so that the new A.A.F.F. can continue with the management.

3. Regarding the delivery of the original documentation derived from the management of the CCPP, this part attaches a copy of the communication addressed to the A.A.A., by which it was responds to your request for us to deliver the relative documentation to the Community of Owners R.R.R. located at ***ADDRESS.1 from which he .Only an acknowledgment of receipt of the delivery of the documentation is requested, with a small inventory of documents delivered, to justify their delivery.

4. In order to return the physical documentation of the CCPP in the hands of this office, and given that a good understanding has not been possible with the President to pick it up, last 08/11/2019 of slogan in the Court number 3 of Algeciras the deposit of the personal data files of the aforementioned community of owners, minute book, owner data as well as private data and

especially protected, such as telephone numbers, bank addresses, list of quotas, list of defaulters, assets of workers who provide their services in the community, tax identification card, contracts, checking accounts, checkbooks, insurance policy, copy of statutes, horizontal division, administration data of finance, and administration reports, among other documents. We attach as documentary number 2 document of consignment of the Court.

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5. Mr. A.A.A. He has not appeared again to collect the documentation, nor has he sent to any representative authorized to carry out the management.

However, he sends us repeated emails uttering threats, a fact that has caused us not to respond to your communications.

6.

AEFINCAS ADMINISTRACIONES, SL has contracted a Consulting specialized in data protection that accompanies us throughout the procedure of Continuous adaptation to legislative developments regarding privacy of the information."

NINTH: On November 16, 2019, the instructor of the procedure agreed the opening of a period of practice of tests, considering incorporated the previous investigative actions, E/08219/2019, as well as the documents provided by the claimant.

Of the actions carried out, the following have been accredited

facts:

FIRST: The claimant makes it clear that he is prevented from being able to carry out his committed as president of his community of neighbors, given that he lacks information relevant to carry out a faithful administration and according to the situation of the community, because today, they are still available to the claimed instead of the claimant, the personal data files of the aforementioned community of owners, minute book, proprietary data as well as private and specially protected data, such as telephone numbers, bank addresses, list of installments, list of defaulters, assets of workers who provide their services in the community, tax identification card, contracts, checking accounts, checkbooks, insurance policy, copy of statutes, horizontal division, data from the treasury administration, and reports from the administration, among other documents.

Likewise, it states that both the President of the Community and the new Property Administrator, appeared on two occasions, at the registered office of the ceased administration, being both attempts unsuccessful when refusing said entity to deliver the documentation of a personal nature that is in its possession, until that they did not sign a document that exonerated them from any civil liability or criminal in the case of malpractice in the use of such data.

SECOND: The respondent states that on May 9, 2018, a copy of the all the documentation related to the management of the Community once the Order of Treatment, so that you can continue with the management of the new farm administrator.

Regarding the delivery of the original documentation, the respondent requires that the claimant presents acknowledgment of receipt of the documentation to be delivered, consisting of a small inventory of the delivered documents, to justify their delivery.

The claimant has not appeared to collect the documentation, nor has he sent no representative authorized to carry out the management.

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The defendant, unable to deliver the documents, on the 8th of November 2019 consigns in the Court number 3 of Algeciras the deposit of the personal data files of the aforementioned community of owners, minute book, proprietary data as well as private and specially protected data, such as telephone numbers, bank addresses, list of installments, list of defaulters, assets of workers who provide their services in the community, tax identification card, contracts, checking accounts, checkbooks, insurance policy, copy of statutes, horizontal division, data from the treasury administration, and reports from the administration, among other documents.

FOUNDATIONS OF LAW

Yo

Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April 2016, regarding the protection of natural persons with regard to treatment of personal data and the free circulation of these data and by which repeals Directive 95/46/CE (RGPD) refers -in section 8 of its article 4-, to the in charge of the treatment or in charge as "the natural or legal person, authority public, service or other body that processes personal data on behalf of the data controller". Consequently, the figure of the data processor due to the need to respond to phenomena such as the outsourcing of services by companies and other entities, so that in those cases in which the data controller entrusts a third party with the

provision of a service that requires access to personal data by it,

said access cannot be considered as a transfer of data by the user.

responsible to the person who provides such service, but that the processing of the data is

carried out by the person in charge in the name and on behalf of the person in charge as if it were this

himself who carries it out.

Article 28.3 g) of the RGPD regulates said figure and requires the existence of a

contract or other legal act under the law of the Union or of the States

members that binds the person in charge with respect to the person in charge, indicating in letter g)

that "at the choice of the person in charge, will delete or return all personal data once

Once the provision of treatment services ends, and will delete the copies

existing unless the retention of personal data is required under

of the Law of the Union or of the Member States".

Said contract or legal act must be in writing, including in

electronically, as stated in number 9 of said article. In this regard, the claimant

has provided a copy of the contract entered into on July 18, 2016 in favor of the

claimed entity.

Likewise, number 10 of article 28, establishes that "Notwithstanding the

provided in articles 82, 83 and 84, if a person in charge of the treatment infringes the

this Regulation when determining the purposes and means of the treatment, it will be

considered responsible for the treatment with respect to such treatment."

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In accordance with the evidence available in this

At that time, it was considered that the known facts could constitute a
infraction, attributable to the defendant, for violation of art. 28.3 g) of the RGPD, on
the obligations of the person in charge of the treatment, for not delivering the documentation
required of the claimant.

However, the claimed entity has accredited by burofax dated 7
November 2019, the consignment of all the documentation required in the
civil court of first instance of Algeciras, alleging that it makes such a decision after
several unsuccessful attempts to deliver said documentation to the claimant.

III

This being the case, having verified that he claims it, he has the will to deliver
the required documentation, accrediting the consignment of the same in the aforementioned
judged, the present proceedings must be archived.

Considering the aforementioned precepts and others of general application,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ARCHIVE sanctioning procedure PS/00346/2019, upon proving that
AEA FINCAS ADMINISTRACIONES, S.L, with NIF B72291875, is exempt from
responsibility that could constitute an infringement of article 28 of the RGPD,
typified in article 83.4 of the RGPD.

SECOND: NOTIFY this resolution to AEA FINCAS ADMINISTRACIONES,
SL

Against this resolution, which puts an end to the administrative process as prescribed
by art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure
Common of Public Administrations, and in accordance with the provisions of arts.
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 Spanish Agency for

Data Protection within a month from the day following the notification
of this resolution or directly contentious-administrative appeal before the Chamber of the
Contentious-administrative of the National Court, in accordance with the provisions of the
Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13
of July, regulating the Contentious-Administrative Jurisdiction, within two
months from the day following the notification of this act, as provided in the
Article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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