

□ Procedure No.: PS/00166/2020

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) on 11/04/2019 filed

claim before the Spanish Data Protection Agency. The claim is

directed against ADMINISTRACIÓN AGUSTÍN, S.L. with NIF B81554750 (hereinafter, the

reclaimed). The grounds on which the claim is based are:

that the administrator of the Community of Owners in which he owns his home

ownership has communicated their personal data, community debts as well as costs

and supplements related to legal proceedings for opening the door to the garden followed

against his person to a third party outside the Community of Owners; than the informed

maintains with the claimant a purchase option on the property owned by him

and whose situation can only be informed by the same prior request to the Administration

of the Community of certification of community situation for later

proceed to write or extend authorization so that you can be informed of

existing debts by the Community Administration.

SECOND: Upon receipt of the claim, the Subdirector General for

Data Inspection proceeded to carry out the following actions:

On 12/11/2019, the claim submitted was transferred to the defendant for analysis

and communication to the affected party of the decision adopted in this regard. Likewise, it

required so that within a month it would send to the Agency determined

information:

- The decision adopted regarding this claim.

- In the event of exercising the rights regulated in articles 15 to 22

of the RGPD, accreditation of the response provided to the claimant.

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

- Report on the measures adopted to prevent the occurrence of similar incidents, dates of implementation and controls carried out to check its effectiveness.

- Any other that you consider relevant.

On 01/16/2020 the respondent responded to the information request of the AEPD

pointing out that the data of the debt of a property is not considered data of

"personal character", which verified the legitimate interest of the third party, requesting such

information, since it was necessary for the execution of a contract in which both the

claimant and the interested third party were a party; that in no case

provided personal data; that the dissemination of the personal data of the

delinquent owner that are made under the requirements indicated in the Law of

Horizontal Property, for the purposes of data protection regulations, will be considered

valid. .

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THIRD: On 06/05/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed by the claimant against the respondent.

FOURTH: On 07/10/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged infringement of article 5.1.f) of the RGPD, sanctioned in accordance with the provisions of the article 83.5.a) of the aforementioned RGPD.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f)

establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

SIXTH: Of the actions carried out in this proceeding, they have been accredited the following:

PROVEN FACTS

FIRST: On 11/04/2019, the affected party submitted a written document to the Spanish Agency for Data Protection, against the claimant indicating that he had communicated his data of a personal nature, as well as community debts and costs and supplies related to legal proceedings brought against him by a third party outside the Community of Owners and that the third party maintains with the claimant a purchase option about the property you own and whose situation can only be informed by the same prior request to the Administration of the Community of certification of situation community to subsequently proceed to write or extend authorization so that you can be informed of the existing debts by the Administration of the Community.

SECOND: The claimant in writing of 01/16/2020 has indicated that the third party I provide in your offices DNI and Purchase Option Contract on housing

located in the Community of Owners requesting to be informed about the debts of said dwelling and considering that it has not violated the regulations regarding data protection and that the legitimizing basis of its action is found in the article 6.1.b) and f) of the RGD.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGD recognizes to each control authority, 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 to solve this procedure.

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Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

II

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.
- e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.
- f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in
- If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

The facts denounced materialize in the communication by the defendant of the personal data relating to the claimant, referring to community debts and costs related to the judicial procedure in which he was involved, to a third party with the that he had a purchase option contract on the home he owned in the Community of Owners in which the claimed person acts as Administrator, violating the duty of confidentiality.

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Such treatment could constitute an infringement of article 5, Principles related to the treatment, of the RGPD that establishes that:

"1. The personal data will be:

(...)

f) treated in such a way as to ensure adequate security of the personal data, including protection against unauthorized processing or against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

(...)"

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

"1. Those responsible and in charge of data processing as well as all people who intervene in any phase of this will be subject to the duty of

confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment”.

IV

The documentation in the file shows that the defendant violated article 5.1.f) of the RGPD, since it has illegally processed the data of a personal nature of the claimant, as there is no evidence of any legitimizing cause that enable for the processing of personal data, materialized in the communication of community debts and costs related to a procedure judicial in which it was involved, being provided to a third party with whom that had signed a purchase option contract on the home he owned in the Community of Owners in which the respondent acts as Administrator.

It should be noted that farm administrators carry out treatment of personal data when acting on behalf of communities of owners, who in turn hold the status of controllers.

In the same way, the communities of owners regarding the treatment data of the community members are legitimized, for the purposes of the causes that collects the RGPD, in compliance with a legal obligation in accordance with the articulated of the Horizontal Property Law (LPH).

The LPH, in its article 16.2 provides that "the meeting call contains the list of delinquent neighbors who are deprived of the vote", being a good practice notification of the individual call by mail, inclusion in a box, or

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via intranet with key and password, avoiding any means that may

assume access by third parties.

However, the dissemination of a debtor neighbor may be published only in the

assumption included in article 9 of the Horizontal Property Law section h)

second paragraph, "If an attempted summons or notification to the owner was impossible

practice it in the place indicated in the previous paragraph, it will be understood

by placing the corresponding communication on the bulletin board

of the community, or in a visible place of general use enabled for this purpose." In addition, to

To proceed in this way, notification attempts must be proven.

However, in the present case the treatment carried out by the

administrator is not fit in any of the legitimating causes contemplated

in the norm and materialized, as previously indicated, in the communication of

community debts and costs related to a legal proceeding, to a third party with

in which the claimant had signed a purchase option contract on the home

of its ownership in which the respondent acts as Administrator.

Respect for the principle of legality of the data requires that it be accredited that

there is a legitimizing cause for the treatment of the data and displaying a

reasonable diligence essential to prove that point. If he does not act like this

The result would be to empty the content of the principle of legality.

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On the other hand, article 83.5 a) of the RGPD, considers that the infringement of "the

basic principles for processing, including conditions for consent

in accordance with articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the mentioned article 83 of the aforementioned GDPR, “with administrative fines of €20,000,000 maximum or, in the case of a company, an amount equivalent to 4% as maximum of the overall annual total turnover of the previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates: “Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(...)

However, article 58.2 of the RGPD provides the following: “Each authority

of control will have all the following corrective powers indicated below:

continuation:

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

warning when the treatment operations have infringed the

provided in this Regulation;

(...)

Therefore, the RGD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations.

In the present case, there is evidence that the respondent communicated the data of the claimant to a third party violating the duty of confidentiality constituting the aforementioned conduct an infringement of the provisions of article 5.1.f) of the GDPR.

Likewise, it is necessary to point out that not correcting the incidents produced in accordance with what is stated in the RGD or reiterate the behavior put in manifest in the claim and that is the cause of this procedure, as well as not informing this AEPD of the measures adopted could give rise to the exercise of possible actions before the person in charge of the treatment so that they are applied effectively the appropriate measures to guarantee and not compromise the confidentiality of personal data and the right to privacy of people.

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 ADMINISTRACIÓN AGUSTÍN, S.L., with NIF B81554750, for an infringement of article 5.1.f) of the RGD, typified in article 83.5 of the RGD, a sanction of warning in accordance with article 58.2 of the RGD.

SECOND: REQUEST ADMINISTRACIÓN AGUSTÍN, S.L., with NIF B81554750 so that within a month from the notification of this resolution, prove: the adoption of the necessary and pertinent measures in accordance with the regulations in matter of protection of personal data in order to avoid that in the future incidents such as those that gave rise to the claim occur again,

adapting the aforementioned measures to the requirements contemplated in article 5.1.f) of the GDPR.

THIRD: NOTIFY this resolution to ADMINISTRACIÓN AGUSTÍN, S.L.

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 in accordance with art.

48.6 of the LOPDGDD, 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

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month from the day following the notification of this resolution or directly

contentious-administrative appeal 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the

LPACAP, the firm resolution may be provisionally suspended in administrative proceedings

if the interested party expresses his intention to file a contentious appeal-

administrative. If this is the case, the interested party must formally communicate this

made by writing to the Spanish Agency for Data Protection,

introducing him to

the agency

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

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

must transfer to the Agency the documentation that proves the effective filing

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

precautionary suspension.

Electronic Registration of

through the

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