

Procedure No.: PS/00248/2019

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938-300320

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) filed a claim on 01/04/2019
before the Spanish Agency for Data Protection that is directed against COMMUNITY OF
PROPIETARIOS R.R.R., in Mataró, Barcelona, with NIF ***NIF.1 (hereinafter, the
claimed) and the Community Administrator. The grounds on which the claim is based
are the exhibition on a closed notice board in common areas of the Community,
containing your personal data in the agenda of the call to the Meeting of
01/16/2019. The date 12/21/2018 appears in the header of the call, which could be the
date the document is made.

Provides:

-With the Community Administrator logo on the left and date 12/21/2018,
copy of the agenda for calling the ordinary general meeting to be held on
01/16/2019. The literal appears, which according to article 553-21.4 d) and e) of the Code
Catalan civil law (CCC), appearing as debtors, along with another, the claimant identified
with name and surname, floor with stairs and letter and pending fee, and in relation to the
article 553-24 1 of the CCC on the right of voice, not vote of the debtors of receipts
still to be paid.

- Photo showing the closed plank, glazed, in a common area next to the stairs
ascent, close to the exit portal and inside the meeting call for the

01/16/2019.

SECOND: In view of the facts stated, the claim was transferred to the

COMMUNITY and the Administrator, who is responsible for the file, to inform:

1.

“Copy of the communications, of the decision adopted that referred to the claim regarding the transfer of this claim, and proof that the claimant has received notice of that decision.

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

two.

mation.

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

3.

lares.

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Four.

Any other that you consider relevant.”

Neither entity responded.

The claim was admitted for processing on 06/17/2019.

THIRD: On 11/14/2019, the Director of the Spanish Agency for the Protection of

Data agreed to initiate sanctioning procedure of warning to COMMUNITY OF

PROPIETARIOS R.R.R., Mataró, Barcelona, for the alleged infringement of Article 5.1.f) of the

RGPD, in accordance with article 83.5 of the RGPD.

FOURTH: It has entry on 02/14/2020 written by RIVAS & COLL ADMINISTRADORS DE

FINQUES, S.L., of the CP c/ Sant Valentín 40-42 in Mataró, stating:

They attach a letter dated 05/09/2019 in which they indicate that they attach a copy of the letter

1)

sent to the claimant and acknowledgment of receipt, although they do not accompany the aforementioned letter.

They add that "the calls are announced on the bulletin board located in the

two)

inside part of the Community entrance on the right hand side, where it is not visible from the

exterior of the farm since the distance from the entrance door is more than 10

meters, therefore data is neither disseminated nor displayed to people outside the community, among

which neither the cleaning staff nor the commercial technical staff are located

that have access authorized by the Community".

An extraordinary meeting will be convened to inform all

3)

neighbors of the claim and thus propose timely measures so that in the event of future

calls, only the debtor departments are indicated without the names of the

owners"

They attach a copy of the open initiation agreement to the CP.

FIFTH: A resolution proposal is issued for the literal: "That by the Director of the Agency

Spanish Data Protection is sanctioned with a WARNING to the COMMUNITY OF

PROPIETARIOS R.R.R., with NIF ***NIF.1, for a violation of Article 5.1.f) of the RGPD,

as stated in Article 83.5 a) of the RGPD."

Faced with the proposal, on 06/19/2020, allegations were received from RIVAS & COLL

ADMINISTRATORS OF FINQUES, S.L. what they need:

-The document was removed when the meeting was held, on 01/16/2019.

-Article 553.21.2 of the Catalan Civil Code specifically establishes a legal regime of

citations and summons as a subsidiary means to that indicated in the statutes. Prime the in-delivery at least 8 calendar days in advance to the address communicated by the owner to the Secretary. "The shipment can be made by mail or electronic mail, or by other means of communication, as long as the authenticity of the communication and its contents. If the owner has not communicated any address, they must be sent to the element exclusive of which he is the owner. In addition, the announcement of the call must be published with the same notice on the community bulletin board or in a visible place enabled to

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such effect. Said announcement produces the effect of effective notification when the staff has not had success".

Article 553.21.4 of the same code indicates that "The call for the meeting of the board of owners must express clearly and in detail: d) The list of owners with pending debts with the community due to fees" which, according to ity with article 553-24, they have a voice but they do not have the right to vote, all of which is I need to warn."

The respondent interprets that the calls must contain a list of the pro-debtor owners in order to warn them that they will not have the right to vote, "and that the publication of the call will be made both to the address designated by each owner as in a visible place in the Community; hence the term "in addition" when noting that: "understand- We declare that said publication on the bulletin board does not have a subsidiary character in de- The effect of unsuccessful personal communication that you manifest is deduced from the Law of Horizontal property."

-Concludes that they have changed the procedure because "from now on only con-
will designate the debtor floor in the call without consigning the name and surnames or debt "in re-
In relation to this, you state in your motion for a resolution that even said rectification
tion could not be sufficient for the purposes of data protection legislation, so
Therefore, it is communicated "that in the calls no data will be consigned of possible
debtors but an unnamed general warning will be made to the effect that
those owners who have debts will not have the right to vote".

PROVEN FACTS

1. The claimant's data is displayed on a note located inside a board
of glazed advertisements of the COMMUNITY OF OWNERS R.R.R. from Mataro. The
board is located according to the photo provided by the claimant, in a common area next to the
climbing ladder, near the exit portal and inside the portal. It is predictable that
not only the owners transit or can transit through said area, strictu sensu of the
homes, it can be done by their relatives, friends, or third parties who come to said property.
2. The data is contained in the call for a meeting of the Board of Owners, to
be held on 01/16/2019, with space for the signature of the administrative secretary, RIVAS & COLL
ADMINISTRATORS OF FINQUES, S.L. The data refers to his condition as a debtor of the
claimant of the aforementioned community, name and surnames and floor and door with amount
owed, also showing another person.
3. The call indicates in its point 2 that in accordance with article 553/21, 4 d) and e)
of the Catalan Civil Code, it is stated that "owners who have debts
pending with the community will have a voice but will not have the right to vote. Today (which
does not detail, although it could refer to the one that appears in the call on its right margin,
12/21/2018) the owners who have pending payment receipts and who continue in this
situation on the day of the Meeting may not exercise their vote, unless they prove that they have
judicially challenged the accounts and consigned the debt judicially or by notary public, according to

article 553/ 24.1 of the Civil Code, are...”, and mentions, between two, the name and surnames the floor and door, and the pending fee.

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1. The claimant provided along with his signed complaint on 12/31/2018, before the Board, a copy of the aforementioned meeting call, identical to the one published. It ignores the means by which said was delivered to the claimant or disposes of it, but it is revealed that has it, before the Meeting is held. The claimed one does not add any element for the one that despite having the claimant of the aforementioned notification of summons of the order on the day of the Meeting, your data should appear on the community bulletin board, exposed in a place of public access, when it could be presumed that it has been notice by having your copy available prior to the meeting.

2. The dates and method by which the respondent makes the notifications are ignored to the owners of announcements of calls to the Meeting, and has not accredited or manifested as in this case it was carried out, dates, and modality and if the one that is delivered to the claimant was or was not collected. The claimant provides a copy, and the claimed one does not prove that delivery was not possible. Nor in the notice of call exposed in the

The board shows that these personal data are exposed because it was not possible to deliver the announcement of the summons to the claimant.

However, not expressing the foregoing, the respondent stated that the calls posted on the bulletin board located inside the entrance to the Community on the right hand side, deducing that by default it uses this system without accrediting if the data of the people referred to have the announcement of the call.

6. The respondent states in pleadings to the proposal that the aforementioned exposed note is removed when the meeting was held, on 01/16/2019, although he did not express any extreme when the claim was transferred.

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.

II

STC 292/2000 states that "... the content of the fundamental right to protection of data consists of a power of disposal and control over personal data that empowers empowers the person to decide which of their data they provide to a third party (...) these powers disposition and control over personal data, which constitute part of the fundamental right fundamental to data protection is legally specified in the power to consent to the collection, obtaining and access to personal data, its subsequent storage and treatment, as well as its use or possible uses, by a third party, be it the State or an individual", that is, to know who, why and what data is going to be processed. This allows the affected party, in this In this case, local police officers exercise control over your personal data (self-determination). informational nation). The duty of prior information forms part of the essential content of the right to data protection, since it is an essential complement to the treatment data The duty of information on the use and destination of personal data is in-

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intimately linked to the general principle of legal authorization of the treatment and exercise of rights, because if its purpose and recipients are not known, it can hardly be exercised.

You have no right to your own data.

The personal data of a homeowner may be processed for the financial purposes of the management of the horizontal property regime. Basically, knowledge of data and information associated with them, must be reserved to the members of the community that make up said community, unless a law establishes transfers of the same either prescriptively or as a legal obligation. The current general protection regulations on data (RGPD and LOPDGDD) and the applicable sector, Catalan Civil Code or the law of horizontal property in the cases and scope in which it is applicable, are the regulatory frameworks in which the management of this type of data takes place.

In addition, the basic data protection principles of the GDPR apply. These principles determine that these are collected for certain purposes, and then they will be treated in accordance with the purposes for which they were collected, taking care that in the treatment to be carried out, these data are adequate and pertinent. The treatment must be limited to what is necessary in relation to the purposes. These principles are set out in article 4 of the GDPR, which indicates:

- b) collected for specific, explicit and legitimate purposes, and will not be processed further in a manner incompatible with said purposes;
- c) adequate, pertinent and limited to what is necessary in relation to the purposes for which the data are treated

The CCC in its article 553-21.2, within the Horizontal Property Regime, with the title indicates:

3. Calls, citations and notifications, unless the statutes establish otherwise, must be sent, at least eight calendar days in advance, to the address communicated by the owner to the secretariat. Shipping can be done by

postal or electronic mail, or by other means of communication, as long as it is earned.

guarantee the authenticity of the communication and its content. If the owner has not communicated each address, must be sent to the private element of which it is the owner. In addition, the announcement of the call must be published with the same advance notice on the notice board. community halls or in a visible place enabled for this purpose. This announcement produces effect of effective notification when personal has been unsuccessful.”

In the aforementioned regulations there is no provision similar to Law 49/1960 on Property Horizontal Authority (hereinafter LPH) indicated in article 9.1.h) “1. They are obligations of each owner:

h) Communicate to whoever exercises the functions of secretary of the community, for any medium that allows proof of receipt, the address in Spain for the purposes of citations and notifications of all kinds related to the community. Failing this communication will be taken by address for summonses and notifications the floor or local belonging to the community, having full legal effects those delivered to the occupant of the same.”

If a summons or notification to the owner is attempted, it is impossible to carry it out in the prevented in the previous paragraph, it will be understood to be carried out by placing the

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corresponding communication on the community bulletin board, or in a visible place of general use enabled for this purpose, with expressive diligence of the date and reasons for the that this form of notification is made, signed by the person exercising the functions of secretary of the community, with the approval of the president. The notification made of

this form will produce full legal effects within three calendar days.”

This wording of the Law is clearer and more decisive than the CCC. However, from

both it is deduced that the circumstance that in the call that is exposed in

boards must contain the debtors, it will be for notification purposes to them, if it has not

could be sent to the owner through the established mode. The fact that the call

that is exposed contains personal data of debtors, is saved or

first notifying or delivering the call to all owners, ensuring their

delivery especially to debtors, with a longer period of 8 days, and the

subsequent closest to 8 days posting on the boards containing the data

personal in the event that the notification of the call had been unsuccessful to those

debtors, without being superfluous to fill out said circumstance in the same announcement. Hence

point out that said announcement produces the effect of effective notification when the staff does not

it has been successful.”

If everyone, especially the debtors, had been notified of the announcement of

call, the exhibition with your data, especially for notification purposes, does not

would have effects.

If, as indicated, all owners have been notified, you can refer to the

display on the board that debtors who do not have the right to vote are referred to in

ads sent to each owner, and are in the original document held by the

President, without needing to mention, if the board is in a place exposed to the public, the

debtor data.

The pertinent treatment would not contemplate that if the debtor owner has been notified

dor, be published again on boards as this implies a dissemination of data that is not pertinent.

nly or adequate for the purposes of their treatment. In this sense, publishing di-

directly on the board the personal data, without previously having tried to the owner

debtor, as indicated by the applicable regulations, both the CCC and the Horizontal Property Law

such and prove that said notification has not been possible would violate the RGPD.

The contrary, according to what the defendant defends, is a duplicate use of personal data and for the same purpose, with the detriment that the exhibition is made known to any person that person owes receipts to the community. In addition, it must be agreed that the notification to the debtor owner has the purpose of making him aware of the deprivation of the right of vote before going to the Meeting and can get up to date on your case.

The defendant, in this case, does not prove its duty, which is to notify the owners beneficiaries, especially the debtor, and does not indicate the regime that follows for it, or otherwise, does not prove that it was impossible to send the summons to the claiming debtor, and in fact cho, the claimant has a copy.

Indicates the discussed article of the CCC: "In addition, the announcement of the call must be posted the same time in advance on the community bulletin board or in a place visible enabled for this purpose. Said announcement produces the effect of effective notification when do the staff has not been successful."

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Although the literal seems to reveal the meaning that the publication should make in place "visible enabled for it or community bulletin board", it must be inferred that

This would be the case if all the requirements for it were met, and that is if it has not been achieved notify the debtors, and it is accredited, that the exhibition can be used as a means of advertising service for notification purposes, but if it has been delivered to the debtor before, there will be two notifications and would go against the RGPD, violating the duty of confidentiality in the treatment of data.

In any case, the right to privacy and honor of the owners must be respected.

of the data, with the guarantees and purposes for which they can be processed. With

the thesis of the claimed, in any case, made in advance of the call,

even if the notice is accredited to all the debtors, and they know that they cannot vote, it is seen

Your data will also be exposed on the bulletin board, in view of third parties, friends

etc., and really without the need for it because they were already notified, violating their right to

the confidentiality of the treatment of the same, and without such an interpretation making sense.

III

It is therefore considered that the defendant commits the infringement of article 5.1.f) of the

RGPD, which 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.”

The person in charge of the treatment is the Community of owners, acting

Administrator as Secretary in the Meetings and as person in charge of treatment of the

responsible.

Foreseeably, in the area where the plank is placed, different

types of people, not all owners in the strict sense (holders of the real right of

property) who are interested in the note, not family or friends or third parties who do not

they would be legitimated for their knowledge. A different matter is that they meet strictly

the requirements for the exposure of debtor data and they are exposed, even if they can see it third parties, the exhibition would be justified by the legal protection in said exhibition, which It would also have effects of notification to said debtor.

In this case, the treatment of the data of the owners is exclusively incumbent on to the circle or group to which the management of the common thing refers, the Community as such, not being understood to or third parties that would not be in the circle of interest of the management of the community.

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The ideal would be that the space in which they were exhibited would be of limited access to only the owners, or notifications will be made to them electronically, but They are usually exposed in common transit areas so that the aforementioned debtors can see the information, provided logically that there are guarantees for said data appear in that space legitimately.

Finally, to mean about the measure that the claimed party manifests is going to adopt, to put only the floors, letter and door of the debtors in the calls exposed on the board of portal announcements, it must be indicated that if the requirements of non-notification are met by impossibility, there is no infringement of data protection. In the case at hand, notifies the debtor owner, or it is not proven that it would have been impossible to send the announcement to the claimed (there is a legally imposed obligation and the burden of proof incumbent on the person obliged to do so, the one claimed), and in addition the data is transferred to third parties, to continue breaking the law. This is because these people are going to be easily identifiable, not only possibly in the mailboxes that are located nearby

said data appears, and it can be known who it is, but that third parties who visit that same property and that dwelling can find out that this person is the one refers to the call, being identifiable.

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 Ci-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:

b) sanction any person responsible or in charge of the treatment with a warning when the processing operations have violated the provisions of this Regulation-

mint;

d) order the controller or processor that the processing operations compliance with the provisions of this Regulation, where appropriate, of a de-completed manner and within a specified time.”

Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a sanction of warning to COMMUNITY OF PROPRIETORS

R.R.R., with NIF ***NIF.1, for a violation of article 5.1.f) of the RGPD, in accordance with article 83.5 a) of the RGPD.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

R.R.R.. through its Administrator RIVAS & COLL ADMINISTRADORS DE FINQUES,

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THIRD: 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 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,

may provisionally suspend the firm resolution in administrative proceedings if the interested party

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

In this case, the interested party must formally communicate this fact in writing addressed to the

Spanish Agency for Data Protection, presenting it through the Electronic Registry

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