

□ File No.: EXP202101177

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: A.A.A. (hereinafter, the complaining party), on 07/30/2021 filed claim before the Spanish Data Protection Agency. The claim is directed against the entity URBANIZACIÓN ***URBANIZACIÓN.1, COMMUNITY OF PROPIETARIOS, with NIF ***NIF.1 (hereinafter, ***URBANIZACIÓN.1, the entity claimed, or the claimed party). The grounds on which the claim is based are following:

“Form required from the residents of an urbanization for guests, in which they request personal data of the person who requests it and of the people invited. Are not comply none of the requirements of the data protection law. Anyone with the user and password of the google account from which the form was created has access to confidential data”.

With your claim, provide a copy of the form that motivates it, whose details include outlined in the Single Proven Fact.

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), said claim was sent to the claimed party until five occasions, three of them by mail and two by the Service of Electronic Notifications, without any of these shipments being effectively delivered to the recipient entity (postal items were returned with the indication “Unknown” or “Wrong address”; and electronic notifications

were "expired").

On 08/16/2021, a first transfer of the claim was made through electronic notification, in accordance with the regulations established in Law 39/2015, of 1 of October, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP), which was not collected by the person in charge, within the term of made available, understood as rejected in accordance with the provisions of art. 43.2 of the LPACAP on 08/17/2021, as stated in the certificate that is in the proceedings.

Although the notification was validly made by electronic means, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, with dated 08/30/2021, a copy was sent, for information purposes, by postal mail to the address of the complaining party provided by the complaining party. In this communication, in addition to transferring the claim, the claimed party was reminded www.aepd.es

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your obligation to interact electronically with the Administration and you will be informed of the means of access to said notifications. This shipment was returned by the Postal Service on 09/15/2021 with the indication "Returned to origin by unknown".

On 09/21/2021, the transfer was reiterated through the Notification Service Electronics, which was also not collected by the person in charge, resulting in "expired" dated 10/02/2021.

For this reason, two new notification attempts were made through emails

postcards; the first of them addressed to the same address provided by the party claimant and the second to a new address located by this Agency through from an internet search engine. Both were returned by the Postal Service with the indications "Returned to origin by unknown" and "Returned to origin by address incorrect".

Therefore, despite the attempts made, the process of transferring the claim remained unanswered by the respondent.

The transfer is carried out, in accordance with the outlined regulations, with the purpose of the entity complained against proceeded to analyze the complaint and inform it Agency of the actions carried out to adapt to the requirements set forth in data protection regulations.

THIRD: On 11/22/2021, in accordance with article 65 of the LOPDGDD, the claim filed by the claimant was admitted for processing.

FOURTH: On 01/04/2022, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of articles 13 and 14 of Regulation (EU) 2016/679, of the European Parliament and of the Council, of 04/27/2016, regarding the Protection of Natural Persons with regard to the Processing of Personal Data and the Free Circulation of these Data (General Data Protection Regulation, hereinafter RGPD), typified in article 83.5.b) of the same Regulation, determining that it would proceed to direct a warning to the aforementioned entity, without prejudice to what may result of instruction.

The notification of this opening agreement to the complaining party, in which granted a term to formulate allegations and propose evidence, it was sent by means of the Electronic Notification Service, although it was not collected by the claimed.

Although the notification was validly made by electronic means, assuming carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, with On 05/13/02022, an announcement was published in the Official State Gazette of notification of the opening of proceedings. In said announcement, the party is informed complained about the possibility of obtaining a copy of the opening agreement.

FIFTH: Notification of the aforementioned start-up agreement in accordance with the rules established in the LPACAP and after the term granted for the formulation of allegations, it has been

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verified that no allegation has been received by the respondent.

Article 64.2.f) of the LPACAP - provision of which the respondent was informed

in the agreement to open the procedure - establishes that if no

allegations within the stipulated period on the content of the initiation agreement, when

it contains a precise statement about the imputed responsibility,

may be considered a resolution proposal. In the present case, the agreement

beginning of the sanctioning file determined the facts in which the

imputation, the infraction of the RGPD attributed to the claimed and the sanction that could

prevail. Therefore, taking into consideration that the respondent has not

formulated allegations to the agreement to initiate the file and in attention to what

established in article 64.2.f) of the LPACAP, the aforementioned initial agreement is

considered in this case proposed resolution.

In view of everything that has been done, by the Spanish Data Protection Agency

In this proceeding, the following are considered proven facts:

PROVEN FACTS

SINGLE: The entity URBANIZACIÓN ***URBANIZACIÓN.1, COMMUNITY OF PROPIETARIOS enabled a form for the collection of personal data of the people invited by their neighbors who wanted to access the swimming pools of the Community of Owners during the 2021 season.

Said form, created with the "Google Forms" tool, includes a label with the indication "***URBANIZACIÓN.1" and the following text:

"Dear neighbors,

Taking into account the delicate situation after COVID-19, and in order to safeguard the well-being and health of the neighbors in this 2021 pool season, the board of directors has created this tool to have a follow-up of the capacity and, therefore, the visits to our installations.

To this end, it is requested that those neighbors interested in bringing guests fill out the following form, in which information will be requested regarding the date and number of companions invited to the facilities.

Compliance will be MANDATORY:

- The form must be completed by the resident resident of OLDER AGE who is

You will be responsible for your guests.

Said neighbor must complete it before each visit.

- The number of guests may NOT exceed 3 FOR EACH HOME and DAY.

The 3 guests must be the same throughout the day...

The Board of Directors of ***URBANIZACIÓN.1".

This form includes fields for the interested party to provide their personal data relating to name and surname, chalet number, date of visit and contact telephone number.

In addition, you must indicate the number of guests (1, 2 or 3) and the name and surname of one from them. Finally, it includes a box with the legend "I have read the current regulations

and I take responsibility for my guests” and a “Submit” button.

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It does not include any informative legend regarding the protection of personal data.

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 as established in articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

In the present case, a claim is filed against the entity ***URBANIZACIÓN.1 for having established an access control to the urbanization facilities (swimming pool) that entails the completion of a data collection form personal details of owners and guests, according to the details listed above in the Single Proven Fact.

Examining the form object of the claim, it is verified that it does not includes no information on the protection of personal data.

Article 12.1 of the RGPD establishes the obligation of the data controller

take the appropriate measures to “provide the interested party with all the information indicated in

articles 13 and 14, as well as any communication under articles 15 to

22 and 34 related to the treatment, in a concise, transparent, intelligible and easily

access, in clear and simple language, in particular any information addressed to

child”.

Article 13 of the aforementioned legal text details the “information that must be provided

when the personal data is obtained from the interested party” and article 14 mentioned

refers to the “information that must be provided when the personal data is not

have obtained from the interested party”.

In the first case, when the personal data is collected directly from the

concerned, the information must be provided at the very moment in which the

that data collection. Article 13 of the RGPD details this information in the terms

following:

1. When personal data relating to him is obtained from an interested party, the person in charge of the treatment, at the time these are obtained, will provide you with all the information indicated

next:

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a) the identity and contact details of the person in charge and, where appropriate, of his representative;

b) the contact details of the data protection delegate, if applicable;

c) the purposes of the treatment to which the personal data is destined and the legal basis of the treatment.

treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the responsible or a third party;

e) the recipients or categories of recipients of the personal data, if any;

f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a decision on the adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to the adequate or appropriate guarantees and the means to obtain a copy of these or to the fact that they have been loaned.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee fair and transparent data processing:

a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;

b) the existence of the right to request access to the data from the data controller related to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without this affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a requirement necessary to sign a contract, and if the interested party is obliged to provide the data personal and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, referred to in article 22, paragraphs 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and the anticipated consequences of said treatment for the

interested.

3. When the data controller plans the further processing of personal data

for a purpose other than that for which they were collected, will provide the interested party, with prior to such further processing, information about that other purpose and any information relevant addition pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and to the extent that the interested party already has the information.

In the second case, when the personal data is not obtained from the interested party, the information that must be provided to it is established in article 14 of the RGPD:

"1. When the personal data has not been obtained from the interested party, the person in charge of the treatment will provide you with the following information:

a) the identity and contact details of the person in charge and, where appropriate, of his representative;

b) the contact details of the data protection delegate, if any;

c) the purposes of the treatment for which the personal data is intended, as well as the legal basis of the treatment;

d) the categories of personal data in question;

e) the recipients or categories of recipients of the personal data, if applicable;

f) Where appropriate, the intention of the controller to transfer personal data to a recipient in a third country or international organization and the existence or absence of a decision to adequacy of the Commission, or, in the case of transfers indicated in articles 46 or

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47 or article 49, paragraph 1, second paragraph, reference to adequate guarantees or

appropriate and the means to obtain a copy of them or the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party with the following information necessary to guarantee a treatment of fair and transparent data regarding the interested party:

- a) the period during which the personal data will be kept or, when this is not possible, the criteria used to determine this term;
- b) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the data controller or a third party;
- c) the existence of the right to request access to the data from the data controller related to the interested party, and its rectification or deletion, or the limitation of its treatment, and to oppose the treatment, as well as the right to data portability;
- d) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent at any time, without affecting the legality of the treatment based on the consent before its withdrawal;
- e) the right to file a claim with a supervisory authority;
- f) the source from which the personal data comes and, where appropriate, if they come from sources of public access;
- g) the existence of automated decisions, including profiling, to which refers to article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and the foreseen consequences of said treatment for the interested party.

3. The controller will provide the information indicated in sections 1 and 2:

- a) within a reasonable time, once the personal data has been obtained, and at the latest within one month, taking into account the specific circumstances in which said data is processed;
- b) if the personal data are to be used for communication with the interested party, at the latest

at the time of the first communication to said interested party, or

c) if it is planned to communicate them to another recipient, at the latest at the time when the personal data is communicated for the first time.

4. When the person in charge of the treatment projects the subsequent treatment of the data personal for a purpose other than that for which they were obtained, will provide the interested party, prior to such further processing, information about that other purpose and any other information pertinent indicated in section 2.

5. The provisions of sections 1 to 4 shall not apply when and to the extent that:

a) the interested party already has the information;

b) the communication of said information is impossible or supposes an effort disproportionate, in particular for processing for archiving purposes in the public interest, purposes of scientific or historical research or statistical purposes, subject to the conditions and guarantees indicated in article 89, paragraph 1, or to the extent that the obligation mentioned in section 1 of this article may make it impossible or hinder seriously the achievement of the goals of such treatment. In such cases, the person in charge will adopt appropriate measures to protect the rights, freedoms and legitimate interests of the data subject, including making the information public;

c) the obtaining or communication is expressly established by Union Law or of the Member States that applies to the data controller and establishes appropriate measures to protect the legitimate interests of the data subject, or

d) when the personal data must remain confidential on the basis of an obligation of professional secrecy regulated by the Law of the Union or of the States members, including an obligation of secrecy of a statutory nature”.

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For its part, article 11.1 and 2 of the LOPDGDD provides the following:

“Article 11. Transparency and information to the affected

1. When the personal data is obtained from the affected party, the data controller may comply with the duty of information established in article 13 of the Regulation (EU) 2016/679 providing the affected party with the basic information referred to in section following and indicating an electronic address or other means that allows access in a simple and immediate to the rest of the information.

2. The basic information referred to in the previous section must contain, at least:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for profiling, the basic information will also include this circumstance. In this case, the affected must be informed of their right to oppose the adoption of individual decisions automated that produce legal effects on him or significantly affect him in any way similarly, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679”.

In relation to this principle of transparency, it is also taken into account expressed in Considerations 32, 39, 58, 60 and 61 of the RGPD.

In this case, there is no evidence that the respondent entity has complied with the obligations outlined above.

Consequently, the aforementioned facts entail a violation of the provisions of the articles 13 and 14 of the RGPD, which gives rise to the application of the corrective powers

that article 58 of the aforementioned Regulation grants the Spanish Protection Agency of data.

III

In the event that there is an infringement of the provisions of the RGPD, between the corrective powers available to the Spanish Data Protection Agency, as a control authority, article 58.2 of said Regulation contemplates the following:

“2 Each control authority will have all the following corrective powers indicated below: continuation:

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;”

(...)

d) order the person responsible or in charge of the treatment that the treatment operations be comply with the provisions of this Regulation, where appropriate, of a given manner and within a specified time;

(...)

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;”.

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According to the provisions of article 83.2 of the RGPD, the measure provided for in letter d)

above is compatible with the sanction consisting of an administrative fine.

Without prejudice to the provisions of article 83, sections a) and b), the aforementioned article 58.2.d) provides for the possibility of sanctioning with a warning, in relation to what stated in Recital 148:

“In the event of a minor offence, or if the fine likely to be imposed constituted a disproportionate burden for a natural person, instead of sanction by fine can impose a warning. However, special attention must be paid to the nature, gravity and duration of the infraction, to its intentional nature, to the measures taken to mitigate the damages suffered, the degree of responsibility or any infraction previous pertinent, to the way in which the supervisory authority had knowledge of the infraction, to the fulfillment of measures ordered against the person in charge or in charge, to the adherence to codes of conduct and any other aggravating or mitigating circumstance”.

IV

It is considered that the exposed facts fail to comply with the principle of transparency established in articles 13 and 14 of the RGPD, which implies the commission of a infringement typified in article 83.5.b) of the RGPD, which under the heading "Conditions for the imposition of administrative fines" provides the following:

“Infractions of the following provisions will be sanctioned, in accordance with section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the total annual global turnover of the previous financial year, opting for the highest amount:

b) the rights of the interested parties pursuant to articles 12 to 22; (...).”

In this regard, the LOPDGDD, in its article 71 establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the present organic law”.

For the purposes of the limitation period, article 72.h) of the LOPDGDD indicates:

“Article 72. Infractions considered very serious.

1. Based on the provisions of article 83.5 of Regulation (EU) 2016/679, they are considered very serious and will prescribe after three years the infractions that suppose a violation substance of the articles mentioned therein and, in particular, the following:

h) The omission of the duty to inform the affected party about the processing of their personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this Organic Law".

In the present case, it is considered appropriate to address to the respondent a warning, in accordance with the provisions of article 58.2 b) of the RGPD, in relation to what is stated in Considering 148, cited above.

Attended the special circumstances that concur in the entity presumably

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responsible for the infraction and making a broad interpretation of the criterion that inspires Recital 148 of the RGPD, according to which when the fine that likely to be imposed would constitute a disproportionate burden may be imposed instead of the sanction of a fine a warning, in this phase of the procedure, it is estimated that due to the infringement of articles 13 and 14 of the RGPD it is appropriate to direct a warning to the claimed party. It also takes into account that the claim is not directly linked to the processing of personal data and that the forecast use of the form in question is temporary, given the circumstances that determined its implementation.

On the other hand, in the event that the use of the control form is maintained access that has given rise to the actions, it is agreed to impose on the party demanded the adoption of adequate measures to adjust its actions to the regulations mentioned in this act, in accordance with the provisions of the aforementioned article 58.2 d) of the RGPD, according to which each control authority may “order the responsible or in charge of the treatment that the treatment operations are comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period.

Specifically, the party complained against must include in the form in question the information provided in the non-compliant items.

It is warned that not meeting the requirements of this organization may be considered as a serious administrative infraction by “not cooperating with the Authority of control” before the requirements made, being able to be valued such behavior to the time of the opening of an administrative sanctioning procedure with a fine pecuniary

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: DIRECT TO URBANIZATION ***URBANIZACIÓN.1, COMMUNITY OF PROPIETARIOS, with NIF ***NIF.1, for an infraction of articles 13 and 14 of the RGPD, typified in Article 83.5.b) of the RGPD, a warning.

SECOND: REQUEST the entity URBANIZACIÓN ***URBANIZACIÓN.1, COMMUNITY OF OWNERS, in the event that the current use of the access control form that has given rise to the actions, so that within a period of one month, counted from the notification of this resolution, adapt its action to the personal data protection regulations, with

the scope expressed in the Basis of Law IV, and justify before this Agency Spanish Data Protection the attention of this requirement. In the text of the resolution establishes what have been the infractions committed and the facts that have given rise to the violation of data protection regulations, of which It is clearly inferred what the measures to be adopted are, without prejudice to the type of specific procedures, mechanisms or instruments to implement them corresponds to the sanctioned party, since it is the data controller who fully knows your organization and has to decide, based on the responsibility proactive and risk-focused, how to comply with the RGPD and the LOPDGDD.

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THIRD:

***URBANIZATION.1, COMMUNITY OF OWNERS.

the present

NOTIFY

resolution to URBANIZATION

In accordance with the provisions of article 50 of the LOPDGDD, 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 month from

counting 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, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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Director of the Spanish Data Protection Agency

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