

□ File No.: PS/00444/2021

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 claimant party) dated November 3,
2020 filed a claim with the Spanish Data Protection Agency. The
claim is directed against ESTUDIO LA FLORIDA 2009 S.L. with NIF B65216277
(hereinafter, LA FLORIDA). The grounds on which the claim is based are
following:

-According to what he states, he owns a place that he rented from LA FLORIDA. One time
resolved the lease and delivered the keys by a
representative of LA FLORIDA (tenant), inside the premises it has been found
a lot of documentation, supposedly from LA FLORIDA clients (invoices,
original notarial deeds, sales contracts, personal data such as
ID, phones etc.

Along with the claim, it provides, as an example of the documentation found:

- Document of the end of the lease and delivery of the keys.
- Rental contract for housing use.
- Note ordering the sale of property.
- Copy of a DNI in the name of B.B.B.
- Inheritance and gift tax.
- Notary deed of manifestation of inheritance.

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 transferred to the administrator of the claimed, so that it proceeded to its analysis and inform this Agency within the period of a month, of the actions carried out to adapt to the foreseen requirements in data protection regulations.

The transfer was sent on 12/01/2020, reiterating on 02/01/2021 and 02/24/2021 no response.

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THIRD: On 02/03/2021 the claim was admitted for processing filed by the claimant.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out of previous 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 the LOPDGDD, having knowledge of the following ends:

Individual owner of a premises located at ***ADDRESS.1 (hereinafter the premises) presents written on the occasion of having found in it, after the delivery of the keys of the former tenant (LA FLORIDA), "a lot of documentation supposedly from clients of ESTUDIO LA FLORIDA (invoices, original notarial deeds, contracts purchase-sale, personal data such as ID, telephone numbers, etc.)." As indicated, attached to the claim "only a small part of this documentation". The complaining party

requests information on how to “proceed with abandoned documentation inside the premises”.

The information contained in the information systems is as follows:

On February 24, 2021, the AEPD, by virtue of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights, transferred the claim to the administrator of LA FLORIDA through postal notification to the address ***ADDRESS.2. This notification was delivered on March 8, 2021 as stated in the acknowledgment document of receipt issued by Correos, not stating in the AEPD a reply to the transfer of the claim.

During these proceedings, the following entities have been investigated:

- STUDIO LA FLORIDA 2009 S.L. with NIF B65216277 with address at AVDA.

DE MASNOU, Nº58, P. BAJA - 08905 L'HOSPITALET DE LLOBREGAT (BARCELONA). This is the address recorded for LA FLORIDA, both in the Central Mercantile Registry (hereinafter RMC) as well as in the Axesor service (see “Diligence Study Florida 2009”). The State Administration Agency Tributaria, in response to a request from the AEPD, has also provided a substantially identical address (AVDA DEL MASNOU, 58 – LOC. 08905 L'HOSPITALET DE LLOBREGAT BARCELONA).

- C.C.C. with NIF ***NIF.1 and address at ***ADDRESS.2. This address has been provided by the complaining party in its statement of claim.

It is registered in the RMC (see "Diligencia Estudio La Florida 2009") dated of June 19, 2014 as sole administrator of LA FLORIDA. Likewise,

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figure registered on February 16, 2017 as joint and several administrator along with a third (D.D.D.). After this last date there are no new registrations in the RMC.

In order to investigate the events that occurred, the requirements of following information without it being possible to deliver it to the recipients:

- On May 20, 2021, a request was addressed to LA FLORIDA

of information by means of electronic notification through the Service of Electronic Notifications (SNE) and Authorized Electronic Address (DEH).

As certified by the Support Service of the Electronic Notifications Service and Electronic Address Enabled, on May 31, 2021 the

automatic rejection of this notification, after ten days have elapsed natural from the availability in such service for access.

- On June 29, 2021, LA FLORIDA was reiterated the requirement to

above information via postal notification. However, according to

Post certificate the shipment was "Returned to Origin by Unknown 04 on 07/13/2021 at 11:09".

- On June 29, 2021, it was addressed to the administrator of LA FLORIDA

a request for information by postal notification. Nevertheless,

According to the Post Office certificate, the shipment was "Returned to Origin due to Surplus (Not picked up at the office) on 07/27/2021 at 12:25". The certificate also

Note the following regarding shipping:

"1st delivery attempt on 07/13/2021 at 12:44, by employee 262600, has resulted 03 Absent.

2nd delivery attempt on 07/19/2021 at 17:27, by employee 471535 has been successful

03 Absent. Notice was left in mailbox.”

FIFTH: On January 13, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimed party, for the alleged infringement of Article 5.1.f) of the RGPD and Article 32 of the RGPD, typified in Article 83.5 of the RGPD.

The initiation agreement was electronically notified to LA FLORIDA, as establishes article 14.2 of Law 39/2015 of Common Administrative Procedure of the Public Administrations (LPACAP) according to which:

In any case, they will be obliged to interact through electronic means.

with the Public Administrations to carry out any process of an administrative procedure, at least, the following subjects:

a) Legal persons.

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Works in the file the Certificate issued by the Notification Service

Electronic and Authorized Electronic Address of the FNMT-RCM, which leaves proof of delivery of the initiation agreement, notification from the AEPD addressed to LA FLORIDA, through that medium, being the date of availability at the headquarters agency's email address on 01/13/2022 and the automatic rejection date on 01/24/2022.

Article 43.2. of the LPACAP establishes that when the notification by means electronic devices is mandatory -as is the case in this case- "it is shall be understood as rejected when ten calendar days have elapsed since the

disposition of the notice without accessing its content.”

Articles 41.5 and 41.1, third paragraph of the LPACAP, provide, respectively:

“When the interested party or his representative rejects the notification of an action administrative, it will be recorded in the file specifying the circumstances of the notification attempt and the means, considering the procedure completed and following the process.”

“Regardless of the means used, the notifications will always be valid.

that allow proof of its sending or making available, of the reception or access by the interested party or their representative, their dates and times, the content complete, and the reliable identity of the sender and recipient thereof. The accreditation of the notification made will be incorporated into the file”.

The AEPD, notwithstanding the provision of article 14.2 LPACAP, decided to reiterate to LA FLORIDA notification of the initiation agreement by mail.

In the file is the Certificate issued by the State Post Office and Telégrafos, S.A., which certifies that the shipment made by the AEPD, addressed to ESTUDIO LA FLORIDA 2009 S.L., with reference NT28000049AAQ100000005E, was admitted on 02/03/2022 and was returned to origin for “excess” on 02/21/2022, appearing first delivery attempt on 02/10/2022 at 14:12, with “absent” result and second delivery attempt on 02/11/2022 at 19:42, with "absent" result.

Thus, considering that the notification of the initiation agreement to LA FLORIDA was made electronically by legal imperative (article 14 LPACAP) and that it be produced the rejection of the notification after ten days, as provided by the article 43.2 of the aforementioned law, the procedure was considered carried out and the procedure continued its course (article 41.5 LPACAP)

FIFTH: After the period granted for the formulation of allegations to the agreement to initiate the procedure, it has been verified that no allegation has been received

any by the claimed party.

Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP) -provision of which

the party claimed was informed in the agreement to open the proceeding-

establishes that if allegations are not made 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 to initiate the disciplinary proceedings determined the

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facts in which the imputation was specified, the infraction of the RGD attributed to the

claimed and the sanction that could be imposed. Therefore, taking into account that

the party complained against has made no objections to the agreement to initiate the file and

In accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned agreement of

beginning is considered in the present case resolution proposal.

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

FIRST: It is accredited that, once the lease contract has ended and

delivered the keys to the premises, the owner of the same found in its interior a multitude of

documents containing personal data whose data controller is the

entity ESTUDIO LA FLORIDA 2009 S.L., and that he had left there.

FOUNDATIONS OF LAW

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter RGPD), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in 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."

LA FLORIDA is accused of committing an infringement of article 5.1.f) of the RGPD and

an infringement of article 32 of the RGPD.

II

Article 5.1.f) "Principles related to treatment" of the RGPD establishes:

"1. The personal data will be:

(...)

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against

its loss, destruction or accidental damage, through the application of technical measures

or appropriate organizational structures ("integrity and confidentiality")."

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Article 83.5 of the RGPD, under the heading "General conditions for the imposition of administrative fines" provides:

"The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9; (...)"

a)

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

For the purposes of the limitation period, article 72 "Infringements considered very serious" of the LOPDGDD indicates:

"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.

(...)"

In the present case, it is clear that the complaining party had access to personal data of third parties, collected by LA FLORIDA and unduly exposed to a

third, being abandoned in the rented premises for the exercise of its activity, property of the complaining party, violating the principles of integrity and confidentiality.

Therefore, the infringement of article 5.1.f) of the RGPD is accredited.

For the purposes of deciding on the imposition of an administrative fine and its amount, considers that the infringement in question is serious for the purposes of the RGPD and that It is appropriate to graduate the sanction to be imposed in accordance with the following criteria that establishes article 83.2 of the RGPD:

III

As aggravating factors:

- The high number of people affected. It must be taken into account that, as detailed in the background, numerous documentation, containing personal data such as DNI, NIE, addresses, etc. (Art 83.2.a).
- Negligence in the infraction, since the documentation was simply abandoned in the property that LA FLORIDA had been using for its activity (Art. 83.2.b).

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As mitigating factors:

- LA FLORIDA seems to be a small company, without even contain data on your billing volume in AXESOR (Art. 83.2.k).

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the

following criteria established in section 2 of article 76 "Sanctions and measures

corrective measures" of the LOPDGDD:

As aggravating factors:

-The activity of LA FLORIDA involves handling a large number of

personal data, since it is a company dedicated to the

real estate brokerage (Art. 76.2.b)

The balance of the circumstances contemplated in article 83.2 of the RGPD and the

Article 76.2 of the LOPDGDD, with respect to the infraction committed by violating the

established in article 5.1.f) of the RGPD, allows a fine of €2,500 (TWO

One thousand five hundred euros).

Article 32 "Security of treatment" of the RGPD establishes:

IV

"1. Taking into account the state of the art, the application costs, and the

nature, scope, context and purposes of the treatment, as well as risks of

variable probability and severity for the rights and freedoms of individuals

physical, the person in charge and the person in charge of the treatment will apply technical measures and

appropriate organizational measures to guarantee a level of security appropriate to the risk,

which in your case includes, among others:

a) pseudonymization and encryption of personal data;

b) the ability to guarantee the confidentiality, integrity, availability and

permanent resilience of treatment systems and services;

c) the ability to restore the availability and access to personal data

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and evaluation of the effectiveness

technical and organizational measures to guarantee the security of the

treatment.

2. When evaluating the adequacy of the security level, particular account shall be taken of takes into account the risks presented by the processing of data, in particular as consequence of the accidental or unlawful destruction, loss or alteration of data data transmitted, stored or otherwise processed, or the communication or unauthorized access to said data.

3. Adherence to an approved code of conduct under article 40 or to a certification mechanism approved under article 42 may serve as an element to demonstrate compliance with the requirements established in section 1 of the present article. 4. The person in charge and the person in charge of the treatment will take

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to ensure that anyone acting under the authority of the controller or of the person in charge and has access to personal data can only process said data following the instructions of the person in charge, unless it is obliged to do so by virtue of the Law of the Union or of the Member States”.

Article 83.4 of the RGPD under the heading "General conditions for the imposition of administrative fines" provides:

“The infractions of the following dispositions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 10,000,000 or, in the case of a company, an amount equivalent to a maximum of 2% of the global total annual turnover of the previous financial year, opting for the largest amount:

a)

the obligations of the person in charge and the person in charge in accordance with articles 8, 11, 25 to 39, 42 and 43; (...)"

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that:

"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law.

For the purposes of the limitation period, article 73 "Infringements considered serious" of the LOPDGDD indicates:

"Based on the provisions of article 83.4 of Regulation (EU) 2016/679, considered serious and will prescribe after two years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

f) The lack of adoption of those technical and organizational measures that result appropriate to guarantee a level of security appropriate to the risk of the treatment, in the terms required by article 32.1 of Regulation (EU) 2016/679".

In the instant case, at the time the breach occurred, LA FLORIDA had not established any appropriate measures to prevent the exposure of personal data, given that the documentation was abandoned on the premises, without having proceeded to its destruction or removal before ceasing their professional activity in said premises.

The infringement of article 32 of the RGPD is therefore accredited.

For the purposes of deciding on the imposition of an administrative fine and its amount, considers that the infringement in question is serious for the purposes of the RGPD and that

It is appropriate to graduate the sanction to be imposed in accordance with the following criteria that establishes article 83.2 of the RGPD:

As aggravating factors:

- The high number of people affected (Art 83.2.a).

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-Negligence in the infraction. LA FLORIDA did not have any type of measure to avoid the exposure of personal data of all the documentation that I leave abandoned in the premises it occupied (Art. 83.2.b).

As mitigating factors:

- LA FLORIDA seems to be a small company, without even stating data of your billing volume in AXESOR (Art. 83.2.k)

Likewise, it is considered appropriate to graduate the sanction to be imposed in accordance with the following criteria established in section 2 of article 76 “Sanctions and measures corrective measures” of the LOPDGDD:

As aggravating factors:

- The activity of LA FLORIDA involves handling a large number of data personal, since it is a company dedicated to the intermediation property, so it is essential that appropriate measures be taken to avoid a situation like the one that is substantiated in this procedure (Art. 76.2.b).

The balance of the circumstances contemplated in article 83.2 of the RGPD and the Article 76.2 of the LOPDGDD, with respect to the infraction committed by violating the established in article 32 of the RGPD, allows initially setting a penalty of 1,500 € (ONE THOUSAND FIVE HUNDRED euros).

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 ESTUDIO LA FLORIDA 2009 S.L., with NIF B65216277, for an infringement of Article 5.1.f) of the RGD, typified in Article 83.5 of the RGD, a fine of TWO THOUSAND FIVE HUNDRED euros (2,500 euros)

IMPOSE ESTUDIO LA FLORIDA 2009 S.L., with NIF B65216277, for a violation of Article 32 of the RGD, typified in Article 83.4, a fine of THOUSAND FIVE HUNDRED euros (1,500 euros)

SECOND: NOTIFY this resolution to ESTUDIO LA FLORIDA 2009 S.L.

THIRD: Warn the sanctioned party that he must make the imposed sanction effective once

Once this resolution is enforceable, in accordance with the provisions of the

art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations, approved

by Royal Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003,

of December 17, through its entry, indicating the NIF of the sanctioned and the number

of procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Agency

Spanish Department of Data Protection in the banking entity CAIXABANK, S.A.. In case

Otherwise, it will be collected in the executive period.

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Received the notification and once executed, if the date of execution is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following month or immediately after, and if

between the 16th and last day of each month, both inclusive, the payment term

It will be until the 5th of the second following month or immediately after.

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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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