

□ File No.: PS/00486/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: Mrs. A.A.A. (hereinafter, the ONE CLAIMANT party) on the 10th of  
May 2021 filed a claim with the Spanish Agency for the Protection of Data  
cough.

The claim is directed against COMMUNITY OF OWNERS B.B.B. with NIF  
\*\*\*NIF.1 (hereinafter, THE COMMUNITY OF OWNERS).

The reason on which the claim is based is the publication by the President of the  
Community of Owners on the website \*\*\*URL.1, information contained  
the personal data of several owners, among which are those of the RE-  
CLAIMANT ONE (name, surnames, floor).

Later, D.C.C.C. and D. D.D.D., (hereinafter, the TWO CLAIMANT and  
RECLY THREE) dated June 2 and 3 of the same year, respectively, inter-  
filed a claim with the Spanish Data Agency in relation to them  
facts (publication of your personal data on the website \*\*\*URL.1), accumulated  
both to the file referenced above.

Together with the claims, copies of the publications made on the page are provided.  
web page mentioned in which the personal data of the claimants are recorded, as well as  
as the requirements to the President of the Community of Owners requesting the  
removal of such posts.

It is noteworthy that these publications are not made in the restricted section of the page.  
web page that can only be accessed by the owners.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in hereinafter LOPDGDD), the claims were transferred to THE COMMUNITY OF PROPRIETORS, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the prerequisites seen in the data protection regulations.

The transfer of the first claim was sent on May 28, 2021 to tra- through the Electronic Notification Service and Authorized Electronic Address, do notified that same day.

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The transfer of the second and third claim was sent on June 28, 2021 through the Electronic Notification Service and Electronic Address Enabling litada, being notified that same day.

THIRD: QUERETARO CONSULTORIA Y CIBERSEGURIDAD S.L., on behalf of and representation of the claimed party, upon notification of the second claim filed on June 28, 2021, requests an extension of the granted term, estimating- be the same dated June 30, 2021.

This company was contracted by THE COMMUNITY OF OWNERS, in the year 2018 on the occasion of the entry into force of the European Data Protection Regulation.

Personal data RGPD 679/2016 of April 27, as coordinator of protection of personal data in order to implement the required requirements, make se- follow-up and clarify the doubts and divergences that could arise in the different areas.

cough.

Thus, on July 23 of that same year, this Agency received a letter of res-  
set indicating that:

“In 2018, due to the imminent entry into force of the European Regulation  
Protection of Personal Data (RGPD 679/2016 of April 27), the Community of  
Owners B.B.B. through the company in charge of its administration.  
ma, commissioned QCC to adapt the requirements of the RGPD, carrying out  
the drafting of the following documentation:

- Processing commission contracts with the community administration itself.

community of owners, with the labor consultancy in charge of processing the contracts  
records and payroll of the community's workforce, with the video surveillance company  
gillance.

- Documents for the exercise of rights of access, rectification and deletion  
sion, portability, right to be forgotten.

- Document of security measures and how to act in case of breaches.

- Record of treatment activities.

- Periodic checks are made in case any data needs to be modified  
and/or create a new document, as is the case with the creation of the page

A website that had to incorporate privacy policies, cookies and notice  
legal respectively.

The aforementioned website was approved by the direct meeting and was validated by the  
owners meeting in March 2019 when approving the annual report of the president

where all the details have been reported and put to the vote. the same-

ma was approved by the absolute majority of the members... The website as such, is indicated  
from the presidency of the community, it is used as a channel of information about the  
most relevant events that occur in it, including (using the right to

right to information and freedom of expression), the behavior and actions that certain owners are carried out, being in that area where they are circumscribed the comments made... I cannot confirm or deny if they have sent information to the editor of the website and he has censored it. On the other hand, it should be noted that the web displays a restricted section only accessible to owners prior registration of access...".

The following documentation is attached to the aforementioned document:

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☐ Copy of the treatment order contracts.

☐

Report of the president of 2019 that was approved in the assembly by the majority-estuary of the owners.

☐ Privacy policy and legal notice that appears on the web.

☐ Document from the Spanish Data Protection Agency of 2008, accrediting  
tive of inscription of files. Demonstrates concern for compliance  
regulations by the Community of Owners.

FOURTH: On August 10, 2021, the admission for processing of the applications took place.  
claims filed against THE COMMUNITY OF OWNERS, in accordance with  
ity with the provisions of article 65.5 of the LOPDGDD.

The admission agreement was notified to the interested parties through the Notification Service.  
Electronic cations and Electronic Address Enabled on October 4, 2021.

FIFTH: On April 12, 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 articles 83.5 and 83.4 of the RGPD.

SIXTH: Notification of the start agreement on April 19, 2022 through the Electronic Notification Service and Authorized Electronic Address, it was requested by THE COMMUNITY OF OWNERS, on May 3 of that same year, extension of the period granted to formulate allegations

The extension of the term foreseen to formulate allegations was admitted and notified on the 6th of May 2022 through the Electronic Notifications and Address Service Electronics Enabled.

SEVENTH: Notification of the aforementioned start-up agreement in accordance with the established rules in Law 39/2015, of October 1, of the Common Administrative Procedure of the Public Administrations (hereinafter, LPACAP) and having passed the extension of the term granted for the formulation of allegations, it has been 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:

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## PROVEN FACTS

FIRST: It is accredited that on the website \*\*\*URL.1 of THE COMMUNITY OF OWNERS information containing personal data has been published of several owners (name, surnames, apartment).

SECOND: It is accredited that said publications are not made in the section restricted section of the website, which can only be accessed by the owners.

## FOUNDATIONS OF LAW

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Competition

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.”

## II

### Previous issues

In the present case, in accordance with the provisions of article 4.1 of the RGPD, it consists

carrying out personal data processing, since THE COMMUNITY

DE PROPIETARIOS carries out, among other treatments, the collection, conservation,

fication, consultation and use of the following personal data of natural persons,

such as: name, identification number, telephone number, location of the

housing...etc.

THE COMMUNITY OF OWNERS carries out this activity in its condition of res-

ponsible for the treatment, since it is the one who determines the purposes and means of such activity.

ity, by virtue of the aforementioned article 4.7 of the RGPD.

Article 4 section 12 of the RGPD defines, in a broad way, the "violations of se-

curity of personal data" (hereinafter security breach) as "all

those breaches of security that cause the destruction, loss or alteration

accidental or illicit of personal data transmitted, conserved or processed in another

form, or unauthorized communication or access to said data.”

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In the present case, there is a security breach of personal data in the

circumstances indicated above, categorized as a breach of confidentiality, when

have been published by the President of the Community of Owners B.B.B. on the

Web page \*\*\*URL.1, information that contained personal data of some

private owners, without using the restricted section of the website, to which

only the owners can access after registering access.

This duty of confidentiality must be understood to have the purpose of preventing

leaks of the data are carried out, not consented by the owners of these.

It should be noted that receiving a complaint about a security breach

of confidentiality does not imply the imposition of a sanction directly, since

it is necessary to analyze the diligence of those responsible and in charge and the security measures applied security.

Within the principles of treatment provided for in article 5 of the RGD, the

integrity and confidentiality of personal data is guaranteed in section 1.f)

of article 5 of the RGD. For its part, the security of personal data comes

regulated in articles 32, 33 and 34 of the RGD, which regulate the security of the

treatment, notification of a violation of the security of personal data to

the control authority, as well as the communication to the interested party, respectively.

III

Article 5.1.f) of the RGD

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

"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")."

In the present case, it is clear that the personal data of the claimants, held in

the database of the COMMUNITY OF OWNERS, were unduly



exposed to third parties, through its publication in the open section of the website from the community of owners \*\*\*URL.1, which anyone can access; as, its access does not require prior registration.

For all the above, it is considered that the known facts are constitutive of a infraction, attributable to the COMMUNITY OF OWNERS, for violation of the article 5.1.f) of the RGPD.

Classification of the infringement of article 5.1.f) of the RGPD

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The infringement of article 5.1.f) of the RGPD supposes the commission of the infractions typified in article 83.5 of the RGPD that 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:

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

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. (...)"

Sanction for the infringement of article 5.1.f) of the RGPD

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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, setting a penalty of TWO THOUSAND FIVE HUNDRED EUROS (€2,500).

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Article 32 of the GDPR

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

"1. Taking into account the state of the art, the application costs, and the nature nature, scope, context and purposes of the treatment, as well as risks of probability variable and seriousness for the rights and freedoms of natural persons, the responsible The controller and the data processor will apply appropriate technical and organizational measures. to guarantee a level of security appropriate to the risk, which, where appropriate, includes yeah, among others:

a) pseudonymization and encryption of personal data;  
b) the ability to guarantee the confidentiality, integrity, availability and re-permanent silence of treatment systems and services;

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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

I lie.

2. When evaluating the adequacy of the security level, particular account shall be taken

to the risks that the treatment of data presents, in particular as a consequence

of the accidental or unlawful destruction, loss or alteration of personal data transmitted

stored, stored or otherwise processed, or unauthorized communication or access

to said data.

3. Adherence to a code of conduct approved under article 40 or to a mechanism

certification body approved under article 42 may serve as an element for

demonstrate compliance with the requirements established in section 1 of this

Article.

4. The person in charge and the person in charge of the treatment will take measures to guarantee that

Any person acting under the authority of the person in charge or the person in charge and having

access to personal data can only process said data following instructions

of the person in charge, unless it is obliged to do so by virtue of Union Law or

the Member States”.

In the present case, at the time of the breach, the security measures

available to THE COMMUNITY OF OWNERS were completely insufficient

to guarantee the confidentiality of the personal data of the owners.

These measures took the form of restricted access to information, applying firewall and antivirus, as well as backup copies and images of the relevant systems. nents to avoid any contingency.

In relation to the website of said COMMUNITY OF OWNERS, it is incorporated provided the corresponding privacy policies, cookies and legal notice regarding vely.

Although, it should have been closed to unauthorized persons and take measures such as the authorized user being identified by password.

and that the user's connection to the server be made through an encrypted connection (Cone-SSL connection encrypted with 256-bit AES algorithm) to ensure security and pri-user emptiness.

The website of the COMMUNITY OF OWNERS as indicated from the pre-the community, is used as a channel of information on the most relevant that occur in it, being in that area where the comments made; despite the fact that there is a restricted section that requires the prior access registration of the owners.

Therefore, it is considered that the known facts constitute an infraction, attributable to the COMMUNITY OF OWNERS, for violation of article 32 of the GDPR.

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Classification of the infringement of article 32 of the RGPD

The aforementioned infringement of article 32 of the RGPD supposes the commission of the infringements  
pified in article 83.4 of the RGPD that 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  
section 2, with administrative fines of a maximum of EUR 10,000,000 or, treating-  
of a company, of an amount equivalent to a maximum of 2% of the volume of  
Total annual global business of the previous financial year, opting for the one with the highest  
amount:

a) the obligations of the person in charge and the person in charge pursuant to articles 8,  
11, 25 to 39, 42 and 43; (...)”

In this regard, the LOPDGDD, in its article 71 "Infringements" establishes that "Consti-  
The acts and behaviors referred to in sections 4, 5 and 6 are infractions  
of article 83 of Regulation (EU) 2016/679, as well as those that are 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, it is con-  
they are considered serious and the infractions that suppose a vulnerability will prescribe after two years.  
substantial portion of the items mentioned therein and, in particular, the following:

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

Sanction for the infringement of article 32 of the RGPD

The infringement in question is considered serious for the purposes of the GDPR 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:

-

d) the degree of responsibility of the person in charge or of the person in charge of the treatment, taking into account the technical or organizational measures that have applied under articles 25 and 32.

In the present case, the Community of Owners must be aware that the web page \*\*\*URL.1 is used as an information channel about the events most relevant that affect said community of owners, having to use the restricted section, only accessible to previous owners

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access log, for the publication of information containing data owners personal.

Only in this way would the website \*\*\*URL.1 be used for the publication of the information related to the Community of Owners in accordance with the requirements established in the data protection regulations.

The balance of the circumstances contemplated in article 83.2 of the RGPD, with

Regarding the infraction committed by violating the provisions of article 32 of the RGPD, allows a fine of TWO THOUSAND FIVE HUNDRED EUROS (€2,500) to be set.

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 THE COMMUNITY OF OWNERS URB. B.B.B., with NIF \*\*\*NIF.1, by  
an infringement of article 5.1.f) of the RGPD typified in Article 83.5 of the RGPD, a  
fine of TWO THOUSAND FIVE HUNDRED EUROS (€2,500).

IMPOSE THE COMMUNITY OF OWNERS URB. B.B.B., with NIF \*\*\*NIF.1, by  
an infringement of article 32 of the RGPD typified in Article 83.4 of the RGPD, a  
fine of TWO THOUSAND FIVE HUNDRED EUROS (€2,500).

SECOND: ORDER TO COMMUNITY OF OWNERS URB. B.B.B., okay  
to article 58.2.d) of the RGPD, which within 10 days proves the withdrawal of the  
personal information published on the website \*\*\*URL.1

THIRD: NOTIFY this resolution to the COMMUNITY OF OWNERS  
URB. B.B.B.

FOURTH: 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.

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

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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

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