

□ Procedure No.: PS/00378/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

based on the following

BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) dated May 20, 2019

filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS R.R.R. with NIF

***NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are the public presentation of the minutes of the last

Community assembly in the elevators of the building, in which he identifies himself with

name, surnames, floors and door to the attendees and represented, and floor and

door of the neighbors involved in the issues discussed at the meeting, highlighting the

affected by a complaint that is going to be initiated due to some works considered

irregular by the Community.

Along with the claim, a copy of the minutes of the Extraordinary General Meeting of

the Community of Owners held on 04/25/2019, consisting of 12 sheets, the

email sent by the administrator dated 05/05/2019 attaching the

same record, copy of the response made by one of the neighbors on 05/08/2019

asking the reason for having exposed the complete minutes in the elevators, and copies

of the response given by the administrator that same day indicating that it was done by

President's request.

A photograph of the first page of the minutes is also attached, which allows us to appreciate the

place where it has been exposed (next to an elevator) and the personal data that has already been

can be seen on the first sheet.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

The claimant is informed of this claim on June 30, 2019, requiring you to submit to this Agency, within a period of one month, information regarding the response given to the claimant regarding the facts denounced, as well as the causes that have motivated the incidence and the measures adopted for its correction

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in accordance with article 5.1 f) of Regulation (EU) 2016/679 of the Parliament European and Council of April 27, 2016 (RGPD).

In response to such a request, it is stated that the reason for having used the elevators is that, although an attempt was made to notify all the neighbors by certified letter, they do not always have proof of the reliable delivery of the same, since the letters that are sent to the neighbors are collected by the doormen.

The minutes of this meeting were especially important, since they agreed on the initiation of legal actions against a number of residents of the Community for works

illegal.

The minutes were published in the elevators to be guarantors, not to cause defenselessness to the sued neighbors and to be sure that they were perfectly aware of the decisions adopted, in the face of possible challenges and to that they could not later rely on a lack of notification.

He further states that not only the elevators were used, but also the internal plank concierge.

They maintain that at all times they are complying with the Property Law Horizontal.

Subsequently, at the request of one of the two hundred and fifteen neighbors, eliminate the personal data of names from the minutes, leaving only those of floor and door, and it has also been decided to stop using the exhibitors of the elevators for the placement of information of a personal nature, changing them to locked exhibitors, to increase security.

The respondent provides a copy of the exposed record and a list of 16 certified letters with their addressees, supposedly containing the minutes sent by the administrator, which have been delivered (they have the corresponding sticker). The claimant's name is not among them.

THIRD: On December 18, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of Article 5.1.f) of the RGPD, typified in Article 83.5 of the GDPR.

FOURTH: Notification of the aforementioned agreement to initiate this procedure sanctioning party is given a hearing period of TEN WORKING DAYS so that formulate the allegations and present the evidence that it deems appropriate, in accordance with the provisions of articles 73 and 76 of Law 39/2015 of

Common Administrative Procedure of Public Administrations.

FIFTH: Not having made allegations or presented evidence within the given period,

This resolution is issued taking into account the following:

FACTS

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FIRST: Public presentation of the minutes of the last assembly of the Community in the elevators of the building, in which it is identified with name, surnames, floors and door to attendees and represented, and the floor and door of the neighbors involved in the the topics discussed at the meeting, highlighting those affected by a complaint that was will start due to works considered irregular by the Community.

The respondent provides a copy of the exposed record and a list of 16 certified letters with their addressees, supposedly containing the minutes sent by the administrator, which have been delivered (they have the corresponding sticker). The The claimant's name is not among them.

SECOND: The claimant is made aware of this claim to which responds that the reason for having used the elevators is that, although it was tried notify the minutes to all the neighbors by certified letter, they do not always have proof of the reliable delivery of the same, since the letters that are sent to the neighbors are collected by the doormen.

The minutes of this meeting were especially important, since they agreed on the initiation of legal actions against a number of residents of the Community for works illegal.

The minutes were published in the elevators to be guarantors, not to cause defenselessness to the sued neighbors and to be sure that they were perfectly aware of the decisions adopted, in the face of possible challenges and to that they could not later rely on a lack of notification.

THIRD: This Agency has not received any allegation within the period given for it, after notifying the agreement to initiate this sanctioning procedure.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 6.1 of the RGPD establishes the assumptions that allow considering lawful processing of personal data.

For its part, article 5 of the RGPD establishes that personal data will be:

“a) processed in a lawful, loyal and transparent manner in relation to the interested party ("legality, loyalty and transparency");

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b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with those purposes; according to article 89, paragraph 1, the further processing of personal data for archiving purposes in

public interest, scientific and historical research purposes or statistical purposes are not deemed incompatible with the original purposes ("purpose limitation");

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken reasonable to eliminate or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties for no longer than is necessary for the purposes of data processing personal; personal data may be kept for longer periods provided that they are treated exclusively for archiving purposes in the public interest, purposes of scientific or historical research or statistical purposes, in accordance with article 89, paragraph 1, without prejudice to the application of technical and organizational measures measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period");

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

The data controller will be responsible for compliance with the provided for in section 1 and able to demonstrate it ("proactive responsibility")."

III

The public presentation of the minutes of the last assembly of the the Community in the elevators of the building, in which it is identified by name, surnames, floors and door to the attendees and represented, and floor and door of the neighbors involved in the issues discussed at the meeting, highlighting those affected

for a complaint that is going to be initiated due to some works considered

irregular by the Community.

Also, note that the initiation of legal actions against some neighbors

by the Community does not justify the publication of the minutes with the personal data

of all the neighbors attending the meeting, indicating name, surnames, plant and

door, because if what you want is to reliably communicate the agreement

adopted at the Board, the Community should use a means such as burofax or letter

certified, which guarantees the protection of personal data of those affected, therefore

it is understood that the claimed party has violated article 5.1 f) of the RGPD, which governs the

principles of integrity and confidentiality of personal data, as well as the

proactive responsibility of the controller to demonstrate its

compliance.

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IV

Article 72.1.a) of the LOPDGDD states that “according to what is established

Article 83.5 of Regulation (EU) 2016/679 are considered very serious and

Infractions that suppose a substantial violation will prescribe after three years.

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

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Article 58.2 of the RGPD provides the following: "Each supervisory authority

shall have all of the following corrective powers listed below:

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

warning when the processing operations have violated the provisions of

this Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate,

in a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or in

instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

SAW

This infraction can be sanctioned with a fine of €20,000,000 maximum.

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

of greater amount, in accordance with article 83.5 of the RGPD.

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

with the following criteria established in article 83.2 of the RGPD:

As aggravating the following:

☐ In the present case we are dealing with unintentional negligent action, but significant

active (article 83.2 b)

☐ Basic personal identifiers are affected, according to the article

83.2g)

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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 PROPRIETORS R.R.R., with NIF ***NIF.1, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a fine of €15,000 (fifteen thousand euros).

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

R.R.R.

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 Data Protection at Banco CAIXABANK, S.A. Otherwise,

it will be collected during the executive period.

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

is between the 1st and 15th of each month, both inclusive, the term to carry out the

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

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

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

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

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

contentious-administrative appeal before the Contentious-Administrative Chamber of the

National Court, in accordance with the provisions of article 25 and section 5 of

the fourth additional provision of Law 29/1998, of July 13, regulating the

Contentious-administrative jurisdiction, within a period of two months from the

day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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

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

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

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

made by writing to the Spanish Agency for Data Protection,

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through the

Electronic Registration of

introducing him to

the agency

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

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

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

of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, it would end the

precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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