

☐ Procedure No.: PS/00143/2020

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) on April 12, 2019 filed

claim before the Spanish Data Protection Agency. The claim is

directs against COMMUNITY OF OWNERS R.R.R. with NIF ***NIF.1 (hereinafter,

the claimed).

The reasons on which the claim is based are that the administrator, B.B.B., mailed

all owners the annual meeting call and at the same time exposed in the

community bulletin board, the main sheet of the call with data

relating to outstanding debts, which were going to be discussed in the

said meeting.

And, among other things, attach the following documentation:

☐ Copy of the minutes of the ordinary meeting of 03/21/2019 where it is stated:

o In the "Pending debt settlement" section, the complainant appears

with an amount of €286.81.

☐

o That the complainant is informed that the placement of the summons

on the bulletin board has been the only way to carry out the

reliable notification.

Photograph of the call for the Ordinary General Meeting to be held

on March 21, 2019 of the COMMUNITY OF OWNERS R.R.R.,

located on a bulletin board. In said call it is stated, within the

section of the debt, the name and surnames of the complainant together with the amount of €286.81.

SECOND: On May 9, 2019, the complaint is transferred to

COMMUNITY OF OWNERS R.R.R., in the actions with reference

E/04557/2019. The notification is made electronically through notific@.

According to this notification system, automatic rejection has occurred as

After ten calendar days have elapsed since it was made available and not proceed to its reading.

THIRD: On June 5, 2020, the Director of the Spanish Agency for

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

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FOURTH: On August 29, 2020, a resolution proposal was formulated,

proposing that it be imposed on COMUNIDAD DE PROPIETARIOS 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 sanction of warning.

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

of Data in this procedure the following are considered proven facts,

FACTS

FIRST: Publication on the bulletin board of the claimed community, the debt

of the claimant together with his name and surnames.

SECOND: The claimed community of neighbors states that since 2014

Communications are made through mailboxes, postal mail, email and bulletin board for three days.

The document in which the claimant's data is found is the call for the meeting of the Ordinary General Meeting on March 21, 2019.

The call to said neighborhood meeting was held between March 12 and 13, 2019, so the bulletin board was chosen as a means of communication to Make sure that all those invited attend.

FOUNDATIONS OF LAW

Yo

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 LOPDGDD, 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");

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");

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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

In the present case, it has been verified that in the summons to the session of

Ordinary General Meeting to be held on March 21, 2019 of the COMMUNITY OF

PROPIETARIOS R.R.R., located on a bulletin board, consists, within the section of the debt, the name and surnames of the claimant together with the amount of €286.81.

The claimed community of neighbors states that since 2014 the distribution of the call is made by mailing to the owners residents in the property, sent by ordinary mail to non-resident owners in Calanda 19, by email to all the owners who requested it and by placing on the surface of the bulletin board for three days.

In addition, the notifications that require it are sent through burofax with delivery notification and content certificate. However, the claimant he usually claims that he does not receive the notifications that the rest of the neighbors do they receive on a regular basis.

The respondent justifies his action by pointing out that as the call for the meeting of the Ordinary General Shareholders Meeting on March 21, 2019 was held between March 12 and 13, 2019, and the maximum term to collect a burofax is 30 days and this owner always tends to exhaust the term, the probability that it would not be notified on time said call, was very high.

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This argument is not adjusted to law, since, if the claimed decides to notify by burofax, the reported facts would be resolved, simply by issuing said communication with sufficient time for the claimant receives it.

Also note that as a means of personal and individualized notification to the owner, the Horizontal Property Law, indicates the cases in which the exposure of personal data related to matters arising from the management of the Community of Owners. Its article 9. h) indicates as an obligation of the owner "Notify whoever exercises the functions of secretary of the community, by any means that allows proof of receipt, the address in Spain for the purposes of citations and notifications of all kinds related to the community. In the absence of this communication, the address will be used for citations and notifications the apartment or premises belonging to the community, having full effect legal those delivered to the occupant of the same. If you tried a summons or notification it was impossible for the owner to practice it in the place provided for in the previous paragraph, shall be understood to be carried out by placing the corresponding communication in the community bulletin board, or in a visible place of general use enabled at effect, with expressive diligence of the date and reasons why this is done. form of notification, signed by the person who exercises the functions of Secretary of the community, with the approval of the President. Notification made in this way It will produce full legal effects within three calendar days.

Article 19.3 of the LPH, second paragraph, states: "The minutes of the meetings shall be will send to the owners in accordance with the procedure established in article 9."

According to the available evidence, it is considered proven public exposure of a document on the bulletin board of the aforementioned community, showing the personal data of the claimant, and therefore it is understood that the claimed entity has violated article 5.1 f) of the RGPD, which governs the principles integrity and confidentiality of personal data, as well as the responsibility proactive nature of the data controller to demonstrate compliance".

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

v

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

shall have all of the following corrective powers listed below:

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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;

The art. 83.5 of the RGPD establishes that the infractions that

affect:

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

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

SAW

On the other hand, article 83.7 of the RGPD provides that, without prejudice to the corrective powers of the control authorities under art. 58, paragraph 2, each Member State may lay down rules on whether and to what extent impose administrative fines on authorities and public bodies established in that Member State.

In view of the foregoing, the following is issued

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 warning sanction.

SECOND: TO REQUIRE the claimed party so that within one month they certify before this body the compliance that proceeds to the adoption of all the measures necessary for the respondent to act in accordance with the principles of "integrity and confidentiality" of art. 5.1 f) of the RGPD.

THIRD: NOTIFY this resolution to the COMMUNITY OF OWNERS R.R.R.

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.

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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,

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.

Electronic Registration of

through the

Sea Spain Marti

Director of the Spanish Data Protection Agency

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