

□ Procedure No.: PS/00021/2019

938-051119

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On 07/17/2018, this Agency received an A.A.A. claim.

(claimant) against the COMMUNITY OF OWNERS ***ADDRESS.1, Las Palmas de
Gran Canaria.

It states that on 06/27/2018 it appears placed on the bulletin board of the
Community, located at the entrance of the building, in view of anyone, several
copies of the minutes of the ordinary meeting of owners of 06/19/2018 containing their
debtor data.

It adds that on 07/30/2018 a certificate signed by the secretary and
President of the Community where your data is referred to again, and amount.

Provide as document 1 a photograph of part of the points of a record in the
that it is reported that the claimant is a debtor and the specific debt is XXXX euros. In the
Minutes discuss points such as "approval if appropriate of the budget for 2018"

As document 2, it provides a photograph of a writing inside a board,
certifying with the data of the claimant, apartment, debt as of 06/09/2018, concept, years, the
total of XXXX euros, the seal of the Community and the signatures of the Secretary and President.

SECOND: In view of the facts denounced in the claim and the documents
provided by the claimant, the claim and its documentation are transferred to the claimant
to detail what happened in relation to the object of the claim. A first transfer
of documentation and complaint to the claimed is produced in writing of 09/26/2018 that

it was not delivered due to absence, reiterating, with the same result on 12/21/2018.

THIRD: On 05/27/2019, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE against the COMMUNITY OF OWNERS

***ADDRESS.1, Las Palmas de Gran Canaria, with NIF ***NIF.1 for the alleged infringement

of article 5.1 f) of the RGPD, sanctionable in accordance with the provisions of art. 83.5 of the cited

GDPR”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

2/7

The first Delivery Attempt occurs on 06/03/2019, with an "absent" result, the

second, on 06/04/2019 it has been “absent”, so it had to be published through the

BOE of 06/27/2019.

No claims were received.

FOURTH: Proposed resolution of the literal was issued:

“That by the Director of the Spanish Agency for Data Protection, the

with warning to COMMUNITY OF OWNERS *** ADDRESS.1, with NIF

***NIF.1, for a violation of Article 5.1.f) of the RGPD, in relation to article 5 of the

LOPDGDD, in accordance with Article 83.5 of the RGPD.

REQUEST the respondent to detail the measures adopted so that a

infraction as the one declared is not repeated again, being able to require in the resolution

the adoption of some type of measure tending to it.

The shipment is recorded as absent in delivery. No claims were received.

PROVEN FACTS

1)

The claimant states that on 06/27/2018 it appears placed on the board of announcements located at the entrance of the building of the COMMUNITY OF OWNERS

***ADDRESS.1, Las Palmas de Gran Canaria, in view of anyone, several copies of the minutes of the ordinary meeting of owners of 06/19/2018 containing the data as debtor of the claimant. The claimant provided as document 1 a photograph of part of the points of a record in which it is reported that the claimant is debtor and the specific debt of XXXX euros. The minutes discuss points such as "approval if appropriate of the budget for 2018" two)

The claimant adds that on 07/30/2018 a signed certificate is added to the board by secretary and president of the Community where your data is referred to again, and Provides a photo of the aforementioned document signed by the Secretary and President on 07/02/2018. The writing is found inside a board, and certifies with the data of the claimant, floor, his debt to 06/09/2018, concept, years, the total of XXXX euros, the stamp of the Community and the signatures Secretary and President.

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.

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

The facts consisting in the exposure of personal data of the claimant to the view of any person in the common areas of the Community, on a bulletin board announcements suppose on the part of the person in charge of the treatment,

COMMUNITY OF

OWNERS *** ADDRESS.1, Las Palmas de Gran Canaria an infraction of article

5.1.f) of the RGPD, which provides:

“Personal data will be:

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

including protection against unauthorized or unlawful processing and against their

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

appropriate organizational measures ("integrity and confidentiality").

Article 5 of Organic Law 3/2018, of 5/12, on Data Protection

Personal and guarantee of digital rights (hereinafter LOPDGDD) indicates:

"1. Those responsible and in charge of data processing as well as all persons

that intervene in any phase of this will be subject to the duty of confidentiality to the

referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section will be complementary to the

duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when

the relationship of the obligor with the person responsible or in charge of the treatment had ended.

The exposure of personal data on bulletin boards of the

Community of owners may contain notices of information, notifications or

communications to the owners, with personal data and information from different

matters, one of them being that which indicates that an identified or identifiable person is

Community debtor. As contemplated in the Horizontal Property Law (LPH)

that governs the matter, this exhibition must meet a series of requirements. should be valued

Therefore, the regime in which said regulations allow the aforementioned exposure of data of personal character of an owner associated with any matter relating to the Community.

Usually the boards of the Communities of owners are usually and are

recommends that they be closed with a key, so that they prevent access to expose

documents for anyone. Inside must appear writings or documents

related to the horizontal property regime that is managed. There may be data

personal or not. Among other documents, personal data may appear, but in

In this case, with the precautions that derive from the LPH and the regulations for the protection of data for display.

One of the cases in which the exposure of personal data is authorized

staff on boards of the Community in matters related to the management of the

Community of Owners, is the one that has to do with the notification regime to your

home. Article 9.h) of the LPH, indicates as an obligation of the owner: "Notify

who exercises the functions of secretary of the community, by any means that allows

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

4/7

have proof of receipt, the address in Spain for the purpose of citations and

notifications of all kinds related to the community. Failing this

communication will be taken by address for summonses and notifications the floor or local

belonging to the community, having full legal effects those delivered to the

occupant of it. If attempted summons or notification to the owner is impossible

practice it in the place provided for in the previous paragraph, it will be understood to be carried out through the

placement of the corresponding communication on the community bulletin board, or in a visible place of general use enabled for this purpose, with expressive diligence of the date and reasons why this form of notification is made, signed by the person exercising the functions of Secretary of the community, with the approval of the President. The notification practiced in this way will produce full legal effects within three days natural".

Article 16.2 of the same rule determines: "The call of the Meetings will be made by the president and, failing that, by the promoters of the meeting, indicating the matters to be discussed, the place, day and time in which it will be held first or, where appropriate, in second call, making citations in the manner established in article

9. The call will contain a list of the owners who are not up to date on payment of overdue debts to the community and will warn of the deprivation of the right of vote if the assumptions provided for in article 15.2 occur.

Regarding the minutes, the LPH determines that they will be sent The minutes of the meetings will be sent to the owners in accordance with the procedure established in article 9 (article 19.3 LPH). In other words, unless the community agrees, the minutes should not be published on the board, and if they are published, it must be without personal data, unless complies with article 9 of the LPH, that is, as a subsidiary means of notification.

Basically it is that the announcement on bulletin boards to the owners is a subsidiary means for when it has not been able to be notified through the order of priority indicated in article 9.h) of the aforementioned LPH. In

In the first place, the notification of the debt would have to be made to the domicile that it had provided, if none was provided, to the home address, and if

Even so, the notification would have been unsuccessful, it will be possible to resort to the exceptional way of the bulletin board meeting the following requirements:

1) Having been sufficiently justified the non-receipt or non-collection of the

owner at the consigned address or by default at the address of the dwelling, being able to serve for this, any means of proof in law.

2) The placement of the plank must be in the usual place, preferably on a plank

closed to which only the president of the Community has the keys.

3) The exhibition must include a diligence "expressive of the date and reasons

by which this form of notification is made, signed by the person exercising the functions

of secretary of the community, with the approval of the President".

4) The aforementioned communication must not remain indefinitely, but rather a time

prudent and determined.

In the present case, it is clear that the sheets of part of the minutes of the meeting were not

collects the elements that allow deducing that it is exposed adjusting to the LPH,

violating the principle of data reservation to the circle from which it actually comes and

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

5/7

affects, disseminating data outside the scope of the Community, by allowing any

person who goes through the site see the claimant's debtor data.

The debt certificate also refers to the same infraction, without proving that

meets the requirements indicated for said exhibition and its functions are those of notification

or citation.

In the present case, two writings are being exposed, in a space or place of

transit, which makes a person identifiable and attributes the quality of debtor, being able to

affect your honour. These sheets with the data, in this case do not adjust to the LPH and

violate the right of the claimant to their data protection, for not proceeding the exhibition

in any of the cases provided for in the aforementioned LPH.

It is not that those affected by defaults or owners of the Community can see the data and that you are a debtor, but rather they move through the space in which it is placed, to any person, who can transit through said space.

Since the initial agreement it is unknown if the claimed party has removed those leaves that allow the claimant to be identified as a debtor in a circle outside the Community and its members.

III

Article 83.5 a) of the RGPD, considers that the infringement of “the basic principles for processing, including the conditions for consent under the articles 5, 6, 7 and 9” is punishable, in accordance with section 5 of the aforementioned Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% maximum of the total global annual turnover of the previous financial year, opting for the largest amount.

Article 58.2 of the RGPD provides: "Each control authority will have all the following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning when the treatment 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 accordance with a specified manner and within a specified time.

In line with the RGPD, recital 148: “In the event of a minor infringement, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, instead of sanctioning by means of a fine, a

warning. However, special attention must be paid to the nature, seriousness and the duration of the infringement, its intentional nature, the measures taken to alleviate the damages suffered, the degree of responsibility or any previous infringement pertinent, to the way in which the supervisory authority became aware 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.”

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

6/7

In addition, to apply the sanction of warning, it was taken into account that it is not a entity whose purpose is to obtain profit through data processing, but a Community with a general purpose of managing common elements and quotas. It is interested in the community quotas being paid to defray the common expenses.

In this sense, the measures adopted on criteria that handle the claim related to the exposure of writings with personal data in the scope of the Community, also taking into account whether the documents have been withdrawn, which its objective and dates should have been carried out.

Therefore, in accordance with the applicable legislation, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE the COMMUNITY OF OWNERS ***ADDRESS.1, with NIF ***NIF.1, Las Palmas de Gran Canaria, for an infraction of Article 5.1.f) of the RGPD, typified in Article 83.5 a) of the RGPD, a sanction of WARNING, in accordance with article 58.2.a) of the RGPD.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

***ADDRESS 1.

THIRD: 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 13707, 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 1/10. You must also

Electronic Registration of

through the

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

7/7

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

Sponsored links. 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

C/ Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es