

□ Procedure No.: PS/00075/2019

938-090320

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. (COMMUNITY OF OWNERS B.B.B., ***ADDRESS.1, claimant

1), dated 08/09/2018, filed a claim with the Spanish Agency for the Protection of

Data against the previous Administrator of the C.P., AYD A COSTA, S.L. (claimed) with NIF B27324631.

It states that since its constitution, the C.P. has been managed by the Administration

of Fincas AYD A COSTA, S.L. and recently a change of Administration has been agreed.

When collecting all the documentation to transfer it from one manager to another, it has been discovered that many of those documents (supplier invoices, quota billings, etc.) have been printed on reused paper, so that minutes appear on the back of the sheets, calls, burofaxes and very diverse documents with data on communities and people outside our own community.

Three of these documents are presented as evidence, where it can be seen that the

obverse of the sheet belongs to the C.P. B.B.B., and the back with data from third parties such as:

- C.C.C. COMMUNITY, summons to the Meeting, written addressed to an owner, dated 09/14/2017.

- Order of the meeting of 08/17/2017 of the C.P. DDD in which are contained assistant owners, as owners of the aforementioned dwelling.

- From the C.P. E.E.E., the data of an owner consigned with his name and surnames, floor and letter, and movements from 06/1/1985 to 05/31/2016.

SECOND: In view of the facts stated in the claim, it was transferred to the

requested to report:

Clear specification of the causes that have motivated the incidence that has given rise to

1.

the claim.

Detail of the measures adopted by the person in charge to solve the incident and

two.

to avoid the occurrence of new incidents such as the one exposed.

Documentation proving that the claimant's right to be informed has been met.

3.

formed about the course and outcome of this claim.

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The respondent responds to this AEPD on 11/2/2018, accrediting having responded to the

claimant and indicates that what occurred was a specific human error, since the

documentation at the same time they requested it.

Provides a copy of an audit report carried out on 10/29/2018 by Services of

continuous adaptation in RBSL data protection and states that it is teaching courses on

data protection to its employees, providing a copy of the contract signed with an entity. In

the audit report does not detail procedures for requesting and delivering a copy of

documents by owners or representatives of the community or by completion of the

service

THIRD: On 12/14/2018 a letter is received from SERCO 93 A MARIÑA S.L. (new

Administrator of the CP, claimant 2) indicating that "she has taken over the management of the COMMUNITY OF OWNERS B.B.B., before it was the Administration of Estates AYD A COSTA, S.L." and that the facts of the claim cannot be considered as a punctual error when the sheets containing personal data, reused by both sides, have in one of them, data from various communities, suspecting that those of their community are part from other packages from other communities. He adds that the documentation "was classified in final results of exercises already closed, kept in boxes and deposited in the meeting room and File, Archive. These boxes were delivered as is, without opening them or manipulating their interior at the time any by the employees" of the claimed one.", and that "The rest of the documentation in use is delivered to the President of the Community, being the employees the ones who required him when they thought fit."

It adds that all the documentation delivered from the beginning, year 2010, is photocopied and the reverse contains data from another C.P. Indicates that what is provided in the claim is a minimum sample therefore all the sheets, from the exercises 2010 to 2017-2018 they contain already used paper that is reused to print documents.

Provides, among others, a copy of paper documents containing the reference to the account bank account of an owner, with his data, of *** ADDRESS.2, charge of a fee of 2011, or call with the data of a person from the ***ADDRESS.2 Community to whom it is going directed, as well as another call from another community.

FOURTH: The claim was admitted for processing on 02/11/2019.

FIFTH: On 03/13/2019, claimant 2 adds that upon delivery of the documentation of the COMMUNITY OF OWNERS F.F.F., data of the community appear on the front, and on the back data of people outside this. Provide a copy of three examples in which:

- In one part of the folio there is the name and surname of a natural person in a direct debit unpaid on 11/28/2017 by Banco Sabadell.

- In a second document, on the back, there are details of names and surnames, DNIS and

seat number.

-In a third example, and document, appear on the reverse, two writings, in which a Lawyer goes to another mentioning the name of his client and the matter.

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SIXTH: On 09/06/2019, it was agreed to start the "PUNISHMENT PROCEDURE of warning to AYD A COSTA, S.L., for the alleged infringement of article 5.1 f) of the RGPD, of in accordance with article 83.5 a) of the RGPD."

SEVENTH: The respondent makes allegations on 10/2/2019, stating:

a) In the audit of 10/29/2019 carried out by an external consultant, (the same as carried out in 2018) it is not appreciated that the reuse of documents is a common practice in the entity. Provide a copy of it

The errors of the deliveries coincide in the time and form, since the delivery of the documentation at the same moment in which the cessation of the administration of farms in their functions. Provide a copy of a service certificate from an entity that provides accounting work, in which it indicates that it stopped billing from 09/01/2018 to the CP F.F.F.

It is accompanied by a copy of the data protection audit report of 09/26/2019, which is purpose "to verify the proper implementation of technical and organizational measures in relation to with the processing of personal data carried out by the claimed party. In section 6.5.1 "media management" in which the first point details how it should be, and "in Regarding the file of the supports or documents, a method must be established that allows easily locate the information and that guarantees the correct conservation of the documents

and its storage must be protected. "In "Observed Facts" it is stated that the

claimed "follows a file criterion so that the information is

perfectly locatable and recoverable in case of loss or destruction"" The supports do not

automated are in cabinets guarded by company personnel. I know

Add a photo of filing cabinets in a room.

Nothing is detailed about the system for registering access to said space, the access register

to documents, delivery management systems for copies of documents and materials

related. In corrective measures, it is indicated that "not applied".

They declare that "Although they are not obligated subjects, they have appointed a Delegate of

Data Protection."

EIGHTH: On 02/12/2020, the testing practice period opens, as provided

in article 77 of Law 39/2015, of 1/10, of the Common Administrative Procedure of the

Public Administrations, agreeing:

Consider reproduced for evidentiary purposes the filed claim, the documents

1.

obtained and generated by the Inspection Service

Consider reproduced the allegations to the initial agreement PS/00075/2019 presented

two.

by the claimed and the documentation that accompanies them.

The respondent is requested to provide and report on:

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3. Copy of the current document that contemplates the process to be developed

when a copy of the data and documents generated in the management life of a Community of owners, such as when their designation as treatment manager. How to request the documents, who can request them, deadline of response, format and means of delivery, acknowledgment of receipt, and if they keep a copy of the delivered.

A response is received from the respondent in which it states that the difference between the a copy of documentation is required by a community member or the CP after termination.

The President may request documents, additionally, the co-owners, when the request is adequate and pertinent and does not affect the rights of the rest of the co-owners.

A protocol has been established through which the form is provided to the interested party, with the order to record each request. They indicate that the access included in article 15 of the GDPR is done without undue delay and at the latest within one month. The copy of the Documents are delivered in paper format, at the facilities of the claimed party, with the proof of delivery unless expressly requested to be delivered in digital format, in which case would be through email. Provide a copy of delivery forms and petition in which the literal of data protection appears, both for the President and for co-owners.

They add that "a copy of what was delivered is kept for the time strictly necessary to provide the service and comply with it.

When the appointment of the data processor ends, the request can be make the President or the incoming Administrator, both representing the Community.

The documentation is provided within a maximum period of 30 days. Provide a copy of the form delivery of documentation, for "custody purpose". The cancellation is contained in the form and blocking of data, as well as the right of portability with a listed relationship of documents.

In another form the delivery to the incoming Administrator is detailed.

1.

Storage system for said data, detailing whether data management is contemplated.

paper documents without computer support or vice versa, and backup system

in both formats.

It states that the "supports that contain data both automated and manual,

are identified on their cover by means of a code assigned to each Community" "guaranteeing

that are only identifiable by authorized personnel", which "prevents access to unauthorized persons".

authorized, who were informed of the security measures to be complied with "

It details the documents with personal data that are stored on paper or digitally and

in both formats.

Report from the C.P. B.B.B., date and to whom the copies of the documentation were delivered,

two.

providing a copy of what was delivered and received. In the same sense of the C.P. F.F.F.

It states that the C.P. BBB the documentation was delivered to them on 05/25/2018,

indicating that the meeting in which the provision of services ceased was in the

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05/24/2018. It states that the documentation is delivered to a "former AYD employee

COSTA SL, co-owner of the C.P. B.B.B., and current employee of SERCO 93 A MARIÑA

SL". List the documentation that was delivered.

As for the C.P. F.F.F., his dismissal was decided at the meeting of 07/30/2018, and the

Documentation was delivered the week following the meeting. In this case, the Vice President

of the community. This person "is the father of the former employee of AYD COSTA, SL and

co-owner of the C.P. B.B.B., cited above, as well as a current employee of

SERCO 93 A MARIÑA SL”

They state that due to the confidence and haste in the delivery, the

proof of delivery with the receipt.

Please detail whether you have addressed the claimant and her treatment manager requesting the

3.

return of the documents to deliver exclusively those referred to the CP that

manage.

They answer no, “by not wanting to interfere in the criminal procedure 273/2018 opened

against the former employee of AYD COSTA SL, current employee of SERCO 93 A MARIÑA SL,

co-owner of the C.P. B.B.B., and with a direct family relationship -daughter- with owners of C.P.

F.F.F., for misappropriation of information belonging to AYD COSTA SL, among which

the documents that he claims to have in his possession from other Communities could be found, and with

the purpose of demanding the return of all the information extracted in the exercise of their

functions as a former employee of AYD a COSTA SL”

It states that the aforementioned former employee left her job with them, joining with character

immediately to his new position in SERCO 93, to carry out farm administration tasks,

opening a few days later office in the same town of Foz in which develops the

same activity as AYD A COSTA SL. “Since that moment, SERCO 93 has tried to

all means to capture the portfolio of communities, including using the information to which the

former employee had access while performing the duties of the position she held and

which he allegedly misappropriated, which we understand could explain

the origin of the complaints filed.

NINTH: On 03/12/2020, a resolution proposal was issued, of the literal:

“That by the Director of the Spanish Agency for Data Protection, a sanction is made for

AYD A COSTA S.L., with NIF B27324631, for an infringement of Article 5.1.f) of the RGPD,

as stated in Article 83.5.a) of the RGPD, a WARNING fine”.

Faced with said proposal within the granted period, no arguments are received.

PROVEN FACTS

1)

The defendant is denounced because when she ceased her functions, in two Communities of owners, when requesting a copy of the documents generated and managed during the development of its property administrator management, a copy of data from other communities.

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The two claimants certify what was stated by contributing on the part of the C.P. BBB Y C.P. F.F.F. paper copies of documents of his Community, and on the back were data of a personal nature of other people attached to other communities of owners that the claimed managed.

two)

According to the statements of the respondent, the delivery of the documents to the C.P. BBB occurred on 05/25/2018, the day after they were dismissed, and the C.P. F.F.F., it is decided the cessation of the provision of services at the meeting of 07/30/2018, and the documentation was delivered next week.

The respondent states that in both cases, due to trust and haste in delivery, proof of delivery was not documented with the receipt.

Add the claim that a former employee of AYD COSTA SL had, current employee

3)

of claimant 2, co-owner of the C.P. BBB and with a direct family relationship -daughter- with C.P. owners F.F.F. which has been sued in criminal proceedings for misappropriation of information belonging to AYD COSTA SL.

It states that the aforementioned former employee left her job with them, joining with character immediately to his new position for claimant 2, to carry out tasks of administration of farms, opening a few days later an office in the same town of ***LOCALIDAD.1 in the which carries out the same activity, the company AYD A COSTA SL. It does not indicate the date on which left.

4) The respondent responded to claimant 1 before the start of this proceeding explaining the causes of the events that occurred.

5) The respondent submitted data protection audit reports for 2018 and 09/26/2019, with the entity Continuous Adaptation Services in Data Protection RB, SL.

In them, there is no specific and detailed mention of the delivery of copies of documents requested by those responsible for the treatment, nor any mention of its delivery with data of another entity. In tests, it is accredited that it has a procedure for delivery of documents organized and documented.

The respondent is giving data protection courses to its employees, providing a copy of the contract signed on 09/19/2019 with an entity, which will begin on 10/15/2019 with three employees.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, and according to the provisions of articles 47 and 48 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this process.

Article 5.1.f) of the RGPD provides:

“Personal data will be:

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

including protection against unauthorized or unlawful processing and against loss,

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

appropriate (“integrity and confidentiality”).”

The LOPDGDD states in its article 5:

“1. Those responsible and in charge of data processing as well as all the people who

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

refers to article 5.1.f) of Regulation (EU) 2016/679.”

Article 32 of the RGPD adds:

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

scope, context and purposes of the treatment, as well as risks of probability and severity

variables for the rights and freedoms of natural persons, the person in charge and the person in charge

of the treatment will apply appropriate technical and organizational measures to guarantee a level

appropriate to the risk, which, where appropriate, includes, among others:

a) pseudonymization and encryption of personal data;

b) the ability to ensure confidentiality, integrity, availability and resilience

permanent treatment systems and services;

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

fast in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of the effectiveness of the measures technical and organizational to guarantee the security of the treatment.

2. When evaluating the adequacy of the level of security, particular consideration will be given to the risks presented by the processing of data, in particular as a consequence of the accidental or unlawful destruction, loss or alteration of transmitted personal data, stored or otherwise processed, or unauthorized communication or access to such data."

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In the present case, before the extinction of the relationship of the Communities of owners claimants, distant in time two months, the copies of the documents in one of the faces contained the correct documentation, but on the other side it corresponded to other Communities. This infringement is the responsibility of the data controller for order, the claimed. In his allegations, he states that the copy of all the documentation was delivered the next day which seems to favor that the copies were already made of beforehand, without specifying if they were already archived, and they were not reviewed when they were delivered in both cases.

It is not proven that the deliveries can be directly related to the alleged misappropriation of documents by a former employee, nor is it linked to the former employee in the time with the delivery of the requested documents, which she would have prepared directly copies delivered. As an appropriate measure, if copies of documents are made for your delivery, it should also be noted which person in the organization is the one who does them, and the date on which they are made, in order to be able to link their authorship.

Regarding the allegation that the audit of 10/29/2019 does not appreciate that the reuse of documents is common practice in the entity, it means that it does not enter into this aspect, not even for opening the procedure for that matter and knowing the date the reason why it opens. If you ignore such an aspect, you cannot deduce the situation of the issue as it was not reflected in the report.

III

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

Article 58.2 of the RGPD indicates: "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 a certain manner and within a specified period.

. As regards the commission of the offence, a person intervenes who photocopies the documents and were not checked before delivery, which indicates a lack of diligence in the person in two performances of delivery of the documents, reasons why he is warned.

As for the measures, they have been adopted by the defendant before and during the processing of this procedure, adjusting to what is considered reasonable

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Therefore, in accordance with the applicable legislation

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a sanction of WARNING on AYD A COSTA, S.L., with NIF

B27324631, for an infringement of Article 5.1.f) of the RGPD, as determined in article 83.5

of the GDPR.

SECOND: NOTIFY this resolution to AYD A COSTA, S.L.

THIRD: 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 Agency

Spanish Data Protection Authority within a month from the day following the

notification of this resolution or directly contentious-administrative appeal before the Chamber

of the Contentious-administrative of the National High Court, in accordance with the provisions of the

article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13/07,

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

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 interested party

states its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of 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 will also need to transfer the Agency the documentation that proves 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 terminate the precautionary suspension.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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