

□ Procedure No.: PS/00491/2020

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/00491/2020, instructed by the Spanish Agency for Data Protection, to the entity, HIGHCLIFFE ESTATES MARBELLA, S.L., with CIF.: B93407872, owner of the website: www.higcliffeestates.com, (hereinafter, "the entity") (entity claimed"), by virtue of the claim presented by the entity, BUSINESS & LAW PARTNERS with CIF.: B87322913, (hereinafter, "the claimant entity"), by alleged violation of data protection regulations, and taking into account the following following:

BACKGROUND

FIRST: On 07/29/20, the claimant entity sent this Agency a written claim, indicating, among others:

"It has become known that the website www.higcliffeestates.com does not comply with the regulations on the processing of personal data reflected in the LOPDGDD and the GDPR. The website lacks Legal Notice, Privacy Policy and checkbox. acceptance of this policy in the contact form where personal data is collected. personal character. Therefore, the treatment that will be given to the data is unknown. collected".

In addition, within the web page, (...) the following link: ***URL.1, as has been verified. you get to a notice that uses and displays the image of one of the partners of the BUSINESS & LAW firm, without their consent".

SECOND: In view of the facts set forth in the claim and the documents provided by the claimant, the Data Inspection SG proceeded to carry out actions for its clarification, under the investigative powers granted to the control authorities in article 57.1 of Regulation (EU) 2016/679

(GDPR). Thus, on 10/06/22, an informative request was addressed to the entity claimed.

According to a certificate from the State Post and Telegraph Society, the request sent to the claimed entity, on 10/06/20, through the SICER service, it was returned to origin with the message "unknown" on 10/28/20.

THIRD: On 12/17/20 by the Director of the Spanish Agency for Data Protection, an agreement is issued for the admission of the complaint filed. given by the claimant, in accordance with article 65 of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights them (LPDGDD), considering that the response given by the respondent to this Agency In relation to the claimed facts, it does not prove its submission to the current legislation. people.

FOURTH: by this Agency, checks are made on the Policy of Privacy, Legal Notice and the Cookies Policy of the reported website, www.higcliffestates.com, checking the following characteristics in this regard:

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2/6

- About the processing of personal data on the website:

On the home page, through the <<contact>> link, located at the bottom of the same, is redirected to a form, <http://www.higcliffestates.com/es/contacto>, where Personal data of users, such as name, telephone and email, are collected. the same page where the

In

form

<http://www.highcliffeestates.com/es/contacto>, there is the following information about the

Responsible for the processing of personal data: - e-mail: info@highcliffeestates.com -
- Telephone +34 661 869 811.

- About the "Privacy Policy" of the website:

Through the link <<Privacy Policy>>, existing at the bottom of the page

above, as well as at the bottom of the main page,

the web redirects to a new page, <http://www.highcliffeestates.com/es/politica-privacidad>, which provides, the identification of the data controller

personal, on intellectual and industrial property, the responsibility of the contents

reproduction of content; on legitimacy of personal data processing

personal data and the exercise of user rights; and on the applicable law

- About the "Cookies Policy" of the website:

On the initial page of the indicated website (first layer), no banner is displayed

that reports the use of cookies, however, it is verified that only

uses a session cookie, for technical purposes, as indicated by the entity in its

"Privacy Policy".

- On the non-consensual treatment of personal data:

Within the web page (...) and following the link: ***URL.1, (...) you can see the

photograph of a person and a "Notice to Local Agencies", warning of the alleged

actions of two people belonging to the claimant entity.

FOURTH: In view of the reported facts and the evidence observed in the

website, the Director of the Spanish Data Protection Agency, dated

02/12/21, agreed to initiate a sanctioning procedure against the entity claimed, by virtue of

of the established powers, for failing to comply with the provisions of articles 13 with a

sanction of warning and for violation of article 6.1 of the RGPD with sanction of

8,000 euros.

FIFTH: Notified of the initiation agreement, the claimed entity has not received any type of allegations to the initiation of proceedings, in the time granted for this purpose.

PROVEN FACTS

1.- As stated in the claim, the website www.higcliffeestates.com does not comply with the regulations regarding the processing of personal data. Also, inside of the web page, personal images are used without the express consent to this or any other cause that legitimizes the processing of personal data.

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28001 – Madrid

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3/6

2.- As this Agency has been able to verify, on the website in question, you can collect personal data from users, however, its privacy policy remains referring to the repealed Organic Law 15/1999, of December 13, of Protection of Personal Data (LOPD).

3.- Regarding the non-consensual treatment of personal data, it has been possible to verify that on the web page, through ***URL.1 (...) you can see the photograph of a person and a "Notice to Local Agencies", warning of the alleged actions irregular documents of two people belonging to the claimant entity.

FOUNDATIONS OF LAW

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the RGPD in the art. 47 of LOPDGDD.

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Article 64.2.f) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, of October 2, 2015, hereinafter LPA-

CAP, provides that:

“The initiation agreement must contain at least: (...)

f) Indication of the right to make allegations and to be heard in the procedure and

of the deadlines for its exercise, as well as an indication that, in case of not carrying out

allegations within the stipulated period on the content of the initiation agreement, it may

may be considered a resolution proposal when it contains a pronouncement

accurate about the imputed responsibility.” (the underlining corresponds to the

AEPD).

In the present case, such requirements have been observed, since in the agreement of

At the beginning, it was warned of the provisions of article 64.2.f) of the LPACAP, it was specified

the presumed infraction committed together with its corresponding typification, is determined

The amount of the sanction was determined in accordance with the graduation criteria taken into

account based on the evidence obtained to that date, also reporting on

the planned reductions on the amount set by virtue of the provisions of article

ass 85 of the LPACAP.

In consideration of the foregoing and in accordance with the provisions of article

64.2.f) of the LPACAP, the agreement to initiate this file is considered Pro-

resolution, since it contained a precise statement about the

responsibility imputed and, after notification in the manner described in the antecedent

in fact fourth, the respondent has not made allegations to the same within the period stipulated

assigned for such purposes.

The joint assessment of the documentary evidence in the procedure brings to

knowledge of the AEPD, a vision of the denounced action that has been

reflected in the facts declared proven above reported.

III

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4/6

Regarding the "Privacy Policy" of the website, it has been found that it refers to the repealed Organic Law 15/1999, of December 13, on Protection of Personal Data (LOPD).

According to article 99 of the RGPD, the entry into force and application of the new RGPD was, "Twenty days after its publication in the Official Journal of the European Union (05/25/16)" and would be applicable as of May 25, 2018." Therefore, as of 05/25/18, the LO was repealed. 15/1999, (LOPD), applying compulsorily, from that date, the current RGPD and as of 12/07/18 the new LOPDGDD.

The known facts could constitute an infraction, attributable to the claimed, for violation of article 13 of the RGPD, which establishes the information that must be provided to the interested party at the time of collecting their data personal.

For its part, article 72.1.h) of the LOPDGDD considers it very serious, for the purposes of prescription, "the omission of the duty to inform the affected party about the treatment of your personal data in accordance with the provisions of articles 13 and 14 of the RGPD"

This infraction can be sanctioned with a maximum fine of €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 of greater amount, in accordance with article 83.5.b) of the RGPD.

However, Article 58.2) of the RGPD provides that: "Each supervisory 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 treatment operations have violated the provisions of this Regulation; (...); i) impose an administrative fine pursuant to Article 83, in addition to or instead of the measures mentioned in this section, depending on the circumstances of each particular case", therefore, the sanction would be "warning".

Regarding the non-consensual treatment of personal data, it has been verified that there is a publication of a photograph of the interested party and their personal data, according to claim, without the express consent of the interested party.

IV

The known facts constitute an infraction, attributable to the defendant, for violation of art. 6.1 of the RGPD, when publishing personal data of the claimant without the necessary legitimacy for it.

For its part, article 72.1.b) of the LOPDGDD considers it very serious, for the purposes of prescription, "Breach of the requirements of article 6 of the RGPD".

This infraction can be sanctioned with a maximum fine of €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 of greater amount, in accordance with article 83.5.b) of the RGPD.

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In accordance with the precepts indicated, in order to set the amount of the penalty to impose in the present case, it is appropriate to graduate the sanction to be imposed in accordance with the following aggravating criteria established in article 83.2 of the RGPD:

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The intentionality or negligence in the infringement. In the present case we are before intentional negligent action, (paragraph b).

The way in which the supervisory authority became aware of the infringement. The way in which this AEPD has been aware has been through the interposition of the complaint by the claimant, (section h).

The balance of the circumstances contemplated in article 83.2 of the RGPD, with Regarding the infraction committed by violating the provisions of article 6.1, it allows set a penalty of 8,000 euros, (eight thousand euros).

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

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RESOLVE

FIRST: IMPOSE the entity HIGHCLIFFE ESTATES MARBELLA, S.L., with CIF.: B93407872, owner of the website: www.higcliffeestates.com, a sanction of “warning”, for the violation of article 13) of the RGPD, and a fine of 8,000 euros (eight thousand euros), for the infringement of article 6.1) of the RGPD.

SECOND: NOTIFY this resolution to the entity HIGHCLIFFE ESTATES MARBELLA, S.L., and the claimant about the result of the claim.

Warn the sanctioned party that the sanction imposed must be made effective once it is enforce this resolution, in accordance with the provisions of article 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the Ad-

Public Administrations (LPACAP), within the voluntary payment period indicated in article 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, me- upon deposit in the restricted account number ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency for Data Protection at CAIXABANK Bank, S.A. or 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 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 82 of Law 62/2003, of December 30, bre, of fiscal, administrative and social order measures, this Resolution is will make public, once it has been notified to the interested parties. The publication is made will be in accordance with the provisions of Instruction 1/2004, of December 22, of the Agency Spanish Data Protection on the publication of its Resolutions.

Against this resolution, which puts an end to the administrative procedure, and in accordance with the established in articles 112 and 123 of the LPACAP, the interested parties may interpose www.aepd.es

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28001 – Madrid

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6/6

have, optionally, an appeal for reconsideration before the Director of the Spanish Agency of Data Protection within a period of one month from the day following the notification of this resolution, or, directly contentious-administrative appeal before the

Contentious-administrative Chamber of the National High Court, in accordance with the provisions placed in article 25 and in section 5 of the fourth additional provision of the Law 29/1998, of 07/13, regulating the Contentious-administrative Jurisdiction, in the two months from the day following the notification of this act, according to the provisions of article 46.1 of the aforementioned legal text.

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 do states its intention to file a contentious-administrative appeal. Of being

In this case, the interested party must formally communicate this fact in writing addressed to the Spanish Agency for Data Protection, presenting it through the Re-Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronicaweb/>], or to 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 that proves the effective filing of the contentious-administrative appeal. If the Agency was not aware of the filing of the contentious-administrative appeal tive within two months from the day following the notification of this resolution, would end the precautionary suspension.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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