

□ Procedure No.: PS/00392/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: On October 27, 2020, D. A.A.A. (hereinafter the part
claimant) filed a claim with the Spanish Data Protection Agency.

The claim is directed against COMUNIDAD DE PROPIETARIOS R.R.R., with NIF
***NIF.1 (hereinafter, the claimed party).

The claimant denounces that, on July 11, 2020, the president of the
community of owners to which he belongs has published in a WhatsApp group
in which all the co-owners are included, a written request for a copy of
documentation and authorization for an attorney to represent the claimant in
the procedures related to the community and so that you can access the minutes and accounts
of this, on behalf of the claimant. Said authorization includes the data
of the claimant (name, surnames, postal address, ID number) and photocopy
of your ID on both sides. The violation of the principle of
confidentiality.

Provides the WhatsApp conversation of the Monistrol 34 Owners Community and
the authorization document with the details of the claimant.

: In accordance with article 65.4 of Organic Law 3/2018, of 5

SECOND

December, Protection of Personal Data and Guarantee of Digital Rights
(hereinafter LOPDGDD), said claim was transferred to the respondent, so that
proceed to its analysis and inform this Agency within a month of the

actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

There is no record in this Agency of a reply to the transfer of the claim.

THIRD: On April 8, 2021, in accordance with article 65 of the

LOPDGDD, the Director of the Spanish Data Protection Agency agreed

admit for processing the claim filed by the claimant against the respondent.

FOURTH: The General Subdirectorate for Data Inspection proceeded to carry out

of previous investigative actions to clarify the facts in

matter, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the

Title VII, Chapter I, Second Section, of the LOPDGDD, having knowledge of the

following ends:

On April 22, 2021, it was required by the data inspection, through

postal notification, to the claimed the following information and documentation:

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1. If applicable, a copy of the documentation that could prove the legality for the performance of the reported treatment.

2. In the event of exercising the rights regulated in articles 15 to 22 of the RGPD, accreditation of the response provided to the claimant.

3. Where applicable, report on the measures taken to prevent the produce similar incidents.

4. Any other information or documentation that you consider relevant

On May 31, 2021, a written response to the request has been received

They provide the following documents:

- Copy of the document sent by the claimant to the Community of Owners of request for a copy of documentation and authorization for a lawyer to represent the claimant in the procedures related to the community and so that can access the minutes and accounts of this on behalf of the claimant, in the which includes the name and surnames, ID number and address of the claimant.

Also attached to the document is a photocopy of the claimant's DNI for both faces.

- Copy of Decree-Law 10/2020, of March 27, establishing new extraordinary measures to deal with the health impact, economic and social crisis of COVID-19 of the president of the Generalitat de Catalonia. Chapter IV adopts various solutions in the area of legal persons of private law subject to the provisions of law Catalan civil society, including cooperative societies, and in the boards of owners in the communities subject to the horizontal property regime during the validity of the state of alarm. Thus, the expansion of the legally established deadlines for the meeting of the bodies of these entities and the possibility of postponing or modifying the meetings convened with prior to the declaration of the state of alarm. Also, it is allowed holding meetings and adopting agreements through videoconference or other means of communication and also the adoption of agreements without meetings, in accordance with the requirements provided by the Code of Catalonia and although the statutes do not provide for it. Finally, it is arranged the extension of deadlines to prepare, approve and present annual accounts and

other legally required documents.

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Three screen prints that appear to be relative to the

WhatsApp group conversation of the R.R.R. OWNERS COMMUNITY.

These screenshots include the following:

- o Message informing that the owner's representative has been included in the group

2º 2ª (home of the claimant).

- o Image of the document sent by the claimant to the Community of Owners of

request for a copy of documentation and authorization for a lawyer to

represent. Only the image of the text has been shared, which includes name and surname,

DNI and address of the claimant. The image of the ID does NOT appear.

- o Message of July 12, 2020 requesting all neighbors to delete the

documents sent the day before (July 11), indicating that he had no record

that it could not be shipped.

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FIFTH: On August 12, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the defendant, for

alleged infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the

GDPR.

SIXTH: Having notified the aforementioned initial agreement and not having presented arguments,

in accordance with the provisions of article 64.2.f) of Law 39/2015, of October 1, of the

Common Administrative Procedure of the Public Administrations, the agreement of

start can be considered motion for a resolution. Consequently, this Agency

proceeds to dictate Resolution

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: On July 11, 2020, through the WhatsApp group "Comunidad

de Propietarios c/ Monistrol nº 34", the data is disseminated without their consent.

of the claimant through an attached file containing their data

personal, such as DNI and address, full photocopy of the DNI (front and back),

where your photo, name of the parents, ID number, signature and the address of another

claimant's property.

SECOND: WhatsApp dialog screenshot is provided:

(9265Chat_de_WhatsApp_con_Com._vecinos_Monistrol_34 (1)) where in the message

dated 7/11/20, it is indicated that the lawyer is added and a document of

name COMMUNICATION ADDRESS CONTACT MEETINGS .pdf.

And add in another message:

"I have just added Ms. Mireia who, as indicated in the statement she made to me

arrive from now on will be the person representing the address 2a and therefore

It will be she who will attend the neighborhood meetings. As you can see in the requirement

asks the community to deliver the bank movements, together with the

community records. Yesterday, Friday, I gave Mrs. Mireia all the

documentation requested in the requirement and currently the minute book has it

in his office to make photocopies of the minutes of the last 5 years. A

Next, I pass a photograph of the letter as the minute book is in its

office and that I will pick it up early next week."

The claimant provides a document whose name coincides with the one attached to the

dialogue

WhatsApp:

3131 COMMUNICATION_ADDRESS_CONTACT_MEETINGS_.pdf

This document contains: the claimant's authorization to the lawyer, with the data of both, and the copy by both parties of the DNI of the claimant.

of

THIRD: On 7/12/2020, a message is published in the same chat requesting the deletion of the document in question, assuming that it should not have been sent.

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FOUNDATIONS OF LAW

FIRST: 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.

SECOND: Article 5.1.f) of the RGPD, Principles related to treatment, indicates the

Next:

"1. The personal data will be:

(...)

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

including protection against unauthorized or unlawful processing and against

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

or appropriate organizational ("integrity and confidentiality").

Article 5 of the LOPDGDD, Duty of confidentiality, states the following:

- "1. Those responsible and in charge of data processing, as well as all people who intervene in any phase of this will be subject to the duty of confidentiality 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 between the obligor and the person in charge or in charge of the transaction had ended. treatment".

THIRD: In accordance with the proven facts, it is considered that the party claimed violated article 5 of the RGPD, principles related to treatment, in relation to article 5 of the LOPGDD, duty of confidentiality.

This duty of confidentiality must be understood to have the purpose of preventing leaks of the data are carried out, not consented by the owners of these.

Therefore, this duty of confidentiality is an obligation that falls not only on the responsible and in charge of the treatment, but to everyone who intervenes in any phase of the treatment and complementary to the duty of professional secrecy.

In the present case, it has been confirmed that the defendant, through the WhatsApp group Community of Owners, of the personal data of the claimant through an attached file that contained DNI, a full photocopy of the DNI, where your photo, name of the parents, ID number, handwritten signature and the address of another domicile of the claimant other than that relating to the Community of referenced owners.

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The known facts are constitutive of infringement, attributable to the claimed party, for violation of article 5.1.f) of the RGPD, which regulates the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

FOURTH: Article 83.5 of the RGPD provides the following:

"5. Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 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 largest amount:

a)

basic principles for treatment, including conditions for consent under articles 5, 6, 7 and 9;"

For its part, article 71 of the LOPDGDD, under the heading "Infringements" determines what following: Violations constitute the acts and conducts referred to in the sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

Establishes article 72 of the LOPDGDD, under the rubric of infractions considered very serious, the following: "1. Based on the provisions of article 83.5 of the Regulation (EU) 2016/679 are considered very serious and will expire after three years infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

Yo)

The violation of the duty of confidentiality established in article 5 of this organic law.

In the present case, the infringing circumstances provided for in article 83.5 of the GDPR.

FIFTH: Without prejudice to the provisions of article 83.5, sections a) and b), of the RGPD, in its art. 58.2 b) provides for the possibility of directing a warning, in relation to with what is stated in Considering 148:

"In the event of a minor offence, or if the fine likely to be imposed would constitute a disproportionate burden for a natural person, rather than sanction by means of a fine, a warning may be imposed. must however Special attention should be paid to the nature, seriousness and duration of the infringement, its intentional nature, to the measures taken to alleviate the damages suffered, the degree of liability or any relevant prior violation, the manner in which that the control authority has been aware of the infraction, compliance of measures ordered against the person responsible or in charge, adherence to codes of conduct and any other aggravating or mitigating circumstance."

In the present case, based on the diligence carried out by the entity investigated in relation to requesting that the document sent to the group of

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WhatsApp allows us to consider a decrease in guilt in the facts, so it is considered in accordance with Law, not to impose a sanction consisting of a fine and replace it with a warning, in accordance with article 76.3

of the LOPDGDD in relation to article 58.2 b) of the RGPD.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution is required to the claimed, as responsible for the treatment, that the processing operations comply with the provisions of this Regulation, in a certain way and within a specified period.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of the sanctions whose existence has been proven, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: DIRECT TO COMMUNITY OF OWNERS 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.

SECOND: ORDER COMMUNITY OF OWNERS R.R.R., with NIF ***NIF.1, the adoption, within three months, of the necessary measures to adapt to the personal data protection regulations, the treatment operations that makes.

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

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 Spanish Agency for Data Protection within a month from counting 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, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal.

If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or 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 proving the effective filing of the contentious appeal-

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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 end the precautionary suspension.

Sea Spain Marti

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