

□ File No.: PS/00504/2021

IMI Reference: A56ID 120690 – Case Register 318040

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: MRS. A.A.A. (hereinafter, the claiming party) dated October 26
of 2019 filed a claim with the data protection authority of the United Kingdom
Kingdom (Information Commissioner's Office- ICO). The claim is directed against
HERITAGE RESORTS AND HOTELS LTD. The reasons on which the claim is based
are as follows: the complaining party sent numerous requests for access to its
personal data without having obtained any response.

Along with the claim, provide:

- Copy of an email dated 12/17/2018, addressed to the address

***EMAIL.1 in which you request any and all information that the company could
have from the complaining party and specifically: the client file, emails
and any other correspondence between the company and the complaining party (from 2002 to
present), any agreement or documentation signed between the company and the party
complainant (between 03/26/2002 and 07/23/2002), any note of the meetings that
took place between 03/26/2002 and 07/23/2002 between the company and the party
claimant and metadata regarding the date of creation/amendment of any
signed agreement and supporting documentation.

- Copy of an application sent by postal mail to HERITAGE RESORTS LTD to a
address in the British Virgin Islands, dated April 17, 2019, in which you were
reported that it had violated the GDPR by not responding to the first request for

access to the personal data of the complaining party.

- Copy of an application sent by postal mail to CLUB PLAYA REAL at the address

***ADDRESS.1 dated June 24, 2019, requesting again the

access to the personal data of the complaining party.

SECOND: Through the "Internal Market Information System" (hereinafter

IMI), regulated by Regulation (EU) No. 1024/2012, of the European Parliament and of the

Council, of October 25, 2012 (IMI Regulation), whose objective is to promote the

cross-border administrative cooperation, mutual assistance between States

members and the exchange of information, as of April 29, 2020, had entry

in this Spanish Data Protection Agency (AEPD) the aforementioned claim. He

transfer of this claim to the AEPD is carried out in accordance with the provisions

in article 56 of Regulation (EU) 2016/679, of the European Parliament and of the

Council, of 04/27/2016, regarding the Protection of Physical Persons in what

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regarding the Processing of Personal Data and the Free Circulation of these Data

(hereinafter, GDPR), taking into account its cross-border nature and that this

Agency is competent to act as main control authority, given that

given that PLAYA REAL MANAGEMENT, S.L., with NIF B29859923 (hereinafter,

PLAYA REAL MANAGEMENT) has its main establishment in Spain.

According to the information incorporated into the IMI System, in accordance with the

established in article 60 of the GDPR, act as a "control authority

concerned" the control authorities of Denmark and France. Both by virtue of

Article 4.22 of the GDPR, given that the interested parties residing in these States member are substantially affected or are likely to be substantially affected by the treatment object of this procedure.

THIRD: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in forward LOPDGDD), said claim was transferred to PLAYA REAL MANAGEMENT, to proceed with its analysis and inform this Agency in the period of one month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

The transfer, which was carried out in accordance with the regulations established in Law 39/2015, of October 1, of the Common Administrative Procedure of the Administrations Public (hereinafter, LPACAP) by electronic notification, was not collected by the person in charge, within the period of availability, understood as rejected in accordance with the provisions of art. 43.2 of the LPACAP dated 06/22/2020, as stated in the certificate in the file.

Although the notification was validly made by electronic means, assuming that carried out the procedure in accordance with the provisions of article 41.5 of the LPACAP, under information, a copy was sent by postal mail, which was duly notified in date 08/07/2020. In said notification, he was reminded of his obligation to relate electronically with the Administration, and they were informed of the means of access to said notifications, reiterating that, henceforth, he would be notified exclusively by electronic means.

No response has been received to this letter of transfer.

FOURTH: On October 20, 2020, in accordance with article 64.3 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

FIFTH: The General Sub-directorate of Data Inspection proceeded to carry out

preliminary investigation actions to clarify the facts in
matter, by virtue of the functions assigned to the control authorities in the
article 57.1 and of the powers granted in article 58.1 of the GDPR, and of
in accordance with the provisions of Title VII, Chapter I, Second Section, of the
LOPDGDD, having knowledge of the following extremes:

On October 20, 2020, the entity was contacted by telephone and sent by
email, as well as through the Electronic Notification Service and

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Enabled Electronic Address, a request for information in which he requested
to PLAYA REAL MANAGEMENT to inform this Agency about:

1. Decision adopted regarding the claim presented by the claimant party
blanket.

3.

2. Evidence of the response provided to the request of the complaining party, re-
relative to the exercise of the rights regulated in articles 15 to 22 of the GDPR.

Report on the causes that have motivated the incidence that has originated the
claim.

Report on the measures adopted to prevent incidents from occurring
similar, dates of implementation and controls carried out to verify its effectiveness.

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4.

At present, this Agency does not have any response to this letter.

On November 18, 2020, this same requirement was sent again

by email after telephone conversation with representatives of the entity.

This time a response was obtained the same day from B.B.B. of the department of

Club Heritage International reservations, by email from the address

***EMAIL.2, in which the following is indicated:

"As I explained on the phone, the complex is closed at the moment. I have

managed to speak with the administration department that confirms the following:

tea

The client is no longer our client due to non-payment of their annual fees (since

2017) We no longer have any files on it since it is not in our database

current" (sic)

SIXTH: On October 18, 2021, the Director of the AEPD adopted a

draft decision to initiate disciplinary proceedings. following the process

established in article 60 of the GDPR, on October 19, 2021 it was transmitted through

of the IMI system this draft decision and the authorities were informed

interested parties that they had four weeks from that time to raise objections

relevant and motivated. Once the period for this purpose has elapsed, the control authorities

interested parties did not present pertinent and reasoned objections in this regard, therefore

it is considered that all control authorities agree with said

draft decision and are bound by it, in accordance with the provisions of

section 6 of article 60 of the GDPR.

Notification of the draft decision, which was carried out in accordance with the regulations

established in the LPACAP, was not collected by the person in charge.

SEVENTH: On April 22, 2022, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against PLAYA REAL

MANAGEMENT, for the alleged infringement of Article 15 of the GDPR, typified in the

Article 83.4 of the GDPR.

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The notification of the aforementioned start-up agreement, which was carried out in accordance with the rules established in the LPACAP, was not collected by the person in charge; reiterating on date 04/22/2022 by certified postal mail, it was again returned for "unknown".

Finally, it has been published in the BOE of May 5, 2022, with the ID:
N2200540077.

EIGHTH: Notification of the aforementioned initiation agreement in accordance with the established regulations in the LPACAP and after the period granted for the formulation of allegations, the
has verified that no allegation has been received by PLAYA REAL
MANAGEMENT.

Article 64.2.f) of the LPACAP - provision of which PLAYA REAL was informed
MANAGEMENT in the agreement to initiate the procedure - establishes that if the
they make allegations within the stipulated period on the content of the initiation agreement,
when it contains a precise pronouncement about the responsibility
accused, may be considered a resolution proposal. In the present case, the
agreement to start the disciplinary file determined the facts in which
specified the accusation, the infringement of the GDPR attributed to PLAYA REAL
MANAGEMENT and the sanction that could be imposed. Therefore, taking into
consideration that PLAYA REAL MANAGEMENT has not made allegations to the
agreement to start the file and in accordance with the provisions of article 64.2.f) of
the LPACAP, the aforementioned initiation agreement is considered in the present case proposal

resolution.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: On 12/17/2018, the claimant sends an email to the

address ***EMAIL.1 in which you request any and all information that the company

may have from you and specifically: the client file, emails

and any other correspondence between the company and the complaining party (from 2002 to

present), any agreement or documentation signed between the company and the party

complainant (between 03/26/2002 and 07/23/2002), any note of the meetings that

took place between 03/26/2002 and 07/23/2002 between the company and the party

claimant and metadata regarding the date of creation/amendment of any

signed agreement and supporting documentation.

SECOND: On 04/17/2019, the claimant sends a request by postal mail to

HERITAGE RESORTS LTD to an address in the British Virgin Islands, at which

was informed that he had violated the GDPR by not responding to the first request for

access to the personal data of the complaining party.

THIRD: On 06/24/2019 the claimant sends a request by postal mail to

CLUB PLAYA REAL to the address ***ADDRESS.1 in which it is requested again

access to your personal data.

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FOURTH: PLAYA REAL MANAGEMENT affirms that the complaining party is no longer

client of yours due to non-payment of their annual fees (since 2017) and who do not have no files on you, as you are not in your current database.

FUNDAMENTALS OF LAW

Competition and applicable regulations

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In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47, 48.1, 64.2 and 68.1 of the

Organic Law 3/2018, of December 5, on the Protection of Personal Data and

guarantee of digital rights (hereinafter, LOPDGDD), is competent to

initiate and resolve this procedure the Director of the Spanish Protection Agency

of data.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

previous questions

In the present case, in accordance with the provisions of article 4.1 of the GDPR, there is

the processing of personal data, since PLAYA REAL

MANAGEMENT collects the following personal data from people

physical: name and surname and address, among other treatments.

PLAYA REAL MANAGEMENT carries out this activity in its capacity as responsible

of the treatment, since it is who determines the purposes and means of said activity, in

under article 4.7 of the GDPR. In addition, it is a cross-border treatment,

given that PLAYA REAL MANAGEMENT is established in Spain, although it provides service to other countries of the European Union.

The GDPR provides, in its article 56.1, for cases of cross-border processing, provided for in its article 4.23), in relation to the competence of the authority of main control, that, without prejudice to the provisions of article 55, the authority of control of the main establishment or of the only establishment of the person in charge or of the person in charge of the treatment will be competent to act as control authority for the cross-border processing carried out by said controller or commissioned in accordance with the procedure established in article 60. In the case examined, as has been exposed, PLAYA REAL MANAGEMENT has its main establishment in Spain, therefore the Spanish Agency for the Protection of Data is competent to act as main control authority.

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For their part, the rights of the interested parties are regulated in articles 12 to 23 of the GDPR. In particular, the right of access to personal data is regulated in the Article 15 of the GDPR.

II

Right of access

Article 15 "Right of access of the interested party" of the GDPR establishes:

"1. The interested party shall have the right to obtain from the data controller confirmation of whether or not personal data concerning you is being processed and, in such case, right of access to personal data and the following information:

- a) the purposes of the processing;
- b) the categories of personal data concerned;
- c) the recipients or categories of recipients to whom they were communicated or will be communicated personal data, in particular recipients in third countries or international organizations;
- d) if possible, the expected period of conservation of personal data or, if not if possible, the criteria used to determine this term;
- e) the existence of the right to request from the person in charge the rectification or deletion of personal data or the limitation of the processing of personal data relating to the interested party, or to oppose said treatment;
- f) the right to file a claim with a control authority;
- g) when the personal data has not been obtained from the interested party, any available information on its origin;
- h) the existence of automated decisions, including profiling, to which referred to in Article 22, paragraphs 1 and 4, and, at least in such cases, information about the logic applied, as well as the importance and consequences provisions of said treatment for the interested party.

2. When personal data is transferred to a third country or to an organization international, the interested party shall have the right to be informed of the guarantees appropriate under Article 46 relating to the transfer.

3. The data controller shall provide a copy of the personal data object of treatment. The person in charge may receive for any other copy requested by the interested party a reasonable fee based on administrative costs. when the The interested party submits the application by electronic means, and unless he requests otherwise provided, the information will be provided in an electronic format of Common use.

4. The right to obtain a copy mentioned in section 3 will not negatively affect to the rights and liberties of others.”

For its part, article 12 “Transparency of information, communication and modalities of exercise of the rights of the interested party” of the RGPD provides:

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2. The person responsible for the treatment will facilitate the exercise of their rights by the interested party. under articles 15 to 22. In the cases referred to in article 11, paragraph 2, the person in charge will not refuse to act at the request of the interested party in order to exercise your rights under articles 15 to 22, unless you can show that you do not is in a position to identify the interested party.

3. The person responsible for the treatment will provide the interested party with information regarding their proceedings on the basis of a request under articles 15 to 22, without undue delay and, in any case, within one month of receipt of the request. This period may be extended by another two months if necessary, taking into account the complexity and number of requests. The responsible will inform the interested party of any of said extensions within a period of one month from receipt of the request, indicating the reasons for the delay. when the interested party submits the application by electronic means, the information will be provided by electronic means when possible, unless the interested party requests that it be facilitate otherwise.

4. If the person responsible for the treatment does not process the request of the interested party, he will

will inform without delay, and no later than one month after receipt of the application, the reasons for not acting and the possibility of presenting a claim before a control authority and take legal action.

(...)"

In the present case, it is clear that the complaining party has requested in at least three access to your personal data to PLAYA REAL MANAGEMENT, without have obtained any response, not even regarding the reasons for the delay in that lack of response.

Therefore, according to the available evidence, it is considered that the known facts constitute an infringement, attributable to PLAYA REAL MANAGEMENT, for violation of article 15 of the GDPR.

Classification of the infringement of article 15 of the GDPR

IV.

The aforementioned infringement of article 15 of the GDPR supposes the commission of the infringements typified in article 83.4 of the GDPR that under the heading "General conditions for the imposition of administrative fines" provides:

Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of maximum EUR 20,000,000 or, in the case of a company, an amount equivalent to a maximum of 4% of the total annual global business volume of the previous financial year, opting for the highest amount:

(...)

b) the rights of the interested parties in accordance with articles 12 to 22; (...)"

In this regard, the LOPDGDD, in its article 71 "Infracciones" establishes that

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"The acts and behaviors referred to in sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that result contrary to this organic law".

For the purposes of the limitation period, article 72 "Infractions considered very serious" of the LOPDGDD indicates:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that a substantial violation of the articles mentioned therein and, in particular, the following:

(...)

k) The impediment or the obstruction or the repeated non-attention of the exercise of the rights established in articles 15 to 22 of Regulation (EU) 2016/679. (...)"

Penalty for violation of article 15 of the GDPR

V

Without prejudice to the provisions of article 83 of the GDPR, the aforementioned Regulation provides in section 2.b) of article 58 "Powers" the following:

"Each control authority will have all the following corrective powers indicated below:

(...)

b) send a warning to any person in charge or person in charge of the treatment when the processing operations have infringed the provisions of this Regulation;

(...)"

For its part, recital 148 of the GDPR indicates:

“In the event of a minor infraction, or if the fine likely to be imposed constitutes a disproportionate burden on a natural person, rather than penalty by means of a fine, a warning may be imposed. should however special attention should be paid to the nature, seriousness and duration of the infringement, to its intentional nature, to the measures taken to alleviate the damages suffered, to the degree of responsibility or any relevant prior infringement, to the manner in which that the supervisory authority has become aware of the infringement, to compliance of measures ordered against the person in charge or in charge, to adherence to codes of conduct and any other aggravating or mitigating circumstances.”

In accordance with the evidence available, it is considered that the infringement in question is mild for the purposes of article 83.2 of the GDPR given that in the present case, taking into account that it is a specific claim against a microenterprise not accustomed to the processing of personal data, allows us to consider a reduction of fault in the facts, for what is considered in accordance with the Law, not to impose sanction consisting of an administrative fine and replace it by directing a warning to ROYAL BEACH MANAGEMENT.

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imposition of measures

It is considered appropriate to impose on the person in charge that within a period of 30 days he proceeds to duly attend to the request for the right of access exercised by the party

claimant, in accordance with the provisions of the aforementioned article 58.2 d) of the GDPR, according to which each control authority may “order the person in charge or in charge of the processing that the processing operations comply with the provisions of the this Regulation, where appropriate, in a certain way and within a certain specified term...”. The imposition of this measure is compatible with directing a warning, according to the provisions of art. 83.2 of the GDPR.

It is noted that not meeting the requirements of this body could be considered as an administrative offense in accordance with the provisions of the GDPR, classified as an infraction in its article 83.5 and 83.6, being able to motivate such conduct the opening of a subsequent administrative sanctioning procedure.

Therefore, in accordance with the applicable legislation and assessed the criteria of graduation of sanctions whose existence has been accredited,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ADDRESS PLAYA REAL MANAGEMENT S.L., with NIF B29859923, for an infringement of Article 15 of the GDPR, typified in Article 83.4 of the GDPR, a warning.

SECOND: NOTIFY this resolution to PLAYA REAL MANAGEMENT S.L.

In accordance with the provisions of article 50 of the LOPDGDD, this

Resolution will be made public once the interested parties have been notified.

Against this resolution, which puts an end to the administrative process 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 reversal before the

Director of the Spanish Agency for Data Protection within a period of one month from count 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 for in article 46.1 of the referred Law.

Finally, it is noted 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 through writing addressed to the Spanish Data Protection Agency, presenting it through of the Electronic Registry of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registries provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

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documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative proceedings within a period of two months from the day following the Notification of this resolution would terminate the precautionary suspension.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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