

□ Procedure No.: PS/00150/2021

RESOLUTION OF PUNISHMENT PROCEDURE

In sanctioning procedure PS/0150/2021, instructed by the Spanish Agency for

Data Protection, to the entity, JUBASER DE CONTROL, S.L., with CIF.:

B93306736, (hereinafter, "the claimed party"), for alleged infringement of the Regulations

to (EU) 2016/679, of the European Parliament and of the Council, of 04/27/16, regarding the

Protection of Natural Persons with regard to the Processing of Personal Data

nals and the Free Circulation of these Data (RGPD); Organic Law 3/2018, of 5 of

December, Protection of Personal Data and guarantee of digital rights,

(LOPDGDD) and based on the following:

BACKGROUND

FIRST: On 11/23/20, you entered this Agency, a brief presented by

A.A.A., (hereinafter, "the complaining party"), in which it indicated, among others, the

Next:

"A reservation was made through the booking.com portal, at the Marbe-

lla Resorts S.L. (Guadalpin Suites). After leaving the establishment on the date

dedicated, on June 17 he receives a WhatsApp, where they warn him that they have sent

contracted your ID together with your personal information, on a contact page

for adults. A complaint is filed with the General Directorate of the Police, Torremolinos.

us and a record is drawn up before the Notary on the different publications.

An access request is addressed to the person responsible for processing the data of the

hotel establishment, who informs her of the following:

"On the day of the incident, when check-in is carried out, outside the opening hours of the

establishment, the reception was closed and who performs the scan of the DNI of

affected is the janitor of the company contracted by the community of neighbors of the

building, where the hotel establishment is located, to manage the entry/exit outside opening hours in the building. The company contracted for this service is JUBASER DE CONTROL, S.L. This company does not have any relationship with the hotel establishment (Marbella Resorts SL- Guadalpín Suites), only with the community of neighbors of the building”.

SECOND: On 01/29/21, this Agency sent a request information to the hotel establishment, Marbella Resorts SL, in accordance with the stipulated in article 65.4 of the LOPDGDD Law.

THIRD: On 02/03/21, this Agency sent a request information to the entity in charge of the night control of the building, Jubaser de Control SL., in accordance with the provisions of article 65.4 of the LOPDGDD Law.

FOURTH: On 02/22/21, the hotel establishment, Marbella Resorts SL. send to this Agency in response to the request made, in which, it indicated, among others, the following:

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“(…) The claimant stayed in our apartments on the night of June 6, 2020 (Saturday) and that the claimant's arrival time was around 8:00 p.m., as she informs us. - At the time of the arrival of the claimant the reception of our apartments was closed, so the person who attended the claimant is not a worker of our entity, but of the concierge service contracted by the community of owners of the building (…)

FIFTH: On 03/04/21, the entity, Jubaser de Control SL., sends a letter of

response to the request made by this Agency, in which, among others, it indicates

goat:

“JUBASER DE CONTROL SL is a general services company for companies and

specifically, it provides a control service for the entry and exit of people.

nas (conciierge service) in the building located at AVD. PRINCE ALFONSO HOHEN-

LOHE SIN, CTRA. NAC, 340, KM.179 of the town of MARBELLA 8 COMMUNITY

OF OWNERS HOTEL DE APARTAMENTOS GUADALPIN DE MARBELLA. The

mentioned building is intended for hotel uses through a contract of

provision of hotel operation services signed between the PROPERTY COMMUNITY

OWNERS and MARBELLA RESORT SL. JUBASER DE CONTROL SL provides its services

vices to COMMUNITY OF OWNERS HOTEL DE APARTAMENTOS GUADAL-

PIN DE MARBELLA in accordance with the provisions of the corresponding signed contract

between both parties. which is attached to this writing as DOC.1.

JUBASER DE CONTROL SL has not had any knowledge of the incident that

has originated the claim since this company does not keep information of any

type of people who have accessed or are accessing the building, limiting themselves to acting under

the instructions of our client, which is the Community of Owners.

Attached is a treatment order contract signed with the community of owners.

rios and documentation of information to employees where, among other issues,

the obligation of confidentiality and duty of secrecy in relation to any

any information to which they may have access in the performance of their duties.

nes.

There is a protocol of action regarding the processing of personal data

that marks the privacy policy of this company. which is attached to this letter

as document DOC.4.

The services of a data protection consultant have been contracted for the

adaptation of our entity to the current data protection regulations as

as stated in document DOC.5.

We have proceeded to review the regulatory documentation of the relationship maintained with the community of owners, according to which the service has been provided following the instructions given by the Community. We have proceeded to review the information provided to employees in relation to the processing of personal data.

The services of a data protection consultant have been contracted for your adaptation to the RGPD and other data protection regulations applicable in each mo-

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ment. having carried out periodic reviews of its implementation with said consultant in June 2018. June 2019 and July 2020”.

SIXTH: On 03/30/21, by the Director of the Spanish Agency for Pro-

tection of Data, an agreement is issued to admit the processing of the claim presented.

in accordance with article 65 of the LPDGDD Law, considering that the res-

statement given by the party claimed to this Agency in relation to the facts indicated

does not prove the legality for the processing of the personal data of the claimant.

SEVENTH: On 06/07/21, the Director of the Spanish Agency for the Protection of

Data agreed to initiate sanctioning proceedings against the claimed entity, by virtue of

the established powers, for violation of article 6 of the RGPD, with an initial sanction

of 5,000 euros, (five thousand euros), for the alleged illicit treatment of

the personal data of the claimant.

EIGHTH: Notification of the initiation agreement to the claimed entity, the latter in writing

dated 06/22/21, made, in summary, the following allegations:

“JUBASER DE CONTROL has never scanned the DNI of the affected party or of any individual subject whose Data Controller is Marbella Resorts S.L. (Guadalpin Suites). It only performs processing operations on the personal data of interested parties.

two whose data controller is the HOTEL OWNERS COMMUNITY

GUADALPIN DE MARBELLA APARTMENTS. In fact, to this writing by all-

We accompany another letter that the Community of owners has sent us

for which we work, in which it is expressly stated that "JUBASER DE CON-

TROL does not scan the ID. of the clients of the hotel establishment “and, therefore,

At no time did JUBASER DE CONTROL personnel carry out any operations

treatment with the personal data of the complainant, neither scanning nor re-

collecting or storing your personal data.

What really happened the day the complainant showed up at the establishment

lie, was that the complainant said that she had booked a hotel apartment and,

without collecting any type of personal data from her (for the reasons stated above)

gave him the key to that apartment. The check-in would surely take place (and decide

We surely know because we do not know the moment with certainty since we do not

we did it) in the morning of the following day, when the service of

reception by Marbella Resorts S.L. (Guadalpin Suites).

In this sense, we understand that if the Agency requests Marbella Resorts S.L. (Wow-

dalpin Suites) the registration document where the personal data of the users is collected.

apartment guests. and more specifically that of the registration of the complaint

you, you will be able to verify that it is a private document of said entity and made by

staff of said entity.

Furthermore, to try to demonstrate everything we point out, we have

allowed the luxury of reviewing the website owned by Marbella Resorts S.L. (Guadalpin Sui-

services) and in the information to the user in the reservation process of one of its apartments.

cough, they point out that "if your arrival is after office hours, you can

pick up the keys at the concierge on the ground floor". fact that goes to prove that

what actually happened on that date was precisely that, that the

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keys to the apartment, and it was subsequently through Marbella Resorts staff

S.L.(Guadalpin Suites) when the check-in was done".

NINTH: On 08/04/21, this Agency began the internship period

ethics of evidence, remembering, to consider reproduced for evidentiary purposes the complaint

filed by the complainant and her documentation, the documents obtained and generated

rados that are part of file E/10493/2020 and consider reproduced for purposes

evidence, the allegations to the initiation agreement of PS/00150/2021, presented by

the reported entity.

TENTH: On 08/15/21, and given the statements made by the entity Juba-

ser Control SL., in its pleadings brief (point six), moves to the part referring to

claiming said pleadings letter so that, within 10 days, he would provide the

supporting documentation of the result of the police investigations carried out

as a result of the complaint filed and report whether these had given rise to

to the opening of judicial proceedings, or failing that, specifying this Agency,

when you remember that your ID was scanned, that is, if it was scanned by the person

who was in the counseling office of the building that night, when he checked-in or

if you remember that it was carried out the next morning as the claimant entity affirms-

gives.

ELEVENTH: Dated 10/08/21, and in the absence of a response to the request made to the claimant, the requested entity is notified of the proposal for solution, in which, it is proposed that, by the Director of the Spanish Agency of Data Protection the present procedure against entity Jubaser is filed Control SL., for alleged infringement of article 6 of the RGPD, by not having the elements sufficient objectives to support the alleged infringement.

TWELFTH: Notification of the proposed resolution to the party complained against on 08/10/20, as of today, there is no record in this Agency that any writing has been filed seated as arguments to the resolution proposal by the claimant entity. mada.

Of the actions carried out in this procedure, of the information and do- documentation presented by the parties, the following facts have been accredited: boys:

PROVEN FACTS

1º.- In the present case, the claimant denounces that, on 06/06/20, when performing the check-check-in at the hotel establishment "Marbella Resorts S.L. (Guadalpin Suites)", in the town of Marbella (Málaga), outside the opening hours of the establishment, the re-The reception of this establishment was closed and the person who carried out the check-in was the concierge of the building where several hotel establishments are located, including c, "Marbella Resorts SL."

The concierge who worked the night shift in the building, belonging to a company contracted by the community of neighbors, for the management and control of the entry and exit outside the opening hours of the hotel establishments installed in the building office. The company contracted for this service is JUBASER DE CONTROL, S.L.

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2º.- According to the statements of the person in charge of the hotel establishment, Marbella Resorts SL, "who carried out the scan of the DNI of the affected was the concierge of the company dam, JUBASER DE CONTROL, S.L. who was on duty that night.

3º.- However, according to the statements of the company Jubaser Control SL., they they never scanned the DNI of the affected person or of any other client of the establishments. existing hotel cough in the building. Only the key to the apartment was provided. when presenting the claimant, the accommodation reservation.

4º.- Given the contradictions made by the entities involved in this case, This Agency requested, on 08/15/21, the complaining party to provide the documentation accrediting documentation of the result of the police investigations carried out as consequence of the complaint presented at the Police Station and if these gave place or not to the opening of judicial proceedings, or failing that, specifying this Agency, when you remember that your DNI was scanned, that is, if it was scanned by the person who was in the counseling building that night, or by the contrary was scanned the next morning,

5º.- As of today, this Agency has not received any written response by the claimant.

FOUNDATIONS OF LAW

I.- Competition:

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.

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 re-reflected in the facts declared proven above reported.

In the present case, the claimant denounces that she had knowledge that her DNI and your personal data are included in a web page with content for adults. cough without your consent. Complaint that your personal data was obtained when do was housed in the hotel establishment, "Marbella Resorts S.L. (Guadalpin Suites)".

From the hotel establishment, "Marbella Resorts S.L. (Guadalpin Suites)", stated ma that, when the claimant person checked in, the reception was closed and that the scanning of the DNI and the collection of personal data was carried out by the personnel of the company JUBASER D CONTROL SL. company is contracted by the community of neighbors where the hotel establishment is located, for the management of the entrances/exits of the community, but that do not have any link-tion with the hotel establishment.

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However, the company JUBASER CONTROL SL., affirm that they never scan They gave the DNI of the affected person. The key to the apartment was only provided to him when showing This is the accommodation reservation.

Given the contradictions, this Agency requested the complaining party to provide the supporting documentation of the result of the police investigations carried out

as a result of the complaint filed at the Police Station and if these have given rise to the opening of legal proceedings, or failing that, to specify to this Agency, when your DNI was scanned, that is, if it was scanned by the person person who was in the counseling building that night, or was scanned to the following morning, without having received any response from the complaining party.

Therefore, based on the foregoing and given the impossibility of obtaining objective data that could provide information on the degree of responsibility entity of the claimed entity, the DIRECTOR OF THE SPANISH PROPERTY AGENCY DATA TECTION,

:

RESOLVE

FILE: this sanctioning procedure against the entity, JUBASER DE CONTROL, S.L., with CIF.: B93306736 for violation of article 6 of the RGPD.

NOTIFY: this resolution to the entity, JUBASER DE CONTROL, S.L.,

In accordance with the provisions of article 50 of the LOPDPGDD, this Re-

The solution 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 LOPDPGDD, 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 the date of

the day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court,

in accordance with the provisions of article 25 and section 5 of the additional provision

Final fourth of Law 29/1998, of July 13, regulating the Contentious Jurisdiction-

administrative, within a period of two months from the day following the notification

tion of this act, as provided for in article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Agency for Data Protection.

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