

□ File No.: EXP202205831

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: DOÑA A.A.A. (hereinafter, the claiming party) dated May 6,

2022 filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS B.B.B. with NIF

***NIF.1 (hereinafter, the COMMUNITY). The reasons on which the claim is based are
the following:

Claim against the community of owners to which it belongs for publishing in the
community bulletin board (locked), located between the doors of the
elevators of the property in the portal, notification procedure in which the
personal data of the claimant (name, surname and amount owed)
presumably under art. 9.h) of the Horizontal Property Law.

The complaining party questions the existence of prior notifications, their validity and the
validity of the resolution adopted by the meeting to require payment of the debt; since, has
communicated to the aforementioned community of owners its intention to challenge
the agreement judicially. Likewise, it alleges that said procedure has been exposed in the
tabón from February 25, 2022 until the date of presentation of the
claim, on May 6 of that same year.

Together with the notification, photographs of the notification procedure, dated
February 15, 2022, in which the name of the person claimed in
relation to the debt maintained with the COMMUNITY, as well as photographs of the
situation of the community bulletin board.

The claim is also accompanied by the documentation related to the challenge of the resolution adopted at the aforementioned meeting.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), said claim was transferred to the COMMUNITY, for to proceed with its analysis and inform this Agency within a month of the actions carried out to adapt to the requirements established in the regulations of Data Protection.

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2/8

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 June 11, 2022, as stated in the certificate that is 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 informative, a copy was sent by postal mail on June 21, 2022, which was returned for “absent”.

THIRD: On July 12, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimant party was admitted for processing.

An attempt was made to notify the agreement for admission to processing by post, resulting in a return

for not being withdrawn from the office, proceeding to its notification by means of an announcement in the Official State Gazette, in accordance with the provisions of art. 44 of the LPACAP.

FOURTH: On August 30, 2022, the Director of the Spanish Agency for Data Protection agreed to initiate disciplinary proceedings against the claimed party, for the alleged violation of Article 5.1.f) of the GDPR and Article 32 of the GDPR, typified in Article 83.4 of the GDPR.

FIFTH: Notified of the aforementioned start-up agreement in accordance with the rules established in Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), the claimed party submitted a written of allegations in which, in summary, he stated that "...On December 1, 2021 an Extraordinary General Meeting is called, in which, among other agreements, detail the pending receipts accumulated by the owner of the X center and the The owners' meeting agrees to settle the debit balance and initiate a legal claim in claim of these. Both the notice of the Meeting and the minutes of the meeting are they sent Mrs. A.A.A. to the post office box of Altea, Alicante, designated by her as address for communication purposes. Unfortunately they were sent by ordinary mail and I cannot provide proof of this.

On December 14, 2021, a burofax is sent to the owner of the X center with the communication of the resolution adopted by the Board, which the company MRW informs which is refused due to unknown...", providing a copy of the burofax sent and the MRW company certification.

However, the claims were dismissed.

SIXTH: On October 18, 2022, a resolution proposal was formulated, proposing Data, the COMMUNITY OF OWNERS B.B.B., with NIF

***NIF.1, for a violation of articles 5.1 f) and 32 of the GDPR, typified in the

Articles 83.5 and 83.4 of the GDPR:

THOUSAND EUROS (€1,000) for alleged violation of article 5.1 f) typified in article 83.5 GDPR.

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3/8

FIVE HUNDRED EUROS (€500) for alleged violation of article 32 typified in the article 83.4 GDPR.

SEVENTH: On October 28 of this year, the COMMUNITY presented allegations to the resolution proposal in which he expresses his disagreement with the THIRD PROVEN FACT of the resolution proposal, returning to contribute to the file the burofax of the communication of the settlement of the debit balance.

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: It is proven in the file that the claimant is the owner of a property located in the street ***ADDRESS.1 integrated in the aforementioned COMMUNITY.

SECOND: The publication on the bulletin board is accredited in the file. community announcements, located between the doors of the elevators of the property in the portal, notification procedure in which the personal data of the claimant (name, surname and amount owed).

THIRD: Attempts to subpoena or notification to the claiming party prior to the corresponding communication in the notice board of the community, at the consigned address or by default at that of

the home of which she owns, in accordance with the provisions of art. 9 o'clock

Horizontal Property Law.

FUNDAMENTALS OF LAW

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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 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

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."

Regarding the allegations presented to the motion for a resolution, the

COMMUNITY states "... In response to your response to our letter of

allegations, we must express our disagreement with its resolution. on the point

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II

4/8

3rd of the "proven facts" say that the attempts to

notification from the community and, as you will see in your own record, along with

our pleadings, we provided a copy of the burofax that we had sent to the owner. We understand, therefore, that an error has been made evaluation of the documentation provided and we request that it be corrected, dismissing the complaint and closing the file.

If necessary, we remain at your disposal for an interview.

personnel and clarify any doubts they may have...".

In response to the allegations, it is noteworthy that the file referred to above was agrees to start as a result of posting on the bulletin board community (locked), located between the doors of the elevators of the property on the portal, notification procedure containing personal data of the claimant (name, surname and amount owed) allegedly under the protection of the art. 9.h) of the Horizontal Property Law.

There is a photograph in the file of the notification procedure dated December 15, February 2022 of the agreement adopted at the Board of Owners of the Community, held on December 1, 2021.

Article 9. h) indicates the owner's obligation to "Notify whoever exercises the functions of secretary of the community, by any means that allows to have proof of receipt, address in Spain for the purposes of summons and notifications of all kinds related to the community. In default of this communication will be by address for summons and notifications the floor or premises belonging to the community, having full legal effect those delivered to the occupant thereof. If a summons or notification to the owner was attempted impossible to practice it in the place provided in the previous paragraph, it will be understood carried out by placing the corresponding communication on the bulletin board community announcements, or in a visible place for general use enabled for this purpose, with expressive diligence of the date and reasons why this form of

notification, signed by whoever exercises the functions of Secretary of the community, with the approval of the President. The notification practiced in this way will produce full legal effects within three calendar days.

Consequently, and in accordance with the provisions of the aforementioned article, the publication of said notification procedure on the bulletin board of the community requires the accreditation of notification attempts, with respect to which the COMMUNITY has stated that (the underlining corresponds to the AEPD) "...On the 1st of December 2021 an Extraordinary General Meeting is called, in which, among other agreements, the pending receipts accumulated by the Mrs. Owner are detailed of the X center and the Board of Owners agrees to settle the debit balance and initiate judicial claim in claim of these. Both the call of the Meeting and the minutes of the meeting were sent to Mrs. Lafuente to the Altea post office box, Alicante, designated by it as address for the purposes of communications. Unfortunately they were sent by regular mail and I cannot provide proof of it...".

The COMMUNITY provides the burofax for communication of the settlement of the debit balance, to prove the notifications prior to the publication of the notification procedure

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5/8

dated February 15, 2022, of the agreement reached in the Meeting of Owners of the Community, held on December 1, 2021.

Consequently, and for all the above, the allegations presented are upheld.

II

Article 5.1.f) of the GDPR

Article 5.1.f) "Principles relating to processing" of the GDPR establishes:

"1. Personal data will be:

(...)

f) processed in such a way as to guarantee adequate security of the personal data, including protection against unauthorized processing or illicit and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality»).".

The facts exposed reveal the disclosure of personal data personal, which would suppose the possible violation of the duty of confidentiality in the treatment of personal data when published on the bulletin board of the COMMUNITY the notification procedure in which the personal data of the claimant (name, surname and amount owed) allegedly under art. 9.h) of the Horizontal Property Law.

It must be taken into account that the exposure on the bulletin board of the COMMUNITY, of personal data must comply with a series of principles in order not to violate the data protection regulations.

As a means of personal and individualized notification to the owner, the Law of Horizontal Property, indicates the cases in which the exposure of data is authorized of a personal nature related to matters arising from the management of the Community of owners.

Its article 9. h) indicates the owner's obligation to "Notify whoever exercises the functions of secretary of the community, by any means that allows to have proof of receipt, address in Spain for the purposes of summons and notifications of all kinds related to the community. In default of this

communication will be by address for summons and notifications the floor or premises belonging to the community, having full legal effect those delivered to the occupant thereof. If a summons or notification to the owner was attempted impossible to practice it in the place provided in the previous paragraph, it will be understood carried out by placing the corresponding communication on the bulletin board community announcements, or in a visible place for general use enabled for this purpose, with expressive diligence of the date and reasons why this form of notification, signed by whoever exercises the functions of Secretary of the community, with the approval of the President. The notification practiced in this way will produce full legal effects within three calendar days.

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6/8

In this case, the existence of prior notifications is established, meeting the requirements indicated for such exposure.

Consequently, for the purposes of compliance with data protection regulations there has not been an undue exposure of personal data nor has the duty of confidentiality.

IV.

GDPR Article 32

Article 32 "Security of treatment" of the GDPR establishes:

"1. Taking into account the state of the art, the application costs, and the nature of nature, scope, context and purposes of processing, as well as probability risks and variable severity for the rights and freedoms of natural persons, the responsibility

responsible and the person in charge of the treatment will apply appropriate technical and organizational measures.

measures to guarantee a level of security appropriate to the risk, which, where appropriate, will include

yeah, among others:

a) the pseudonymization and encryption of personal data;

b) the ability to guarantee the confidentiality, integrity, availability and re-

permanent silence of treatment systems and services;

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

quickly in the event of a physical or technical incident;

d) a process of regular verification, evaluation and assessment of effectiveness

technical and organizational measures to guarantee the security of processing

I lie.

2. When assessing the adequacy of the security level, particular account shall be taken of

The risks presented by the data processing, in particular as a consequence

of the destruction, loss or accidental or illegal alteration of personal data transmitted

collected, preserved or processed in another way, or the unauthorized communication or access

two to said data.

3. Adherence to a code of conduct approved under article 40 or to a mecha-

certification document approved in accordance with article 42 may serve as an element to

demonstrate compliance with the requirements established in section 1 of this

article.

4. The controller and the processor shall take measures to ensure that

any person acting under the authority of the controller or processor and having

ga access to personal data can only process such data following instructions

of the controller, unless it is required to do so by Union law or by

the Member States”.

There is the possibility of disseminating the call and the list of defaulters in the "Tablón de

Announcements" of the Community of Owners, prior compliance with the legal requirements.

Welsh.

In the present case, the bulletin board is located between the elevator doors.

property censors on the portal, allowing said information to be revealed and

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7/8

may be known not only to the owners but also to any third party who

access each of the blocks.

The "bulletin board" of the Community will have to be locked with the key that

the President and/or Administrator or person designated for that purpose must be depositary,

exclusively.

The dissemination of the list of a debtor neighbor may be published only in the event

included in article 9 of the Horizontal Property Law, section h) second paragraph.

do, "If a summons or notification to the owner was attempted, it was impossible to carry it out in

the place provided in the previous paragraph, it shall be understood as carried out by placing

placement of the corresponding communication on the community bulletin board, or

in a visible place of general use enabled for this purpose, with express diligence of the date

and reasons for which this form of notification is made, signed by the person exercising

the functions of secretary of the community, with the approval of the president. The news-

Fication practiced in this way will produce full legal effects within three

natural days..."

Consequently, whenever the publication is due to the fact that the Call-

of the Board, in which the data referred to in article 16.2 of the

Horizontal Property Law, it has not been possible to notify any of the owners by the procedure that has just been described, the transfer that implies the publication of the Call on the bulletin board would be covered by the regulations of data protection.

To proceed in this way, notification attempts must be accredited; circumstances-

This stance has been accredited in the file.

V

Conclusion

Therefore, based on what is indicated in the previous paragraphs, no Evidence proving the existence of an infringement in the area of competence of the Spanish Data Protection Agency.

Thus, in accordance with what has been indicated, by the Director of the Spanish Agency for Data Protection,

HE REMEMBERS:

FIRST: PROCEED TO THE ARCHIVE of the present actions.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

B.B.B., with NIF ***NIF.1.

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8/8

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common for Public Administrations, and in accordance with the provisions of the arts. 112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may file, optionally, an appeal for reversal before the Director of the Agency Spanish Data Protection Agency within a period of one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National Court, in accordance with the provisions of article 25 and paragraph 5 of the provision additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction Contentious-Administrative, within a period of two months from the day following to the notification of this act, as provided in article 46.1 of the aforementioned Law.

Mar Spain Marti

Director of the Spanish Data Protection Agency

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