

□ File No.: EXP202213118 (PS/00676/2022)

RESOLUTION OF SANCTIONING PROCEDURE

Of the actions carried out by the Spanish Data Protection Agency and in

based on the following

BACKGROUND

FIRST: On 02/23/22, Mrs. A.A.A. (hereinafter, the claimant) filed

claim before the Spanish Data Protection Agency.

The claim was directed against the entity MARINA MARIOLA SL., with CIF.:

B29695327, owner of the web page ***URL.1, (hereinafter, the claimed party), for the

alleged violation of data protection regulations: Regulation (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 and the

Free Circulation of these Data (GDPR), Organic Law 3/2018, of December 5,

Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD)

and Law 34/2002, of July 11, on Services of the Information Society and

Electronic Commerce (LSSI).

The reasons indicated in the claim were, in essence, the following:

"1. That, dated 12.04. 22, and in accordance with the provisions of the LOPDGDD,

We informed that AEPD, in detail, that the page

Web: ***URL.1 , does not comply with the regulations on data processing

personal information reflected in the LOPDGDD and the GDPR.

2. On 05.30.22, we were notified in writing by the AEPD, in which we

indicate: a. That the defendant has been informed of the legal requirements

required by the applicable regulations. b. That, however, in the event that

the non-adoption by the defendant of the measures is verified

corrections that, where appropriate, were necessary, would initiate, where appropriate, the actions provided for in the aforementioned regulations for cases of non-compliance, in accordance with the investigative and sanctioning powers of the agency.

3. With a letter dated 07.19.22 we communicated to that AEPD that we had verified that the website: ***URL.1 , still did not comply with the regulations in matter of data processing by presenting the same deficiencies and use of data in consent that were the subject of a complaint on our part.

4. On 09.23.22 we received notification from that AEPD in which we communicated that "... on August 31, 2022, the notification of the communication sent to the denounced entity, which had been rejected in previous notification attempts."

5. After more than two months have elapsed since such notification, we have verified that today the website: ***URL.1 still does not comply with the

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2/16

regulations on the processing of personal data. This is, I don't know they have adopted the corrective measures that the AEPD has required.

SECOND: On 02/01/23, this Agency accesses the website

***URL.1, verifying the following characteristics regarding the possibility of Obtaining personal data from users, on its "Privacy Policy" and about its "Cookies Policy":

a).- On the possibility of obtaining personal data of the users of the

web page in question:

It has been verified that the web page, ***URL.1 can obtain personal data of its users through the following mechanisms:

a.1.- Through the link <<contact>>, existing at the top of the page main page, the web displays a form where you can enter personal data such as name, e-mail, telephone and subject.

To be able to send the form through the option, <<send>>, you must click before in the box of, " _ I am not a robot",

a.2.- Through the link <<manage your home>>, at the top of the home page, the website displays a menu with various options: buy/sell; rent; vacation rental; transfers, cleaning; maintenance; reforms; decor; news; services.

In each of the menu options a form is displayed where you can enter personal data such as name, e-mail, telephone and subject. To send the form <<send>>, you must first click on the option " _ I am not a robot".

b).- Regarding the "Privacy Policy":

If you access the <<Privacy Policy>> through the link located in the bottom of the main page, the web redirects the user to a new page ***URL.2, where the following information is provided:

"Privacy Policy: Through this website, no personal data is collected.

personal nature of the users without their knowledge, nor are they transferred to third parties.

In order to offer you the best service and in order to facilitate use,

the number of pages visited, the number of visits, as well as the

visitor activity and frequency of use. To these effects,

Marina Mariola Marbella uses the statistical information prepared by the

Internet Service Provider. Marina Mariola Marbella does not use cookies

to collect user information, nor does it record the IP addresses of

access. Only own, session cookies are used for the purpose of

technique (those that allow the user to navigate through the website and

the use of the different options and services that exist in it). He

The portal owned by Marina Mariola contains links to websites of

third parties, whose privacy policies are unrelated to those of Marina Mariola

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3/16

Marbella. By accessing such websites you can decide whether to accept their

privacy and cookie policies. In general, if you browse

internet you can accept or reject third-party cookies from the

configuration options of your browser.

In compliance with the provisions of article 5 of the LOPD, it is reported that the

personal data that is collected directly from the user through

of the different resources available on the portal will be treated in a

confidential and will be incorporated into the respective files of which it is

responsible Marina Mariola Marbella, with the purposes detailed in the

General Registry of Data Protection not being used for purposes

incompatible with these. The data collected may be transferred in cases

provided, for each file, in said Registry.

Those affected can exercise the rights of access, rectification,

cancellation and opposition to Marina Mariola Marbella, by means of a letter addressed to

a C/Pepe Carleton 1 Marina Mariola Building, 29.602 Marbella - Málaga.

Intellectual and industrial property: The design of the portal and its source codes, as well as logos, brands and other distinctive signs that appear on the same belong to Marina Mariola Marbella and are protected by the corresponding intellectual and industrial property rights.

Responsibility for the contents: Marina Mariola Marbella is not made responsible for the legality of other third-party websites from which the portal can be accessed. Marina Mariola Marbella is not responsible for the legality of other third-party websites, which may be linked or linked from this portal. Marina Mariola reserves the right to make changes to the website without prior notice, in order to keep your website updated information, adding, modifying, correcting or deleting the contents published or the design of the portal. Marina Mariola will not be responsible for the use that third parties make of the information published on the portal, nor of the damages suffered or economic losses that, directly or indirectly, produce or may cause economic, material or data damage, caused by the use of said information.

Reproduction of contents: The total or partial reproduction of the contents is prohibited. content published on the portal. However, the contents that are considered as open data in the Electronic Office, published as provided for in Royal Decree 1495/2011, of October 24, on the development of the Law 37/2007, on the reuse of public sector information, for the scope of the state public sector, may be reproduced in the terms contained in the Notice.

General Data Protection Registry: Information on files registered in the General Data Protection Registry is published in accordance

with the provisions of article 14 of Organic Law 15/1999, of 13

December, Protection of Personal Data (LOPD). The

total or partial reproduction, including dumping of the contents of the Registry to

any support, will require the express authorization of Marina Mariola Marbella.

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4/16

The personal data included in the Registry may not be object of treatment, or used for different purposes.

Applicable Law: The applicable law in case of dispute or conflict of interpretation of the terms that make up this legal notice, as well as any question related to the services of this portal, will be Spanish law.

If the existing information is accessed in the <<Legal Notice>> of the web, through the link located at the bottom of the main page, the web redirects the user to a new page, ***URL.3, where the following information is provided:

Official Website of the Marina Mariola Marbella Building, represented by its Promoter and Builder and representing properties of third parties for their marketing and sale. In no case does it represent the Community of Owners and/or their representatives.

Marina Mariola and its logo are registered trademarks and may not be used without the consent of its owner with the risk of criminal action.

Privacy policy and legal notice: Privacy policy: Through this site web does not collect personal data from users without their knowledge, nor are they transferred to third parties. In order to offer you the best

service and in order to facilitate use, the number of pages are analyzed visited, the number of visits, as well as the activity of the visitors and their frequency of use. For these purposes, Marina Mariola Marbella uses the statistical information prepared by the Internet Service Provider.

Marina Mariola Marbella does not use cookies to collect information from users, nor does it record the access IP addresses. are only used Own cookies, session cookies, for technical purposes (those that allow the user to user browsing through the website and the use of the different options and services that exist in it). The portal owned by Marina Mariola Marbella contains links to third-party websites, whose privacy policies privacy are alien to those of Marina Mariola Marbella. By accessing such websites you can decide if you accept their privacy policies and cookies. In general, if you browse the internet you can accept or reject third-party cookies from the configuration options of your browser. In compliance with the provisions of article 5 of the LOPD, informs that the personal data that is collected directly from the user through the different resources available on the portal will be treated confidentially and will be included in the respective files of the for which Marina Mariola Marbella is responsible, for the purposes set forth detailed in the General Data Protection Registry not being used for purposes incompatible with these. The data collected may be ceded in the cases provided, for each file, in said Registry. The affected can exercise the rights of access, rectification, cancellation and opposition before Marina Mariola Marbella, by means of a letter addressed to C/Pepe Carleton 1 Marina Mariola Building, 29.602 Marbella - Malaga.

Intellectual and industrial property:

The design of the portal and its source codes,

as well as the logos, brands and other distinctive signs that appear on the

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5/16

themselves belong to Marina Mariola Marbella and are protected by the

corresponding intellectual and industrial property rights.

Responsibility for the contents: Marina Mariola Marbella is not made

responsible for the legality of other third-party websites from which

the portal can be accessed. Marina Mariola Marbella is not responsible for the

legality of other third-party websites, which may be linked or

linked from this portal. Marina Mariola reserves the right to make

changes to the website without prior notice, in order to keep your website updated

information, adding, modifying, correcting or deleting the contents

published or the design of the portal. Marina Mariola will not be responsible for the use

that third parties make of the information published on the portal, nor of the

damages suffered or economic losses that, directly or indirectly,

produce or may cause economic, material or data damage,

caused by the use of said information.

Reproduction of contents: The total or partial reproduction of the contents is prohibited.

content published on the portal. However, the contents that are

considered as open data in the Electronic Office, published as

provided for in Royal Decree 1495/2011, of October 24, on the development of the

Law 37/2007, on the reuse of public sector information, for the

scope of the state public sector, may be reproduced in the terms contained in the Notice.

General Data Protection Registry: Information on files registered in the General Data Protection Registry is published in accordance with the provisions of article 14 of Organic Law 15/1999, of 13 December, Protection of Personal Data (LOPD). The total or partial reproduction, including dumping of the contents of the Registry to any support, will require the express authorization of Marina Mariola Marbella. The personal data included in the Registry may not be object of treatment, or used for different purposes.

Applicable Law: The applicable law in case of dispute or conflict of interpretation of the terms that make up this legal notice, as well as any question related to the services of this portal, will be Spanish law.

c).- Regarding the cookies detected when accessing the web:
c.1.- When entering the website for the first time, once the terminal equipment has been cleaned browsing history and cookies, without accepting new cookies or making any action on the web page, it has been verified that the following cookies are used:

Strictly necessary cookies:

2
cookies
Domain

Description

PHPSESSID

***DOMAIN.1

Cookie generated by applications

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6/16

cookies

Domain

Description

PHPSESSID

***DOMAIN.1

based on the PHP language. This

is a purpose identifier

generally used for

keep session variables

of the user. It is usually a

randomly generated number,

the way it is used can be

site specific, but a good

example is to maintain a state

login for a

user between pages.

Cookie generated by applications

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generally used for

keep session variables

of the user. It is usually a

randomly generated number,
the way it is used can be
site specific, but a good
example is to maintain a state
login for a
user between pages.

Performance Cookies:

3

cookies

Domain

Description

_ga

***DOMAIN.1

This cookie name is
associated with Google Universal
which is a
analytics,
update
important of
most used analytics service
of Google. This cookie is used
to distinguish unique users
by assigning a
randomly generated number
as customer identifier. HE
included in each application for

page on a site and is used to

calculate visitor data,

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7/16

cookies

Domain

Description

_gid

.***DOMAIN.1

_gat

.***DOMAIN.1

sessions and campaigns for

site analysis reports.

This cookie is set by

Google Analytics. stores and

updates a unique value for each

page visited and is used to

Count and track pageviews.

This cookie name is

associated with Google Universal

analytics,

the

documentation is used to

accelerate the application rate, which

limiting data collection

on high traffic sites.

according to

c.2.- It is verified that there is no type of information banner about cookies

on the main page. There is also no possibility of rejecting or managing the

Cookies that are not technical or necessary. There is also no type of control panel.

cookie control, (second layer), where cookies can be managed in a

granulate or reject them.

c.-3.- There is no information on the main page of the website about the

"Cookies" used on the web. There is also no link on that page that

can redirect the user to the "Cookies Policy".

The only existing information on the website about cookies is that provided in

the "Privacy Policy" (**URL.2), where you can read the following:

"(...) Only own, session cookies are used for technical purposes

(those that allow the user to navigate through the website and the

use of the different options and services that exist in it (...)"

There is also a reference to the "Cookies Policy" included in the information

provided on the "Legal Notice" page (**URL.3), where you can read:

"(...) Marina Mariola Marbella does not use cookies to collect information from

users, nor does it record access IP addresses. are only used

Own cookies, session cookies, for technical purposes (those that allow the user to

user browsing through the website and the use of the different

options and services that exist in it (...)"

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8/16

THIRD: On 03/08/23, by the Board of Directors of the Spanish Agency for Data Protection, a sanctioning procedure is initiated against the claimed entity, at assess reasonable evidence of violation of the provisions of article 13 of the GDPR due to the lack of information in accordance with current regulations, on the treatment of personal data when obtained through the website of its ownership by referring to a repealed LOPD, with an initial sanction of 5,000 euros (five thousand euros) and for the violation of article 22.2 of the LSSI for the deficiencies detected, regarding the cookies policy, on the web page in question, (the use of cookies that are not technical or necessary; the impossibility to reject them or to manage them in a granular way and the non-existence of information on the use of cookies) with an initial penalty of 5,000 euros (five thousand euro).

In addition, to the foregoing, and in application of article 58.2 of the GDPR, it was indicated that, if Once the infringement is confirmed, it could be agreed to impose on the controller the adoption of adequate measures to adjust its performance to current regulations, in what with respect to the provisions of article 13 of the GDPR.

FOURTH: On 03/22/23, the respondent entity submits a written statement of allegations to the initiation of the file, in which, among others, it states the following:

FIRST. – FACTS GIVING RISE TO THE ALLEGED INFRINGEMENTS.

1.- The claimant filed a claim with the AEPD on the 23rd of February 2022 against Marina Mariola S.L. was followed in the file with reference EXP202206270, stating that the person in charge of the website

URL.1 has published on said website, in the news section (URL.4) data

personal data of two people (name and surname of both and, in addition, a photograph of him) without his consent and accusing them of having occupied a property and not having paid the price corresponding to the rent.

The complaining party also stated that they do not appear on the page ***URL.1 the data of the owner of the website, a fact that is true. In view of this claim, Marina Mariola S.L. submitted allegations dated July 8, 2022.

Attached as document No. 2 said statement of allegations and proof of presentation.

2.- A second proceeding was carried out against Marina Mariola, whose file has reference EXP202206119, which dealt with the infringement of the web page in question, of the Privacy Policy and Cookies Policy.

Given this notification, Marina Mariola S.L. presented allegations on the 23rd of September 2022, with the same rationale as in the first proceedings. Attached as document number 3 is the document presented in this file and proof of presentation.

SECOND. – THE FACTS DESCRIBED ABOVE ARE NOT ATTRIBUTABLE TO MARINA MARIOLA S.L.

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9/16

As you can see, in the brief presented we already explained the impossibility of Marina Mariola S.L. to comply with the regulations of the LOPDGDD and LSSI, since Marina Mariola S.L. is not the creator of this website or no other and, therefore, is not the owner of the ***URL.1 web domain.

Therefore, Marina Mariola S.L. It is not who has published the personal information of the claimants and not being the owner of the page has no control or the possibility to delete such published personal data; just like neither has no control or possibility to modify the infractions committed with respect to the cookie policy and privacy policy.

THIRD.- ATTEMPT TO PROVE THE NON-OWNERSHIP OF THE MARINA MARIOLA S.L. REGARDING THE WEB DOMAIN.

As we have seen, the AEPD accessed the web page ***URL.1 for

verify the points expressed by the claimant. Yet we see that it has not responded to the request for verification of ownership that this part he stated to him in his 2 previous writings, since nothing is said in the agreement to start disciplinary proceedings.

Therefore, it can be seen that the AEPD has assumed that by the mere fact of that the domain name of the web page is ***URL.1 must be of the owned by the company that bears the same name, Marina Mariola S.L.

We reiterate that this is not the case. Nowadays, you can buy a domain in any hosting company, without asking for any type of accreditation or prerequisite to acquire a specific domain.

Anyone has been able to acquire the domain that included «Marina Mariola» and write on the page that the owner company is Marina Mariola S.L. posing as said legal person.

It is vitally important that the AEPD not only verify the facts that the claimant expressed in his brief, but the facts that this party also manifest, so that they can go against the true owner of the web domain, which is who will be able to meet your compliance requirement

of the LOPDGDD and the LSSI.

For this reason, we reiterate the arguments already presented in the two writings that we present in the 2 files opened against Marina Mariola for these questions (EXP202206270 and EXP202206119): 1.- Willing to try that, indeed, Marina Mariola S.L. is not the creator of the web page in question, we contacted the company OVHCloud -thanks to which it was possible to acquired the domain ***URL.1 and the one that, therefore, has the data of the holder of said domain - to request some type of certification or justification that Marina Mariola S.L. is not the creator -it is not the owner- of said website and, therefore, Therefore, it is not the one that has published the personal information of the claimants nor has breached the LSSI.

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10/16

This contact was unsuccessful, since we were denied such a certificate by phone and they answered the email with a generic email automatically generated.

We attach as document number 4 the email and its corresponding response.

2.- Because the previous evidentiary route has not been possible due to external causes

At this point, there is another second possibility of demonstrating that Marina Mariola

S.L. and the creator of that web page are different people. If we agree to

the page ***URL.1 , appears several times on the web and, more

specifically, in the Contact section, the telephone number +34 661 869

811.

We attach a screenshot as document no. 5. Next, if

we access the web ***URL.5 we can see that the mobile phone number contact is the same, ***PHONE.1.

We attach a screenshot as document no. 6. This company,

Highcliffe Estates Marbella S.L. has a single administrator, who is a person other than the sole administrator of Marina Mariola S.L.

For this, we attach simple notes from the company Highcliffe Estates Marbella S.L. and Marina Mariola S.L. as attachments no. 7 and 8, respectively. That is, it is clear that the person who created the page web ***URL.1 is not the company Marina Mariola S.L.

FOURTH.- INVESTIGATION REQUEST BY AEPD OF DATA OF THE WEB DOMAIN OWNERSHIP.-

Despite being evidenced by the evidence previously provided that Marina Mariola S.L. is not responsible for the facts that motivate the 3 files directed against Marina Mariola S.L., this party requests the AEPD that, through the appropriate channels, verify with the appropriate means the identity of the person who owns the web page ***URL.1 , based on the Articles 51 and following of the LOPDGDD Law.

Thus, the collaboration of OVHCloud is mandatory, for the Obtaining data from the owner of the web page ***URL.1 that requires the AEPD - collaboration that was denied to this party - according to article 52.1 LOPDGDD. Specifically, the AEPD may obtain from OVHCloud the necessary information because they are facts carried out through the use of a information society service, as permitted by article 52.3, in its section b), which establishes the following:

3. When you have not been able to make the identification by other means, the

The Spanish Agency for Data Protection may collect from the operators that provide electronic communications services available to the public and of the service providers of the information society the data that in their possession and that are essential for the identification of the allegedly responsible for conduct contrary to Regulation (EU) 2016/679 and to this organic law when it has been carried out through the

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11/16

use of a service of the information society or the performance of an electronic communication. For such purposes, the data that the Agency Española de Protección de Datos may collect under this section are the following: [...] b) When the conduct was carried out through the use of a service of the information society: 1. Identification of the Internet protocol address from which the the conduct and the date and time of its completion. 2nd. If the conduct had been carried out by email, the identification of the address of Internet protocol from which the email account was created and the date and time in which it was created. 3rd The name, identification document number and address of the subscriber who has been assigned the Protocol address Internet to which the two preceding paragraphs refer. These dates must be transferred, prior reasoned request of the AEPD, exclusively within the framework of investigative actions initiated as consequence of a complaint filed by an affected person regarding a

conduct of a legal person or regarding the use of systems that

allow unrestricted disclosure of personal data. [...]’.

For all of the above, this party requests the AEPD to request the

protocol address identification - more commonly known as

IP address - which created the web page ***URL.1 and, therefore, which violated the

LOPDGDD and the LSSI, and the data (such as name, document number

identification and address of the person) associated with the IP address

previously referred to.

FIFTH - ARCHIVE AND DISMISSAL OF ALL FILES

DIRECTED AGAINST MARINA MARIOLA S.L. AND THE NON-IMPOSITION OF

PROPOSED SANCTION.

We are not going to analyze the facts and their legal basis, since it has been

proven that this party does not have passive standing to be part of the

proceedings. After verification by the means provided by this party, together with

with relevant investigative procedures to confirm the

separation between the owner of the web domain in question and Marina Mariola

S.L., it is pertinent to request the filing and dismissal of this file

sanctioning and all the files directed against Marina Mariola S.L. and

the non-imposition of the proposed sanction of 10,000 euros, since it is not the

creator of the web page in question and, therefore, is not the person who has

published the personal information of the claimants.

SIXTH - VIOLATION OF THE PRINCIPLE OF PERSONALITY IN THE

SANCTIONING ADMINISTRATIVE PROCEDURE.

Due to the nature of this disciplinary file, we cannot forget

that the principles that should govern it are those characteristic of law

administrative sanction, among which is the principle of

personality of sorrows Regarding this principle, it should be noted that it is included in article 25.1 of the Spanish Constitution, which means that against its violation, it is possible to file an appeal for amparo before the Court Constitutional.

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12/16

There is extensive jurisprudence on this principle that makes clear the concept and its consequences: thus, only the sanction can be imposed to that subject who has committed the acts that originate the sanction that is intends to impose This principle has the consequence that verify that the acts giving rise to the sanction have been committed by the person to whom the disciplinary procedure is directed, as well expressed in the Judgment of March 9, 2017 issued by the Third Chamber of the Supreme Court, "Only the offender is the one who has to pay the sanction, since it is about a repressive measure that he has to face as compensation for the commission of an infraction, which leads us to the extinction of the responsibility derived from infringements and tax sanctions."

The AEPD has directed the procedure against Marina Mariola S.L. for the mere fact that the web domain that has committed the infringements has the name of the company and that on the website it appears written that the owner of the website is Marina Mariola S.L. However, let us remember that today you can easily impersonate anyone by electronic means.

The AEPD must be clear that the only manifestations that proceed

truly from Marina Mariola S.L. are those expressed in this and in the 2 other documents presented previously -as you will be able to verify in the power that is attached that it is so - and in which we have reiterated that that page web (**URL.1) has not been created by Marina Mariola S.L.

Thus, the STS of May 3, 1988 considers that "being common to the criminal order and to the sanctioning administrative the principles on which the power rests punitive of the State - article 25 of the Constitution, it is necessary to state clearly the authorship of the infraction to be able to impose the sanction, and this authorship does not appear at all in the present case in which what appears is that the sanctioned Promoter used construction professionals to carry out the work (professionals, contractor), being evident that it is not possible to sanction without further ado the Promoter of the work as if he were responsible, for the mere fact of having been the Promoter, due to the vices or defects that appeared in it, since what is unavoidable in these cases is to purify its possible eventual responsibilities." As we see in the Judgment, it cannot be taken for granted fact that Marina Mariola S.L. is responsible for the infringing conduct without further ado, for the mere fact of having the same name as the domain and some statement that it puts on the web page, without checking if it truly is the responsible subject, despite the fact that this party - Marina Mariola S.L. - has requested so on several occasions.

SEVENTH.- NOTIFICATION OF THE EXISTENCE OF THE WEB PAGE

***URL.1 TO THE OVHCLOUD HOSTING SERVICE.

The hosting service that allowed the creation of the web page ***URL.1 allows send them notifications about infractions and illegal content established in the web pages created through your company. That is why, for older in addition to the above and in order to prove that Marina Mariola S.L. it's not

neither the creator nor the owner of this web domain, we have presented said notification

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13/16

before OVHCloud. We attach as document no. 9 the proof of

presentation. For these reasons, I REQUEST V.S., that, having

presented this writing, along with the accompanying documents, deigns

admit it, considering the allegations formulated in due time and form

contained in the body of the same, and prior to the timely processing

(including the verifications that this party has requested and that the Agency

The Spanish Data Protection Agency deems appropriate to carry out to know the

Ownership of the web page ***URL.1.

FIFTH: This Agency has verified that there is a second

file opened in this Agency for a second claim filed with

dated 04/19/22, by the same claimant against the owner of the website ***URL.1, as

consequence of an alleged publication in it of your personal data, without

their consent, which caused in that case, the opening, in this Agency, of the

file EXP202206270.

During the development of the procedure of said file, the

claim to the entity MARINA MARIOLA SL to inform this Agency

about the claim presented and in his answer he stated that he was not the owner

of the domain "****DOMAIN.1", sending as proof, the impression of the screen of

contact of the website where the telephone number was listed ***TELEPHONE.2, telephone number that matched

with the one that appeared on another website (***URL.6) and whose owner is the entity, HIGHCLIFFE

ESTATES MARBELLA SL.

In the previous actions carried out by this Agency, within the file

EXP202206270, the following results were obtained:

- In ASEXOR (**URL.7) there are three entities with the name MARINA

MARIOLA:

o MARINA MARIOLA SL with NIF B29695327 with address at Avda. José

Meliá, Marina Mariola Apt. Building - 29602 MARBELLA (MÁLAGA) whose

activity is: "Buy and sell real estate."

o MARINA MARIOLA PROPERTIES SL with NIF B93610780 with

address at Avd. Ricardo Soriano 65 2 4 29601 MARBELLA (MALAGA)

whose activity is: "Buy and sell real estate on behalf of

own".

or COM. PRO. MARINA MARIOLA with NIF H92391762 with address at

C/ José Meliá (Casablanca Urbanization) 29602 MARBELLA

(MALAGA) whose activity is "Other associative activities".

- AXESOR (**URL.7) contains the entity HIGHCLIFFE ESTATES MARBELLA

SL with NIF B93407872 with address C/Pepe Carleton 1, Edf MARINA

MARIOLA Apt D2 29602 MARBELLA (MALAGA).

- On the web ***URL.1 the phone number ***TELEPHONE.2 appears as a contact and on the

legal notice appears for the exercise of rights the address MARINA

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

sedeagpd.gob.es

14/16

MARIOLA MARBELLA c/ Pepe Carleton 1 MARINA MARIOLA Building 29602

MARBELLA (MALAGA)

- On the web ***URL.6 the telephone number ***TELEPHONE.2 and the

Privacy Policy appears: "The portal owned by Marina Mariola

Marbella... Those affected can exercise the rights of access,

rectification, cancellation and opposition before Marina Mariola Marbella, through

letter addressed to C/Pepe Carleton 1 Edificio Marina Mariola, 29602 Marbella –

Malaga".

- On 09/09/22, a request for information was sent to the entity

HIGHCLIFFE ESTATES MARBELLA SL and in its response, the entity

responds as MARINA MARIOLA SL indicating that it was requested in June and

He already stated that he was not the owner of the page ***URL.1 .

- On 10/05/22, a request for information is sent to OVH CLOUD, which

appears as registrar of the domain ***DOMAIN.1. replying to this Agency

that the owner of the domain "***DOMAIN.1" is D. B.B.B. C/ ***ADDRESS.1.

TELEPHONE ***TELEPHONE.3.

PROVEN FACTS.

Of the actions carried out in this procedure and of the information and

Documentation presented has proven the following facts:

First: The claim presented in this proceeding was based on the

deficiencies observed in the web page ***URL.1, regarding its "Policy of

Privacy" and regarding its "Cookies Policy".

Second: Once the deficiencies in the "Privacy Policy" and in the

"Cookies Policy" of the page in question by this Agency was opened

disciplinary file against the entity MARINA MARIOLA, with CIF.: B29695327,

Third: In the allegations presented by the entity MARINA MARIOLA, it is

stated that they were not the owners of the ***URL.1 website and therefore were not

responsible for the deficiencies detected. They also show that the same claimant had filed another writ against them referring to some images published on said website and that the Agency had carried out an investigation process within file EXP202206270, where it had been concluded that the owner and responsible for said web page was D.C.C.C.

Fourth: It has been verified that, on 04/19/22, the same claimant filed another claim against the owner of the website ***URL.1 , as a result of a publication in it of your personal data, without your consent, which In this case, this caused the opening, by this Agency, of the file EXP202206270. resulting in the owner and manager of the website in question was D. B.B.B., and not the entity MARINA MARIOLA SL., with CIF.: B29695327.

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28001 – Madrid

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15/16

YO.-

Competence:

- On the treatment of personal data and the "Privacy Policy" in the

Web page:

It is competent to initiate and resolve this procedure, the Director of the Agency Spanish Data Protection Agency, by virtue of the powers that article 58.2 of the GDPR recognizes each Control Authority and, as established in arts. 47, 64.2 and 68.1 of the LOPDGDD Law.

- About the "Cookies Policy" on the website:

It is competent to initiate and resolve this procedure, the Director of the Agency

Spanish Data Protection, in accordance with the provisions of art. 43.1,

second paragraph, of Law 34/2002, of July 11, on Company Services

of Information and Electronic Commerce (LSSI),

II.-

In the present case, the claim was based on the deficiencies observed in the

web page ***URL.1, regarding its Privacy and Cookies Policy.

Started in disciplinary proceedings against the entity MARINA MARIOLA SL, for

the deficiencies detected in the web page, it states in its allegations that it does not

be the owner of the web page ***URL.1; and that the claimant herself had presented

another letter against them referring to some images published on said website and that the

Agency had carried out an investigation process within the file

EXP202206270 resulting in the owner of the website being D. B.B.B. and

not them.

III.-

As specified in article 4.2 of the GDPR, we must understand data processing

personal like:

“Any operation or set of operations performed on data

personal data or sets of personal data, either by procedures

automated or not, such as the collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use,

communication by transmission, diffusion or any other form of authorization of

access, collation or interconnection, limitation, deletion or destruction;

Points 7 and 8 of said article also specify what should be understood

by data controller and data processor. Thus we have, as:

7) "responsible for the treatment" or "responsible" is the natural person or legal entity, public authority, service or other body which, alone or together with others, determine the purposes and means of processing; if Union law or of the Member States determines the purposes and means of processing, the

C / Jorge Juan, 6

28001 – Madrid

www.aepd.es

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16/16

responsible for the treatment or the specific criteria for its appointment

they may be established by law of the Union or of the Member States;

In short, the data controller is the natural or legal person or authority

public, which decides on the processing of personal data, determining the

purposes and means of such processing. Under the principle of responsibility

proactively, the data controller has to apply technical measures and

organizational measures for, in response to the risk involved in the processing of the data

personal, comply and be able to demonstrate compliance.

In the present case, it has been possible to verify that the owner of the web page ***URL.1

is D.B.B.B., as stated by the domain registrar "****DOMAIN.1", OVH

CLOUD.

Therefore, according to the available evidence, after the analysis

carried out on the documents provided by the claimed entity, it can be

verify that there is no evidence of the violation of the GDPR or the LSSI, by

of the claimed entity, as it is not the owner of the page ***URL.1.

Therefore, in accordance with the foregoing, by the Director of the Agency

Spanish Data Protection,

RESOLVES:

ARCHIVE: this disciplinary procedure against the entity MARINA MARIOLA

SL., with CIF.: B29695327, for the alleged violation of articles 13 of the GDPR and

22.2 of the LSSI.

NOTIFY: this resolution to the entity, MARINA MARIOLA SL., and inform the

claimant.

In accordance with the provisions of article 50 of the LOPDPGDD, 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

LOPDPGDD, 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.

Mar Spain Marti

Director of the Spanish Data Protection Agency.

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