

Procedure No.: PS/00180/2019

938-0419

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: Ms. A.A.A. (hereinafter, the claimant) dated December 13,

2018 filed a claim with the Spanish Data Protection Agency. The

claim is directed against COMMUNITY OF OWNERS *** ADDRESS.1 and

***ADDRESS.2, LOGROÑO (LA RIOJA) ***NIF.1 (hereinafter, the claimed) and the

The reasons on which the claim is based are that the claimant has inserted in the board of
community announcements to the claimant as a debtor being identified by her
property, not protecting such advertising the Law of Horizontal Property. Nope
not stating the reasons for such publication and also cannot be extended
beyond the period of three days indicated in the aforementioned Law.

It adds that said facts imply a transfer or disclosure of the data to a
generality of people that is excessive and is not covered by the regulations of
Data Protection.

Contribute photos from the Community bulletin board.

SECOND: Upon receipt of the claim, the Subdirector General for
Data Inspection proceeded to carry out the following actions:

On February 18, 2019, the claim was transferred to the defendant
submitted for analysis and communication to the claimant of the decision adopted at
regard. Likewise, it was required that within a month he send to the
Agency certain information:

- Copy of the communications, of the adopted decision that has been sent to the claimant regarding the transfer of this claim, and proof that the claimant has received communication of that decision.
- Report on the causes that have motivated the incidence that has originated the claim.
- Report on the measures adopted to prevent the occurrence of similar incidents.
- Any other that you consider relevant.

On the same date, the claimant was informed of the receipt of the claim and its transfer to the claimed entity.

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2/5

On March 20, 2019, the representative of the defendant D. B.B.B., presented written response to the request sent by the AEPD:

1.-

Provide a copy of the burofax sent to the claimant.

two.-

It states that the causes that have motivated the placement of the incidence are the lack of a valid address for the purposes of notifications of several co-owners of the portal located on the street *** ADDRESS.2

3.-

Add, that the placement on the notice board of the call is consequence of art. 9.1 h) of the Horizontal Property Law, that is, it has been

placed subsidiarily and not alternatively.

On 04/26/2019, in accordance with article 65 of the LOPDGDD, the Director of the Spanish Agency for Data Protection agreed to admit the claim for processing filed by the claimant against the respondent.

THIRD: On June 24, 2019, the director of the AEPD agreed:

“INITIATE PUNISHMENT PROCEDURE for the COMMUNITY OF PROPRIETORS

***ADDRESS.1 and ***ADDRESS.2, LOGROÑO (LA RIOJA) NIF ***NIF.1, by the alleged infringement of article 5.1 f) of the RGPD, punishable in accordance with the provisions in art. 83.5 of the aforementioned RGPD, and qualified as very serious in article 72.1 a) of the LOPDGDD.” opting for a sanction that could correspond to that of WARNING, being notified by the postal service on July 17, 2019.

FOURTH: Of the actions carried out in this proceeding, they have been accredited the following proven facts:

On the notice board of the Community of owners of the Community denounced, a note with the claimant's debts is displayed. It is mentioned, floor, door, period owed and amount.

The board is located in common areas. Any non-proprietary person, visitors, friends, maintenance staff etc. You can pass by that place and visualize ad.

Likewise, once the purpose of the exhibition of the call in the plank, it was removed immediately and with the greatest diligence possible.

The call to the Ordinary Annual General Meeting on September 27, 2018 was made to the claimant in her mailbox.

The exposed note does not mention any reason why the data. It contains "they are not up to date in the payment of the expenses of the Community following owners.”

The respondent has not submitted arguments to the initial agreement of this process.

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3/5

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and according to the provisions of articles 47 and 48 of the LOPDGDD, The Director of the Spanish Agency for Data Protection is competent to initiate and to solve this procedure.

II

In this case, the defendant reveals data of one of the owners, and it is to mean that the exhibition is made in a place of free and public transit in the sense that they can circulate not only the owners who would be affected by the non-payment, but also third parties, visits, etc. It must be taken into account that for the exposure of personal data in the Community bulletin board, has to adhere to a number of principles in order to not violate the data protection regulations.

As a means of personal and individualized notification to the owner, the Law of Horizontal Property, indicates the assumptions in which the exposure of data of personal nature related to matters arising from the management of the Community of Owners. Its article 9. h) indicates as an obligation of the owner "Notify whoever exercises the functions of secretary of the community, by any means that allows having proof of receipt, the address in Spain for the purposes of citations and notifications

of all kinds related to the community. In the absence of this communication, there will be by address for citations and notifications the apartment or premises belonging to the community, having full legal effects those delivered to the occupant of the same. If you tried one summons or notification to the owner was impossible to practice it in the place prevented in the previous paragraph, will be understood to be carried out by placing the communication corresponding in the bulletin board of the community, or in a visible place of general use enabled for this purpose, with expressive diligence of the date and reasons for which it proceeds to this form of notification, signed by the person who exercises the functions of Secretary of the community, with the approval of the President. Notification made in this way It will produce full legal effects within three calendar days.

Article 19.3 of the LPH, second paragraph, states: "The minutes of the meetings shall be will send to the owners in accordance with the procedure established in article 9."

The community board should not serve as a board to notify or inform when personal data is exposed, if the requirements indicated in each case are not met for said exhibition and its functions be those of notification or citation.

In the present case, an informative note is being exposed to the owners, making an exhibition in a space or place of transit, becoming identifiable to a person by the neighbors who do not own the property, to be able to also include their name and surnames in mailboxes, claimant to whom the quality of debtor is attributed, may affect your honor. This note with the data as a means of information, in this case does not comply with the LPH and violates the claimant's right to data protection,

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for not proceeding the exhibition in any of the cases provided for in the aforementioned LPH, nor contain the requirements contemplated by the LPH.

Therefore, it is considered that the defendant has committed a violation of article 5.1.

f) of the RGPD that states "1. Personal data will be: f) "treated in such a way that it is ensures adequate security of personal data, including protection against unauthorized or unlawful treatment and against loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality"). Confidentiality has been breached by exposure on a bulletin board closed ownership and use by the claimed.

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles for treatment, including the conditions for consent under articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article 83 of the aforementioned Regulation, with administrative fines of a maximum of €20,000,000 or, in the case of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, opting for the highest amount.

The LOPGDD in its article 5.1 indicates: "Duty of confidentiality":

Those responsible and in charge of data processing, as well as all persons that intervene in any phase of this will be subject to the duty of confidentiality to the referred to in article 5.1.f) of Regulation (EU) 2016/679."

Its article 72.1.a) considers it: "Infringements considered very serious

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

a The processing of personal data violating the principles and guarantees established in the Article 5 of Regulation (EU) 2016/679".

Article 58.2 of the RGPD provides: "Each control authority will have all the

following corrective powers indicated below:

b) sanction any person responsible or in charge of the treatment with a warning

when the treatment operations have violated the provisions of this

Regulation;

d) order the person in charge or in charge of the treatment that the operations of

treatment comply with the provisions of this Regulation, where appropriate, in accordance with

a specified manner and within a specified time.

In this sense, the actions taken by the defendant when

know the claim of which it was informed by this AEPD and the measures adopted,

having to understand from the allegations made that the note with the data of the

claimant was removed from the board, so its removal is not required, notwithstanding that

this procedure serves so that in the future compliance with the regulations is considered

to expose data in spaces such as the community board. Also, you should refrain

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5/5

to use means of communication or notification on which you cannot prove sending and

reception as a means of relating to the owners of the dwellings due to the absence

accreditation of such shipments.

Therefore, in accordance with the applicable legislation and having assessed the criteria for

graduation of sanctions whose existence has been proven,

the director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE on the COMMUNITY OF OWNERS ***ADDRESS.1 and

***ADDRESS.2, LOGROÑO (LA RIOJA) NIF ***NIF.1, for a violation of Article 5.1.f)

of the RGPD, typified in Article 83.5 of the RGPD, a WARNING fine.

SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

***ADDRESS.1 and ***ADDRESS.2.

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

This Resolution will be made public once it has been notified to the interested parties.

Against this resolution, which puts an end to the administrative procedure in accordance with art. 48.6 of the

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 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 High Court, with

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 two months from the day following the notification of this act,

according to the provisions of article 46.1 of the aforementioned Law.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, it may be

precautionary suspension of the firm decision in administrative proceedings if the interested party expresses

its intention to file a contentious-administrative appeal. If this is the case, the

The interested party must formally communicate this fact in writing addressed to the Agency

Spanish Data Protection, presenting it through the Electronic Registry of the

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through one of the

remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1.

You must also transfer to the Agency the documentation that proves the filing

effectiveness of the contentious-administrative appeal. If the Agency were not aware of the

filing of the contentious-administrative appeal within two months from the day

following the notification of this resolution, it would end the suspension

precautionary

Sea Spain Marti

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