

Procedure No.: PS/00168/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

In the sanctioning procedure PS/00100/2019, instructed by the Spanish Agency for Data Protection to COMMUNITY OF PROPRIETORS R.R.R. (hereinafter the claimed), given the claim of D. A.A.A. on behalf of D.B.B.B. (in forward the claimant), and based on the following

### BACKGROUND

FIRST: The claimant on 02/11/2019 filed a claim with the Agency Spanish Data Protection. The claim is directed against the defendant and the The reasons on which the claim is based are, in short: that the respondent has inserted in the bulletin board a list of owners, who are going to claim the unpaid installments or against which legal proceedings have already been initiated for said reason. The board is locked and in view of anyone who travels through said area, being able to have access to that information, totally reserved and whose placement in a visible place violates various provisions of the LOPD.

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 02/28/2019, the claim submitted was transferred to the defendant for analysis and communication to the complainant of the decision adopted in this regard. Likewise, it required him to send to the determined Agency within a period of one month 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.

On 04/05/2019, the representative of the respondent D.C.C.C., filed a response brief to the request sent by the AEPD indicating: that the published data is not other than those approved by the Board of Owners, under the LOPD as of the LPH, whose conjugation allows the free publication of data of a nature personal without the existence of the consent of the affected party; that in compliance with a norm with the rank of law is possible to publish on the board together with the call for the

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Board, the list of delinquent owners; which, among others, is indicated by the First Chamber of the Supreme Court in a judgment of 03/21/2014, requesting the filing of the present performances.

On 04/10/2019, 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 05/16/2019, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

infringement of Article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD.

FOURTH: Once the initial agreement was notified, on 06/20/2019 the respondent reiterated stated above in the response to the request for information and provided burofax sent to the claimant communicating the debt, not collected by the addressee (as address appears \*\*\*ADDRESS.1); installment debt certificate community; demand for Verbal Trial against the claimant; minutes of the Board of Owners.

FOURTH: On 07/08/2019 a trial practice period began, remembering the following:

- Consider reproduced for evidentiary purposes the claim filed by the claimant and his documentation, the documents obtained and generated that They are part of file E/02104/2019.
- Consider reproduced for evidentiary purposes, the allegations to the initial agreement PS/00168/2019 presented by the respondent and the documentation that they accompanies.

FIFTH: On 08/02/2019, a Resolution Proposal was issued in the sense of that the Director of the Spanish Agency for Data Protection sanctioned the claimed for infringement of article 5.1.f) of the RGPD, typified in article 83.5.a) of the aforementioned Regulation, with a warning in accordance with article 58.2.b) of the same norm.

The representation of the defendant at the time of this resolution had not filed any allegation brief.

SIXTH: Of the actions carried out in this proceeding, they have been accredited the following:

#### PROVEN FACTS

FIRST. On 02/11/2019 there is a written entry in the AEPD from the affected party in which

states that the respondent has inserted a list of owners, who are going to claim the unpaid fees or against those who already Legal proceedings have been initiated for this reason.

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SECOND. Complainant provides photos of the community bulletin board glazed and locked with a latch key, containing the information denounced by the claimant in view of third parties and which includes a list of owners of unpaid installments, as well as the owners to whom a procedure has been initiated monitoring and defendant owners.

THIRD. They include burofaxes sent to the claimant by the Secretary-Administrator of the claimed party informing of the debt as prior to the presentation of the claim before the Courts of first instance of Torremolinos. In the cited burofaxes include the indication of Not delivered by Surplus (Not picked up at the office) and Not delivered, notice left.

FOURTH. Copies of the Minutes of the Ordinary General Meeting held on 03/17/2018, the Certificate of Debt of Community Quotas approved in the aforementioned Ordinary General Meeting, as well as a copy of the demand for oral judgment against the claimant for non-payment of common expenses before the Courts of first instance of Torremolinos.

#### FOUNDATIONS OF LAW

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 Data Protection Agency is competent to resolve this procedure.

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The defendant is imputed a violation of article article 5, Principles

related to the treatment, of the RGPD that establishes that:

II

"1. The personal data will be:

(...)

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

(...)"

Article 5, Duty of confidentiality, of the new Organic Law 3/2018, of 5 December, Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), states that:

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

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2. The general obligation indicated in the previous section will be complementary of the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will remain even when the relationship of the obligor with the person in charge or person in charge had ended of the treatment".

In the present case, as evidenced by the proven facts in the community bulletin board includes list of quota owners

unpaid, but also the owners to whom a procedure has been initiated

monitoring for non-payment of common expenses that correspond to them and the owners

defendants, violating the duty of confidentiality.

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It should be noted that farm administrators carry out treatment of

personal data when acting on behalf of communities of

owners, who in turn hold the status of data controller.

In the same way, the communities of owners regarding the treatment

data of the community members are legitimized, for the purposes of the causes that

collects the RGPD, in compliance with a legal obligation in accordance with the

articulated of the Horizontal Property Law (LPH).

The Horizontal Property Law, in its article 16.2 provides that "the call

of the Board contains the list of delinquent neighbors who are deprived of the vote",

being a good practice the notification of the individual call by mail, the

inclusion in box, or through intranet with key and password, avoiding any

means that may involve access by third parties (Internet).

However, the dissemination of the list of a debtor neighbor may be published

only in the case included in article 9 of the Horizontal Property Law

section h) second paragraph, "If a summons or notification to the owner is attempted

If it is impossible to practice it in the place provided for 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 of general use enabled for this purpose."

To proceed in this way, the notification attempts must be accredited.

In the present case, the exposed facts show the violation

of the duty of confidentiality in the processing of personal data to the

publish on the notice board of the claimed the list of debtors neighbors of the community; and, while it is true that for the publication on the bulletin board community is in accordance with the law, prior notification must have been attempted to the debtor owners in the place designated for notification purposes, providing in this case the burofax with which it was intended to communicate the debt to the claimant; is no less true than the information published on the board and exposed to the public does not comply with the requirements indicated in the LPH, since it includes a list of owners who have already been sued in proceedings payment order -then it is not about notifying the prior requirement for installments unpaid community debts - and even the information inserted in the community element and referring to the "monitoring start owners" is not referring to their exposure in order to complete the prior notification process of debts to debtor owners so that they know the amount and proceed to pay it, but rather a different purpose, such as making known those who are involved in the civil procedure.

Therefore, the publication in the aforementioned community element whose closure is under the control of the governing bodies of the community of owners, in the exposed conditions, constitutes a violation of the duty of confidentiality and whose person in charge is identified in this case with the defendant, since it is who decides on the purpose, content and use of the data of the different owners that comprise it and who must control the use made of the community elements.

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#### IV

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

On the other hand, the regulation of infractions in the LOPDGDD is more precise

Regarding the situations that give rise to an infringement and their consideration,

so that it is much easier to know the limitation period of that infraction

(that is, if it is considered minor, serious or very serious) and in the face of the sanction

administrative fee to be imposed for non-compliance.

The LOPDGDD considers for prescription purposes in its article 72:

“Infringements considered very serious:

1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

a) The processing of personal data violating the principles and guarantees

established in article 5 of Regulation (EU) 2016/679.

(...)

However, article 58.2 of the RGPD provides the following: “Each authority

of control will have all the following corrective powers indicated below:

continuation:

(...)



b) sanction any person responsible or in charge of the treatment with warning when the processing operations have violated the provisions of this Regulation;

(...)

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2.b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations.

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Likewise, it is necessary to point out that not correcting the incidents produced in accordance with what is stated in the RGPD or reiterate the behavior put in manifest in the claim and that is the cause of this procedure, as well as not informing this AEPD of the measures adopted could give rise to the exercise of possible actions before the person in charge of the treatment so that they are applied effectively the appropriate measures to guarantee and not compromise the confidentiality of personal data and the right to privacy of people.

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 the entity COMUNIDAD DE PROPIETARIOS R.R.R., with NIF \*\*\*NIF.1, for an infraction of article 5.1.f), typified in article 83.5.a) of the RGPD, a penalty of warning in accordance with article 58.2.b) of the GDPR.

SECOND: NOTIFY

this resolution to the COMMUNITY OF

OWNERS R.R.R. and INFORM the complainant of the outcome of the

claim.

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

month 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 in 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, the firm resolution may be provisionally suspended in administrative proceedings if

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 by

writing addressed to the Spanish Agency for Data Protection, presenting it through

Electronic Register of the Agency [[https://sedeagpd.gob.es/sede-electronica-](https://sedeagpd.gob.es/sede-electronica-web/)

[web/](https://sedeagpd.gob.es/sede-electronica-web/)], or through any of the other registers provided for in art. 16.4 of the

aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the

documentation proving the effective filing of the contentious appeal-

administrative. If the Agency was not aware of the filing of the appeal

contentious-administrative within a period of two months from the day following the

notification of this resolution would end the precautionary suspension.

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