

□ Procedure No.: PS/00092/2021

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 10/10/2020 filed
claim before the Spanish Data Protection Agency. The claim is
directed against DATA 1000 FINCAS, S.L., with NIF B84433309 (hereinafter, DATA 1000
FINCAS or claimed entity), and the grounds on which the claim is based are, in
summary: that the acting administrator of the community of owners

***DIRECTION.1, (hereinafter Community of Owners), provided the Director of the
security company "CMM Seguridad", by email on 09/30/2020,
copy of the minutes of the Ordinary General Meeting held by the aforementioned Community
on 03/05/2020; the aforementioned document contains the names and addresses of neighbors,
list of defaulters and the accounts with all the income and expenses of the Community.

It adds that there is no contract between the Administrator and the security company, nor
authorization of neighbors and defaulters to provide their data and statement of accounts to the
security company.

The following documentation is attached to this claim:

. Copy of the Act object of the claim. It is found that it includes, among
other information, detail regarding the owners with pending receipts, with
indication of the "estate", name and surname of the owner, amount of the debt and shares
undertaken to collect the amounts owed, if any; information
on the rental of a parking space that is being carried out by an owner, with
indication of your name and surnames; and renewal of charges, indicating the charge, the

designated person and the property owned by him; In addition to the statement of accounts community. This document includes as an Annex the Notice of the Meeting.

. Copy of the email, dated 09/30/2020, sent by the claimed entity to the company CMM Guard, S.L.

This email informs the aforementioned company of the meeting call carried out by a group of neighbors, scheduled for that same date, and they are provided with instructions on the measures to be carried out in accordance with the rules of established by the Community of Owners mentioned (closure of some facilities, notice to the police, where appropriate, conservation of the images of video surveillance, disconnection of lighting in certain areas of the urbanization, etc).

In this same email it is expressly stated: "We enclose a copy of the minutes of the General Meeting held on March 5 of this year, which includes the appointments of the Governing Board.

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SECOND: On 11/13/2020, the claim was transferred to the entity claimed, in accordance with the provisions of article 65.4 of the Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter, LOPDGDD), in order to proceed to its analysis, notify the claimant of the decision adopted and provide this Agency information about it.

On 12/14/2020, the respondent responded to the aforementioned transfer stating the

following:

- . That the claimed entity acts as administrator of the aforementioned Community of Owners, not having received any administrative file, neither criminal, nor disciplinary as a member of the Professional Association of Property Administrators of Madrid;
- . That since October 2016 the company CMM Guard S.L. provides security service and security in the Community of Owners during the seven days of the week, the 24 hours a day;
- . That the claim must be understood within the context of confrontation between owners that the Community has lived in the previous months and of which the claimed entity has not been able to stay out;
- . That the Minutes of the General Meeting to which reference is made do not include data on personal character of any owner such as their telephone numbers or bank accounts, nor any other data not available to the contracted security company due to its functions;
- . That the minutes were not sent to people outside the Community of Owners, but to the Manager of the security company hired by it, who had requested instructions due to the confusion created by several owners about the lack of legitimacy of the Governing Board and the Administrator to carry out their functions. With this, in the opinion of the respondent, the principle of necessity established by article 5 of the RGPD and the delivery of this document is justified as documentary evidence of the appointment of the members of the Governing Board, appointments that were being disputed by a group of co-owners;
- . With the indicated reason, indicates the claimed entity, the President of the Community of Owners gave him instructions to send the act in question to the aforementioned security company, as documentary evidence of the appointment of the members

of the Board of Governors;

. That the claimant cannot act on behalf of a third party without having proven the representation, since in the aforementioned act the name or surnames do not even appear.

Provide a copy of the "Security Service Lease Agreement", of 01/11/2016, which binds the Community of Owners and the entity CMM Guard, S.L., and a copy of the email that the President of said Community sent to the claimed on 09/19/2020. In this email, the respondent is instructed to send a note to the security company "in which instructions are given on how to proceed in the event that the people who want to hold the Meeting meet" and a statement "indicating the reasons why the Meeting of the 30th convened by the promoters is not well convened". Nothing is indicated in this email about sending the Minutes to the security company.

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THIRD: On 02/19/2021, in accordance with article 65 of the LOPDGDD,

The Director of the Spanish Agency for Data Protection agreed to admit for processing the claim filed by the claimant against the entity claimed.

FOURTH: On 04/12/2021, the Director of the Spanish Protection Agency of Data agreed to initiate a sanctioning procedure against the entity DATA 1000 FINCAS, for the alleged infringement of article 5.1 c) of the RGPD, typified in article 83.5 a) of the same Regulation; stating in said agreement that the sanction that could correspond amounts to 2,000 euros (two thousand euros), without prejudice to what results from The instruction.

FIFTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written which reproduces almost verbatim his previous allegations, made manifest with occasion of the process of transfer of the claim, and requests the file of the process.

Reiterates that he sent the record that motivates the claim by mandate of the President and Vice President of the Community of Owners, so there is no voluntary element that attributes responsibility.

In relation to this issue, the respondent states that a certified letter is attached to the that the aforementioned security company notified the Community of Owners, through its President, the non-availability of the record accrediting the positions in force; and notes that, in response to this letter, said President instructed requested to send a copy of the Act to the person in charge of the security company.

You understand that you cannot be held responsible for this.

Subsidiarily, it alleges that the penalty of 2,000 euros is disproportionate, for which represents 49.6% of the result of the profit and loss account of the company in the 2019 financial year. He warns that they will not be able to pay this penalty, given their precarious economic situation and lack of resources.

As documentation attached to his allegations, he only provides a copy of a communication directed by CMM Guard, S.L. to the President of the Community of Owners, dated 10/28/2020, in which that company indicates that "it has not Minutes received by the current Board of Governors".

SIXTH: On 08/10/2021, a resolution proposal was formulated, in the sense of that the Director of the Spanish Data Protection Agency sanction the entity DATA 1000 FINCAS, for an infringement of Article 5.1.c) of the RGPD, typified in Article 83.5 a) of the RGPD, and classified as very serious for the purposes of prescription in article 72 of the LOPDGDD, with a fine amounting to 2,000 euros (two thousand

euros).

Likewise, it was proposed that the Director of the Spanish Agency for the Protection of Data is required from the claimed party so that, within the period determined, it adopts the necessary measures to adapt their actions to data protection regulations personal, with the scope expressed in the Fundamentals of Rights of the aforementioned resolution proposal.

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SEVENTH: Having notified the aforementioned resolution proposal, dated 08/17/2021, received in this Agency written of allegations presented by the entity DATA 1000 FINCAS, in which it reiterates that the certificate in question was delivered to the following instructions from the Government Commission of the Community of Owners, understanding that, having acted as agent in their capacity as administrator of the community, there is no responsibility for the facts that are imputed.

With his letter, he provides a "Certification" of 08/14/2021, supposedly signed by the President and Vice President of the Community of Owners on the date of 09/30/2020. This document does not include any validation or legitimation of your signature by the people who supposedly issued it.

EIGHTH: By letter dated 08/30/2021, this Agency requested the entity claimed to provide a new testimony given by the President and Vice President of the Community of Owners, collected in a document that reliably proves the identity of the persons who carry out the

manifestations in question.

In response to this request, on 09/01/2021, the respondent entity provided the same document or "Certificate" signed digitally by the President of the Community of Owners and with the signature of the Vice President notarized. The content of this document is outlined in the Fifth Proven Fact. Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: The entity DATA 1000 FINCAS provides services as Administrator of the Community of Owners ***ADDRESS.1.

SECOND: On 11/01/2016, the indicated Community of Owners signed a contract with the entity CMM Guard S.L., by virtue of which it is entrusted to this company the provision of security services in the aforementioned Community.

THIRD: On the occasion of a meeting that a group of owners belonging to the Community were scheduled to hold on 09/30/2020, the President of the Community of Owners sent DATA 1000 FINCAS an email, dated 09/19/2020, instructing him to send a note to the security company "in the that instructions be given on how to proceed in the event that people meet that the Board wants to carry out" and a statement "indicating the reasons why the Meeting of the 30th called by the promoters is not well convened". I know nothing indicates in this email about sending a copy of the Minutes to the security company corresponding to the Ordinary General Meeting held on 03/05/2020.

FOURTH: On 09/30/2020, DATA 1000 FINCAS sent CMM Guard S.L. a C/ Jorge Juan, 6
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email through which you become aware of the meeting request carried out by a group of neighbors, scheduled for that same date, and they are provided with instructions on the measures to be carried out in accordance with the rules of established by the Community of Owners mentioned (closure of some facilities, notice to the police, where appropriate, conservation of the images of video surveillance, disconnection of lighting in certain areas of the urbanization, etc).

A copy of the minutes of the Ordinary General Meeting was attached to this email held by the aforementioned community on 03/05/2020. In the text of this communication is expressly stated: "We attach a copy of the minutes of the Board General of last March 5 of this year where the appointments of the Governing Board.

This Act includes, among other information, details regarding the owners with receipts pending, indicating the "farm", name and surname of the owner and amount of the debt and actions taken to collect the amounts owed, in its case; information on the rental of a parking space that is carrying out a owner, indicating his name and surnames; and renewal of charges, indicating the position, the designated person and the property owned by him; Besides of Community account statement.

FIFTH: Through a document provided to the proceedings by the claimed entity dated 09/01/2021, the people who as of 09/30/2020 held the position of President and Vice President of the Community of Owners have declared that gave instructions to the Administrator of the same to send to the Director Manager of the company CMM Guard, S.L. the minutes of the General Meeting of 03/05/2020,

“as documentary evidence of the people who, at that time, held the positions of the Governing Board of the Community, as indeed did the same September 30, 2020, complying with these instructions.” In the same document indicates that said shipment was made on 09/30/2020 “in compliance with those instructions”; which was produced at the request of the indicated company, which provides the surveillance service; and on the occasion of the Meeting convened by a group of owners for that same day 09/30/2020.

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of control, 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 resolve this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the RGPD, in this organic law, by the regulatory provisions issued in its development and, in so far as they are not contradicted, on a subsidiary basis, by the rules general administrative procedures.

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II

Article 5 of the RGPD refers to the principle of data minimization in letter c) of its section 1 in the following terms:

“Article 5 Principles relating to the treatment

1.The personal data will be:

c) adequate, pertinent and limited to what is necessary in relation to the purposes for which they are processed (“data minimization”).

In this case, the facts denounced are specified in the delivery to a third party, the security company contracted by the Community of Owners, a copy of the Minutes of the General Meeting held on 03/05/2020, which contains data of a nature staff of the residents of the Community that are listed in the Proven Fact

Fourth, without there being any legal basis that justifies this communication of data personal.

The Community has entered into a contract with the company receiving the information, CMM Guard S.L., by virtue of which this company provides the Community surveillance and security services. This contractual relationship justifies access by part of the aforementioned company to personal data of the people who make up the Community, whenever they are necessary for the fulfillment of the obligations that entails the provision of agreed services. Thus, CMM Guard S.L. could have legitimacy to know the identification data and some of the agreements taken at the General Meeting, such as the appointment of the Governing Board; but it does not justify access to information about neighbors who owe amounts to the Community, nor the details of the debt, nor the personal issues that can be addressed at a General Meeting such as the one held on 03/05/2020.

With the delivery of the Act in question to the security company, it was intended to give meet the members of the Governing Board appointed by the respective Board General Ordinary, since said information may be necessary for the performance of the aforementioned service contract. Therefore, it should have been limited to facilitating that information or to send the Minutes document after having been duly

anonymized.

Thus, the delivery of the Minutes to the security company, with all the information contained in that document, gives rise to the processing of personal data inappropriate, not relevant and not necessary for the specific purpose of the treatment, contrary to the principles of data protection, specifically, to the principle of “data minimization”, regulated in article 5.1.c) of the RGPD.

The remission of the Minutes was made by the entity claimed in its capacity as Administrator of the Community of Owners, and this determined the opening of the present sanctioning procedure.

Said entity stated that sending the repeated document to the security was carried out in compliance with the instructions received from the representatives of said Community. However, in proof of this, he provided an email www.aepd.es

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email that was sent by the President on 09/19/2020, in which nothing is indicated in this regard.

The respondent also stated that the President's instructions on the dispatch of the repeated document were given in response to a letter sent by the security company in which he required a copy of the Act. But he provided as evidence a letter from the company dated 10/28/2020, well after the email was sent through which this Act was provided, sent on 09/30/2020.

Based on all the above, a resolution proposal was prepared in which it was concluded that the aforementioned facts violate the provisions of article 5.1 c) of the RGPD, which

involves the commission of an offense classified in section 5.a) of article 83 of the GDPR, and that the entity claimed was responsible for the commission of this infringement.

However, with its allegations to the aforementioned motion for a resolution, the respondent has provided a "Certification", signed by the President and Vice President of the Community of Owners on the date of 09/30/2020, in which these people declare that they gave instructions to the claimed entity to send to the company CMM Guard, S.L. the minutes of the General Meeting of 03/05/2020, "as evidence documentary of the people who, at that time, held the positions of the Community Governing Board, as it effectively did on the 30th of September 2020 in compliance with these instructions." In the same document, indicates that said shipment was made on 09/30/2020 "in compliance with those instructions"

Thus, the processing of personal data consisting of communicating to the company security of the personal data in question is carried out by the entity DATA 1000 FINCAS in its capacity as data processor, in accordance with the instructions received from the person in charge, which is none other than the Community of Owners, and on behalf of the latter, for which reason DATA 1000 FINCAS cannot be charged any responsibility for the facts analyzed in this proceeding sanctioning

In this regard, article 29 of the RGPD refers to "Processing under the authority of the person in charge or of the person in charge of the treatment" in the following terms: "The person in charge of the treatment and any person acting under the authority of the person in charge or the person in charge and has access to personal data may only process said data following instructions of the person in charge, unless they are obliged to do so under the Law of the Union or of the Member States.

Article 28.10 of the RGPD attends to the criterion of the determination of the ends and means of the treatment to establish the responsibility of the person in charge of the treatment in the commission of infractions to the Regulation itself. According to this article, if the person in charge determines the purposes and means of the treatment will be considered responsible of the same:

“10. Without prejudice to the provisions of articles 82, 83 and 84, if a data processor infringes this Regulation when determining the purposes and means of the treatment, it will be considered responsible for the treatment with respect to said treatment”.

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The existence of a data processor depends on a decision taken by the person in charge of the treatment, who may decide to carry out certain treatment operations or contract all or part of the treatment with a third party in charge.

The essence of the “processor” function is that the personal data are processed in the name and on behalf of the data controller. In practice, it is the person in charge who determines the purpose and the means, at least the essential ones, while the person in charge of the treatment has a function of providing services to the controller responsible for the treatment. In other words, “acting in the name and on behalf of the data controller” means that the data controller is at the core of servicing the interest of the controller in carrying out a task specific and, therefore, follows the instructions established by the person in charge of the processing, at least as regards the purpose and essential means of processing.

ordered treatment.

The person in charge of the treatment is the one who has the obligation to guarantee the application of the data protection regulations and the protection of the rights of the interested, as well as being able to demonstrate it (articles 5.2, 24, 28 and 32 of the RGPD).

The control of compliance with the law extends throughout the treatment,

From the beginning to the end. The data controller must act, in

in any case, in a diligent, conscious, committed and active manner.

This mandate of the legislator is independent of whether the treatment is carried out directly the person in charge of the treatment or that it is carried out using a treatment manager.

In addition, the treatment carried out materially by a treatment manager for account of the person in charge of the treatment belongs to the sphere of action of this last, in the same way as if he did it directly himself. The person in charge of treatment, in the case examined, is an extension of the person responsible for the treatment.

The data controller has the obligation to integrate and deploy the protection of data within everything that makes up your organization, in all its areas. I know must bear in mind that, ultimately, the determining purpose is to guarantee the protection of the interested party.

In accordance with the foregoing, in the present case, proving that there was a legal basis to provide the security company with the Minutes of the General Meeting Ordinary with all the personal information outlined in said document corresponds to the Community of Owners, as the responsible entity, and not to the entity claimed, imputed in the reference procedure, who intervened in the facts in your status as data processor and in accordance with the instructions given to you were taught by the Community of Owners.

On the other hand, the provisions of article 28 must be taken into account.

"Responsibility" of Law 40/2015, of October 1, on the Legal Regime of the Sector

Public (LRJSP):

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"one. They may only be sanctioned for acts constituting an administrative infraction natural and legal persons, as well as, when a Law recognizes them capacity to act, affected groups, unions and entities without legal personality and estates independent or autonomous, who are responsible for them by way of fraud or guilt".

Therefore, it is appropriate to uphold the allegation of lack of passive standing made by DATA 1000 FINCAS, which was charged with facts that it was not responsible, which implies the impossibility of pursuing against it the procedure, which must be filed without further processing, with all the pronouncements favorable that this implies with respect to the claimed.

Therefore, in accordance with the applicable legislation,
the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: FILE the sanctioning procedure followed against the DATA entity
1000 FINCAS, S.L., with NIF B84433309, for an alleged infringement of article 5.1.c)
of the RGPD, typified in Article 83.5 a) of the RGPD.

SECOND: NOTIFY this resolution to DATA 1000 FINCAS, S.L.

In accordance with the provisions of article 50 of the LOPDGDD, 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 LOPDGDD, 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 counting 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, may provisionally suspend the firm resolution in administrative proceedings if the 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-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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Sea Spain Marti

Director of the AEPD, P.O. the Deputy Director General for Data Inspection, Olga

Pérez Sanjuan, Resolution 4/10/2021

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