

□ Procedure No.: PS/00224/2020

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) on 01/23/2020 filed
claim before the Spanish Data Protection Agency. The claim is
directs against COMMUNITY OF OWNERS R.R.R. with NIF ***NIF.1 (hereinafter,
the claimed). The reasons on which the claim is based are, in short: that
system is being posted on the bulletin board, located in the hall of
entry and exit of each block of flats, the list of neighbors in debt,
identified by floor and letter, which allows said information to be known by
third parties.

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

On 03/09/2020, the claim submitted was transferred to the defendant for analysis
and communication to the claimant of the decision adopted in this regard. Likewise, it
required so that within a month it would send to the Agency determined
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 06/12/2020, the Claimant's Administrator filed a response brief to the request sent by the AEPD indicating: that it acts as a mere manager of the treatment, following the instructions of the Community of Owners, and that the

The writings object of the complaint bear the letterhead of the same and are published on its bulletin board.

advertisements; that the reason for the publication is carried out in execution of agreements of board adopted by the community of owners, not having been subject to

judicial challenge by any neighbor; that according to the criteria of the AEPD we

We would find ourselves in the event of transfer of data with the prior consent of the users. interested.

THIRD: On 07/02/2020, 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 respondent.

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FOURTH: On 10/15/2020, 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, sanctioned in accordance with the provisions of the article 83.5.a) of the aforementioned RGPD.

FIFTH: Once the initiation agreement has been notified, the one claimed at the time of this

The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure

Common Administrative Law of Public Administrations, which in section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

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

PROVEN FACTS

FIRST: On 01/23/2020 there is an entry in the AEPD written by the claimant stating that the claimed, systematically and monthly list of neighbors defaulters on the bulletin board, located in the entrance and exit hall of each housing block, considering that such a practice violates the protection regulations of data by exposing the list of debtor neighbors to the view of third parties.

SECOND: A photograph of the bulletin board located in the hall of entry and exit, as well as the August and October account statements, where the list of debtors neighbors, identified by floor and letter.

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 Agency for Data Protection is competent to initiate and to solve this procedure.

Yo

Law 39/2015, of October 1, on the Common Administrative Procedure of the Public Administrations, in its article 64 "Agreement of initiation in the procedures of a sanctioning nature", provides:

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the rules regulators of the procedure so provide.

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2. The initiation agreement must contain at least:

- a) Identification of the person or persons allegedly responsible.
- b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what result of the instruction.
- c) Identification of the instructor and, where appropriate, Secretary of the procedure, with express indication of the system of recusal of the same.
- d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.
- e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.
- f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in

If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

III

The denounced facts materialize in the insertion in the boards of advertisements located in the entrance and exit hall of each block of flats in the Community of Owners of the list containing the personal data of those debtors owners identified by floor and letter violating the duty of confidentiality.

Such treatment could constitute an infringement of article 5, Principles related to the treatment, of the RGPD that establishes that:

"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 processing or against its loss, destruction or accidental damage, through the application

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of appropriate technical or organizational measures ("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.

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".

IV

The accredited facts reveal the disclosure of personal data personal, which would suppose the possible violation of the duty of confidentiality, with previous duty to keep secret, in the treatment of personal data staff by posting on the notice boards of the Community of Owners the list of debtors neighbors; it is true that for the publication on the board community announcements is in accordance with the law notification must have been attempted prior to the debtor owners in the place designated for the purposes of notifications, providing burofax with which they tried to communicate the debt to the debtors.

Furthermore, it should be noted that the location of the notice boards, which
According to the claimant, they are located in the entrance and exit hall of each
block of flats, allows said information to be disclosed and may be known
not only by the owners but by any third party that accesses each of the
blocks.

Therefore, the publication in the aforementioned community element and in the conditions
exposed constitutes a violation of the duty of confidentiality whose person in charge
It is the community of owners.

It should be noted that property administrators, those in charge of treatment,
carry out processing of personal data acting on behalf of the
communities of owners, who hold the status of responsible for the
treatment.

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).

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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 bulletin boards of each of the claimed portals and in visible place the list of debtor owners of the community; it is true that for that the publication on the community bulletin board is in accordance with the law has prior notification to the debtor owners must have been attempted 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; Therefore, the information published in the board and exposed to the public does not comply with the requirements indicated in the LPH.

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.

v

On the other hand, article 83.5 a) of the RGPD, considers that the infringement of "the basic principles for processing, including conditions for consent

in accordance with 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.

Likewise, 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:

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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. Also, don't

It is clear that the defendant has been sanctioned previously.

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 COMMUNITY OF OWNERS R.R.R., with NIF

***NIF.1, for an infringement of Article 5.1.f) of the RGPD, typified in article 83.5.a) of the RGPD, a sanction of warning.

SECOND: REQUIRE the COMMUNITY OF OWNERS R.R.R., so that in

Within one month from the notification of this resolution, prove: the adoption of the necessary and pertinent measures in accordance with the regulations on protection of personal data, in order to prevent them from being used again in the future. occur incidents such as those that have given rise to the claim, adapting to the requirements contemplated in article 5.1.f) of the RGPD.

THIRD: NOTIFY this resolution to the COMMUNITY OF OWNERS R.R.R.

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

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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 appeal-administrative. If this is the case, the interested party must formally communicate this made by writing to the Spanish Agency for Data Protection, introducing him to the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. Also must transfer to the Agency the documentation that proves the effective filing 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 precautionary suspension.

Electronic Registration of

through the

Sea Spain Marti

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