

□ File No.: EXP202200356

RESOLUTION OF SANCTIONING PROCEDURE

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

BACKGROUND

FIRST: TWO CLAIMANTS, listed in the GENERAL ANNEX as 1 and 2 (in
onwards, claimant 1 or 2) on January 4, 2022 they present a claim for
the same facts before the Spanish Data Protection Agency. the claims
are directed against A.A.A. BOARD OF DIRECTORS, *** ADDRESS.1 with NIF ***NIF.1
(hereinafter, the claimed).

The reasons on which the claim is based are the following:

They sent a burofax to the Administrative Board of portals 1 to 8, reiterating the
unanswered request made in 2019 to be shown account books. That
burofax is displayed on "the boards of the eight portals that are part of the
Board".

They provide:

1- Photos of a bulletin board, glazed and closed, located in an area apparently
common, and transit, next to the access gates to the farms. would be two doors
different with a slightly different interior, deducing that they are two different portals,
named in the file portal 1 and 2 by the claimants. Both contribute the same

Photographs

2- In the photos you can see the burofax, signed on 12/16/2021, with the data of the claimants,
and your request. Next to it, on the board, another sheet appears next to the burofax, with the
title "important information", with reference to the Administrative Board at the bottom of the page.

The note indicates..." in turn we want to communicate to the neighbors the harassment that

we are suffering from this administrative Board on the part of some neighbors who have sent a burofax which we attached without really knowing what his intentions are since when they made a revocation they were not chosen by the neighbors. Any consultation do not hesitate to inform us".

3- Statutes of the Administrative Board A.A.A., *** ADDRESS.1, made up of four Blocks, constituted as a "civil community", and made up of all the tenants of the dwellings of the property, being the quality of member inalienable.

In the object, it indicates: "regulate the neighborhood coexistence of the owners and occupants, as well as provide the administration with conservation and adequate use of certain elements and common services of the farm whose administration and conservation are not

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have reserved the property. The community is made up of the following organs of Government, the Board of Administration, the President, the Administrator, and the Secretary.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5

December, Protection of Personal Data and guarantee of digital rights (in hereafter LOPDGDD), said claim was transferred to the defendant, in accordance with the rules established in Law 39/2015, of October 1, on the Procedure

Common Administrative System of Public Administrations (hereinafter, LPACAP) through electronic notification, was transferred to the claimed on February 2, 2022, and consists expired on February 13, 2022, by not having accessed its content within the period of making available, with the effects of being understood rejected ", in accordance with the provided for in art. 43.2 of the LPAC.

The purpose of the transfer was for it to proceed with its analysis and inform this Agency within a month, of the actions carried out to adapt to the requirements provided for in the data protection regulations.

Additionally, in order for you to be aware of the claim, you were notified by mail certified postal service on February 14, 2022, and after two delivery attempts it resulted "returned to origin due to excess", on March 9, 2022.

THIRD: On March 15, 2022, in accordance with article 65 of the LOPDGDD, the claim presented by the claimants was admitted for processing.

FOURTH: On April 12, 2022, the Director of the AEPD agreed:

"START SANCTION PROCEDURE for AAA ADMINISTRATING BOARD, ***ADDRESS.1 with NIF ***NIF.1, for the alleged violation of article 5.1.f) of the GDPR, in accordance with article 83.5.a) of the GDPR and article 72.1.a) of the LOPDGDD."

"For the purposes specified in the art. 64.2 b) of Law 39/2015, of October 1, of Common Administrative Procedure of Public Administrations, the sanction that could correspond would be 2,000 euros, without prejudice to what results from the instruction."

FIFTH: The delivery of the initiation agreement by postal mail, resulted in the certificate, its "impossibility of delivery", "resulting in being returned to origin due to excess 05/03/2022", including the delivery attempts on 04/24 and 25/2022 (notice is left in mailbox). As a consequence, it is published in the BOE of 05/09/2022, referring to the Article 44 of the LPCAP, considering that its notification has been carried out by said means.

SIXTH: On May 25, 2022, the instructor requests claimant 2, who proceed to the complete identification of the data of the person and the address or entity, who holds the Presidency of the aforementioned Administrative Board, for the purpose of future communications that may occur in the processing thereof.

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A response was received on 06/08/2022 from the two signatories of the claim, indicating: "the members of the previous Administrative Board, left their position on 05/25/2022 ",

"resulting irrelevant for the processing of this file." List the names and

addresses of the people and the positions they held, which: "published on the bulletin board

announcements" personal data, for the purposes of communication and notification.

SEVENTH: On 06/10/2022, the instructor addresses a new letter to claimant 2,

indicating: "the procedure is not directed against people, but against the one who legally

is considered responsible for the treatment, the Board, so they would have to

provide to follow the file, the identifying data of their addresses and

names for the purposes of "continuing the processing thereof, as indicated in

the previous letter."

No response was received regarding the person who represented the Board

for possible contact.

EIGHTH: Article 64.2.f) of the LPACAP, provision of which the party was informed

claimed in the agreement to open the procedure, establishes that if the

arguments within the established term on the content of the initiation agreement, when

it contains a precise pronouncement about the imputed responsibility, it may

be considered a motion for a resolution. In the present case, the agreement to initiate the

disciplinary file determined the facts in which the accusation was specified,

the infringement of the GDPR attributed to the defendant and the sanction that could be imposed. By

this, taking into consideration that the claimed party has not made allegations to the

agreement to start the file and in accordance with the provisions of article 64.2.f) of the LPACAP, the aforementioned initiation agreement is considered in the present case as a proposal for resolution.

In view of all the proceedings, by the Spanish Agency for Data Protection

In this proceeding, the following are considered proven facts:

PROVEN FACTS

FIRST: The claimants, awarded housing, claim against the Board

Administrator A.A.A., ***DIRECTION.1, according to its Statutes, constituted as "civil community", made up of all the tenants of the dwellings of the property, and divided into four blocks, eight portals.

SECOND: It is proven that a burofax dated 12/16/2021, which contains the data of the claimants, and their address, with the title "To the Administrative Board of the portals 1 to 8 A.A.A.", requesting a copy of the Board's financial documentation, appears displayed on a bulletin board, glazed and closed, located in an area apparently common, and transit, next to the access doors to the farms, in accordance with the photos they provided, in which you can see next to the burofax, a note with the title "important information", with reference to the Administrative Board at the bottom of the page. In the note is indicated, following the information that cannot be done calls for meetings due to the pandemic..."

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THIRD: In the photos provided by claimant 1, two different portal interiors can be seen in which a closed glass board with the aforementioned note can be seen in both

exposed, called portals 1 and 2 by the claimant in the file. the same photos

and file title are sent by claimant 2.

FUNDAMENTALS OF LAW

Yo

In accordance with the powers that article 58.2 of Regulation (EU) 2016/679

(General Data Protection Regulation, hereinafter GDPR), grants each

control authority and as established in articles 47 and 48.1 of the Law

Organic 3/2018, of December 5, Protection of Personal Data and guarantee of

digital rights (hereinafter, LOPDGDD), is competent to initiate and resolve

this procedure the Director of the Spanish Data Protection Agency.

Likewise, article 63.2 of the LOPDGDD determines that: "Procedures

processed by the Spanish Data Protection Agency will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations dictated in its development and, insofar as they do not contradict them, with character

subsidiary, by the general rules on administrative procedures."

II

The facts exposed suppose on the part of the defendant a violation of the article

5.1.f) of the GDPR, which states:

"The personal data will be:

"processed in such a way as to guarantee adequate security of the personal data"

personal information, including protection against unauthorized or unlawful processing and against its

accidental loss, destruction or damage, through the application of technical or

appropriate organizational procedures ("integrity and confidentiality")."

The LOPDGDD, states in its article 5:

"1. Those responsible and in charge of data processing as well as all persons

Persons involved in any phase of this will be subject to the duty of confidentiality.

ciality referred to in article 5.1.f) of Regulation (EU) 2016/679”

The Administrative Board is considered responsible for the infraction, since in accordance with the definition of data controller in article 4.7 of the GDPR, it is considered to have determined the purposes and means of processing, specifically the exposure of the data on the bulletin boards of the Community, violating the principle of reserve of confidentiality of the data of the people who form part of it, in the treatment of the data for which it is responsible and that must guarantee.

II

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Article 83.5 of the GDPR indicates:

"5. Violations of the following provisions will be penalized, in accordance with paragraph 2, with administrative fines of a maximum of 20,000,000 EUR or, in the case of a company, of an amount equivalent to a maximum of 4% of the volume global annual total business menu for the previous financial year, opting for the of greater amount:

a) the basic principles for treatment, including the conditions for consent in accordance with articles 5, 6, 7 and 9;"

The prescription of the infringement is contained in article 72 of the LOPDGDD, which notes:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, are considered very serious and will prescribe after three years the infractions that

a substantial violation of the articles mentioned therein and, in particular, the

following:

a) The processing of personal data in violation of the principles and guarantees established

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

IV.

Sections d) and i) of article 58.2 of the GDPR provide the following:

2 Each control authority will have all the following corrective powers

indicated below:

(...)

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

treatment comply with the provisions of this Regulation, when

proceed, in a specified manner and within a specified time frame;”

“i) impose an administrative fine in accordance with article 83, in addition to or instead of

the measures mentioned in this paragraph, according to the circumstances of each

particular case;”

V

The determination of the sanction that should be imposed in the present case requires obtaining

observe the provisions of articles 83.1) and .2) of the GDPR, precepts that, respec-

They provide the following:

"1. Each control authority will guarantee that the imposition of fines admissible

pursuant to this article for breaches of this Regulation.

mentioned in sections 4, 5 and 6 are effective in each individual case,

proportionate and dissuasive.”

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"2. Administrative fines will be imposed, depending on the circumstances of each individual case, as an addition to or substitute for the measures contemplated in Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine and its amount in each individual case shall be duly taken into account:

- a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the processing operation in question, as well as the number of stakeholders affected and the level of damages they have suffered do;
 - b) intentionality or negligence in the infraction;
 - c) any measure taken by the person in charge or in charge of the treatment to settle the damages suffered by the interested parties;
 - d) the degree of responsibility of the controller or the person in charge of the treatment, taking into account the technical or organizational measures that they have applied under articles 25 and 32;
 - e) any previous infringement committed by the controller or processor
- dude;
- f) the degree of cooperation with the supervisory authority in order to remedy the breach and mitigate the potential adverse effects of the breach;
 - g) the categories of personal data affected by the infringement;
 - h) the way in which the supervisory authority became aware of the infringement, in part particularly whether the controller or processor notified the infringement and, if so, in what extent;
 - i) when the measures indicated in article 58, paragraph 2, have been ordered previously against the person in charge or the person in charge in relation to the

same matter, compliance with said measures;

adherence to codes of conduct under article 40 or to mechanisms of

j)

certification approved in accordance with article 42, and

k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as the financial benefits obtained or the losses avoided, directly or indirectly, through the offense.”

Within this section, the LOPDGDD contemplates in its article 76, entitled: "Sanctions and corrective measures”:

"1. The sanctions provided for in sections 4, 5 and 6 of article 83 of the Regulation (UE) 2016/679 will be applied taking into account the graduation criteria established in section 2 of said article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679 may also be taken into account:

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a) The continuing nature of the offence.

b) The link between the activity of the offender and the performance of data processing.
personal information.

c) The benefits obtained as a consequence of the commission of the infraction.

d) The possibility that the conduct of the affected party could have led to the
commission of the offence.

e) The existence of a merger by absorption process subsequent to the commission of the

violation, which cannot be attributed to the absorbing entity.

f) The affectation of the rights of minors.

g) Have, when it is not mandatory, a data protection delegate.

h) Submission by the person responsible or in charge, on a voluntary basis, to

alternative dispute resolution mechanisms, in those cases in which

that there are controversies between those and any interested party.

3. It will be possible, complementary or alternatively, the adoption, when appropriate, of

the remaining corrective measures referred to in article 83.2 of the Regulation

(EU) 2016/679.”

An amount of the fine of 2,000 euros is considered,

Therefore, in accordance with applicable law,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE A.A.A. ADMINISTRATING BOARD, *** ADDRESS.1 with

NIF ***NIF.1, for a violation of article 5.1.f) of the GDPR, typified in article

83.5.a) of the GDPR, and for the purposes of prescription of the infringement, in article 72.1.a)

of the LOPDGDD, a fine of 2,000 euros.

SECOND: NOTIFY this resolution to the ADMINISTRATIVE BOARD

A.A.A., with the sending of the GENERAL ANNEX.

THIRD: Warn the penalized person that they must make the imposed sanction effective

once this resolution is enforceable, in accordance with the provisions of

the art. 98.1.b) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations (hereinafter LPACAP), within the payment term

voluntary established in art. 68 of the General Collection Regulations,

approved by Royal Decree 939/2005, of July 29, in relation to art. 62 of the

Law 58/2003, of December 17, through its entry, indicating the NIF of the

sanctioned and the number of the procedure that appears in the heading of this

document, in the restricted account number ES00 0000 0000 0000 0000 0000, open to

name of the Spanish Data Protection Agency in the bank

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CAIXABANK, S.A. Otherwise, it will be collected in the period

executive.

Once the notification has been received and once executed, if the execution date is

between the 1st and 15th of each month, both inclusive, the term to make the payment

voluntary will be until the 20th day of the following or immediately following business month, and if

between the 16th and the last day of each month, both inclusive, the payment term

It will be until the 5th of the second following or immediately following business month.

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

LOPDGDD, 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.

Finally, it is noted 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 to the Spanish Data Protection Agency,

presenting it to

the agency

[<https://sedeagpd.gob.es/sede-electronica-web/>], or through any 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 proving the

effective filing of the contentious-administrative appeal. If the Agency did not have

knowledge of the filing of the contentious-administrative appeal within the term

of two months from the day following the notification of this resolution, would give

by the end of the precautionary suspension.

Electronic record of

through the

Mar Spain Marti

Director of the Spanish Data Protection Agency

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GENERAL ANNEX

CLAIMANT 1- B.B.B.

CLAIMANT 2- C.C.C.

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