

□ File No.: PS/00256/2021

RESOLUTION OF TERMINATION OF THE PROCEDURE FOR PAYMENT

VOLUNTEER

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

BACKGROUND

FIRST: On September 1, 2021, the Director of the Spanish Agency
of Data Protection agreed to initiate a sanctioning procedure against the COMMUNITY OF
PROPIETARIOS C/ ***DISIÓN.1 (hereinafter the claimed party). notified on
initial agreement and after analyzing the allegations presented, dated October 21
of 2021, the proposed resolution was issued, which is transcribed below:

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File number: PS/00256/2021

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

BACKGROUND

FIRST: On January 25, 2021, Ms. A.A.A. (hereinafter, the claimant)
filed a claim with the Spanish Agency for Data Protection, against the
Community of Owners, C/ ***DIRECTORY.1 of Madrid, with CIF E78334539, (in
later, the claimed one).

It states that the documents that appeared on the window of the
goal (closed with a key) appearing, again, published their data. Instead of
poster of the final page of the writing of the Activities Agency of the City Council of
Madrid: "Closure order and suspension of activities with allegations" that he had
almost a year pasted in that place, it has been replaced by two sheets of said Order,

where your name and address are also underlined in yellow so that everyone who passes can take note of their personal data. Consider that far from have considered that your personal data should not be published on the pass-through site of the portal, they have republished them twice, revealing two pages of the Cessation Order of the City Council with your personal data underlined.

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5 December, Protection of Personal Data and Guarantee of Digital Rights (hereinafter LOPDGDD), said claim was transferred to the respondent, so that proceed to its analysis and inform this Agency within a month of the

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actions carried out to adapt to the requirements set forth in the regulations of Data Protection.

On March 11 and April 15, 2021, a response was received from the respondent in the which shows that the only data contained in these documents is your name and surnames, as well as your address in said farm, that said information obviously it is known by all the owners of the Community and therefore it is not may be considered sensitive data, and that the sheets to which the complainant refers they are not displayed on the Community bulletin board, but in a room where the gatehouse of the estate was formerly located, and which is currently intended for use by a cleaning company where they store materials and products, staying open many mornings.

THIRD: On May 21, 2021, in accordance with article 65 of the

LOPDGDD, the Director of the Spanish Data Protection Agency agreed admit for processing the claim filed by the claimant against the respondent.

FOURTH: In view of the facts denounced, in accordance with the evidence of that is available, the Data Inspection of this Spanish Agency for the Protection of Data considers that the treatment of personal data that is carried out by the entity claimed does not meet the conditions imposed by the regulations on data protection, so it is appropriate to open this procedure sanctioning

FIFTH: On September 1, 2021, the Director of the Spanish Agency for Data Protection agreed to initiate a sanctioning procedure against the claimant, with in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations (hereinafter, LPACAP), for the alleged infringement of article 5.1.f) of the RGPD, typified in the article 83.5 of the RGPD.

SIXTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, it stated that the claimant was attributing the authorship in the placement of that documentation, where some of its personal data, to the Community of Owners, and therefore to its Governing Board, without any proof that certifies it, that access to the interior of the room where these posters appear is not limited, since it is a space where

They store the tools and materials used by the company that performs the cleaning of the farm, in addition to being located there the water intake from where the operators of cleaners are used for their work and that any neighbor can access there without any problem, without the need to have a key to open the access door, and that neither by the Community of Owners nor by any of the members of its Government Board, the provisions of article 5 of the LOPDGDD have been breached,

on the duty of confidentiality, nor has there been negligent action of any kind, because the Community of Owners cannot be responsible for isolated actions to be carried out on behalf of any neighbor.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

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PROVEN FACTS

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FIRST: On January 25, 2021, the claimant filed a claim with the

Spanish Agency for Data Protection, against the Community of owners of the

C/ ***DIRECTORY.1 of Madrid, with CIF E78334539, since their data appeared posted on the front door window (locked).

SECOND: According to the respondent, the only data that appears in those

documents are your name and surnames, as well as your address in said farm, which

said information is known by all the owners of the Community and therefore

cannot be considered sensitive data, and that the sheets referred to in the

claimant are not displayed on the Community bulletin board, but on

a room where the gatehouse of the estate was formerly located, and which currently

It is intended for use by a cleaning company where they store materials and

products, staying open many mornings.

THIRD: The respondent states that there has been no negligent action of any

type, that the provisions of article 5 of the LOPDGDD have not been breached and that the

Community of owners is not responsible for the incident that is now being analyzed.

FOUNDATIONS OF LAW

FIRST: 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.

SECOND: Regarding the allegations presented, it should be clarified that the RGPD, in force at the time of the events, states in its article 5.2 that "the responsible for the treatment will be responsible for compliance with the provisions of the paragraph 1 and able to demonstrate it ("proactive responsibility)". This means that the controller (the Communities are responsible for their processing) must guarantee Ensuring the effective application of the principles of treatment both at the time of terminate the means of treatment as during the treatment itself, through the articulation of a series of measures, which should be subject to review and action periodic update.

And this because the data controller is the one who has the obligation to guarantee the application of data protection regulations and the protection of the rights of stakeholders, as well as being able to demonstrate it. In compliance with said precept and without containing a specific list of the tasks to be carried out to prove compliance, the following may be cited, without exhaustiveness:

- Have established, only in the cases that can legally be carried out, the exposure of data in a designated and predetermined place, excluding for purposes of its exposure, given the purpose of advertising, exposure in other places closed, clearly managed by the Community, such as rooms common, meetings, warehouses or porters. Warn and inform that no owner has to assume the role of the Community to unilaterally expose data of owners in common spaces, whether closed or open, without complying with the

legal requirements applicable to the case.

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-Adequately establish the effective means to respond to the exercise of rights on the part of the owners of the Community on the treatment of their data and the right of transparency to treatment.

-Risk assessment and assessment procedures and the adoption of measures technical and organizational that allow to eliminate or mitigate the damages that could derive for the rights and freedoms of individuals.

-Procedures for monitoring the implementation of treatments.

Therefore, a proactive development in data protection is needed, as well as have evidence on the steps taken to comply with the provisions of the GDPR.

Thus, in relation to the allegations made after the agreement to start the present sanctioning procedure, it should be noted that the community space in issue must ensure compliance with the regulations on the protection of data, especially when in the same allegations it is recognized that the documents where the personal data of the claimant appear were placed again, after having withdrawn by the Governing Board of the Community, on the understanding that he was committing an irregularity.

The fact that any neighbor with access to said space could do it is not sufficient cause for justification or exoneration since the Community cannot continue allowing the exposure of data in a space that is not adequate and this is because

it is the Community that actively assumes the role of guarantor of the data that managed in a community way without being able to allow it to continue causing damage to the holders of said data. The claimed party is responsible for the management and treatment of the data and in this case it is accredited that personal data is exposed to the knowledge of different people, not all owners in the strict sense (owners of the real right of property), for which third parties have been able to view the data and the matter in question. Consequently, the claims must be dismissed, meaning that the arguments presented do not distort the essential content of the infraction that is declared committed nor do they suppose a cause of sufficient justification or exculpation

In addition, this AEPD contains the reference precedent E/7115/2020, in whose reference solution dated 09/18/2020, the following was indicated to the claimant:

“This does not mean that the claimant does not have the right that, if there were any note with your personal data, in a common space, not considering the official of the Community can demand its immediate removal, including stickers inside the official bulletin board of the Community that identifies your data or makes it identifiable, Considering the community as guarantor of said common spaces and before a petition request that I remove such a document from an owner should respond, although not hu- It should have been that entity that exposed them.”

To this end, article 17 of the RGPD indicates that “1. The interested party shall have the right to obtain without undue delay from the data controller the deletion of the data personal information that concerns you, which you will be obliged to delete without undue delay personal data when any of the following circumstances occur:

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d) the personal data has been illicitly processed;”

However, the incidence has been repeated for similar reasons.

THIRD: The facts denounced are specified in that the defendant reveals data details of an owner (name, surnames and address) on the window of the goal, located in the portal of the building in which he resides.

It must be taken into account that the exposure of personal data must be conform to a series of principles, in order not to violate the protection regulations of data.

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 is authorized of a 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 “Communicate whoever exercises the functions of secretary of the community, for any medium that allows proof of receipt, the address in Spain for the purposes of citations and notifications of all kinds related to the community. In defect of this communication will be taken by domicile for citations and notifications the apartment or premises belonging to the community, having full legal effects delivered to the occupant. If a summons or notification to the owner is impossible to practice it in the place provided for in the preceding paragraph, shall be understood to be carried out by placing the corresponding communication in the community bulletin board, or in a visible place of general use enabled by effect, with expressive diligence of the date and reasons why this is done. 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.

Basically it is that the announcement on bulletin boards to the owners

be a subsidiary means for when it has not been possible to notify the

through the order of priority indicated in article 9.h) of the aforementioned LPH. In first

Instead, he would have to notify the address that he had provided,

If you have not provided any, to the address of the dwelling, and if even so

If the notification has been unsuccessful, it will be possible to resort to the exceptional way of

bulletin board meeting the following requirements:

1) Having been sufficiently justified the non-receipt or non-collection of the

owner at the consigned domicile or by default at the address of the dwelling, and may be

To do this, use any means of proof in law.

2) The placement of the plank must be in the usual place, preferably in

closed blón of which only the president of the Community has the keys.

3) The exhibition must include a diligence "expressive of the date and reason for

you for which this form of notification is made, signed by the person exercising the

functions of secretary of the community, with the approval of the president".

4) The aforementioned communication must not remain indefinitely, but rather a time

prudent and determined.

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Therefore, the glass of the goal should not serve as a notice board or

inform when personal data is exposed, if the requirements are not met in each

case indicated for said exhibition and its functions being those of notification or

citation.

In the present case, it is proven that the personal data of the claimant were unduly exposed to third parties, violating the principle of confidentiality, established in the aforementioned article 5.1.f) of the RGPD, infringement considered very serious for prescription purposes (three years) in article 72.1.a) of the LOPDGDD.

FOURTH: Article 5.1.f) of the RGPD, Principles related to treatment, indicates the

Next:

"1. The personal data will be:

(...)

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

Article 5 of the LOPDGDD, Duty of confidentiality, states the following:

"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 to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections will be maintained even when the relationship between the obligor and the person in charge or in charge of the transaction had ended.

treatment".

FIFTH: Article 83.5 of the RGPD provides the following:

"5. Violations of the following provisions will be sanctioned, in accordance with the paragraph 2, with administrative fines of a maximum of EUR 20,000,000 or,

in the case of a company, an amount equivalent to a maximum of 4% of the global total annual turnover of the previous financial year, opting for the largest amount:

a)

basic principles for treatment, including conditions for consent under articles 5, 6, 7 and 9;"

For its part, article 71 of the LOPDGDD, under the heading "Infringements" determines what following: Violations constitute the acts and conducts referred to in the

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sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that are contrary to this organic law.

Establishes article 72 of the LOPDGDD, under the rubric of infractions considered

very serious, the following: "1. Based on the provisions of article 83.5 of the

Regulation (EU) 2016/679 are considered very serious and will expire after three years

infractions that suppose a substantial violation of the articles

mentioned therein and, in particular, the following:

(...)

Yo)

The violation of the duty of confidentiality established in article 5 of this organic law.

SIXTH: In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

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

administrative actions under this article for violations of this

Regulation indicated in sections 4, 5 and 6 are in each individual case

effective, proportionate and dissuasive.

2. Administrative fines will be imposed, depending on the circumstances of each

individual case, in addition to or as a substitute for the measures contemplated in the

Article 58, paragraph 2, letters a) to h) and j). When deciding to impose a fine

administration and its amount in each individual case will be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature

nature, scope or purpose of the processing operation in question, as well as the number

number of interested parties affected and the level of damages they have suffered;

b) intentionality or negligence in the infringement;

c) any measure taken by the controller or processor to pa-

allocate the damages suffered by the interested parties;

d) the degree of responsibility of the person in charge or of the person in charge of the treatment,

gives an account of the technical or organizational measures that have been applied by virtue of the

articles 25 and 32;

e) any previous infringement committed by the person in charge or the person in charge of the treatment;

f) the degree of cooperation with the supervisory authority in order to remedy the

infringement and mitigate the possible adverse effects of the infringement;

g) the categories of personal data affected by the infringement;

h) the way in which the supervisory authority became aware of the infringement, in particular

whether the person in charge or the person in charge notified the infringement and, if so, to what extent.

gives; i) when the measures indicated in article 58, section 2, have been ordered

given previously against the person in charge or the person in charge in question in relation to

the same matter, compliance with said measures;

j) adherence to codes of conduct under Article 40 or to certification mechanisms

approvals approved in accordance with article 42,

k) any other aggravating or mitigating factor applicable to the circumstances of the case,

such as financial benefits obtained or losses avoided, directly or indirectly.

mind, through infraction.”

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For its part, article 76 “Sanctions and corrective measures” of the LOPDGDD

has:

"1. The penalties provided for in sections 4, 5 and 6 of article 83 of the Regulation

(EU) 2016/679 will be applied taking into account the graduation criteria

established in section 2 of the aforementioned article.

2. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679

may also be taken into account:

a) The continuing nature of the offence.

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

c) The profits obtained as a result of committing the offence.

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

e) The existence of a merger by absorption process after the commission of the infringement, which cannot be attributed to the absorbing entity.

f) Affectation of the rights of minors.

g) Have, when it is not mandatory, a delegate for the protection of

h) The submission by the person in charge or person in charge, with
voluntary, to alternative conflict resolution mechanisms, in those
assumptions in which there are controversies between those and any
interested."

data.

In accordance with the precepts transcribed, in order to set the amount of the penalty for
infraction of article 5.1 f) to the defendant, as responsible for the aforementioned infraction
typified in article 83.5 of the RGPD, it is appropriate to graduate the fine taking into account:

☐ In the present case, we are dealing with unintentional negligent action, but
significant (article 83.2 b)

☐ Basic personal identifiers (name, surname) are affected.

two, domicile), according to article 83.2 g)

Considering the exposed factors, the valuation that reaches the amount of the fine
is €2,000 for violation of article 5.1 f) of the RGPD.

SEVENTH: Establishes Law 40/2015, of October 1, on the Legal Regime of the Sector

Public, in Chapter III on the "Principles of the power to sanction", in the

Article 28 under the heading "Responsibility", the following:

"1. They may only be sanctioned for acts constituting an infraction.

natural and legal persons administratively, as well as, when a Law

recognize capacity to act, affected groups, unions and entities

without legal personality and independent or autonomous estates, which

are responsible for them by way of fraud or negligence."

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In view of the foregoing, the following is issued

MOTION FOR A RESOLUTION

That the Director of the Spanish Data Protection Agency sanction

***ADDRESS.1, from Madrid, with CIF

COMMUNITY OF OWNERS C/

E78334539, for an infringement of article 5.1.f) of the RGPD, typified in article

83.5 of the RGPD, with a fine of TWO THOUSAND € (2,000 euros) and order the implementation

of the corrective measures that are necessary to adapt their actions to the

personal data protection regulations that prevent future recurrence

similar events, such as the removal of the documents contained in the window

of the goal.

Likewise, in accordance with the provisions of article 85.2 of the LPACAP,

informs that you may, at any time prior to the resolution of this

procedure, carry out the voluntary payment of the proposed sanction, which

will mean a reduction of 20% of the amount of the same. With the application of this

reduction, the sanction would be established at ONE THOUSAND SIX HUNDRED (€1,600) and its payment

will imply the termination of the procedure. The effectiveness of this reduction will be

conditioned to the abandonment or renunciation of any action or resource in via

administrative against the sanction.

In case you chose to proceed with the voluntary payment of the amount specified

above, in accordance with the provisions of article 85.2 cited, must do so

effective by depositing it in restricted account number ES00 0000 0000 0000 0000

0000 opened in the name of the Spanish Agency for Data Protection in the entity

banking CAIXABANK, S.A., indicating in the concept the reference number of the

procedure that appears in the heading of this document and the cause, for
voluntary payment, reduction of the amount of the sanction. Also, you must send the
proof of entry to the General Subdirectorate of Inspection to proceed to close
The file.

By virtue of this, you are notified of the foregoing, and the procedure is made clear to you.
so that within TEN DAYS you can allege whatever you consider in your defense and
present the documents and information that it considers pertinent, in accordance with
article 89.2 of the LPACAP).

BBB

INSTRUCTOR

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SECOND: On November 19, 2021, the claimed party has proceeded to
payment of the sanction in the amount of 1,600 euros making use of the planned reduction
in the motion for a resolution transcribed above.

THIRD: The payment made entails the waiver of any action or resource in via
against the sanction, in relation to the facts referred to in the
resolution proposal.

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FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each authority of

control, and as established in art. 47 of the Organic Law 3/2018, of 5

December, of Protection of Personal Data and guarantee of digital rights (in

hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection

is competent to sanction the infractions that are committed against said

Regulation; infractions of article 48 of Law 9/2014, of May 9, General

Telecommunications (hereinafter LGT), in accordance with the provisions of the

article 84.3 of the LGT, and the infractions typified in articles 38.3 c), d) and i) and

38.4 d), g) and h) of Law 34/2002, of July 11, on services of the society of the

information and electronic commerce (hereinafter LSSI), as provided in article

43.1 of said Law.

II

Article 85 of Law 39/2015, of October 1, on Administrative Procedure

Common to Public Administrations (hereinafter LPACAP), under the rubric

"Termination in sanctioning procedures" provides the following:

"1. Started a sanctioning procedure, if the offender acknowledges his responsibility,

the procedure may be resolved with the imposition of the appropriate sanction.

2. When the sanction is solely pecuniary in nature or it is possible to impose a

pecuniary sanction and another of a non-pecuniary nature, but the

inadmissibility of the second, the voluntary payment by the alleged perpetrator, in

any time prior to the resolution, will imply the termination of the procedure,

except in relation to the replacement of the altered situation or the determination of the

compensation for damages caused by the commission of the infringement.

3. In both cases, when the sanction is solely pecuniary in nature, the

competent body to resolve the procedure will apply reductions of, at least,

20% of the amount of the proposed sanction, these being cumulative with each other.

The aforementioned reductions must be determined in the notification of initiation

of the procedure and its effectiveness will be conditioned to the withdrawal or resignation of any administrative action or recourse against the sanction.

The reduction percentage provided for in this section may be increased regulations."

In accordance with the above, the Director of the Spanish Agency for the Protection of Data

RESOLVES:

FIRST: TO DECLARE the termination of procedure PS/00256/2021, of in accordance with the provisions of article 85 of the LPACAP.

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SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

C/ ***ADDRESS.1 OF MADRID.

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 as prescribed by

the art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of the Public Administrations, the interested parties may file an appeal

contentious-administrative 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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