

□ Procedure No.: PS/00404/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and

based on the following

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on June 6, 2019 filed

claim before the Spanish Data Protection Agency.

The claim is directed against GESTIÓN ABRIL DE PATRIMONIO, S.L. with NIF

B85336832 (hereinafter, the claimed one).

The grounds on which the claim is based are public exposure, in the five

notice boards of the community of neighbors -one for each block of the group of

dwellings-, of an informative document that includes identification data (name,

surnames, block, floor and door) of several neighbors who oppose allowing the passage

for his home to carry out some works in the community.

In the letter they are required to give written permission within five days and

He threatens them with legal action if they object.

Likewise, they are required to pay an economic amount determined by the

extra cost caused by the delay in the execution of the works.

The complainant, who is one of those neighbors, considers that this measure was not necessary,

every time you have been notified by burofax from a law firm that

same content.

The claimant has been sued in court (ordinary procedure

\*\*\*PROCEDURE.1 in the Court of First Instance no. \*\*\*COURT.1 of

Madrid)

Along with the claim, provide a photograph of the writing on the board, and a copy of the burofax

with the communication of the law firm.

SECOND: In view of the facts denounced in the claim and the documents provided by the claimant, the Subdirector General for Inspection of Data proceeded to carry out preliminary investigation actions for the clarification of the facts in question, by virtue of the investigative powers granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD).

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The aim is to notify the respondent of this claim on July 19, 2019, requiring you to submit to this Agency, within a period of one month, information on the response given to the claimant for the facts denounced, as well as the causes that have motivated the incidence and the measures adopted for its correction of in accordance with article 5.1 f) of Regulation (EU) 2016/679 of the Parliament European and Council of April 27, 2016 (RGPD).

The respondent answers the following:

“Such information has been published, because despite the fact that a previous attempt was made to notification by burofax of the Board agreement to the four neighbors who opposed allow entry into your home to carry out the agreed works, two of the four neighbors refused the burofax, and another did not pick it up except for the

claimant, that he did receive it.

Having unsuccessfully tried to notify the domicile of those affected, under the provisions of art. 9.1.h of the LPH, the communication was made through edict within 3 calendar days on the community bulletin board.

Although they did not place any notice of communication addressed to the claimant, in the remaining 3 edicts the data of the claimant were exposed, since in them enumerated and identified the neighbors who were opposed to allowing entry into their address for the execution of the works.

The publication of the data of the claimant, therefore, obeys assumption 9.1.h of the LPH and art. 6.c of the RGPD, since the treatment is necessary for compliance of a legal obligation applicable to the data controller (the works to be carried out were notified by the Resolution of the Director of Emergencies and Civil Protection of the Government area of Health, Safety and Emergencies of the Madrid City Council, after, it is understood, the performance of an inspection)”

THIRD: On January 9, 2020, 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.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations on February 5, in which it proves the adoption of a series of measures to ensure that future bulletin board postings are comply with the provisions of the General Data Protection Regulation.

In this sense, the signed documents relating to the confidentiality and security rules and procedures, as well as the report of

audit carried out by your lawyer that accredits the review and compliance with measures security, aimed at ensuring the confidentiality and integrity of the information.

FIFTH: On February 26, the instructor of the procedure agreed to open a period of evidence practice, taking into account the actions

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preliminary investigations, E/07072/2019, as well as the documents provided by the reclaimed.

SIXTH: On March 17, 2020, a resolution proposal was formulated, proposing that it be imposed on GESTIÓN ABRIL DE PATRIMONIO, S.L., with NIF B85336832, for an infringement of article 5.1.f) of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

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

#### PROVEN FACTS

FIRST: the claim is based on public exposure, on five boards of announcements of a community of neighbors where an informative writing is placed that includes identification data (name, surnames, block, floor and door) of several neighbors who oppose allowing the passage through their home to carry out some works in the community.

SECOND: The respondent states that the facts are a consequence of the attempt unsuccessful of the notification in the domicile of those affected, of the agreements of the community of owners, deciding under the provisions of art. 9.1.h of the

LPH, make the communication by edict during a period of 3 calendar days in the community bulletin board.

THIRD: The respondent has proceeded to incorporate in his professional activity of immediate nature the appropriate measures so that future publications on the board ads comply with the provisions of the General Data Protection Regulations. cough.

Provides the documents signed by the staff of the entity denounced, related to confidentiality and security rules and procedures, applicable to the information accessed, as well as the audit report made by your lawyer who accredits the review and compliance with security measures, tending to ensure the confidentiality and integrity of the information.

## 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 according to what is established in articles 47 and 48 of the LOPDGDD, the Director of The Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

Article 6.1 of the RGPD establishes the assumptions that allow the legalization of the treatment of personal data.

For its part, article 5 of the RGPD establishes that “personal data will be:

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“a) processed in a lawful, loyal and transparent manner in relation to the interested party

("legality, loyalty and transparency");

b) collected for specific, explicit and legitimate purposes, and will not be processed

subsequently in a manner incompatible with those purposes; according to article 89,

section 1, further processing of personal data for archiving purposes in the interest

public, scientific and historical research purposes or statistical purposes shall not be considered

incompatible with the original purposes ("purpose limitation");

c) adequate, pertinent and limited to what is necessary in relation to the purposes for

those that are processed ("data minimization");

d) accurate and, if necessary, updated; all measures will be taken

reasonable for the erasure or rectification without delay of the personal data that is

inaccurate with respect to the purposes for which they are processed ("accuracy");

e) maintained in a way that allows the identification of the interested parties during

no longer than is necessary for the purposes of processing the personal data; the

personal data may be kept for longer periods as long as they are processed

exclusively for archival purposes in the public interest, scientific research purposes or

historical or statistical purposes, in accordance with article 89, paragraph 1, without prejudice

of the application of the appropriate technical and organizational measures imposed by the

this Regulation in order to protect the rights and freedoms of the data subject ("limitation

of the term of conservation»);

f) processed in such a way as to ensure adequate security of the data

including protection against unauthorized or unlawful processing and against their

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

appropriate organizational measures ("integrity and confidentiality").

The controller will be responsible for compliance with the provisions

in section 1 and able to demonstrate it ("proactive responsibility").”

### III

It has been found that despite having correctly notified the claimant for refusing to allow the passage through his home to carry out some works in the community, your personal data (name, surnames, block, floor and door) in the edicts addressed to the three remaining neighbors who had refused or did not collect the notification, for this reason it is understood that the claimed party is violating article 5.1 f) of the RGPD, which governs the principles of integrity and confidentiality of personal data, as well as the proactive responsibility of the data controller to demonstrate compliance.

However, within the period given for it, it has been accredited by virtue of the documents provided with their allegations to the initial agreement that the respondent has adopted a series of appropriate measures to ensure that future publications on the bulletin board comply with the provisions of the General Regulations of Data Protection.

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Providing the documents signed by the personnel of the denounced entity, related to confidentiality and security rules and procedures, applicable to the information accessed, as well as the audit report made by your lawyer who accredits the review and compliance with security measures, tending to ensure the confidentiality and integrity of the information.

### IV

Article 72.1.a) of the LOPDGDD states that “according to what is established in the

article 83.5 of Regulation (EU) 2016/679 are considered very serious and will prescribe the three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following:

a) The processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679

SAW

Article 58.2 of the RGPD provides the following: "Each supervisory authority shall have all of the following corrective powers listed below:

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

Regulation;

d) order the person in charge or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a certain way and within a specified period;

i) impose an administrative fine under article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;

The art. 83.5 of the RGPD establishes that infractions that affect:

“a) the basic principles for the treatment, including the conditions for the consent under articles 5, 6, 7 and 9;

b) the rights of the interested parties pursuant to articles 12 to 22.”

7th

Among the corrective powers contemplated in article 58 of the RGPD, in its section 2 d) establishes that each supervisory authority may “order the responsible or in charge of the treatment that the treatment operations are comply with the provisions of this Regulation, where appropriate, in a



certain manner and within a specified period...". The imposition of this measure is compatible with the sanction consisting of an administrative fine, as provided in art. 83.2 of the GDPR.

Therefore, as stated,

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the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a sanction of WARNING to MANAGEMENT APRIL OF HERITAGE, S.L. with NIF B85336832, for a violation of article 5.1 f) of the RGPD, of in accordance with article 83.5 and 58.2.b) of the RGPD.

SECOND: NOTIFY this resolution to ABRIL DE ASSETS MANAGEMENT, SL with NIF B85336832

THIRD: 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 one month from the day following the notification of this resolution or directly contentious appeal before the Contentious-Administrative Chamber of the National High Court, with in accordance with the provisions of article 25 and section 5 of the fourth additional provision of Law 29/1998, of 13/07, regulating the Contentious-administrative Jurisdiction, in within two months from the day following the notification of this act, as the provisions of 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 decision may be provisionally suspended in administrative proceedings if the interested party

states its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Registry

Electronic 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 1/10.

You must also transfer to the Agency the documentation that proves the filing

effectiveness 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 suspension

precautionary

Sea Spain Marti

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