

□ Procedure No.: PS/00200/2019

938-300320

## 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 11/15/2018, filed  
claim before the Spanish Data Protection Agency against the COMMUNITY  
OF OWNERS R.R.R. at \*\*\*ADDRESS.1 (hereinafter, the claimed address). The

In June 2018, the claimant filed a lawsuit against the respondent, which was  
transferred to him on 09/19/2018 and part of that demand, containing his personal data  
has been exhibited at the entrances to the garages of the Community on 10/22/2018, in  
the inside of a bulletin board.

Provide two photos. In one of them, seen further away, you can see a plank  
locked and glazed, containing two leaves, one next to the other. Next to  
a large cork board. In the closest shot you can see the two leaves, the first  
It is a document with the logo of a shield, "certificate of location" and in  
the other reads representation and defense, but the text is not well distinguished, appearing  
some sections underlined with marker.

SECOND: On 12/17/2018, the claim is transferred to the one claimed with the  
literal:

"In accordance with article 65.4 of Organic Law 3/2018, of 5/12, on Pro-  
Protection of Personal Data and guarantee of digital rights (LOPDDGG),  
transfer the submitted claim to analyze said claim and notify you  
the claimant the decision adopted in this regard.

Likewise, within a month from the receipt of this letter, you must re-

Submit to this Agency the following information:

"1. Copy of the communications, of the decision adopted that has sent the claim

regarding the transfer of this claim, and proof that the claimant-

You have received the communication of that decision.

2. Report on the causes that have motivated the incidence that has originated the claim.

mation.

3. Report on the measures adopted to prevent the occurrence of incidents si-

thousands.

4. Any other that you consider relevant."

On 01/22/2019, the Administrative Secretary of the claimed party, named

nothing GESTICAN ADMINISTRACIONES SL, declares that the board where it was exposed

part of the sentence is located in a space with access only to owners of the

property, not the general public, for such purpose and authorized to do so.

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The communication was for community interest, since the object affected ele-

common elements -At the General Meeting of owners on 03/12/2018, the claimant and

the rest of the community members adopt an agreement regarding the undertaking of works in

the covered areas of each of the blocks that make up the Residential. the de-

demand presented did not obey the agreements adopted and for this reason the need arose

aria and essential information to the community members.

THIRD: The claim was admitted for processing by the director of the AEPD on

05/10/2018.

FOURTH: On 11/11/2019 the Director agreed:

“FIRST: START A SANCTIONING PROCEDURE against the COMMUNITY OF PROPIETARIOS R.R.R., for the alleged infringement of article 5.1.f) of the RGPD in accordance with article 83.5 of the RGPD.”

FIFTH: On 11/28/2019 allegations are received from CONSULTANCY AND PROPERTIES CANARIAS, S.L. indicating is the new administrator. In them he reiterates what he said in the previous procedures, and adds that the exhibition took place in an access area unique for the owners of the parking spaces in the Community -24 spaces-, as well as maintenance and cleaning staff. Consider that it has not made a publication open access to anyone outside the Community.

The exhibit was withdrawn upon learning of the claim.

As corrective measures, a letter was sent apologizing to the affected party, the breach of data security was assessed, the protocols for cases of exposure of personal data and instructions for Post on the community board.

Provide a copy of the processing contract with the claimed

04/23/2019.

Copy of letter addressed by ASESORÍA Y FINCAS CANARIAS to the claimant on which the date does not appear, informing you of the measures adopted.

Copy of protocol for cases of exposure of personal data posted on the community board, indicating that not even those that may be identifiable and that would be anonymized and other issues related

SIXTH: Proposed resolution of the literal was issued:

“That by the Director of the Spanish Data Protection Agency,  
sanction the COMMUNITY OF OWNERS R.R.R. with a WARNING, with  
NIF \*\*\*NIF.1, for a violation of Article 5.1.f) of the RGPD, in relation to the article

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5 of the LOPDGDD, as indicated in article 83.5 of the RGPD, and article 58.2.b)

of the GDPR.”

No objections were received against the proposal.

In view of everything that has been done, by the Spanish Protection Agency

of Data in this procedure the following are considered proven facts,

#### FACTS

1)

On the occasion of the processing of a lawsuit filed by the claimant

against the Community, it was transferred to the Community claimed by the

Court. The Community partially exposed it on the closed board

belonging to the Community. According to the photos provided by the claimant,

they are two sheets in a closed board that contain your data.

two)

According to the respondent, the plank is located in an area

intended for a community garage, although it should be noted that it is not ruled out that

children, relatives, friends of owners can pass through said area, without ruling out

tenants or cleaning and maintenance staff of said community. People

that in any case they would not form each and every one part of the Board of owners, that

It is made up of all the owners of the properties, with tasks typical of a collective governing body, the only ones who, in general, would be responsible for knowing matters related to the Community.

3)

The respondent stated that she removed the pages displayed on the board and has adopted measures that include a protocol for not exposing sensitive data personnel on the board, except when legal requirements are met and with authorization expressed by the administrator.

## FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the Director of the Spanish Data Protection Agency is competent to resolve this procedure.

II

Article 5.1.f) of the RGPD provides:

“Personal data will be:

“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 measures appropriate technical or organizational (“integrity and confidentiality”).”

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The LOPDGDD states in its article 5:

"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."

Although the size of the claimed Community is unknown, predictably, in the Community vehicle parking area not only will access the owners, their relatives would access, but also any person authorized by these, as friends, or there could be places rented from non-residents, staff of maintenance etc that is, third parties outside the owner relationship can circulate, which is the one that marks the group to which these matters can be disclosed.

Not being guaranteed that exclusively the owners are the ones that access said transit space as a common area, third parties unrelated to the data have been able to view the data and the matter in question, not being a space suitable for communicating news to the owners of the Community.

The claimed party is responsible for the management and treatment of the data of the owners and in this case it is accredited that it exposes the data to the knowledge of not only owners, but not owners, and the filing of a lawsuit for a comunero against the community is the responsibility of the parties, not third parties.

III

Article 83.5 a) of the RGPD, considers that the infringement of "the basic principles costs for treatment, including the conditions for consent under the articles 5, 6, 7 and 9" is punishable, in accordance with section 5 of the aforementioned article.

Article 83 of the aforementioned Regulation, with administrative fines of €20,000,000 as maximum or, in the case of a company, an amount equivalent to 4% maximum amount of the global total annual turnover of the previous financial year, opting- I know for the highest amount."

Article 58.2 b) of the RGPD indicates the possibility of sanctioning warning, and section 2 d) establishes that each control authority may “order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, when proceed, in a certain way and within a specified period...”. The imposition of this last measure is compatible with the sanction consisting of warning.

Therefore, according to the law,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE a sanction of WARNING to the COMMUNITY OF PROPIETARIOS R.R.R., with NIF \*\*\*NIF.1, for an infraction of Article 5.1.f) of the RGPD, in accordance with Articles 83.5 and 58.2.d) of the RGPD.

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SECOND: NOTIFY this resolution to the COMMUNITY OF OWNERS

R.R.R., through its representative, ASESORÍA Y FINCAS CANARIAS, S.L.

THIRD: 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 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  
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