

□ Procedure No.: PS/00040/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: MUNICIPAL CONSUMER INSTITUTE OF THE CITY COUNCIL OF

MADRID (hereinafter, the claimant) on July 8, 2020 filed

claim before the Spanish Data Protection Agency.

The claim is directed against A.A.A. with NIF \*\*\*NIF.1 (hereinafter, the claimed one).

The reasons on which the claim is based are non-compliance with the regulations of  
data protection on the website <https://www.fontanerosexpress.com>

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

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

hereinafter LOPDGDD), with reference number E/07893/2020, transfer of

said claim to the claimed, on October 26, 2020, to proceed to

its analysis and inform this Agency within a month of the actions carried out

carried out to adapt to the requirements set forth in the regulations for the protection of

data, stating the claimed on November 17, 2020 that he has proceeded to the

update of this website.

THIRD: On March 18, 2021, the Director of the Spanish Agency for

Data Protection agreed to initiate a sanctioning procedure against the claimant, for the

alleged infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD.

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

In this proceeding, the following are considered proven facts:

### FACTS

The

FIRST:

website

<https://www.fontanerosexpress.com> does not have a privacy policy according to the data protection regulations, because the legitimizing basis for the treatment of personal data is inaccurate.

claimant states that the

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SECOND: On April 7, 2021, the respondent states that on April 6, 2021 he has proceeded to the correction of the web page, leaving its privacy policy, as follows:

“In compliance with Regulation (EU) 2016/679 of the European Parliament and the Council, of April 27, 2016, regarding the protection of natural persons in relation to regarding the processing of personal data, which repeals the directive 95/46/CE (hereinafter, RGPD), of Law 34/2002, of July 11, on services of the information society and electronic commerce (hereinafter, LSSI-CE) and the Organic Law 3/2018, on the Protection of Personal Data and guarantee of rights digital PLUMBERS EXPRESS guarantees the protection and confidentiality of the information that is provided by your users when using your site website, in accordance with the provisions of the General Data Protection Regulation Personal Character.

PLUMBERS EXPRESS is committed to the security of the data of its

users for it, when we ask for personal information with which you can be identified, we do so by ensuring that it will only be used in accordance with the terms of this document and that will be treated in the terms established in the RGPD for which, PLUMBERS EXPRESS has adopted the protection levels that are legally required, and has installed all the technical measures at its disposal to prevent loss, misuse, alteration, unauthorized access by third parties, exposed below.

However, the USER must be aware of the existing risks in what regarding security measures on the Internet and that this Privacy Policy may change over time, or be updated, so we recommend and we emphasize continually reviewing this page to ensure that you agree with these changes.

Who is responsible for the treatment?

In accordance with the provisions of the current regulations on Data Protection of Ca- Personal character, we inform you that your data will be incorporated into the treatment system owned by:

Identity of the person in charge: A.A.A.

Commercial name: Plumbers Express

Tax identification number: \*\*\*NIF.1

Registered office: \*\*\*ADDRESS

Phone:(+34) \*\*\*PHONE.1

Email: [info@fontaneroexpress.com](mailto:info@fontaneroexpress.com)

What data do we collect?

Our website may collect personal information, for example: Name, information contact information such as your email address and demographic information. Just like that-

However, when necessary, specific information may be required for matters

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specific, always with your consent, by checking the box

that appears in the contact form.

For what purpose will we use your data?

The data provided by visitors to the PLUMBER EXPRESS website are

collected in order to resolve the issues that move us through

our contact form and/or questions or problems that may arise

after visiting our website.

The legal basis for the treatment of your data is the express consent: the

treatment of your data is based on your consent that you grant when facilitating the

requested data, filling in and sending the form and checking the box

accepting data processing.

We will process your data for as long as necessary to meet your request or

petition.

Any other data that could be collected by PLUMBERS EXPRESS

outside the scope of its website, will have as its purpose the correct provision of the

service that could be ordered.

The legal basis for the processing of your data, in such a case, is none other than the execution

of the contract that unites the parties, or the application of pre-contractual measures

regarding the same.

The personal data provided will be kept for the appropriate time for the

due customer assistance and for the time necessary to comply with the

responsibilities derived from its treatment and established in the legal provisions.

Is your data shared?

PLUMBERS EXPRESS will not transfer your personal data to third parties, except for those regulations or laws that oblige it to carry out such a transfer with Public Entities.

public or private. In the event that, aside from the aforementioned assumptions, you need to

If we disclose your personal information to other entities, we will previously request your permission through clear options that will allow you to decide in this regard.

While it is true that our website may contain links to third party sites, which could be of interest to you. Once you click on these links and leave our another page, we no longer have control over the site to which you are redirected, and therefore we are not We are not responsible for the terms or privacy or the protection of your data in those other third party sites. These sites are subject to their own privacy policies.

which it is recommended that you consult them to confirm that you agree with these you.

How long will your data be found in the records of PLUMBERS EXPRESS?

The data will be kept for the period strictly necessary to comply with the precepts mentioned above and included in a record of ownership and responsibility reliability of PLUMBERS EXPRESS.

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When determining the appropriate storage period, the risks and contractual, legal and regulatory obligations acquired; as well as the

internal data retention policies and our legitimate business interests described

in this Privacy Notice and Cookies Policy.

In this sense, PLUMBERS EXPRESS will keep the personal data once the terminated the relationship with the user, during the prescription period of the actions that may could derive from the relationship maintained with it. If blockage occurs cough, your data will be inaccessible to PLUMBERS EXPRESS, and will not be processed except for making it available to public administrations, judges and tribunals. them, for the attention of the possible responsibilities arising from the treatments, as well as as for the exercise and defense of claims before the Spanish Protection Agency.

Data tion.

How will your data be protected?

PLUMBERS EXPRESS employs all the necessary resources to maintain the confidentiality of the personal information you provide in order to protect them against Accidental losses and/or unauthorized access, treatment or leaks.

However, PLUMBERS EXPRESS is not responsible for the use that the User make of the data (including username and password) that you use on our website by making know that, if you provide data from third parties, the User assumes the responsibility of informing them prior to everything provided for in article 14 of the General Regulations for the Protection of Data under the conditions established in said precept.

Likewise, PLUMBERS EXPRESS reserves the right to hire third parties to provide support services, which will be audited in order to know if they comply with the required standards.

What rights do you have over your data?

PLUMBERS EXPRESS informs the user of the possibility of exercising their rights of access, rectification, cancellation, limitation of treatment, portability and opposition by email to [info@fontanerosexpress.com](mailto:info@fontanerosexpress.com), attaching a photocopy of the DNI

signed by the interested party, under the subject: Protection of personal data.

Faced with any violation of their rights, especially when they have not obtained satisfaction in its exercise, you can file a claim with the Spanish Agency for Data Protection (contact details accessible at [www.agpd.es](http://www.agpd.es)) or other authority of competent control. You can also get more information about your rights attend by contacting these organizations.

The privacy policy, can it change?

PLUMBERS EXPRESS reserves the right to modify this policy to adapt it to new legislation or jurisprudence that may affect compliance

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of the same, for which we recommend and emphasize that you continuously review this page.

na to ensure that you agree to such changes.

Document revised and updated on 04/06/2021"

FOUNDATIONS OF LAW

Yo

By virtue of the powers that article 58.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of individuals with regard to the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD) recognizes each control authority, and according to what is established in the articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the

Director of the Spanish Data Protection Agency is competent to initiate this procedure.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the provisions regulations issued in its development and, as long as they do not contradict them, with a subsidiary, by the general rules on administrative procedures."

II

Article 4 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, regarding the protection of natural persons in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric "Definitions", provides that:

"For the purposes of this Regulation, the following shall be understood as:

1) "personal data": any information about an identified natural person or identifiable ("the interested party"); An identifiable natural person shall be deemed to be any person whose identity can be determined, directly or indirectly, in particular by an identifier, such as a name, an identification number, location, an online identifier or one or more elements of the identity physical, physiological, genetic, psychic, economic, cultural or social of said person;

2) "processing": any operation or set of operations carried out on personal data or sets of personal data, whether by procedures automated or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, broadcast or any other form of enabling of access, collation or interconnection, limitation, suppression or destruction;"



Therefore, in accordance with these definitions, the collection of personal data personal through forms included in a web page constitutes a treatment of data, with respect to which the data controller must comply with the provided for in article 13 of the RGPD, a precept that has moved since May 25 of 2018 to article 5 of the Organic Law 15/1999, of December 13, of Protection of Personal Data.

In relation to this matter, it is observed that the Spanish Agency for the Protection of Data is available to citizens, the Guide for the fulfillment of duty to inform (<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of carrying out low-risk data processing, the free tool Facilitates (<https://www.aepd.es/herramientas/facilita.html>).

### III

Article 13 of the RGPD, a precept that determines the information that must be provided to the interested party at the time of collecting their data, it has:

“1. When personal data relating to him is obtained from an interested party, the responsible for the treatment, at the time these are obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;
- b) the contact details of the data protection delegate, if applicable;
- c) the purposes of the treatment to which the personal data is destined and the legal basis

of the treatment;

d) when the treatment is based on article 6, paragraph 1, letter f), the interests

legitimate of the person in charge or of a third party;

e) the recipients or the categories of recipients of the personal data, in their

case;

f) where appropriate, the intention of the controller to transfer personal data to a third party

country or international organization and the existence or absence of a decision to

adequacy of the Commission, or, in the case of transfers indicated in the

Articles 46 or 47 or Article 49, paragraph 1, second paragraph, reference to the

adequate or appropriate warranties and the means to obtain a copy of these or

to the fact that they have been borrowed.

2. In addition to the information mentioned in section 1, the person responsible for the

treatment will facilitate the interested party, at the moment in which the data is obtained

personal, the following information necessary to guarantee data processing

fair and transparent

a) the period during which the personal data will be kept or, when it is not

possible, the criteria used to determine this period;

b) the existence of the right to request from the data controller access to the

personal data relating to the interested party, and its rectification or deletion, or the limitation

of its treatment, or to oppose the treatment, as well as the right to portability

of the data;

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c) when the treatment is based on article 6, paragraph 1, letter a), or article 9, paragraph 2, letter a), the existence of the right to withdraw consent in any time, without affecting the legality of the treatment based on the consent prior to its withdrawal;

d) the right to file a claim with a supervisory authority;

e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not provide such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, sections 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information on that other purpose and any additional information relevant under paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to referred to in the following section and indicating an electronic address or other medium that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at

less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the affected party must be informed of their right to oppose the adoption of automated individual decisions that produce legal effects on him or her significantly affect in a similar way, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

#### IV

By virtue of the provisions of article 58.2 of the RGPD, the Spanish Agency for Data Protection, as a control authority, has a set of corrective powers in the event of an infraction of the precepts of the GDPR.

Article 58.2 of the RGPD provides the following:

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“2 Each supervisory authority shall have all of the following corrective powers listed below:

(...)

- b) send a warning to any person responsible or in charge of the treatment when the

treatment operations have violated the provisions of this Regulation;”

(...)

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

treatment comply with the provisions of this Regulation, where appropriate,

in a specified manner 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

particular case;”

Article 83.5.b) of the RGPD establishes that:

“The infractions of the following dispositions 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) the rights of the interested parties pursuant to articles 12 to 22;”

In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered

mild has:

“They are considered minor and the remaining infractions of a legal nature will prescribe after a year.

merely formal of the articles mentioned in paragraphs 4 and 5 of article 83

of Regulation (EU) 2016/679 and, in particular, the following:

a)

Failure to comply with the principle of transparency of information or the right

of information of the affected party for not providing all the information required by the articles

13 and 14 of Regulation (EU) 2016/679.”

v

In this case,

website

<https://www.fontanerosexpress.com> did not have an adequate privacy policy, since that the legal basis for the processing of personal data was not precise.

it has been found that the

It has been found that the respondent has recently updated said web page, establishing as a legitimate basis for the processing of personal data the

Next:

“The legal basis for the treatment of your data is the express consent”.

And then it explains that the consent is express because the treatment of the data is based on the consent that is granted, filling in and sending the form and by checking the box accepting the data processing.

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Despite this, it should be noted that the warning for the data continues to be maintained.

data that were collected without adequately informing clients, which constitutes an infringement of article 13 of the RGPD.

However, a warning will be sent without the need to adopt measures by of the claimed, since it has already been proceeded by this to the generation of a policy of adequate privacy.

SAW

Faced with this infraction, a warning is issued, in accordance with article 58.2.b) of the RGPD, when collecting through said form basic data of the users and

consider that the administrative fine that could be levied in accordance with the provisions of Article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to the treatment of personal data, since there is no record of the commission of any previous infraction in matter of data protection.

In view of the foregoing, the following is issued  
the Director of the Spanish Data Protection Agency

RESOLVES:

FIRST: DIRECT A.A.A. with NIF \*\*\*NIF.1, for an infraction of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to A.A.A. with NIF \*\*\*NIF.1

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 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 month from

counting 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.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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