



RESOLUTION OF PUNISHMENT PROCEDURE

Procedure No.: PS/00160/2020

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

BACKGROUND

FIRST: D.A.A.A. (hereinafter, the claimant) on 08/27/2019 filed
claim before the Spanish Data Protection Agency. The claim is
directed against LA PASTORA DE GREDOS, S.L. with NIF B05132899 (hereinafter, the
reclaimed). The reasons on which the claim is based are: that on 08/18/2019, in the
Hostal "La Pastora" requested the complaints book to file a complaint about the
treatment received in said hostel; that after completing the document in which their
personal data breaches the LOPDGDD by not providing clauses
information regarding basic information (identity of the data controller,
the purpose of the treatment, the possibility of exercising the rights established in the
articles 15 to 22 of Regulation (EU) 2016/679), nor of course the information
additional; that the website of said establishment does not have a policy of
privacy published on said website.

SECOND: Upon receipt of the claim, the Subdirector General for
Data Inspection proceeded to carry out the following actions:

On 10/28/2019, the claim submitted was transferred to the defendant for analysis
and communication to the affected party of the decision adopted in this regard. Likewise, it
required so that within a month it would send to the Agency determined
information:

- The decision adopted regarding this claim.

- In the event of exercising the rights regulated in articles 15 to 22

of the RGPD, accreditation of the response provided to the claimant.

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

- Any other that you consider relevant.

On 12/02/2019 the respondent responded to the information request of the AEPD

noting that the claimant has not been a client nor has he ever contracted any service

with the aforementioned establishment; that nothing is provided to substantiate their statements

about a contractual relationship with the claimed establishment; that the claimant does not

You were never a client of the hostel, nor have you had a room previously reserved,

wanting to take advantage of a circumstance, the reservation by a third party that is already

had made, paid and extinguished, to try not to pay and sleep for free; that

prior to this claim before the AEPD, we have also received another

claim exercised before another body that has been filed; that in relation to

that the website of the establishment does not have the privacy policy, it is false and

denotes that you have not used the web page, since there is a tab that contains

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the legal notice and the privacy policy, being necessary whenever you try to

book and before filling in personal data, you must accept the privacy policy

privacy.

THIRD: On 06/02/2020, in accordance with article 65 of the LOPDGDD, the

Director of the Spanish Agency for Data Protection agreed to admit for processing the

claim filed by the claimant against the respondent.

FOURTH: On 06/23/2020, the Director of the Spanish Protection Agency

of Data agreed to initiate a sanctioning procedure against the defendant, for the alleged

infringement of article 13 of the RGD, sanctioned in accordance with the provisions of article

58.2.b) of the RGD.

FIFTH: Once the start agreement was notified, the one claimed on 07/08/2020 requested

copy of the file and extension of the term for allegations; copy sent to you

and the term extended.

On 07/29/2020, the respondent submitted a brief of allegations stating in summary

the following: that in the information provided on 11/26/2019 the website of the

claimed has always contained tab with legal notice and privacy policy and

as a requirement to reserve accept it; which has always been the intention of the

company to strictly comply with the regulations on data protection and

that, however, said privacy policy has been expanded and reinforced

detailing more exhaustively what is established in article 13 of the RGD; considers

absence of guilt and willingness to break the norm which leads to exclusion

of responsibility.

SIXTH: On 08/17/2020, a period of practice tests began,

remembering the following

- Consider reproduced for evidentiary purposes the claim filed by the

claimant and his documentation, the documents obtained and generated by the

Inspection Services that are part of file E/09828/2019.

- Consider reproduced for evidentiary purposes, the allegations to the agreement of

start PS/00160/2020 presented by LA PASTORA DE GREDOS, S.L., and the

accompanying documentation.

SEVENTH: On 10/09/2020, a Resolution Proposal was issued in the sense of

that the Director of the Spanish Agency for Data Protection sanctioned the
claimed for infringement of article 13 of the RGPD, typified in article 83.5 of the
RGPD, with a penalty of warning in accordance with article 58.2 of the
GDPR.

As of the date of this Resolution, the respondent had not submitted a written
allegations to the aforementioned Proposal.

EIGHTH: Of the actions carried out in this proceeding, they have been
accredited the following:

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PROVEN FACTS

FIRST: On 08/27/2019, the claimant submitted a written document to the Spanish Agency for
Data Protection, against the person claimed, stating that on 08/18/2019 he requested the
complaints book to file a complaint about the treatment received in said hostel
and after filling in the document in it, the regulations on the protection of
data by not providing basic information about it, nor of course the
Additional Information; that the website of said establishment does not contain
Privacy Policy.

SECOND: There is a Complaint Form provided addressed to the Territorial Service of
Culture and Tourism of the Junta de Castilla y León, Ministry of Culture and Tourism,
General Directorate of Tourism and the file of the same by the aforementioned service.

THIRD: A screenshot of the entity's website has been provided
contains tab on privacy policy; figure heading "Data protection of

personal character according to the LOPD”; its content does not refer to the new RGD.

FOUNDATIONS OF LAW

By virtue of the powers that article 58.2 of the RGD 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.

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The facts denounced materialize in the fact that the website of the establishment claimed is not adapted nor does it include any information in the sense indicated by article 13 of the RGD.

II

Article 13 determines the information that must be provided to the interested party in the time of collecting your data, establishing the following:

“Article 13. Information that must be provided when personal data is obtain from the interested party.

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 any;
- c) the purposes of the treatment to which the personal data is destined and the basis legal treatment;
- d) when the treatment is based on article 6, paragraph 1, letter f), the legitimate interests of the person in charge or of a third party;
- e) the recipients or categories of recipients of the personal data,

in your case;

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f) where appropriate, the intention of the controller to transfer personal data to a third country or international organization and the existence or absence of a adequacy decision of the Commission, or, in the case of transfers indicated in articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate or appropriate safeguards and means of obtaining a copy of these or the fact that they have been loaned.

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 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 related 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 data portability;

c) when the treatment is based on article 6, paragraph 1, letter a), or the Article 9, paragraph 2, letter a), the existence of the right to withdraw the consent at any time, without affecting the legality of the treatment based on 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 providing such data;

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

3. When the person in charge of the treatment projects the subsequent treatment of personal data for a purpose other than that for which it was collected, will provide the interested party, prior to said further treatment, information for that other purpose and any additional information relevant to the meaning of paragraph 2.

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

III

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In the present case, the defendant is accused of violating article 13 of the RGPD, typified in article 83.5.b) and a sanction of conformity warning with article 58.2 of the RGPD.

As has been proven in the facts proven through the printing screenshot of the web page provided by the respondent herself since, although it contained

privacy policy, tab with the heading "Protection of personal data

according to the LOPD", its content was not adapted to the new RGPD.

However, in order to clarify the terms of the claim

filed on 08/27/2019 that had led to the opening of this proceeding

sanctioning party, the person claimed in writing dated 07/29/2020 has provided details of the

information that is provided to users through its website, accrediting

understand that each of the requirements established in the new Regulation has been met

European, providing information on the privacy policy and legal notice adapted to the

new regulations on data protection, specifically article 13 of the

aforementioned Regulation.

Therefore, in light of the foregoing, it is not appropriate to urge the adoption of measures

additional, having been accredited, that the respondent has adopted the measures

opportune to have been incorporated into its website informative clause, legal notice and

privacy policy, in accordance with the provisions of the new regulations.

IV

Article 83.5. b) of the RGPD, considers that the infringement of "the rights of

those interested in accordance with articles 12 to 22", is punishable, in accordance with the

"with fines

section 5 of the aforementioned article 83 of the aforementioned Regulation,

administrative fees of €20,000,000 maximum or, in the case of a company, a

amount equivalent to a maximum of 4% of the total global annual turnover of the

previous financial year, opting for the highest amount.

The LOPDGDD in its article 72 indicates: "Infringements considered very serious:

"1. Based on the provisions of article 83.5 of the Regulation (EU)

2016/679 are considered very serious and the infractions that

suppose a substantial violation of the articles mentioned in that and, in

particularly the following:

(...)

h) The omission of the duty to inform the affected party about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law.

(...)”

However, article 58.2 of the REPD provides the following: "Each authority of control will have all the following corrective powers indicated below:

continuation:

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b) sanction any person responsible or in charge of the treatment with warning when the treatment operations have infringed the provided in this Regulation;

(...)”

Therefore, the RGPD, without prejudice to the provisions of its article 83, contemplates in its article 58.2 b) the possibility of going to the warning to correct the processing of personal data that do not meet your expectations.

In the case at hand, the present sanctioning procedure has

It has been proven that the respondent had not adapted the information offered in his web page to the provisions of the RGPD, which entails the infraction of the provisions in article 13 of the RGPD.

Likewise, in accordance with the provisions of article 58.2.d) of the RGPD, in the resolution could order the respondent to adopt measures so that his/her web page adapts to the provisions of article 13 RGPD, and must provide users with users, at the time they collect their personal data, the information required in the aforementioned precept and prevent incidents from occurring as the one revealed in the claim made in this case, as well as such as the provision of means of proof accrediting compliance with the required.

However, as previously indicated, it is not appropriate to urge the adoption of measures as it has been proven that the respondent has adopted the appropriate measures to have been incorporated into its web page informative clause, notice legal and privacy policy, in accordance with the provisions of the new regulations.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE LA PASTORA DE GREDOS, S.L., with NIF B05132899, for the infringement of article 13 of the RGPD, typified in article 83.5.b) of the RGPD, a penalty of warning in accordance with the provisions of article 58.2 of the GDPR.

SECOND: NOTIFY this resolution to LA PASTORA DE GREDOS, SL

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

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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

Sea Spain Marti

Director of the Spanish Data Protection Agency

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