

□ Procedure No.: PS/00075/2021

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

*** LOCATION.1 (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 that the web page of the claimed,

***URL.1, lacks a privacy policy in accordance with the privacy protection regulations
data.

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/07892/2020, transfer of

said claim to the claimant on October 13, 2020, so that he could proceed with his

analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations.

No response has been received to this request.

THIRD: On February 1, 2021, the Director of the Spanish Agency for

Data Protection agreed to admit for processing the claim presented by the

claimant.

FOURTH: 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).

These investigative actions have revealed the following facts:

The following is indicated on the ***URL.1 website page as a privacy policy:

“In compliance with Organic Law 15/1999, of December 13, on the Protection of

Personal Data, I expressly authorize personal data

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collected in this form are included and processed in the files owned by

Plumbers 24 hours ***LOCALIDAD.1 in order to be able to attend to the request of

contact you, perform statistics, send advertising, offers and, in

general information of a commercial nature of interest and sending of communications

commercial, through any means.

In any case, you may exercise your rights of access, rectification,

cancellation or opposition in the terms that the law (LOPD) establishes in our

address at Calle *** ADDRESS.1.

You can also contact us to answer any questions about it by

email ***EMAIL.1, or by phone ***PHONE.1”.

: On May 26, 2021, the Director of the Spanish Agency for

FIFTH

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.

SIXTH: On June 17, 2021, the respondent submits allegations accepting the facts object of this claim, and indicating its intention to proceed to correct deficiencies as soon as possible.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: At the time the complaint that gives rise to this sanctioning procedure, the website of the defendant, ***URL.1, lacked a policy Of privacy.

SECOND: It has been verified that the respondent has proceeded to correct the deficiencies alleged.

So that currently you can access the privacy policy of the claimed by following this link ***URL.2 where the following can be read:

“Responsible for the treatment

The person responsible for processing the data collected is A.A.A. with NIF ***NIF.1 (in forward Plumbers 24 hours) and domicile at Calle ***DIRIMIENTO.1 de ***LOCATION.1 owner of the Website ***URL.1.

This Privacy Policy regulates the collection and processing of data that are provided by the Users, when they access, browse or make use of the functionalities of the Website.

Collection of data, purposes, basis of legitimacy and retention periods:

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a. Contact: The User can contact, through the forms

established for this purpose on the Website. You must provide your identification data, as well as the reason, matter or issue. Plumbers 24 hours will use this data to process the query and contact the User.

The legal basis for the processing of such data is based on the relationship pre-contractual agreement with the User.

The term of conservation of the data for this purpose will be one year, unless other deadlines apply.

b. Cookies: The Website has technology for the implantation of files

called cookies on the equipment that is used for access and navigation through the website. Cookies can be blocked or disabled at any time through the browser configuration options. if you want more information you can consult our Cookies policy.

The legal basis for the processing of such data is based on the consent of the User.

Exercise of rights

Likewise, the User can revoke the consent for the treatment, making exercise of the rights of access, rectification, deletion, portability, opposition and limitation to the treatment, informing Plumbers 24 hours through of an email addressed to ***EMAIL.1 or indicating it to the address above indicated, indicating as subject "Data Protection". In case of doubts about your identity, we may request the User to prove it by means of an official document,

for example to prevent access to your data by third parties.

Finally, the User may communicate any modification in writing or request the down, indicating it in any of the directions provided.

At any time, the User may file a claim with the Agency

Spanish Data Protection to enforce your rights

Modification of the Privacy Policy Plumbers 24 hours reserves the right

to modify at any time its privacy policy, respecting the legislation

in force in terms of data protection and prior due communication to the

interested.

Language applicable to this privacy policy

The language applicable to this Privacy Policy is Spanish. Any version of

same in a different language is offered for the convenience of the User and to facilitate their

comprehension. However, this Privacy Policy will always be governed by your

Spanish version.

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In case of contradiction between the Privacy Policy in any language and its

version in Spanish, the version in Spanish will prevail.”

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 RGD, a precept that has moved since May 25

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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 RGD, 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;
- 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;

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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 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:

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

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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, it has been found that the website of the complainant, ***URL.1, lacked

a privacy policy appropriate to the data protection regulations but it has been

verified that it has recently proceeded to its update.

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 RGD. However, it will be a

warning without the need to adopt measures on the part of the defendant, since it is already

has proceeded by this to the generation of an adequate privacy policy.

SAW

This infraction is sanctioned with a warning, in accordance with article 58.2.b)

of the RGD, considering that the administrative fine that could be levied in accordance with

the provisions of article 83.5.b) of the RGD would constitute a disproportionate burden

for the claimed, whose main activity is not directly linked to the

processing of personal data, since there is no record of the commission of any infringement

above regarding data protection.

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In view of the foregoing, the Director of the Spanish Agency for Data Protection

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.

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