

Procedure No.: PS/00352/2019

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: MADRID MUNICIPAL CONSUMER INSTITUTE (hereinafter, the claimant) dated January 22, 2019 filed a claim with the Agency

Spanish Data Protection. The claim is directed against LOCKSMITHS

OPEN DOOR (CERRAJEROSMADRID-OD.COM), (hereinafter, the claimed party).

The reasons on which the claim is based are the collection of personal data by the claimed, without providing the precise information to the interested parties in accordance with the regulations in force regarding the protection of personal data.

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).

The aim is to notify the respondent of this claim on March 22 of 2019, requiring you to send 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 to adapt its "Policy of

Privacy" to article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (RGPD).

However, such request was returned by mail, alleging "address incorrect"

Subsequently, investigation actions were carried out on its website

<https://www.cerrajerosmadrid-od.com/> from which it can be deduced that the defendant

within the purpose of the treatment manifests that it is justified to maintain the contractual relationship, as well as the sending of information requested through forms and sending newsletters and commercial communications.

Regarding legitimacy in the processing of personal data, it indicates that found in the request for information or contracting services and in the consent given by its clients.

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However, in the data entry form there are no check boxes

to differentiate the consent with the rest of the relationship of the person in charge with the interested.

It alludes to the fact that they have contracted as treatment managers "those following service providers, having committed to comply with the regulatory provisions (...)" but does not list them.

Regarding the exercise of rights, it does not say anything about the possibility of presenting a claim before the AEPD.

In addition, it mixes privacy policies with other elements such as property

intellectual and protection of information or commercial communications.

As a result of the research actions carried out, it is found that the responsible for the treatment is the claimed.

THIRD: On November 19, 2019, the Director of the Spanish Agency of Data Protection agreed to initiate a sanctioning procedure against the claimed, for the alleged infringement of article 13 of the RGPD, typified in Article 83.5 of the RGPD.

QUAR

TO: Having notified the aforementioned start-up agreement, a term of hearing of TEN WORKING DAYS to formulate the allegations and present the evidence it deems appropriate, in accordance with the provisions of articles 73 and 76 of Law 39/2015 of Common Administrative Procedure of the Administrations Public.

TO: Not having made allegations or presented evidence within the given period,

WHO

This resolution is issued taking into account the following:

FACTS

FIRST: The claim consists of the collection of personal data by the claimed, without providing the precise information to the interested parties in accordance with the regulations in force regarding the protection of personal data.

SECOND: The respondent does not respond to the transfer made by this Agency, as it is it was returned by post to an incorrect address, however, it is found that in the link to the privacy policy that can be accessed from your website

<https://www.cerrajerosmadrid-od.com/> in the data entry form do not exist

checkboxes to differentiate the consent with the rest of the relationship of the responsible with the interested party and also, regarding the exercise of rights, it is not said nothing about which a claim can be filed with the AEPD.

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 arts. 47 and 48.1 of the LOPDPGDD, the Director of

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The Spanish Agency for Data Protection is competent to resolve this process.

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 means of a 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 authorization of access, collation or interconnection, limitation, suppression or destruction;”

Therefore, in accordance with those definitions, the collection of data from personal character through forms included in a web page constitutes a data processing, in respect of which the data controller must give compliance with the provisions of article 13 of the RGPD, a precept that has moved from on May 25, 2018 to article 5 of Organic Law 15/1999, of December 13, of Personal data protection.

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 the duty of report

(<https://www.aepd.es/media/guias/guia- Modelo-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 5 of the RGPD regulates the principles related to the treatment establishing what Next:

The personal data will be:

- 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");

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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 paragraph 1 and able to demonstrate it ("proactive responsibility").

For its part, article 6 that regulates the legality of the treatment establishes that:

"1. The treatment will only be lawful if at least one of the following is met

conditions:

a) the interested party gave their consent for the processing of their personal data

for one or more specific purposes;

b) the treatment is necessary for the execution of a contract in which the

The interested party is a party or for the application at the request of the latter of pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation

applicable to the data controller;

d) the treatment is necessary to protect the vital interests of the interested party or of

another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in

public interest or in the exercise of public powers vested in the person responsible for the

treatment;

f) the treatment is necessary for the satisfaction of legitimate interests

pursued by the person responsible for the treatment or by a third party, provided that on said

interests do not override the interests or fundamental rights and freedoms of the

interested party that require the protection of personal data, in particular when the

interested is a child.

The provisions of letter f) of the first paragraph shall not apply to the processing

carried out by public authorities in the exercise of their functions.

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2. Member States may maintain or introduce more

in order to align the application of the rules of this Regulation with
regarding the treatment in compliance with section 1, letters c) and e), setting in a way
more precise specific treatment requirements and other measures that guarantee a
fair and lawful treatment, including other specific situations of treatment
under chapter IX.

3. The basis of the treatment indicated in section 1, letters c) and e), must be
established by:

a) Union law, or

b) the law of the Member States that applies to the person responsible for the
treatment. The purpose of the treatment must be determined in said legal basis
or, in relation to the treatment referred to in section 1, letter e), it will be necessary to
the fulfillment of a mission carried out in the public interest or in the exercise of powers
data conferred on the data controller.

This legal basis may contain specific provisions to adapt the
application of the rules of this Regulation, among others: the general conditions that
govern the legality of the treatment by the person in charge; the object data types
treatment; affected stakeholders; the entities to which data can be communicated
information and the purposes of such communication; purpose limitation; the terms of
data conservation, as well as the operations and procedures of the treatment,
including measures to ensure fair and lawful treatment, such as those relating to
other specific situations of treatment under chapter IX. Union Law
or of the Member States will fulfill an objective of public interest and will be proportional to the
legitimate purpose pursued.

4. When the treatment for another purpose other than that for which they were collected
personal data is not based on the consent of the interested party or on the Law
of the Union or of the Member States which constitutes a necessary and

proportional in a democratic society to safeguard the objectives indicated in the article 23, paragraph 1, the controller, in order to determine whether the treatment for another purpose is compatible with the purpose for which the data was initially collected. personal data, will take into account, among other things:

- a) any relationship between the purposes for which the data was collected data and the purposes of the intended further processing;
- b) the context in which the personal data were collected, in particular by what regarding the relationship between the interested parties and the data controller;
- c) the nature of the personal data, specifically when categories are processed special personal data, in accordance with article 9, or personal data relating to criminal convictions and offences, in accordance with article 10;
- d) the possible consequences for data subjects of the envisaged further processing;
- e) the existence of adequate safeguards, which may include encryption or pseudonymization.”

Likewise, article 13 of the RGPD, a precept in which the information that must be provided to the interested party at the time of collecting their data, provides:

“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 you with all the information listed below:

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- 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 basis legal 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 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 articles 46 or 47 or article 49, paragraph 1, second paragraph, reference to adequate guarantees or appropriate and the means to obtain a copy of them or 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 information, the following information necessary to guarantee fair data processing 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 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 the portability of the data;

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 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 the personal data and is informed of the possible consequences of not providing such data;

f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 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 about that other purpose and any additional relevant information pursuant to 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.

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In relation to said precept, article 11 of the LOPDGDD, provides the

Next:

"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 which

refers to the following section and indicating an electronic address or other means 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 concerned shall be informed of their right to oppose the adoption of decisions automated individuals that produce legal effects on him or affect him significantly in a similar way, when this right concurs in accordance with what provided for in 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 powers corrective measures in the event of a violation of the provisions of the RGPD.

Article 58.2 of the RGPD provides the following:

“2 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 responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time;”

“i) impose an administrative fine under article 83, in addition to or instead of 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 section 2, with administrative fines of a maximum of EUR 20,000,000 or, in the case of of a company, of an amount equivalent to a maximum of 4% of the turnover global annual total of the previous financial year, choosing the highest amount:

a) the rights of the interested parties pursuant to articles 12 to 22;”

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In turn, article 74.a) of the LOPDGDD, under the heading "Infringements considered minor 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 sections 4 and 5 of article 83 of the Regulation (EU) 2016/679 and, in particular, the following:

a)
Failure to comply with the principle of transparency of information or the right to information of the affected party for not providing all the information required by the Articles 13 and 14 of Regulation (EU) 2016/679.”

In this case, it is verified that in the link to the privacy policy to the that can be accessed from the website of the claimed party <https://www.cerrajerosmadrid-od.com/> in the data entry form there are no checkboxes for differentiate the consent with the rest of the relationship of the person in charge with the interested and also, regarding the exercise of rights nothing is said about the right to file a claim with the AEPD.

The exposed facts constitute a violation of the provisions of article 13 of the RGPD, in relation to articles 5 and 6 of the RGPD.

This infraction could be sanctioned with a warning, in accordance with the 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 fall in accordance with the provided in article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to data processing personal, since there is no record of the commission of any previous infraction in terms of Data Protection.

Likewise, in accordance with the provisions of the aforementioned article 58.2.d) of the RGPD, in the resolution may order the claimed party, as data controller, to personal data that is collected is in accordance with the data protection regulations in general and to the requirements contemplated in articles 5, 6, 12, 13 and 14 of the RGPD in particular, as well as the provision of supporting evidence of compliance with the required.

Therefore, in accordance with the applicable legislation and having assessed the criteria for graduation of sanctions whose existence has been proven,

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE OPEN DOOR LOCKSMITHS (CERRAJEROSMADRID-

OD.COM), with NIF B87659686, for an infringement of article 13 of the RGPD in relation to

with articles 5 and 6 of said legal text, typified in article 83.5 of the RGPD, a warning sanction.

SECOND: REQUEST OPEN DOOR LOCKSMITHS (CERRAJEROSMADRID-OD.COM), with NIF B87659686, so that within a month from this act of notification accredits before this body the adoption of measures to update its "Privacy Policy" to current regulations on data protection

-Regulation (EU) 2016/679 (RGPD)-, and that specifically guarantee what

Next:

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the adoption of the necessary measures to update its "Privacy Policy"

□

Privacy" to current regulations on data protection

-Regulation (EU) 2016/679 (RGPD)-, adapting the information

offered to the requirements contemplated in article 13 of the RGPD, and must

provide users, prior to the collection of data

of the same, all the information required in the aforementioned precept,

for which you must take into account the provisions of article 6 of the RGPD in

In relation to the legality of the treatment, as well as what is indicated in article 5 of the

RGPD in relation to the purpose of the treatment and term of conservation of

the data.

THIRD: NOTIFY this resolution to OPEN DOOR LOCKSMITHS

(CERRAJEROSMADRID-OD.COM), with NIF B87659686

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 (article 48.2 of the

LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, 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

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

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Director of the Spanish Data Protection Agency

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