

□ Procedure No.: PS/00041/2021

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 AH CHA GUA S.L. with NIF B80899016 (hereinafter,
the claimed).

The reasons on which the claim is based are non-compliance with the regulations of
data protection on the website www.fontaneros-ahchagua-madrid.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/07891/2020, transfer of

said claim to the claimed party, on October 16, 2020, so that he could 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 16, 2020 that said website

complies with regulations.

THIRD: On March 10, 2021, the Director of the Spanish Agency for

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

in accordance with the provisions of articles 63 and 64 of Law 39/2015, of October 1, of the

Common Administrative Procedure of Public Administrations (hereinafter,

LPACAP), for the alleged infringement of Article 13 of the RGPD, typified in Article

83.5 of the GDPR.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written allegations in which, in summary, he stated that he had proceeded to correct his privacy policy and that already complies with data protection regulations personal.

FIFTH: On April 26, 2021, the instructor of the procedure agreed to the opening of a period of practice tests, considering incorporated the previous investigative actions, E/07891/2020, as well as the documents provided by the claimant.

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Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

PROVEN FACTS

FIRST: A claim is filed for non-compliance with the regulations of data protection on the website www.fontaneros-ahchagua-madrid.com

SECOND: The defendant states that he has proceeded to correct the website www.plumbers-ahchagua-madrid.com

THIRD: The web policy of the website www.fontaneros-ahchagua-madrid.com, in this time is as follows:

"Privacy Policy of AH.CHA.GUA, S.L.

For the purposes of compliance with the General Data Protection Regulation (RGPD), the following information is established:

RESPONSIBLE

TREATMENT

PURPOSE

AH CHA GUA, S.L., NIF/DNI: B80899016 Address: C/

Valderribas, 8 Retiro Pacífico 28007 Madrid, Registered in the

Mercantile Registry of Madrid Volume 8050, Book 0 Folio

114, Section 8, Sheet M-130056, Inscription 1, as well as

registered in the Integrated Industrial Registry of the Ministry

of Industry, Commerce and Tourism with the identification number

13-B-D21-00101931 being authorized by the Di-

rector General Directorate of Industry, Energy and Mines of the Co-

munity of Madrid as a company authorized to install

construction, maintenance and repair of installations

gas with the number of nº 976. Mail: ahchagua@ahcha-

gua.es

This is the information provided to us by individuals

resadas in order to manage the sending of information

requested, provide the interested party with offers of products

and services of your interest and improve your experience of

user, being able to elaborate, if necessary, a profile

based on the information provided. I don't know to-

They will make automated decisions based on said profile.

The personal data provided will be kept

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LEGITIMATION

RECIPIENTS

RIGHTS

as long as the commercial relationship is maintained, and no
its deletion by the interested party.

The consent of the interested party is requested for the treatment
processing of your data and the prospective offer of products and
services.

Personal data will not be transferred to third parties, except in
where appropriate, other group companies for administrative purposes
you internal

Interested parties have the right to access their data
as well as to request the rectification of the data
inaccurate data or, where appropriate, request its deletion when
the data is no longer necessary for the purposes for which it was
collected. Those interested in certain circumstances
companies may also limit or oppose the treatment of
your data, as well as request the portability of the same
mos. You will also have the right to withdraw your consent
and to file a complaint with the Control Authority. For
To exercise your rights, you must contact the Responsible in
the address that appears in the first box, accompanied
copy of the identity document of the interested party.

FOURTH: The privacy policy of this website did not inform about the right to

the limitation of treatment or the right to portability, however the

claimed has proceeded to remedy such deficiencies.

FOUNDATIONS OF LAW

Yo

The Director of the Spanish Agency is competent to resolve this procedure.

Data Protection, in accordance with the provisions of art. 58.2 of the GDPR and

in the art. 47 and 48.1 of LOPDGDD.

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;

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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.

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;

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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;

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.”

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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:

(...)

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 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 www.fontaneros-ahchagua-madrid.com

did not have an adequate Privacy Policy, but it has been

verified that it has recently proceeded to its update.

Despite this, it should be noted that the sanction of warning for the

personal data that was collected without adequately informing customers, which

which is constitutive of an infringement of article 13 of the RGD. However, it will be a

sanction of warning without the need to adopt measures by the defendant,

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because it has already been proceeded by this to the generation of a privacy policy

adequate.

SAW

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

of the RGD, 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 RGD 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: IMPOSE AH CHA GUA S.L. with NIF B80899016, for an infringement

of article 13 of the RGD, typified in article 83.5 of the RGD, a sanction of

warning.

SECOND: NOTIFY this resolution to AH CHA GUA S.L. with NIF

B80899016

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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