

□ Procedure No.: PS/00460/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

FIRST: The General Directorate of the Civil Guard - Main Post of Zafra (in
hereinafter, the claimant) on June 5, 2020 filed a claim with the
Spanish Agency for Data Protection sending intervention report
done.

The claim refers to the fact that on March 13, 2020, after inspection
administration of hostels to the establishment Hostal Anhia 2005, S.L. it is noted
that there is no information to customers about the treatment that is going to be given to
data collected in the traveler file.

The claim is directed against Hostal Anhia 2005, S.L. with NIF B06430938 (in
later, the claimed one).

SECOND: In accordance with article 65.4 of Organic Law 3/2018, of 5
December, Protection of Personal Data and guarantee of digital rights
(LOPDGDD), which has provided a mechanism, prior to the admission for processing of the
claims made before the Spanish Agency for Data Protection,
consisting of transferring them to the Data Protection Delegates designated by
those responsible or in charge of the treatment, for the purposes provided in article 37
of the aforementioned norm, or to these when they had not been designated, the transfer of the
claim presented by the claimant so that it proceeded to its analysis and give
response to this Agency within a month.

On September 17, 2020, electronically and later by the service

post office on the 28th of the same month and year was transferred to the claimed claim submitted for analysis and decision adopted in this regard, being returned for expired on September 28, 2020 and returned to origin for not being withdrawal at the post office on October 13 of the same year.

The respondent has not responded to any of the requirements formulated by the Spanish Agency for Data Protection.

THIRD: On February 12, 2021, the Director of the Spanish Agency for 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 b) of the GDPR.

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FOURTH: Once the initiation agreement has been notified, the claim at the time of this The resolution has not presented a written statement of allegations, for which reason the indicated in article 64 of Law 39/2015, of October 1, on the Procedure Common Administrative Law of Public Administrations, which in section f) establishes that in the event of not making allegations within the period established on the content of the initiation agreement, it may be considered a proposal for resolution when it contains a precise statement about the responsibility imputed, reason why a Resolution is issued.

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

PROVEN FACTS

FIRST: On June 5, 2020 The General Directorate of the Civil Guard - Post

Principal de Zafra sends this Agency a report on the intervention carried out.

SECOND: Dated March 13, 2020 after administrative inspection of

hostels to the establishment Hostal Anhia 2005, S.L. made by the post

Principal of Zafra of the Civil Guard, it is verified that there is no information to the

clients about the treatment that is going to be given to the data collected in the

traveler.

FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of the RGPD recognizes to each

control authority, and as established in arts. 47 and 48.1 of the LOPDGDD, the

Director of the Spanish Data Protection Agency is competent to resolve

this procedure.

II

Law 39/2015, of October 1, on the Common Administrative Procedure of

the Public Administrations, in its article 64 "Agreement of initiation in the

procedures of a sanctioning nature", provides:

"1. The initiation agreement will be communicated to the instructor of the procedure, with transfer of how many actions exist in this regard, and the interested parties will be notified, understanding in any case by such the accused.

Likewise, the initiation will be communicated to the complainant when the regulatory norms of the procedure so provide.

2. The initiation agreement must contain at least:

a) Identification of the person or persons allegedly responsible.

b) The facts that motivate the initiation of the procedure, its possible rating and sanctions that may apply, without prejudice to what

result of the instruction.

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c) Identification of the instructor and, where appropriate, secretary of the procedure, with express indication of the system of recusal of the same.

d) Competent body for the resolution of the procedure and regulation that attribute such competence, indicating the possibility that the presumed responsible can voluntarily acknowledge their responsibility, with the effects provided for in article 85.

e) Provisional measures that have been agreed by the body competent to initiate the sanctioning procedure, without prejudice to those that may be adopted during the same in accordance with article 56.

f) Indication of the right to formulate allegations and to the hearing in the procedure and the deadlines for its exercise, as well as an indication that, in

If you do not make allegations within the stipulated period on the content of the initiation agreement, this may be considered a resolution proposal when it contains a precise statement about the responsibility imputed.

3. Exceptionally, when at the time of issuing the initiation agreement there are not sufficient elements for the initial qualification of the facts that motivate the initiation of the procedure, the aforementioned qualification may be carried out in a phase later by drawing up a List of Charges, which must be notified to the interested".

In application of the previous precept and taking into account that no formulated allegations to the initial agreement, it is appropriate to resolve the initiated procedure.

III

The defendant is charged with the violation of article 13 of the RGPD that establishes:

“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; 4.5.2016 L 119/40 Official Journal of the European Union

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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;

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

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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.

In the present case, the respondent does not have any information regarding the processing of personal data, collecting personal data of users who they fill in through contact forms and lack a privacy policy.

The respondent has also not responded to the requests made by the Spanish Agency for Data Protection, nor has it made allegations to the present sanctioning procedure.

Specifically, there is no information in the sense indicated in the article 13 of the RGPD and, as it does not have adequate Privacy Policies where

The user is provided with clear and complete information about the treatment of their personal data according to the provisions of the aforementioned article.

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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 71, Violations, states that:

“The acts and behaviors referred to in the regulations constitute infractions.

sections 4, 5 and 6 of article 83 of Regulation (EU) 2016/679, as well as those that
are contrary to this organic law.

The LOPDGDD in its article 72 indicates for prescription purposes: "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 RGPD provides the following: “Each authority
of control will have all the following corrective powers indicated below:

continuation:

(...)

b) sanction any person responsible or in charge of the treatment with
warning when the processing operations have violated the provisions of

this Regulation;

(...)

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

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

in a certain way and within a specified period;

(...)”

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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 that concerns us, the present sanctioning procedure comes

motivated by the lack of information in the sense indicated in article 13 of the RGPD

and, since the claimed party does not have adequate Privacy Policies where

provide the user with clear and complete information about the processing of their data

according to the provisions of the aforementioned article.

In accordance with such evidence, said conduct constitutes

infringement of the provisions of article 13 of the RGPD.

Now, as indicated above, this infraction can be

sanctioned with a warning. Considering that the administrative fine that could

fall in accordance with the provisions of article 83.5.b) of the RGPD would constitute a

load disproportionate to that claimed, in accordance with article 58.2.b) of the

RGPD proceeds the warning.

Also, for the purposes provided in article 58.2. d) of the RGPD is ordered to responsible for the treatment that the treatment operations comply with the provided in article 13 of the RGPD, especially adapting the information that has to be offered to users to the requirements contemplated in the aforementioned article, as well such as the provision of means of proof accrediting compliance with the indicated.

Therefore, in accordance with the applicable legislation,

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE HOSTAL ANHIA 2005, S.L., with NIF B06430938, for a infringement of Article 13 of the RGPD, typified in Article 83.5 of the RGPD, a warning sanction.

SECOND: NOTIFY this resolution to HOSTAL ANHIA 2005, S.L. with NIF B06430938 and require it to inform the AEPD of the measures adopted, in the period of one month, to prevent a new infringement from occurring in the future of article 13 of the RGPD, trying to effectively adopt measures so that the treatment operations comply with the provisions of the aforementioned article, adapting the information that must be offered to users to the requirements referred to in it, as well as the provision of supporting evidence compliance with what is required.

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

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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 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

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