

□ Procedure No.: PS/00419/2020

RESOLUTION OF PUNISHMENT PROCEDURE

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

BACKGROUND

MUNICIPAL INSTITUTE OF CONSUMPTION OF THE CITY COUNCIL OF

FIRST:

*** 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 non-compliance with the regulations of
data protection on the website ***URL.1.

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/06527/2020, transfer of said

claim to the respondent, on August 17, 2020, to proceed with its analysis

and inform this Agency within a month of the actions carried out to

adapt to the requirements set forth in the data protection regulations, without the

date recorded answer in this regard.

THIRD: In view of the facts denounced in the claim and the documents

provided by the claimant, the General Subdirectorate for Data Inspection proceeded to

carrying out preliminary investigative actions to clarify the facts

in question, by virtue of the investigative powers granted to the authorities of

control in article 57.1 of Regulation (EU) 2016/679 (General Regulation of

Data Protection, hereinafter RGPD), and in accordance with the provisions of the Title

VII, Chapter I, Second Section, of Organic Law 3/2018, of December 5, of

Protection of Personal Data and guarantee of digital rights (hereinafter

LOPDGDD).

These investigative actions have revealed the following facts:

It is verified that on the reported website, personal data is collected through

Contact Form. The website does not identify the data controller or

has a privacy policy document where the necessary aspects are collected

established in the data protection regulations, and therefore, the checkbox does not appear.

acceptance of this policy in the form.

Made a request for information about the owner of the domain "damafon.es" to the

public business entity RED.ES (hereinafter, RED.ES), responsible for managing the

first level domain ".es", dated October 28, 2020 is received in this

Agency, reply sent by RED.ES informing that the owner of the registry is the

following legal person:

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Javier Crucis Medina, S.L. with CIF B55185474 with address at ***ADDRESS.1,

***LOCATION.1 (GIRONA)

This company was investigated in the Central Mercantile Registry (hereinafter, RMC) and the Internet,

we find that it is an internet service company that includes the

domain registration and website hosting, so we understand that you have provided

this type of service to the owner of the investigated website. The data of this company are

(updated address of the legal notice of the website ***URL.2) OKITUP, S.L. (onwards

OKITUP), with CIF B55185474 and address at C/ ***DIRIMIENTO.2, ***LOCALIDAD.2 (GIRONA).

Made request for information on the owner of the website claimed to the entity

OKITUP, dated November 10, 2020, this Agency receives a letter from reply indicating the Name, Surname and NIF of the holder.

Dated November 13, 2020, it is obtained from the National Institute of Statistics (in hereinafter, INE) the address of registration of the owner of the website informed by OKITUP.

Based on the information provided by OKITUP and the INE, we can conclude that the owner of the claimed website is:

A.A.A. with NIF ***NIF.1 and address at Calle ***DIRIMIENTO.3, ***LOCALIDAD.3, MADRID

FOURTH: On January 29, 2021, the Director of the Spanish Agency for

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.

FIFTH: On February 15, 2021, allegations are presented, but no

expresses nothing beyond the fact that it has received the receipt of the agreement of initiation of this sanctioning procedure.

SIXTH: On February 23, 2021, the instructor of the procedure agreed to the

opening of a period of practice tests, considering incorporated the previous investigation actions, E/08095/2020, as well as the documents provided for the claimed.

SEVENTH: On March 1, 2021, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency

impose on A.A.A. with NIF ***NIF.1, for an infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

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 the alleged breach of the regulations

of data protection on the website ***URL.1.

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SECOND: Allegations are presented on February 15, 2021, but it is not stated

anything other than the fact that you have received receipt of the contract initiation agreement present sanctioning procedure.

THIRD: On March 1, 2021, the privacy policy of the site has been verified

website of the claimed and it has been verified that it has been reformed in this way:

“Confidentiality and security are core values of A.A.A. and in

consequently, we assume the commitment to guarantee the privacy of the User in at all times and not to collect unnecessary information.

Next, we provide you with all the necessary information about our

Privacy Policy in relation to the personal data we collect,

explaining:

Who is responsible for processing your data.

For what purposes we collect the data we request.

What is the legitimacy for its treatment.

How long do we keep them for?

To which recipients your data is communicated.

What are your rights.

1.- Responsible:

A.A.A.

C/ ***ADDRESS.1, ***LOCALITY.1 (Madrid).

***EMAIL.1

2.- Purposes, legitimacy and conservation of the processing of the data sent

via:

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CONTACT FORM.

Purpose: Provide a means for you to contact us and

respond to your requests for information, as well as send you communications of

our products, services and activities, including by electronic means (Email

email, SMS, WhatsApp), if you check the acceptance box.

Legitimation: The user's consent when requesting information through

our contact form and by checking the acceptance box for sending

information.

Conservation: Up to once your request is through our form or

answered by email, if you have not generated a new treatment. In case

of having accepted to receive commercial shipments, until you request the cancellation of the

themselves.

SENDING OF EMAILS.

Purpose: Answer your requests for information, attend to your requests and

answer your questions or doubts.

Legitimation: The user's consent when requesting information through the Email address.

Conservation: Once your request is answered by email, if you have not generated a new treatment.

Obligation to provide us with your personal data and consequences of not doing so.

The provision of personal data requires a minimum age of 14 years, or in its case, have sufficient legal capacity to contract.

The requested personal data is necessary to manage your requests and/or provide you with the services you may contract, so if you do not provide them to us, we will not we will not be able to serve you correctly or provide the service you have requested.

3.-Recipients of your data

Your data is confidential and will not be transferred to third parties, unless there is an obligation legal.

4.- Rights in relation to your personal data: Anyone can withdraw their consent at any time, when the same has been granted for the treatment of your data. In no case, the withdrawal of this consent conditions the execution of the subscription contract or the relations generated with anteriority.

Likewise, you can exercise the following rights:

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Request access to your personal data or its rectification when they are inaccurate.

Request its deletion when, among other reasons, the data is no longer necessary for the purposes for which they were collected.

Request the limitation of your treatment in certain circumstances.

Request opposition to the processing of your data for reasons related to your particular situation.

Request the portability of the data in the cases provided for in the regulations.

Other rights recognized in the applicable regulations.

Where and how to request your Rights: By means of a letter addressed to the person in charge at your postal or electronic address (indicated in section A), indicating the reference “Personal Data”, specifying the right that you want to exercise and with respect to what personal information.

In case of disagreements with the company in relation to the processing of your data,

You can file a claim with the Data Protection Authority

(www.agpd.es).”

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;

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,

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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 RGPD.

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 RGPD, 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 any;
- 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;

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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 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.

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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 ***URL.1 did not have a Policy

of Privacy 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 RGPD. However, it will be a

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

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

adequate.

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Thus, the exposed facts constitute, on the part of the defendant, a

infringement of the provisions of article 13 of the RGPD.

This infraction is sanctioned with a warning, in accordance with 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 be levied in accordance with the provisions of

Article 83.5.b) of the RGPD 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 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 sanction of warning.

SECOND: NOTIFY this resolution to A.A.A.

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

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