

Procedure No.: PS/00324/2019

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 against EL MAESTRO CERRAJERO SL (CERRAJEROSMADRID-24H.COM and CERRAJEROSMADRID.COM) with NIF B87043691 (hereinafter, the claimed).

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: It is verified that in the "Privacy Policy" of the aforementioned website, points out:

- That the claimed party operates the website hosted under the domain name ***URL.1
- That said policy establishes that "In accordance with Organic Law 15/1999, of 13 December, Protection of Personal Data (LOPD), and the Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27 ("General Regulation of Data Protection" or "RGPD"), this Privacy Policy applies to the processing of personal data that CERRAJEROS MADRID 24H carries out as Responsible and/or in charge of the same, in relation to the data that the users and/or clients (individuals) facilitate as a result of contracting the services, purchase of products or access to the blog provided by CERRAJEROS MADRID 24H, or collected in any of the sections of the website ***URL.1

Subsequently, the General Subdirectorate for Data Inspection proceeded to carry out of previous investigative actions to clarify the facts in question, by virtue of the investigative powers granted to the supervisory authorities in the Article 57.1 of Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second section of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD).

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

In addition, the following extremes are noted:

The claimant is informed of this claim on June 21, 2019, requiring you to submit to 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

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motivated the incidence and the measures adopted to adapt its "Privacy Policy" to the article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR).

After the given period has elapsed, no response has been obtained from the respondent.

THIRD: On October 23, 2019, 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.

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

In this proceeding, the following are considered proven facts:

FACTS

FIRST: The claim is based on the fact that the privacy policy of the claimed does not provide all the information that article 13 of the RGPD requires when the data are obtained from the interested party.

The claimant is informed of this claim on June 21, 2019, requiring you to submit to 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 "Privacy Policy" to the article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (GDPR).

After the given period has elapsed, no response has been obtained from the respondent.

SECOND: The respondent filed a document indicating the measures adopted on July 11 of 2019, but due to computer problems there was no access to said information after have initiated the present sanctioning procedure.

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 as established in arts. 47 and 48.1 of the LOPDPGDD, the Director of the Spanish Agency for Data Protection is competent to resolve this process.

II

The defendant is imputed the commission of an infraction for violation of article 13 of the GDPR, which states the following:

"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:

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;

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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.

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 which

refers to the following section and indicating an electronic address or other means that

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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.”

III

In the present case, the infringement is typified in article 83.5 of the RGPD that

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:

b) the rights of the interested parties pursuant to articles 12 to 22;"

Said infraction is classified as minor in article 74.a) of the LOPDGDD, under the

The heading "Infringements considered minor" provides:

"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 articles 13 and

14 of Regulation (EU) 2016/679."

IV

The agreement to initiate the sanctioning file that concerns us had its reason for

be in the claim filed against the defendant because his website is not

adapted to the personal data protection regulations, specifically to what is established

in article 13 of the RGPD that regulates the information that must be provided when the

personal data is obtained from the interested party.

The Spanish Data Protection Agency has recently had access to the

document that the respondent sent in response to the request made by this

Body, indicating the measures adopted to adapt to the new regulations,

to which, due to computer problems, this Agency did not have access until now.

Said document indicates the following:

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“It has been updated and included in the web pages object of its requirement in the privacy policies.

We hope to comply with all current regulations.

We proceed to include the links in which these updates are included.

***LINK.1

***LINK.2

***LINK.3

***LINK.4

***LINK.5

***LINK.6

Specifically, in the first link, the following is notable:

“YOUR PRIVACY IS IMPORTANT TO ME.

In this privacy statement I explain what personal data I collect from my users and how do I use them. I encourage you to read these terms carefully before providing your personal data on this website. Those over thirteen years of age may register at ***URL.1 as users without the prior consent of their parents or guardians.

In the case of minors under the age of thirteen, the consent of the parents or guardians for the treatment of your personal data.

In no case will data related to the professional situation, economic or privacy of other family members, without the consent of these.

If you are under the age of thirteen and have accessed this website without notifying your parents, You must register as a user.

This website respects and cares for the personal data of users. as a user

You should know that your rights are guaranteed.

We have made an effort to create a safe and reliable space and that is why I want to share my principles regarding your privacy:

☐ I never request personal information unless it is really necessary to provide you with the services you require.

☐ I never share personal information of my users with anyone, except to comply with the law or if it has your express authorization.

☐ I never use your personal data for a purpose other than that expressed in this Privacy Policy.

It should be noted that this Privacy Policy may vary depending on the requirements legislative or self-regulatory, so users are advised to visit it periodically. It will be applicable in the event that users decide to fill in any form of any of its contact forms where data is collected from personal character.

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In accordance with Organic Law 15/1999, of December 13, on Data Protection of Personal Character (LOPD), and Regulation (EU) 2016/679, of the European Parliament and of the Council, of April 27 ("General Data Protection Regulation" or "RGPD"), this Privacy Policy applies to the processing of personal data that CERRAJEROS MADRID 24H performs as Responsible and/or in Charge of the same, in relation to the data that users and/or clients (individuals) provide as consequence of the contracting of services, purchase of products or access to the blog provided by CERRAJEROS MADRID 24H, or collected in any of the sections of the

website ***URL.1

If you do not agree to the terms of this Policy, do not access or use the Services. This Privacy Policy does not apply to any other products, services or third party activity.

RESPONSIBLE FOR THE PROCESSING OF YOUR DATA

- ☐ Company Name: The Master Locksmith SL
- ☐ Trademark: CERRAJEROS MADRID 24H
- ☐ Address: C/ DEL GENERAL PARDIÑAS 15, 28015 Madrid (Madrid)
- ☐ CIF/NIF: B87043691
- ☐ Email: ***EMAIL.1

PRINCIPLES THAT I WILL APPLY TO YOUR PERSONAL INFORMATION

In the treatment of your personal data, I will apply the following principles that are adjusted to the requirements of the new European data protection regulation:

Principle of legality, loyalty and transparency: I will always require your consent for the processing of your personal data for one or more specific purposes that you I will inform you in advance with absolute transparency.

Data minimization principle: I will only request data that is strictly necessary in relation to the purposes for which I require them. The minimum possible.

Principle of limitation of the term of conservation: the data will be kept during no longer than necessary for the purposes of the treatment, depending on the purpose, I will inform you of the corresponding conservation period, in the case of subscriptions, I will periodically review my lists and delete those records that are inactive for a considerable time.

Principle of integrity and confidentiality: your data will be treated in such a way that adequate security of personal data is guaranteed and guarantees confidentiality. You should know that I take all necessary precautions to avoid

unauthorized access or improper use of my users' data by third parties.

HOW DID I OBTAIN YOUR DATA?

The personal data that I process at CERRAJEROS MADRID 24H comes from:

☐

Contact Form.

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Registration Form.

☐ Blog comments.

☐

Subscription form.

Service request form.

☐

WHAT ARE YOUR RIGHTS WHEN YOU PROVIDE ME WITH YOUR DATA?

Anyone has the right to obtain confirmation about whether in LOCKSMITHS

MADRID 24H I am treating personal data that concerns me, or not.

Interested persons have the right to:

☐ Request access to personal data relating to the interested party.

☐ Request its rectification or deletion.

☐ Request the limitation of your treatment.

☐ Oppose the treatment.

☐ Request data portability.

(...)

LEGITIMATION FOR THE TREATMENT OF YOUR DATA

The legal basis for the treatment of your data is: consent.

To contact or make comments on this website, consent is required with this privacy policy.

The prospective or commercial offer of products and services is based on the consent that is requested, without in any case the withdrawal of this consent conditions the execution of the subscription contract.

CATEGORY OF DATA COLLECTED

The categories of data that are processed are identifying data.

In no case are specially protected data categories treated.

FOR HOW LONG WILL I KEEP YOUR DATA?

The personal data provided will be kept until requested.

deletion by the interested party.

TO WHICH RECIPIENTS WILL YOUR DATA BE COMMUNICATED?

(...)

PURPOSES OF TREATMENT

Your personal data collected through the website will be used for the generic purpose of the management and control of the established contractual or business relationship and, specifically for:

☐ Manage full access and correct use of the Services by users.

their users.

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☐ To communicate with users in response to questions, requests, comments and questions you ask us through the contact forms on our page web (including chats or phone calls).

☐ To offer new products, services, special offers or upgrades, send bulletins (newsletters).

☐ Where appropriate, manage personnel selection processes in selective processes of workers and/or collaborators.

☐ Commercial Communications (Marketing): We may use your data to contact you, both electronically and non-electronically, to conduct surveys, obtain your opinion on the service provided, and, occasionally, to notify you changes, important developments of the services, offers and/or promotions. These commercial offers will be, in any case, expressly and separately authorized by the user who can revoke at any time their consent to receive these notifications using the mechanism implemented for that purpose in them.

☐ We will not treat your personal data for any other purpose beyond the described above unless it is imposed by law or there is some judge requeriment.

☐ Conservation period: The personal data provided will be kept and will be processed while the commercial relationship is maintained, without prejudice to the possibility of exercise your right of deletion, in which case CERRAJEROS MADRID 24 H will block your data for as long as its legal obligations persist.

The personal data of the people interested in receiving information will remain in the system indefinitely as long as the interested party does not request its deletion.

LEGITIMATION OF TREATMENT

The legal basis for data processing is the legitimacy based on the consent of the interested party provided for the purposes described above, “
(...)

In this regard, it should be noted that after a detailed study of the measures adopted by the claimed entity in the privacy policy of its website, indicate that with the exception that the old LOPD 15/1999 is still mentioned today repealed in its entirety, which is why its omission is advised to most brevity, the privacy policy of the claimed complies at this time with the current regulations, so the present actions must be archived.

Considering the aforementioned precepts and others of general application, the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: ARCHIVE sanctioning procedure PS/00324/2019, upon proving that

THE MASTER LOCKSMITH SL

(CERRAJEROSMADRID-24H.COM and

CERRAJEROSMADRID.COM) with NIF B87043691 is exempt from

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responsibility that could constitute an infringement of article 13 of the RGPD, infringement typified in article 83.5 b) of the RGPD

SECOND: NOTIFY this resolution to EL MAESTRO CERRAJERO SL

(CERRAJEROSMADRID-24H.COM and CERRAJEROSMADRID.COM) with NIF B87043691

Against this resolution, which puts an end to the administrative process as prescribed

by art. 114.1.c) of Law 39/2015, of October 1, on Administrative Procedure

Common of Public Administrations, and in accordance with the provisions of arts.

112 and 123 of the aforementioned Law 39/2015, of October 1, interested parties may file, optionally, an appeal for reconsideration before the Director of the Spanish Agency for Data Protection within a month from the day following the notification of this resolution or directly contentious-administrative appeal before the Chamber of the Contentious-administrative of the National Court, in accordance with the provisions of the Article 25 and in section 5 of the fourth additional provision of Law 29/1998, of 13 of July, regulating the Contentious-Administrative Jurisdiction, within two months from the day following the notification of this act, as provided in the Article 46.1 of the aforementioned Law.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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