

938-0419

Procedure No.: PS/00408/2018

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: On June 28, 2018, a claim has been filed with this Agency  
formulated by Don A.A.A. (hereinafter, the claimant), stating that  
the company CHAPAUTO SPORT, S.L., (hereinafter, the claimed party), processes data  
without providing the interested parties with the information provided for in the regulations of  
Data Protection.

In particular, the claimant indicates that he has not been informed by the respondent  
about your rights of rectification and cancellation of data in relation to the  
treatment of your personal data.

The claimant provides the following documentation of the claimed, in which no  
contains no information regarding the processing of personal data  
concerning the claimant that are included in this type of document:

-Copy of the budget dated 02/12/2018, in which "A.A.A." is identified,  
with mobile phone \*\*\*TELEFONO.1, as the owner of a vehicle of the brand  
"Mercedes", model "Clas-C", for the work to be carried out in "Capo Pelayo. Rest €550."

-Copy of the budget dated 03/06/2017, in which "A.A.A."  
with mobile phone \*\*\*TELEFONO.1, as the owner of a vehicle "Mercedes,  
license plate 1380 HJN", for the work to be carried out "rear wing 80 €.

- Copy of delivery note dated 02/26/2018, issued in the name of "A.A.A." in  
relation to a "Mercedes class C" vehicle, with the description "Integer + Trim 570

—. The document bears the seal of TALLER CHAPAUTO SPORT, S.L., which

In addition, it appears signed.

SECOND: In view of the facts denounced in the claim and the

documents provided by the claimant, the following is observed:

The budget model provided contains the following sections relating to

to personal information to be provided by the client or interested party: Data

identification, DNI/NIF/NIE, address and telephone number; Make, model and license plate

of the vehicle whose repair is the object of the estimate. There is also a space for

the Customer's signature of consent.

The delivery note model provided contains the following sections related to

personal information to be provided by the client or interested party: identification

of the client, DNI/CIF, Address and Population of the same. There is also a space for

signature of the "Client Agreement"

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Said claim was transferred to the respondent, dated September 4,

2018, this Agency receives the following response from the respondent in relation to

with the request for information made on August 23, 2018 referring to

reported facts:

"We disagree with the terms of the complaint since in the

The attached documentation does not show that this company has in its possession any

data of the complainant.

There is no name, ID or address, or any other data that could be subject to

protection. Just a first name and phone number.

The rest of the documentation has been provided to the Insurance Company,  
but not to this company.”

In said answer, the respondent does not inform, as required, about  
the causes that have motivated the incidence that has originated the claim or about the  
measures taken to prevent similar incidents from occurring.

Consulted on January 16, 2018, the application of the AEPD that

THIRD:

manages the query of precedent sanctions and warnings, it is  
verifies that the claimed party does not have previous records.

FOURTH: On January 30, 2019, the Director of the Spanish Agency for  
Data Protection agreed to initiate a sanctioning procedure of Warning to the  
entity CHAPAUTO SPORT, S.L., in accordance with the provisions of article 58.2.b)  
of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27  
April 2016, regarding the protection of natural persons with regard to  
treatment of personal data and the free circulation of these data, (hereinafter  
RGPD), for the infringement of article 13 of the aforementioned RGPD, typified in article  
83.5.b) thereof.

FIFTH: Once the aforementioned initiation agreement was notified, on March 1, 2019,  
records of entry in this Agency written of allegations of the claimed arguing,  
in short, the following:

- That they have contracted a consultancy specializing in the protection of  
data in order to implement the process of adaptation to current regulations on  
of data protection.
- They recognize that existing deficiencies must be remedied, such as  
informative clauses.

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They indicate that the causes that gave rise to the facts object of the claim have been "the lack of complete adaptation of our entity to the regulations in force in matter of data protection. Mistakenly thinking that by collecting only a "given" name and a telephone number was not subject to the regulations in force in matter of data protection. Having consulted with the Consultant, you understand and accepts this part that was not completely adapted and from it arises the current process"

- As corrective measures, in addition to contracting the aforementioned Consulting, the informative clause has been incorporated into the documentation used, being provided with the data collection. The respondent provides a copy of the clause

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informative, its content being described in Proven Fact number Four of this resolution.

SIXTH: In view of everything that has been done, by the Spanish Protection Agency of Data in this procedure the following are considered proven facts,

#### FACTS

FIRST: On June 28, 2018, a claim has been filed with the AEPD made by the claimant showing that the company CHAPAUTO SPORT, S.L. does not comply with the duty of information provided for in the protection regulations data, even though it collects personal data provided by customers or affected holders of that data.

SECOND: The documents provided by the claimant (budgets and delivery notes) contain sections relating to personal information to be provided by the client or interested party, such as identification data, DNI/NIF/NIE, address, population, telephone of the same, make, model and license plate of the vehicle owned by the client or affected.

THIRD: On September 4, 2018, the respondent files a letter in the

AEPD in which it does not certify having adopted any type of measure tending to give compliance with the duty to inform the interested parties contained in article 13 of the GDPR.

FOURTH: On March 1, 2019, the respondent files a letter with the AEPD to

which attaches a copy of a document called "Budget Informative Clause",

in which the following points are reported:

Identity and contact details of the data controller (the complainant),

purpose of the treatment (management of the budget of the works entrusted to the

responsible), legitimizing basis of the treatment (contractual relationship), term of

data conservation, possibility of exercising access rights,

rectification, limitation of treatment, deletion (right to be forgotten), portability and

Opposition, revocation of the consent given for the processing of data, and

presentation of a claim before the Control Authority. In the field of transfers

informs about the categories of recipients to whom the data is communicated with the

purpose of providing the service and its legitimizing basis, noting that the fact of not

facilitating the damage to said entities implies that it will not be possible to comply with the provision of services.

FOUNDATIONS OF LAW

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By virtue of the powers that articles 55.1, 56.2 and 58.2 of the

Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27,

2016, regarding the protection of natural persons with regard to the treatment

of personal data and the free circulation of these data, recognize each authority

of control, and according to the provisions of articles 47 and 48.1 of the Organic Law

3/2018, of December 5, on the Protection of Personal Data and guarantee of the

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digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency for

Data Protection is competent to resolve this procedure.

Article 63.2 of the LOPDGDD establishes that: "The procedures

processed by the Spanish Agency for Data Protection will be governed by the provisions

in Regulation (EU) 2016/679, in this organic law, by the provisions

regulations issued in its development and, as long as they do not contradict them, with a

subsidiary, by the general rules on administrative procedures."

## II

Article 85.1 of Law 39/2015, of October 1, on the Procedure

Common Administrative of Public Administrations (LPACAP), under the rubric

"Termination in sanctioning procedures", provides that: "1. started a

sanctioning procedure, if the offender acknowledges his responsibility, it may be

resolve the procedure with the imposition of the appropriate sanction."

In the present case, the content of the allegations made by the

claimed evidences the acknowledgment of its responsibility in relation to the

facts that are the subject of this proceeding, proceeding, therefore, the resolution of the

procedure with the imposition of the appropriate sanction.

## III

Article 4 of the RGPD, under the heading "Definitions", provides that: "For the purposes

of this Regulation 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  
about personal data or sets of personal data, either 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 by the  
claimed identification data, telephone numbers and vehicle license plates of  
its clients within the framework of the existing contractual relationship between the parties, constitutes  
a treatment of personal data, in respect of which the claimed party, in his/her condition  
responsible for the treatment, must comply with the provisions of article 13

GDPR

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IV

Article 12 of the RGPD, referring to the "Transparency of information,  
communication and modalities of exercising the rights of the interested party", in its  
Section 1 establishes the following:

"1. The person responsible for the treatment will take the appropriate measures to facilitate  
to the interested party all the information indicated in articles 13 and 14, as well as any  
communication pursuant to articles 15 to 22 and 34 relating to processing, in the form  
concise, transparent, intelligible and easily accessible, with clear and simple language,  
in particular any information directed specifically at a child. Information

shall be provided in writing or by other means, including, if applicable, by

When requested by the interested party, the information may be provided

verbally provided that the identity of the interested party is proven by other means.”

In the present case, the defendant is charged with the violation of the duty to

inform provided for in article 13 of the RGPD, a precept that regarding the "Information

that must be provided when the personal data is obtained from the interested party.”,

determines that:

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;

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 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 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;

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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 personal data and is informed of the possible consequences of

not provide 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, information

about applied logic, as well as the importance and consequences

provisions 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.

For its part, regarding the rights of “Transparency and information to the affected”, article 11.1 and 2 of Organic Law 3/2018, of December 5, of Protection of Personal Data and guarantee of digital rights (hereinafter LOPDGDD), establishes that:

"1. When the personal data is obtained from the affected party, the person in charge of the treatment may comply with the duty of information established in the Article 13 of Regulation (EU) 2016/679 providing the affected party with basic information 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 be contain at least:

- a) The identity of the data controller and his representative, in his case.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of 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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In this proceeding it has been proven that after 25 of May 2018, date from which the aforementioned was fully applicable RGPD, the defendant collected in various documents personal data from of its clients (identification data, telephone number of the owner of the vehicle or client and license plate of the vehicle to be repaired), without offering them the required information regarding of data protection provided for in article 13 of the aforementioned RGPD.

Likewise, it is stated in the procedure that the defendant, in order to regularize the described situation, has adopted measures tending to offer the interested parties that provide your personal data with information on data protection that, in accordance with the provisions of the aforementioned article 13 of the RGPD, it must offer, in the at the time of collection, to those affected whose personal data it collects.

In order to justify said circumstance, the respondent has attached to his writ of allegations copy of the document prepared to comply with the duty of inform in the cases in which the personal data is obtained from the affected party.

After analyzing the information offered in said document, called "Clause Informative Budgets", it is observed that the person in charge of the treatment facilitates the information required in article 13 of the RGPD, as follows from the Fact Tested number four. In this case, the informative clause provided by the claimed is dated and signed by a person identified at the bottom of the same with your name, surnames and DNI.

From the reasoning it follows that the defendant has rectified his conduct implementing a mechanism through which to respond to the duty to inform

that concerns him in cases such as the one studied.

What does not prevent him from being responsible for having failed to comply with said obligation to inform, specifically between May 25, 2018 and the moment in which went on to inform the interested parties to whom it collected their personal data of the requirements contemplated in the aforementioned article 13 of the RGPD, which undoubtedly occurred after September 4, 2018, the date on which when answering the request for information made by this Agency as a result of the transfer of the claim did not justify the adoption of measures aimed at regularizing the situation.

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Sections b), d) and i) of article 58.2 of the RGPD provide the following:

“2 Each supervisory authority shall have all of the following powers  
corrections listed below:

(...)

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 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;”

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“i) impose an administrative fine in accordance with article 83, in addition to or in  
instead of the measures mentioned in this paragraph, depending on the circumstances

of each particular case;

Article 83 of the RGPD, under the heading "General conditions for the imposition of administrative fines", in its sections 2 and 5.b) states that:

"two. Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures contemplated in article 58, paragraph 2, letters a) to h) and j). (...)

5. Violations of the following provisions will be sanctioned, in accordance with 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: (...)

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

For its part, article 71 of the LOPDGDD establishes that "They constitute infractions the acts and behaviors referred to in sections 4, 5 and 6 of the Article 83 of Regulation (EU) 2016/679, as well as those that are contrary to the this organic law.", establishing in article 72.1.h) of said Law that: "1. In

According to the provisions of article 83 of Regulation (EU) 2016/679, considered very serious and will prescribe after three years the infractions that suppose a substantial violation of the articles mentioned therein and, in particular, the following: (...)

g)

The omission of the duty to inform the affected party about the treatment of your personal data in accordance with the provisions of articles 13 and 14 of the Regulation (EU) 2016/679 and 12 of this organic law."

From what has been reasoned, it is evident that the respondent has failed to comply with the duty to inform those affected about the aspects outlined in article 13 of the RGPD

in relation to personal data collected from them to complete

different documents, which constitutes an infringement of the provisions of article 13 of the RGD in its relationship with the provisions of sections 1 and 2 of article 11 of the LOPDGD, typified in article 83.5.b) of the RGD and qualified as very serious to effects of prescription in article 72.1.h) of the LOPDGD.

In the present case, it is deemed appropriate to impose the sanction of warning provided for in article 58.2.b) of the RGD in view of the following circumstances: it is a company whose main activity is not linked to the usual treatment of personal data and consider that the administrative fine that could fall in accordance with the provisions of article 83.5.b) of the RGD would constitute a disproportionate burden for said company, which has accredited having regularized the lack of information described after receiving the agreement to initiate the procedure.

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

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The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CHAPAUTO SPORT, S.L., with NIF B87854030, of

In accordance with the provisions of article 58.2.b) of the RGD, a sanction of WARNING as responsible for the commission of an infraction of the provisions of article 13 of the RGD, typified in article 83.5 of the RGD.

SECOND: NOTIFY this resolution to CHAPAUTO SPORT, S.L. with NIF B87854030.

In accordance with the provisions of article 50 of the LOPDGD, 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 LOPDPGDD, 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.

Finally, it is pointed out that in accordance with the provisions of art. 90.3 a) of the LPACAP, may provisionally suspend the firm resolution in administrative proceedings if the The interested party expresses his intention to file a contentious-administrative appeal. If this is the case, the interested party must formally communicate this fact by writing addressed to the Spanish Agency for Data Protection, presenting it through Electronic Register of the Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any of the other registers provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1. You must also transfer to the Agency the documentation proving the effective filing of the contentious appeal-administrative. If the Agency was not aware of the filing of the appeal contentious-administrative within a period of two months from the day following the notification of this resolution would end the precautionary suspension.

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