



Procedure No.: PS/00447/2020

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: A.A.A. (hereinafter, the claimant) on August 27, 2019 filed claim before the Spanish Data Protection Agency. The claim is directed against LA PASTORA DE GREDOS, S.L. with NIF B05132899. The reasons on which the claim are as follows:

"FIRST. - Last August 18, 2019, at the Hostal "La Pastora" I requested the license

Complaints Bro to file a complaint about the treatment received in said hostel.

SECOND.- After completing the document in which my personal data appears, such as the name, the two surnames, the National Identity Document, the Address, Postal Code and Town, in said document article 11 is totally breached

of Organic Law 3/2018, December 5, on the Protection of Personal Data and guarantee of digital rights, in which the informative clauses related to the

basic information (identity of the data controller, the purpose of the processing,

the possibility of exercising the rights established in articles 15 to 22 of the Regulations.

to (EU) 2016/679, nor of course the additional information.

THIRD. - The website of said establishment does not have a privacy policy either.

information published on said website.

[...]."

Attach a copy of the form of the claim made on August 18, 2019.

SECOND: Prior to the acceptance of this claim for processing, it was transferred

to the hotel establishment, in accordance with the provisions of article 65.4 of the Law Organic 3/2018, of December 5, on the Protection of Personal Data and guarantee of the digital rights (hereinafter, LOPDGDD), for analysis. Likewise, it is required

I would request that within a month it send certain information to the Agency:

- The decision adopted regarding this claim.
- In the event of exercising the rights regulated in articles 15 to 22 of the RGPD, accreditation of the response provided to the claimant.
- Report on the measures adopted to prevent similar incidents from occurring.

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- Any other that you consider relevant.

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On December 2, 2019, it was entered in the registry of the Protection Agency of Data written in which regarding the omission of the duty of information about the processing of data in relation to the provision of personal data by the interested in the claim form, states the following:

“[...] what he filled out was a claim sheet form provided by the Board of Castilla y León, (we enclose as document no. 2 a copy of these forms that are and that was recently provided to us by the Board, contains the stamp of delivery to us dated October 29, 2019).

You can see how the document that A.A.A. attached to this complaint before the AEPD as annex 1, is the claim sheet form that you submitted to Turismo de Castilla y León, and as it is similar to this document nº 2, both are official forms

of the Junta de Castilla y León, and appear before her, we understand that she is the responsible for the treatment of these data. The only thing the establishment did is facilitate it, and it is he who presents it to the Junta de Castilla y León, we repeat, they are official forms”.

THIRD: The claim was admitted for processing by resolution of 06/02/2020.

FOURTH: In view of the facts denounced in the claim and the documents provided by the claimant and the response of the hotel establishment, the Subdivision General Directorate of Data Inspection proceeded to carry out preliminary actions of investigation for the clarification of the facts in question, by virtue of the powers investigation rights granted to the control authorities in article 57.1 of the Regulation (EU) 2016/679 (General Data Protection Regulation, hereinafter RGPD), and in accordance with the provisions of Title VII, Chapter I, Second Section, of the LOPDGDD).

As a result of the investigative actions carried out, the report prepared by

The acting inspector reveals the following:

“[...] During these proceedings, investigations have been carried out on the following entities:

CASTILLA AND LEON MEETING. MINISTRY OF CULTURE AND TOURISM with NIF S4711001J

On 06/19/2020 these actions begin.

On 12/2/2019, HOSTAL LA PASTORA sends this Agency a copy of the models of claim sheets containing the logo of the Junta de Castilla y León with a stamp of the same dated 10/29/2019 and in which they appear as data to be filled in by the re-claiming their identification data, nationality, ID number or passport, address, telephone, reason for the claim and signature. There is no data protection information.

Dated 07/15/2020, JUNTA DE CASTILLA Y LEÓN. MINISTRY OF CULTURE AND

TOURISM sends this Agency the following information and statements:

1. That the claim sheet model is unique for all types of tourist activity related to

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Regulated in Law 14/2010, of December 9, on Tourism in Castilla y León.

A model of the claim sheet established in the Order of May 28, 2015 is provided.

1986 which regulates the claim sheet for business establishments

sas Turísticas, this model being the same as the one sent by HOSTAL LA PASTORA to

this Agency dated 12/02/2019. There is no protection information on the model

of data.

2. That to date the content of the precept of art. 13 GDPR

because the current Order is in the process of being modified.

3. That the updating of the claim sheets is being done in collaboration

with other bodies so that there is a single model and when the model is agreed upon,

will contain the following text:

“The personal data provided in this form will be processed by the Directorate

General Office of Tourism in order to manage customer complaints.

The treatment of this data is necessary for the "fulfillment of a legal obligation

applicable to the controller. Your data will not be transferred to third parties, except legal obligation.

gal. You have the right to access, rectify and delete the data, as well as other rights re-

caught in the additional information”. You can consult the additional and detailed information

on data protection at [www.tramitacastillayleon.jcyl.es](http://www.tramitacastillayleon.jcyl.es)”.

FIFTH: On 01/14/2021, the Director of the Spanish Agency for the Protection of

Data agreed to initiate sanctioning proceedings against the GOVERNMENT OF CASTILLA Y LEÓN.

MINISTRY OF CULTURE AND TOURISM, for the alleged infringement of article 13 of the RGD, in accordance with article 83.5 b) of the RGD.

The shipment was made electronically, "Date of availability: 01/14/2021

14:37:05 Automatic rejection date: 01/25/2021 00:00:00 The automatic rejection is

produced, in general, after ten calendar days have elapsed since its commissioning.

provision for access according to paragraph 2, article 43, of law 39/2015, of October 1-

tubre, of the Common Administrative Procedure of Public Administrations. And of

particular form, after the term established by the acting Administration in accordance with

to the specific legal regulations that are applicable."

No claims were received.

SIXTH: On 06/03/2021, the Director of the AEPD agreed to change the Ins-

tractor, with the same result in terms of notification as that produced in the agreement

Of start.

SEVENTH: On 06/09/2021, a resolution proposal was issued, with the literal:

"That by the Director of the Spanish Agency for Data Protection is sanctioned with

warning to the JUNTA DE CASTILLA Y LEÓN. MINISTRY OF CULTURE AND TOURISM

MO, with NIF S4711001J, for a violation of article 13 of the RGD, in accordance

with article 83.5 b) of the RGD."

Although time has elapsed, it is verified that the telematic shipment was again as

rejected by not agreeing, out of deference and letting him know that he is obliged to communicate

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electronically, a new proposal is sent to you by post, so that you can make allegations before the final agreement and take the measures ordered if it were the case.

case.

EIGHTH: With entry date 08/04 and 09/7/2021, writings are received from the claimed in which communicates that it has been published in the Official Gazette of Castilla León on 08/3/2021, the order that regulates the claim sheet in tourism, being dis-available at the electronic headquarters of the administration of the Community of Castilla y León indicating the form link.

It is indicated that the personal data contained are treated with the purpose of manage the complaints and claims of the users, being the treatment of data necessary sary for the fulfillment of a mission carried out in the public interest and in the exercise of public powers. The rights are established by offering additional information on the web.

Accessing the web, you can obtain the pdf sheet of information on protection of personal data, including additional information such as the DPD and the rules of reference on which the treatment is based, Law 14/2010 of 9/12, of Tourism of Castilla and Leon.

## PROVEN FACTS

1) The official model of the claim form of the Junta de Castilla y León that completes the claimant against a hotel establishment is from the year 1986. The copy presented by the claimant has to complete, and in this case he did it, by hand, on 08/18/2019, with the data of name and surnames, DNI, address and reason. It is claimed because the form lacks ce of any information about collection, purpose of collection and data processing, and the exercise of personal data rights that such collection entails.

Nor does it refer to any applicable regulations.

2) In hotel establishments in Castilla-León, the right to exercise claims complaints or complaints, the existence of complaint forms and availability of the client

contemplated in Law 14/2010, of 9/12, on Tourism in Castilla y León, although the model of claim sheet is unique for all types of tourist activity regulated in that Law, and it is the model that the claimant completes.

3) This is the claim sheet model established in the Order of 05/28/1986 by which regulates the claim sheet for establishments of Tourist Companies cas, BOCYL 06/20/1986, and provided by the respondent in the transfer of the claim, ca- It reads from the informative literal of article 13 of the RGPD, and is pending update.

4) In the Official Gazette of Castilla León of 08/03/2021, the order by which the regulates the claim sheet in tourism. The purpose of the treatment is stated, and The rights to exercise are established, offering additional information on the web with the following verbatim:

“The personal data provided in this Complaint Sheet will be treated by the General Directorate of Tourism in order to manage complaints and claims tions of the users of tourist establishments and activities The treat-

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storage of these data is necessary for the fulfillment of a mission carried out in interés public or in the exercise of public powers. No transfers to third parties are planned except legal obligation. You have the right to access, rectify, delete, limit the treatment of data and its portability, as well as other rights included in the additional information nal. You can consult additional and detailed information on data protection at [www.tramitacastillayleon.jcyl.es](http://www.tramitacastillayleon.jcyl.es)”

FOUNDATIONS OF LAW

I

By virtue of the powers that article 58.2 of the RGPD recognizes to each Authority of Control, and according to the provisions of articles 47, 48.1, 64.2 and 68.1 of the LOPDGDD, the Director of the Spanish Agency for Data Protection is competent to initiate and resolve this procedure.

II

Article 13 of the RGPD, regarding the information that must be provided when the data are obtained from the interested party, establishes that:

"one. When personal data relating to him is obtained from an interested party, the person in charge of the treatment, at the moment in which these are obtained, will provide you with 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.
- 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 categories of recipients of the personal data, if any;
  - 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 on adequacy of the Commission, or, in the case of transfers indicated in articles 46 or 47 or the 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 data controller



will provide the interested party, at the time the personal data is obtained, the following information necessary to ensure fair data processing and transparent:

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a) the period during which the personal data will be kept or, when this is not possible,

the criteria used to determine this term;

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 the portability of the data.

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 at any

moment, 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 providing

such data;

f) the existence of automated decisions, including profiling, to which

refers to article 22, sections 1 and 4, and, at least in such cases, significant information

on the logic applied, as well as the importance and the foreseen consequences 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 to the extent

in which the interested party already has the information.”

In addition, article 11 of the LOPDGDD adds:

1. When the personal data is obtained from the affected party, the data controller

must comply with the duty of information established in article 13 of the

Regulation (EU) 2016/679 providing the affected party with the basic information referred to in the following section and indicating an electronic address or other means 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 least

us:

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.”

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To make compatible the greater information requirement introduced by the RGPD and the conciseness and understanding in the way of presenting it, from the Protection Authorities

of Data it is recommended to adopt an "information by layers or levels" model. The focus

that of multilevel information consists of the following:

- present basic information at a first level, in a summarized way, in the same time and in the same medium in which the data is collected, in the form of a table or analogous ensuring that information remains within the field of view
- refer to the additional information on a second level, where it will be presented in detail- mind the rest of the information, in a more suitable medium for its presentation, understanding and, if desired, archiving. The referral can be through a hyperlink that lead to the page in question in each section

The set of information required by the RGPD can be grouped into certain underlined headings, for the purposes of organization and presentation, especially in regarding the information to be presented, in summary form, in the first layer or level, and the rest of concretion is left to the second level.

It can be the following:

Epigraph: person in charge of the treatment, basic information first layer summarized identity of the person in charge of the treatment additional information of the second detailed layer, contact details of the person in charge, identity and contact details of the representative, data contact details of the Data Protection delegate.

Epigraph: purpose of the treatment, basic information of the first layer summarized after simple description of the purposes of the treatment and even profiling. Information additional detailed second layer, extended description of the purposes of the treatment, deadlines or criteria for data conservation, automated decisions, profiles and logic case applied.

Epigraph: legitimacy of the treatment basic information of the first layer summarized legal ses of the treatment. Additional information of the second layer: details of the legal basis of the treatment in cases of legal obligation public interest or legal interest

legitimate obligation or not to provide data and consequences of not doing so.

Heading: recipients of assignments or transfers provision or decisions and provision of transfers or not to third countries. In the second layer, the recipients are the categories recipient categories and adequacy decisions.

Epigraph: Rights of interested persons, with information referring to the exercise of rights and in the second layer how to exercise the rights, right to withdraw the consent feeling borrowed and right to claim before the control authority.

The purpose of this form is to facilitate the task of the data controller when to design its procedures and forms, and on the other hand, to ensure that people in-interested parties obtain the most relevant information in a fast and simplified way, but without that this entails no impairment of the principles of legality, loyalty and transparency established by the GDPR.

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At the time of opening the initiation agreement, it is verified that the defendant has infringed the cited article, having corrected the infraction with the modification and update of the information to users.

III

The commission of the infringement is referred to in article 83.5 of the RGPD, which provides:

“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, 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 according to articles 12 to 22; [...]"

For the purposes of the limitation period for infractions, article 72.1 of the LOPDGDD,  
which states that:

"Based on the provisions of article 83.5 of Regulation (EU) 2016/679, it is considered

They will be considered very serious and the infractions that suppose a violation will prescribe after three years.

substantial portion of the items mentioned therein and, in particular, the following:

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

#### IV

The corrective powers of the Spanish Data Protection Agency,  
as a control authority, they are established in article 58.2 of the RGPD. Among them is-  
have the power to sanction with a warning -article 58.2 b)-, -, or the power to  
order the person in charge or in charge of the treatment that the treatment operations  
comply with the provisions of the GDPR, where applicable, in a certain way and  
within a specified period -article 58. 2 d)-.

According to the provisions of article 83.2 of the RGPD, the measure provided for in article 58.2 d)  
of the aforementioned Regulation is compatible with the sanction consisting of an administrative fine.  
Without prejudice to the provisions of article 83 of the RGPD, article 77 of the LOPDGDD  
provides the following:

"one. The regime established in this article will be applicable to the treatment of  
who are responsible or in charge:

...

c) The General State Administration, the Administrations of the autonomous communities  
nomas and the entities that make up the Local Administration.

2. When those responsible or in charge listed in section 1 committed something

any of the infractions referred to in articles 72 to 74 of this organic law,

the data protection authority that is competent will dictate sanctioning resolution

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do to them with warning. The resolution will also establish the measures

that it is appropriate to adopt so that the conduct ceases or the effects of the infraction are corrected

that it had been committed.

The resolution will be notified to the person in charge or in charge of the treatment, to the body of which

hierarchically dependent, where appropriate, and those affected who had the status of interest.

sorry, in your case.

3. Without prejudice to what is established in the previous section, the data protection authority

It will also propose the initiation of disciplinary actions when there are indications

enough for it. In this case, the procedure and the sanctions to be applied will be the

established in the legislation on the disciplinary or sanctioning regime resulting from

application.

Likewise, when the infractions are attributable to authorities and managers, and

the existence of technical reports or recommendations for treatment that do not hu-

should have been duly attended to, in the resolution in which the sanction is imposed,

will include a reprimand with the name of the responsible position and the pu-

publication in the corresponding Official State or Autonomous Gazette.

4. The data protection authority must be informed of the resolutions that

fall in relation to the measures and actions referred to in the preceding sections.

beef.

5. They will be communicated to the Ombudsman or, where appropriate, to the analogous institutions of the autonomous communities the actions carried out and the resolutions issued to the protection of this article.

6. When the competent authority is the Spanish Data Protection Agency, this will publish on its website with due separation the resolutions referring to the entities of section 1 of this article, with express indication of the identity of the responsible or in charge of the treatment that had committed the infraction.

When the competence corresponds to a regional data protection authority

It will be, in terms of the publicity of these resolutions, to what its regulations have.

It's specific."

Therefore, in accordance with the applicable legislation

The Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE THE GOVERNMENT OF CASTILLA Y LEÓN. MINISTRY OF CULTURE AND TOURISM, with NIF S4711001J, for an infringement of article 13 of the RGPD, in accordance with determines article 83.5 of the RGPD, a sanction of warning.

SECOND: NOTIFY this resolution to the GOVERNMENT OF CASTILLA Y LEÓN. WITH-CULTURE AND TOURISM MINISTRY.

THIRD

with the provisions of article 77.5 of the LOPDGDD.

: COMMUNICATE this resolution to the Ombudsman, in accordance

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FOURTH: 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 LO-PDGGD, 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 period of one month from the following day.

following the notification of this resolution or directly administrative contentious appeal

before the Contentious-Administrative Chamber of the National High Court, pursuant to

to the provisions of article 25 and section 5 of the fourth additional provision of the

Law 29/1998, of July 13, regulating the Contentious-administrative Jurisdiction, in

within two months from the day following the notification of this act,

in accordance with the provisions of 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, it can be

may provisionally suspend the firm resolution in administrative proceedings if the interested party

declares its intention to file a contentious-administrative appeal. If this is the

In this case, the interested party must formally communicate this fact in writing addressed to

the Spanish Agency for Data Protection, presenting it through the Electronic Registry

Agency [<https://sedeagpd.gob.es/sede-electronica-web/>], or through any

of the remaining records provided for in art. 16.4 of the aforementioned Law 39/2015, of October 1

bre. You must also transfer to the Agency the documentation that proves the filing

effectiveness of the contentious-administrative appeal. If the Agency is not aware of

the filing of the contentious-administrative appeal within two months from the

day following the notification of this resolution, the suspension would end

precautionary

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