

□ Procedure No.: PS/00039/2021

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: MUNICIPAL CONSUMER INSTITUTE OF THE CITY COUNCIL OF

MADRID (hereinafter, the claimant) on July 8, 2020 filed

claim before the Spanish Data Protection Agency.

The claim is directed against INSTALACIONES F. LAINA SL with NIF B83478479  
(hereinafter, the claimed).

The reasons on which the claim is based are non-compliance with the regulations of  
data protection on the website [www.lainainstalaciones.com](http://www.lainainstalaciones.com)

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/07898/2020, transfer of

said claim to the claimed party, on October 6, 2020, so that he could proceed with his  
analysis and report to this Agency within a month, of the actions carried out

carried out to adapt to the requirements set forth in the data protection regulations,

stating the claimed on November 2, 2020 that he has proceeded to the  
update of this website.

THIRD: On March 10, 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.

FOURTH: Having been notified of the aforementioned initiation agreement, the respondent submitted a written  
allegations dated March 23, 2021 providing your privacy policy:

“We are INSTALACIONES F.LAINA, S.L with CIF B83478479 and address in RIVAS

VACIAMADRID

the Web

www.lainainstalaciones.com responsible for the processing of your personal data, your

uses and protection.

(MADRID),

BILBAO,

,Spain,

of

Four. Five

headline

The use of the services of the Website, as well as the acquisition of any of the

products offered, implies your acceptance as a Client, without reservations of any kind,

of all the statements contained in this Privacy Policy and in the

General conditions.

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Your registration on the website and the use of its services means that the personal data you

you have provided in the registration form as a Client will become part of les

for its treatment with the purpose, legitimacy, assignments and conservation periods that

detailed below, and that you declare to know and accept by pressing the action button of the

form.

For what purpose do we use your data?

Address queries, suggestions or requests you make to us through the web.

What personal data will we request from you? The data that we will request will be:

Identification data: ID, name, surnames, address, email, telephone.

Contact information: Name, email, telephone

In the Cookies Policy you can find what other type of information we will collect from through the use of cookies.

Remember that all the data that we request as mandatory are the minimum necessary to be able to provide you with the service or allow you access to certain web functionality.

If you decide not to provide this information, you may not be able to complete your registration or you may not We may provide you with certain services or features.

Why do we use your data?

The legitimacy for the treatment of your data comes from the fact that we need to treat them to execute the contract that you accept with us when registering and when enjoying our services or features.

There are other reasons such as our interest in attending to your queries or requests and the consent you give us to be able to send you our commercial information.

How long do we keep your data?

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Your personal data will be kept for as long as your account remains active user. Remember that you can cancel it at any time by request to the email facilities [aina@hotmail.com](mailto:aina@hotmail.com).

Once the account has been cancelled, your personal data will be kept blocked during the period required by tax legislation for the prescription of responsibilities in the if you have made any purchase of products.

In any other case, your personal data will be kept for a period of 3 months from your decision to cancel, in case some type of responsibilities.

Once the deadlines are over, the data will be deleted from our records.

With whom do we share your data?

For the fulfillment of the expressed purposes, your personal data will be communicated to auxiliary service providers that facilitate the management or our legal obligations, such as transport companies, tax advice and legal and web hosting among others.

We will also transfer your personal data to Public Organizations or Administrations to the that we are bound by legal requirement.

You can request a list of these companies and organization through our email facilities [aina@hotmail.com](mailto:aina@hotmail.com)

What rights do you have over your personal data?

Regardless of the legal justification with which we have carried out the treatment of your personal data, you have a series of rights that you can exercise before INSTALACIONES F LAINA, S.L, by sending an email to the facilities [aina@hotmail.com](mailto:aina@hotmail.com)

Right of access to your data that we have about you.

Right to rectification of personal data, in case they are not true.

Right to delete your data to the extent that they are no longer necessary for the purpose for which we need to treat them or that we no longer have legitimacy to do it.

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You can request it by email to [Instalaciones.laina@hotmail.com](mailto:Instalaciones.laina@hotmail.com) attaching a copy of your ID. When you exercise this right of deletion, we will block your personal data for any type of treatment during the conservation period that we have indicated above. And once it has elapsed, we will proceed to its elimination. definitive.

Right to limit the processing of your data, which means that in certain cases you can ask us to temporarily suspend the processing of the data or that we keep them beyond the necessary time when you may need it.

Right to request the portability of your personal data.

This means that you will have the right to receive the personal data that you have provided to us. in a structured, commonly used and machine-readable format, in order to transmit it to another entity directly, whenever technically possible. –

You can also file a claim with the supervisory authority regarding data protection, in particular, before the Spanish Data Protection Agency.

#### Changes in the Privacy Policy

We may adapt or modify the information contained in this Privacy Policy.

Privacy when we deem it convenient or incorporate new functionalities in the platform that so require. If we do, we will notify you by an informative banner on the website itself.

We advise you to periodically review this Privacy Policy.”

FIFTH: On April 27, 2021, a resolution proposal was formulated,

proposing that the Director of the Spanish Data Protection Agency direct the INSTALACIONES F. LAINA SL, with NIF B83478479, for an infringement of article 13 of the RGD, typified in article 83.5 of the RGD, a warning.

SIXTH: On May 3, 2021, allegations are submitted to the proposal for resolution issued by this Agency, indicating that it has proceeded to the correction of its privacy policy in relation to the legitimacy for data processing, indicating the following:

“For the fulfillment of a contract and/or service provision relationship. with his consent to respond to your queries or any issue arising from our contractual or pre-contractual relationship, as well as attend to your requests or requests made through our contact form.

Of the actions carried out in this procedure and the documentation in the file, the following have been accredited:

#### PROVEN FACTS

FIRST: The breach of the data protection regulations in the website [www.lainainstalaciones.com](http://www.lainainstalaciones.com) for violating article 13 of the RGD

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SECOND: On March 23, 2021, the respondent files a brief alleging that his current privacy policy is adjusted to law.

THIRD: It is verified that the claimed party has corrected his data privacy policy in relation to the legitimacy for data processing.

#### FOUNDATIONS OF LAW

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By virtue of the powers that article 58.2 of 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 processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD) recognizes each control authority, and according to the provisions of articles 47, 64.2 and 68.1 of Organic Law 3/2018, of December 5, on Data Protection Personal and guarantee of digital rights (hereinafter LOPDGDD), the Director of the Spanish Agency for Data Protection is competent to initiate this process.

Article 63.2 of the LOPDGDD determines that: "The procedures processed by the Spanish Agency for Data Protection will be governed by the provisions of the Regulation (EU) 2016/679, in this organic law, by the regulatory provisions issued in its development and, as long as they are not contradicted, on a subsidiary basis, by the rules general administrative procedures."

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 with regard to the processing of personal data and the free circulation of these data (Regulation General Data Protection, hereinafter RGPD), under the heading "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 means of a 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 performed on data

personal information or sets of personal data, whether by automated procedures or

no, such as the collection, registration, organization, structuring, conservation, adaptation or

modification, extraction, consultation, use, communication by transmission, diffusion or

any other form of authorization of access, collation or interconnection, limitation, suppression

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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 RGD.

In relation to this matter, it is noted that the Spanish Data Protection Agency

has at the disposal of citizens, the Guide for the fulfillment of the duty to inform

(<https://www.aepd.es/media/guias/guia-model-clausula-informativa.pdf>) and, in case of

carry out low-risk data processing, the free tool Facilitates

(<https://www.aepd.es/herramientas/facilita.html>).

III

Article 13 of the RGD, 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 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 his 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 applicable;
- 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 the adequacy of the  
Commission, or, in the case of the 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:

- a) the period during which the personal data will be kept or, when this is not possible,  
the criteria used to determine this term;

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- b) the existence of the right to request access to the data from the data controller 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 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 requirement necessary to sign a contract, and if the interested party is obliged to provide the data personal 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”.

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 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 profiling, the basic information will also include this circumstance. In this case, the affected must be informed of their right to oppose the adoption of individual decisions automated that produce legal effects on him or significantly affect him in any way similarly, when this right concurs in accordance with the provisions of article 22 of Regulation (EU) 2016/679.”

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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 powers corrective measures in the event of a violation of the provisions of the RGPD.

Article 58.2 of the RGPD provides the following:

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

(...)

b) send a warning to any person responsible or in charge of the treatment when the treatment operations have violated the provisions of this Regulation;"

(...)

"d) order the person responsible or in charge of the treatment that the treatment operations comply with the provisions of this Regulation, where appropriate, in a certain manner and within a specified period;

"i) impose an administrative fine in accordance with article 83, in addition to or instead of the measures mentioned in this section, according to the circumstances of each case particular;"

Article 83.5.b) of the RGPD establishes that:

"The infractions of the following dispositions will be sanctioned, in accordance with the section 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:

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 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."

In this case, it has been found that the website did not have a privacy policy

adequate, since the legitimizing basis for the processing of personal data

staff was not accurate.

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It has been found that the respondent has recently updated said web page,

establishing as a legitimate basis for the processing of personal data the

Next:

“For the fulfillment of a contract and/or service provision relationship. with his

consent to respond to your queries or any issue arising from our

contractual or pre-contractual relationship, as well as attend to your requests or requests

made through our contact form.

Despite this, it should be noted that the warning for the data continues to be maintained.

data that were collected without adequately informing clients, which

constitutes an infringement of article 13 of the RGPD.

However, a warning will be sent without the need to adopt measures by

of the claimed, since it has already been proceeded by this to the generation of a policy of

adequate privacy.

SAW

Faced with this infraction, a warning is issued, 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: ADDRESS INSTALACIONES F. LAINA SL, with NIF B83478479, for a infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a warning.

SECOND: NOTIFY this resolution to INSTALACIONES F. LAINA SL, with NIF B83478479

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

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day following the notification of this act, as provided in article 46.1 of the

aforementioned Law.

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