

Procedure No.: PS/00267/2019

RESOLUTION OF PUNISHMENT PROCEDURE

Of the procedure instructed by the Spanish Agency for Data Protection and in

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 CERRAJERIA CARLOS RODRIGUEZ S.L. with

NIF B78427531 (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:

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That the claimed party operates the website hosted under the domain name

www.cerrajeriacarlosrodriguez.com/".

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That said policy establishes that "CERRAJERÍA CARLOS RODRÍGUEZ

SL guarantees the protection of all personal data provided by the

User on the Website and, in compliance with the provisions of Organic Law 15/1999, of

December 13, Protection of Personal Data, in RD 1720/2007 of 21

of December and other applicable regulations, informs you that:

a) All personal data provided to CERRAJERÍA CARLOS RODRÍGUEZ

SL will be treated by it in accordance with Organic Law 15/1999 of December 13

Protection of Personal Data and RD 1720/2007 of December 21 and

will be incorporated into a file, created and maintained under the responsibility of

CERRAJERÍA CARLOS RODRÍGUEZ S.L., which has been duly registered in the

Spanish Data Protection Agency.

b) The data is collected for the following purposes:

- Manufacture and marketing of locksmith products and services.

- Sending advertising by electronic means of the above.

c) In the collection and processing of personal data, the following regulations have been adopted:

adequate security measures to prevent loss, unauthorized access or

manipulation of the same, in accordance with the provisions of Royal Decree 1720/2007,

December 21."

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

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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 March 28, 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.

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 the Protection of Data in this procedure are considered proven facts the following,

FACTS

FIRST: The claimant denounces the collection of personal data by the claimed, without provide accurate information to interested parties in accordance with current regulations regarding the protection of personal data.

SECOND: On March 28, 2019, the respondent is notified of this claim to to inform the AEPD of the measures adopted, without having received a response by part of the claim.

THIRD: Despite the fact that on November 3, 2019 the opening of this sanctioning procedure against the defendant, the latter does not present any allegation within the term given for it.

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 according to what is established in arts. 47 and 48.1 of the LOPDGDD, the Director of the

Spanish Agency for Data Protection is competent to resolve this process.

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II

The defendant is charged with the commission of an infraction for violation of article 13 of the RGPD, precept in which the information that must be provided to the user is determined. interested at the time of collecting your data, noting 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 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;

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.

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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.

III

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 an infringement of the provisions of the RGPD, noting the following:

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

(...)

b) sanction any person responsible or in charge of the treatment with a warning when the treatment operations have violated the provisions of this Regulation;”

(...)

“d) order the person responsible or in charge of the treatment that the operations of treatment comply with the provisions of this Regulation, where appropriate, in accordance with a specified manner and within a specified time;”

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

Article 83.5.b) of the RGPD establishes that:

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

b) 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 minor 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 the Articles 13 and 14 of Regulation (EU) 2016/679.”

In this case, it is taken into account that the respondent collects personal data from users who fill in the form included in the website

<http://www.cerrajeriacarlosrodriguez.com/> without providing them, prior to their collected, all information on data protection provided for in article 13 of the aforementioned RGPD, invoking repealed legislation in its privacy policy.

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According to the evidence currently available

agreement to initiate the sanctioning procedure, and without prejudice to what results from the investigation, the exposed facts could constitute, on the part of the claimed, a infringement of the provisions of article 13 of the RGPD.

Likewise, if the existence of an infraction is confirmed, in accordance with the provisions in the aforementioned article 58.2.d) of the RGPD, in the resolution the claimed party may be ordered, as responsible for the treatment, the adequacy of the information offered to users whose personal data is collected from them to the requirements contemplated in the article 13 of the RGPD, as well as the provision of supporting evidence of the compliance with what is required.

IV

In order to determine the administrative fine to be imposed, the provisions of articles 83.1 and 83.2 of the RGPD, precepts that indicate:

“Each control authority will guarantee that the imposition of fines administrative actions under this article for violations of this

Regulation indicated in sections 4, 9 and 6 are in each individual case effective, proportionate and dissuasive.”

“Administrative fines will be imposed, depending on the circumstances of each individual case, in addition to or as a substitute for the measures referred to in article 58, section 2, letters a) to h) and j). When deciding to impose an administrative fine and its amount in each individual case shall be duly taken into account:

a) the nature, seriousness and duration of the offence, taking into account the nature, scope or purpose of the treatment operation in question as well as the number of affected parties and the level of damages they have suffered;

- b) intentionality or negligence in the infringement;
- c) any measure taken by the person responsible or in charge of the treatment to alleviate the damages suffered by the interested parties;
- d) the degree of responsibility of the person in charge or of the person in charge of the treatment, account of the technical or organizational measures that have been applied by virtue of the articles 25 and 32;
- e) any previous infringement committed by the person in charge or the person in charge of the treatment;
- f) the degree of cooperation with the supervisory authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
- g) the categories of personal data affected by the infringement;
- h) the way in which the supervisory authority became aware of the infringement, in particular whether the controller or processor reported the breach and, if so, to what extent;
- i) when the measures indicated in article 58, section 2, have been ordered previously against the person in charge or the person in charge in question in relation to the same matter, compliance with said measures;
- j) adherence to codes of conduct under article 40 or mechanisms of certification approved in accordance with article 42, and
- k) any other aggravating or mitigating factor applicable to the circumstances of the case, such as financial benefits obtained or losses avoided, directly or

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indirectly, through the infringement.”

Regarding section k) of article 83.2 of the RGPD, the LOPDGDD, article 76, “Sanctions

and corrective measures”, provides:

"two. In accordance with the provisions of article 83.2.k) of Regulation (EU) 2016/679, also may be taken into account:

- a) The continuing nature of the offence.
- b) The link between the activity of the offender and the performance of data processing personal.
- c) The profits obtained as a result of committing the offence.
- d) The possibility that the conduct of the affected party could have led to the commission of the infringement.
- e) The existence of a merger by absorption process subsequent to the commission of the infringement, which cannot be attributed to the absorbing entity.
- f) Affectation of the rights of minors.
- g) Have, when not mandatory, a data protection officer.
- h) Submission by the person in charge or person in charge, on a voluntary basis, to alternative conflict resolution mechanisms, in those cases in which there are controversies between them and any interested party.”

In accordance with the transcribed precepts, and without prejudice to what results from the instruction of the procedure, in order to set the amount of the fine sanction to be imposed in this case to the entity claimed as responsible for an infringement typified in article 83.5.b) of the RGPD, in an initial assessment, the following mitigating factors are considered concurrent:

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The claimed one does not have previous infringements (83.2 e) RGPD).

- It has not obtained direct benefits (83.2 k) RGPD and 76.2.c) LOPDGDD).

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The claimed entity is not considered a large company.

It is appropriate to graduate the sanction to be imposed on the claimed party and set it at the amount of €1,500

for the infringement of article 58.2 of the RGD.

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

the Director of the Spanish Data Protection Agency RESOLVES:

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST: IMPOSE CERRAJERIA CARLOS RODRIGUEZ S.L., with NIF B78427531,

for an infringement of Article 13 of the RGD, typified in Article 83.5 of the RGD, a fine of €1,500 (one thousand five hundred euros).

SECOND: NOTIFY this resolution to CERRAJERIA CARLOS RODRIGUEZ

SL

: Warn the sanctioned person that he must make the imposed sanction effective once

THIRD

that this resolution is enforceable, in accordance with the provisions of art. 98.1.b)

of Law 39/2015, of October 1, of the Common Administrative Procedure of the

Public Administrations (hereinafter LPACAP), within the voluntary payment period

established in art. 68 of the General Collection Regulations, approved by Real

Decree 939/2005, of July 29, in relation to art. 62 of Law 58/2003, of 17

December, through its entry, indicating the NIF of the sanctioned and the number of

procedure that appears in the heading of this document, in the account

restricted number ES00 0000 0000 0000 0000 0000, opened on behalf of the Spanish Agency of Data Protection at Banco CAIXABANK, S.A. Otherwise, it will its collection in executive period.

Received the notification and once executed, if the date of execution is between the 1st and 15th of each month, both inclusive, the term to make the payment voluntary will be until the 20th day of the following month or immediately after, and if is between the 16th and last day of each month, both inclusive, the payment term will be until the 5th of the second following month or immediately after.

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 period of one month from the

day following the notification of this resolution or directly contentious appeal

before the Contentious-Administrative Chamber of the National High Court, with

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

according to 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,

the firm decision may be provisionally suspended in administrative proceedings if the interested party

states 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 Registry

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

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

october. You must also transfer to the Agency the documentation that accredits the

effective filing of the contentious-administrative appeal. If the Agency did not have

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knowledge of the filing of the contentious-administrative appeal within two

months from the day following the notification of this resolution, I would consider

The precautionary suspension has ended.

Sea Spain Marti

Director of the Spanish Data Protection Agency

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