

Procedure No.: PS/00329/2019

## RESOLUTION OF PUNISHMENT PROCEDURE

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

### BACKGROUND

FIRST: MADRID MUNICIPAL CONSUMER INSTITUTE (hereinafter, the claimant) dated January 22, 2019 filed a claim with the Agency

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Spanish

(WWW.CERRAJEROSURGENTESMADRID24H.COM with NIF \*\*\*NIF.1 (hereinafter, the reclaimed).

Protection

against

Data

of

of

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 "operates the website hosted under the domain name www.cerrajerosmadridd24horas.com".

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That the Privacy Policy it uses is not indicated on its website.

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

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

In addition, the following extremes are noted:

The aim is to inform the respondent of this claim on March 11 of 2019, requiring you to send 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 "Policy of Privacy" to article 13 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016 (RGPD).

However, such request was returned by mail, alleging "wrong address".

THIRD: On October 11, 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.

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

In this proceeding, the following are considered proven facts:

## FACTS

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

SECOND: This Agency required the respondent to respond to the facts denounced, however, such request was returned by mail, due to "wrong address".

## 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 LOPDPGDD, the Director of The Spanish Agency for Data Protection is competent to resolve this process.

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 in what regarding the processing of personal data and the free circulation of these data (General Data Protection Regulation, hereinafter RGPD), under the rubric "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 carried out on

personal data or sets of personal data, whether 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 authorization of access, collation or

interconnection, limitation, suppression or destruction;”

Therefore, in accordance with those definitions, the collection of data from

personal character through forms included in a web page constitutes a

data processing, in respect of which the data controller must give

compliance with the provisions of article 13 of the RGPD, a precept that has moved from

on May 25, 2018 to article 5 of Organic Law 15/1999, of December 13, of

Personal data protection.

In relation to this matter, it is observed that the Spanish Agency for the Protection of

Data is available to citizens, the Guide for the fulfillment of the duty of

report

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

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case of carrying out low-risk data processing, the free tool Facilitates

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

III

Article 13 of the RGPD, 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 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 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 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;

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f) the existence of automated decisions, including profiling, to which referred to in article 22, paragraphs 1 and 4, and, at least in such cases, information about applied logic, as well as the importance and consequences provisions of said treatment for the interested party.

3. When the controller plans the further processing of data

personal data for a purpose other than that for which they were collected, you will provide the interested party, prior to such further processing, information about that other purpose and any additional relevant information pursuant to paragraph 2.

4. The provisions of sections 1, 2 and 3 shall not apply when and in the

to the extent that the interested party already has the information.

For its part, article 11 of the LOPDGDD, provides the following:

"1. When the personal data is obtained from the affected party, the person responsible for the treatment may comply with the duty of information established in article 13 of Regulation (EU) 2016/679, providing the affected party with the basic information to which refers to the following section and indicating an electronic address or other means that allows easy and immediate access to the rest of the information.

2. The basic information referred to in the previous section must contain, at less:

- a) The identity of the data controller and his representative, if any.
- b) The purpose of the treatment.
- c) The possibility of exercising the rights established in articles 15 to 22 of the Regulation (EU) 2016/679.

If the data obtained from the affected party were to be processed for the preparation of profiles, the basic information will also include this circumstance. In this case, the concerned shall be informed of their right to oppose the adoption of decisions automated individuals that produce legal effects on him or affect him significantly in a similar way, when this right concurs in accordance with what provided for in article 22 of Regulation (EU) 2016/679."

#### 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) 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;"

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"i) impose an administrative fine under article 83, in addition to or instead of

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

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 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 <https://www.cerrajerosmadrid24horas.com/> without providing them, prior to their collected, all information on data protection provided for in article 13 of the aforementioned GDPR.

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.

This infraction could be sanctioned with a warning, in accordance with the 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 fall in accordance with the provided in article 83.5.b) of the RGPD would constitute a disproportionate burden for the claimed, whose main activity is not directly linked to data processing personal, since there is no record of the commission of any previous infraction in terms of Data Protection.

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.

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

the Director of the Spanish Data Protection Agency RESOLVES:

FIRST:

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TO IMPOSE

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infringement of article 13 of the RGPD, typified in article 83.5 of the RGPD, a sanction of warning.

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SECOND:

REQUIRE

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(WWW.CERRAJEROSURGENTESMADRID24H.COM, with NIF \*\*\*NIF.1, so that in the

within one month from this act of notification proves before this body the adoption

of all the necessary measures to update its "Privacy Policy" to the regulations

in force regarding the protection of personal data, -Regulation (EU) 2016/679

(RGPD)-, adapting the information offered to the requirements contemplated in article

13 of the RGPD, and must provide users, prior to the collection of the

personal data of the same, all the information required in the aforementioned precept, for which that said company must take into account the provisions of article 6 of the RGPD in relation to the legality of the treatment.

THIRD:

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NOTIFY

resolution

Present

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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 (article 48.2 of the

LOPD), and in accordance with the provisions of articles 112 and 123 of Law 39/2015,

of October 1, of the Common Administrative Procedure of the Administrations

Public, 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

from the day following the notification of this resolution, or, directly appeal

contentious-administrative before the Contentious-administrative Chamber of the High Court

National, in accordance with the provisions of article 25 and section 5 of the provision

additional fourth of Law 29/1998, of July 13, regulating the Jurisdiction

Contentious-Administrative, within a period of two months from the day following the

notification of this act, as provided in article 46.1 of the aforementioned legal text.

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Director of the Spanish Data Protection Agency

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