

Carrer Rosselló, 214, Esc. A, 1st 1st  
08008 Barcelona

ARCHIVE RESOLUTION of the Prior Information no. IP 118/2018, referring to the Pere Rosselló School.

#### Background

1.- On 4/25/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Pere Rosselló School (hereinafter, the School), on the grounds of 'an alleged breach of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD).

In particular, the complainant stated that the School would have communicated the personal data of the complainant here (...) to the Mossos d'Esquadra (hereafter MMEE) - from where they would have contacted you by phone with him, on 19/272018 - and also to the Social Services - through an email. These communications of their data would have been carried out without mandatory consent, always according to the reporting person, who provided a copy of a letter addressed to the School by means of which he requested that it identify the person responsible for the School that communicated the data to the MMEE.

2.- The Authority opened a preliminary information phase (no. IP 118/2017), in accordance with article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), in order to determine whether the facts were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant concurrent circumstances.

As part of this information phase, by means of an official letter dated 5/10/2018, the reported entity was required to report on the reported facts. The School responded to the previous request through a letter dated 5/14/2018, which set out, among others, the following:

- That: "(...) there is an irregular situation in relation to Mr. (...) and that the only thing we have done is to communicate it to the Social Services of the municipality and the local police family care squad following the usual protocols."

#### Fundamentals of Law

1.- In accordance with the provisions of article 2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, in relation to article 5 of the Law 32/2010, of October 1, of the Catalan Data Protection Authority, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Agency Catalan Data Protection Authority, the director of the Catalan Data Protection Authority is competent to issue this Resolution.

2.- Based on the account of the facts that has been set out in the background section, it is necessary to elucidate whether the communication of personal data of the affected person by the School to the MMEE and the

Carrer Rosselló, 214, Esc. A, 1st 1st  
08008 Barcelona

Social Services of the municipality may or may not be contrary to the provisions of the personal data protection regulations applicable at the time of the events reported (LOPD).

The first thing to say is that the School has admitted that it communicated personal data - without specifying which specifically - of the affected person to both the MMEE and the municipality's Social Services. And he adds that this communication would have been produced by an "irregular situation" that would have given rise "following the usual protocols" to the reported communications.

In accordance with the provisions of article 11 of the LOPD, and starting from the basis that the affected person did not give his consent for the School to facilitate his data both to the MMEE and to the Social Services, it is appropriate to determine if, as provided in article 11.2.a) LOPD, there was a rule with the rank of law authorizing the transfers of data carried out here.

On the one hand, it is necessary to invoke the Criminal Procedure Law (hereafter, LECrim); and on the other, Organic Law 1/1996, of January 15, on the Legal Protection of Minors, partially amending the Civil Code (hereinafter, LOPJM). As far as the LECrim is concerned, its article 262 provides that: "Those who, by reason of their position, profession or trade, are aware of any public crime are obliged to report it immediately to the Public Prosecutor, to the competent court, to the judge of instruction and, if there is none, to the municipal or police officer closest to the place, if it is a flagrant crime. Those who do not comply with this obligation incur the fine indicated in article 259, which must be imposed in a disciplinary manner.

If the failure to report is from a professor of medicine, surgery or pharmacy and is related to the exercise of their professional activities, the fine cannot be less than 125 pesetas nor greater than 250.

If the person who has committed the omission is a public employee, he must also inform his immediate superior for the purposes that are appropriate in the administrative order.

The provisions of this article are understood when the omission does not produce liability in accordance with the laws."

For its part, the LOPJM determines in its article 13 that: "1. Any person or authority and especially those who, due to their profession or function, detect a situation of abuse, risk or possible helplessness of a minor, must communicate it to the authority or its closest agents, without prejudice to providing - him the immediate help he requires.

2. Any person or authority that is aware that a minor is not in school or does not attend school regularly and without justification, during the mandatory period, must bring it to the attention of the competent public authorities, who must adopt the necessary measures for their schooling.

3. The authorities and the people who by their profession or function know the case must act with due reserve.

In the actions, any unnecessary interference in the life of the minor must be avoided.

4. Any person who, through any source of information, has news of an event that may constitute a crime against sexual freedom and compensation, human trafficking or exploitation of minors, has the obligation to bring it to the attention of the Public Prosecutor's Office without prejudice to the provisions of criminal procedural legislation. (...)"

Carrer Rosselló, 214, Esc. A, 1st 1st  
08008 Barcelona

Finally, article 17 of the LOPJM defines what is considered a risk situation: "1. A situation of risk is considered one in which, due to family, social or educational circumstances, deficiencies or conflicts, the minor is harmed in his personal, family, social or educational development, in his well-being or in his rights to so that, without reaching the entity, intensity or persistence that would justify the declaration of a situation of helplessness and the assumption of guardianship according to the law, the intervention of the competent public administration is necessary to eliminate, reduce or compensate for the difficulties or the maladaptation that affects him and avoid his helplessness and social exclusion, without having to separate him from his family environment (...)".

Therefore, on the basis of the aforementioned regulations, it is considered that the School enjoyed sufficient legal authorization to carry out the communications of personal data reported here.

Finally, with regard to the possible application of the provisions of article 22.2 LOPD, invoked by the complainant, it must be said that this precept was not applicable to the processing of personal data carried out by the School and here the complainant, but to the treatments carried out by the MMEE, a matter unrelated to the facts reported here.

3.- In accordance with everything that has been set forth in the 2nd legal basis, and since it has not been proven during the present information prior to the existence of rational indications that allow imputing any fact that could be constitutive of any of the infractions provided for in the LOPD, it is necessary to agree on the archive of the present proceedings.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, provides that the filing of the proceedings shall proceed when the following is made clear in the instruction of the procedure: "c) When the facts proven do not manifestly constitute an administrative infraction".

For all this,

RESOLVED

First.- Archive the actions of prior information number IP 118/2018, relating to the Pere Rosselló School of the Department of Education of the Generalitat of Catalonia.

Second.- Notify the Pere Rosselló School of this Resolution and communicate it to the person making the complaint.

Third.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://www.apd.cat)), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within a

Carrer Rosselló, 214, Esc. A, 1st 1st  
08008 Barcelona

month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the Courts of Administrative Disputes, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the reported entity may file any other appeal it deems appropriate for the defense of its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)

Machine Translated