

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

File identification Preliminary  
information no. IP 241/2018, referring to the Fundació Teatre Lliure-Teatre Públic de Barcelona

## Background

1. On 09/08/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Fundació Teatre Lliure Teatre Públic de Barcelona (hereinafter, Teatre Lliure), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant stated that on 27/07/2018 he received an email message from Teatre Lliure, the content of which was a statement of support for the person who was its director at the time. In this sense, the complainant stated that the purpose of that data processing, as stated in the privacy policy, was: "the management of the purchase and sale of tickets and the completion of opinion and satisfaction surveys; transmission of commercial and promotional communications; profiling". Given the above, the complainant considered that the content of the aforementioned e-mail message was not suitable for the purpose described. The complainant provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 241/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the 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 (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.
3. In this information phase, on 08/09/2018, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, the content of the privacy policy of Teatre Lliure was accessed by pressing the link at the bottom of the e-mail message provided by the complainant.

Check that in the heading "Purpose" of "BASIC INFORMATION ON PROTECTION OF DATA", the following is reported:

"Purpose

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Management of the purchase and sale of tickets for shows; processing for commercial purposes, sending offers, information and commercial proposals.  
more information in the tab below”

And in the lower tab to which the basic information section was referred, it was reported that:

"purpose

For what purpose do we process your data?

Management of the purchase and sale of tickets and conducting opinion and satisfaction surveys;  
Sending commercial and promotional communications;  
Elaboration of profiles."

On the other hand, it was also found that Teatre Lliure informed about the right to submit a claim to the control authority, in the following terms:

"The right to submit a complaint to the Control Authority ([www.agpd.es](http://www.agpd.es)), if you consider that the treatment does not comply with current regulations."

#### Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.
2. Based on the account of facts that has been presented in the background section, it is necessary to analyze the facts denounced

One of the obligations imposed by the RGPD on those responsible for processing is the preparation of appropriate data protection policies (Article 24.2). The information contained in this data protection policy largely coincides with the information provided to the affected person in the collection of their personal data, such as the purpose of the treatment.

Precisely, in relation to the right to information, it must be agreed that this Authority, together with the Spanish Data Protection Agency and the Basque Agency for

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Data Protection has drawn up the "Guide for compliance with the duty to inform the RGPD", which can be consulted on the Authority's website ([apdcat.gencat.cat](http://apdcat.gencat.cat)).

In this guide, it is anticipated that in order to make compatible the increase in the requirement of information introduced by the RGPD and the brevity and understanding in the way of presenting it, the data protection authorities recommend, especially when collecting the information by electronic means, adopt a model of information by layers or levels. That is, to present basic information (summary information) at a first level, so that you can have a general knowledge of the treatment; and provide the rest of the additional information (detailed information) at a second level.

Having established the above, as verified by the inspector staff on 09/08/2018, in the "BASIC INFORMATION ON DATA PROTECTION" section of the data protection policy it was reported that the purpose of treatment is "Management of the purchase and sale of tickets for shows; processing for commercial purposes, sending offers, information and commercial proposals."

That being the case, the sending of the message object of complaint, which contained a statement from the then director of Teatre Lliure, must be considered to be processing included in the purpose of sending information from Teatre Lliure.

It is worth saying that in the lower tab to which the basic information section of the data protection policy was referred, in the section corresponding to "purpose", the section relating to "information" did not appear, and this is what the complainant pointed out in his letter of complaint. However, as just mentioned, this purpose relating to "information" was indeed indicated in the initial basic information section of the data protection policy.

In short, from the actions carried out within the framework of this prior information phase, it cannot be inferred that Teatre Lliure violates the principle of purpose limitation in accordance with what is indicated in its policy of Data Protection.

3. In accordance with everything that has been set forth in the legal basis 2, and given that during the previous information it has not been proven that there are rational indications that allow imputation of any fact that could be constitutive of any of the violations provided for in the applicable legislation, it is necessary to agree on the archive of these actions. Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, provides that it is necessary to file the actions when the following is highlighted in the instruction of the procedure: "c) When the proven facts do not constitute, in a manifest way, an administrative infraction".
4. Article 58.2.a) of the RGPD empowers the control authorities, in the exercise of their corrective powers, in order to issue a warning to the person in charge, if the operations of

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planned treatment may infringe the provisions of this Regulation. In turn, article 8.2.c) of Law 32/2010 empowers the director of the Authority to require those responsible and those in charge of the treatment to adopt the necessary measures for the adequacy of the treatment of personal data subject to investigation in current legislation.

It is by virtue of this power that, despite the archive decision based on the arguments expressed above, it is considered appropriate to require the Free Theater so that within a maximum period of 10 days from the day after the notification of the this resolution, modify its data protection or privacy policy in accordance with what is set out below:

#### 4.1. About the purpose

As has been noted in the present previous actions, the basic information of the data protection policy that is provided on the purpose includes the purposes of "information", but in the lower tab where the affected person can go to obtain more information, this purpose is not included. This circumstance could lead to confusion for the affected persons as to the actual purposes for which their personal data is processed.

In view of the above, it is necessary to request the Free Theater so that within the aforementioned period modify, with regard to the purpose, the information provided in the section that in principle would seem more extended than what is provided in the first instance, so that all previously announced purposes are detailed there.

#### 4.2. About the control authority

One of the extremes on which the affected persons must be informed, is the right to submit a claim to the control authority (Articles 13.2.d and 14.2.e of the RGPD). In this sense, the inspector staff will also check that the privacy policy of the Free Theater indicated the email address of the Spanish Data Protection Agency (agpd.es) for that purpose. It should therefore be remembered that the data treatments carried out by Teatre Lliure are included in the cases over which this Authority has jurisdiction (art. 3.e.second of Law 32/2010).

Therefore, Teatre Lliure should be required so that, within the aforementioned period, it also modifies the information it provides to the affected persons, regarding the right to submit a claim to the Catalan Data Protection Authority.

Once the corrective measures described in sections 4.1 and 4.2 have been adopted within the period indicated, within the following 10 days the Free Theater must inform

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the Authority, without prejudice to the power of inspection of this Authority to carry out the corresponding checks.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 241/2018, relating to the Foundation Teatre Lliure-Teatre Públic de Barcelona.
2. Require the Free Theater to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out to comply with them.
3. Notify this resolution to Teatre Lliure and communicate it to the person making the complaint.
4. 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, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. You can also directly file an administrative contentious appeal before the administrative contentious courts, 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 the administrative contentious jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)