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File identification File resolution of  
prior information no. IP 305/2018, referring to the Library Consortium of Barcelona

## Background

1. En data 26/10/2018, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava una denúncia contra el Consorci de Biblioteques de Barcelona (hereinafter, CBB), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant stated that a few years ago he had registered in a library "and since then they have not stopped sending me information emails". He added that the option provided by the CBB to unsubscribe from the email list is "accediendo a su web, logearte en ella y elegir unas opciones las cuales nunca he podido realizar", and that "With the new law of data protection did not offer the option to unsubscribe, nor did they ask that you accept sending emails, so I keep receiving emails without being able to unsubscribe". The reporting person provided a screen print of the advertisement promoting cultural activities sent from the CBB.

2. The Authority opened a preliminary information phase (no. IP 305/2018), 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 were

capable of motivating the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances that occurred.

3. In this information phase, on 29/10/2018 the reported entity was required to report on the legal basis that would protect the sending of the emails to the person reporting here, on the procedure to give deregistration of electronic communications and if there was any incident that prevented the deregistration from being processed, and finally, if they had deregistered the person making the complaint based on the service of request.

4. On 09/11/2018, the CBB responded to the aforementioned request through a written in which he stated the following:

- That "the complainant has NEVER addressed the Data Protection Delegate of the CBB to formulate their complaints or requests in relation to the processing of their data

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of a personal nature. (...) All you had to do was contact the Data Protection Officer who had managed your cancellation satisfactorily. The DPD data is published in the privacy policy of the corporate website to which it is also referenced in every electronic communication sent to users of Barcelona libraries"

- That "When a user registers for a library card, he has access to a series of services, among which are informative communications related to the activities and services of the Municipal Library Network through newsletters electronic These shipments can be managed by the user at all times (..) through his Personal Space of the Aladdin catalog (...)"
- That "The legal basis for sending informative communications to users with a library card is the fulfillment of a mission carried out in the public interest based on the Local Regime Bases Law 7/85: to guarantee the territorial balance and service quality in library matters, as well as the access of all citizens to information, knowledge and culture."
- That "On 31/05/2018 the CBB sent a statement to all users informing of the new data protection policy"
- That "At the foot of each newsletter that is sent, there is the procedure to unsubscribe", and that "The enabled procedure works correctly, as other users have successfully unsubscribed".
- That "we have located the user (...) and proceeded to process his cancellation on 6/11/2018 so as not to receive further communications from the CBB".

The reported entity attached various documentation to the letter, in particular, the printouts of the screenshots relating to the statement informing users about the new data protection policy under the title "We adapt to the General Data Protection Regulation" , the screen printout of the electronic newsletter for the month of November 2018 with basic information on data protection and how to unsubscribe from electronic communications, and, the printout of the screen capture of the file of the complainant here , as a CBB user, with the box to "not receive information" activated.

#### 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

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2. Based on the account of facts that has been set out in the antecedents section, it is necessary to analyze the reported facts, and specifically, whether the sending of advertising or communications via email by the CBB to the person here reporting, is a treatment of personal data that is covered by one of the authorizations provided for in article 6 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD).

In this regard, it should first be noted that article 5.1.a) of the RGPD provides that all processing of personal data must be lawful: "1. The personal data will be: processed in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency")". Likewise, article 4.2 of the RGPD defines the concept of treatment as: "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring,

conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".

Therefore, the sending of informative e-mails of cultural activities of the CBB to the person making the complaint, in accordance with art. 4.2 of the RGPD constitutes a processing of personal data, which had to be subject to the principle of legality enshrined in article 5.1.a) of the RGPD. And in case of breach of this principle, we could potentially be faced with an infringement provided for in article 83.5.a) of the RGPD, a provision that typifies as an infringement the violation of: "a) los principios básicos para el tratamiento, including the conditions for consent pursuant to articles 5, 6, 7 and 9".

At this point it is necessary to specify that at the time when the events reported here occurred, Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights had not yet entered into force (hereinafter, LOPDGDD), applicable from 7/12/2018, in which article 72.b) describes as an infringement - very serious - "The processing of personal data without any of the established conditions of legality of the processing in article 6 of the Regulation (EU)

2016/679". In any case, it will be the regulations prior to the LOPDGDD that correspond to apply to the facts analyzed here, in accordance with what is provided for in the transitional provision 3a of the LOPDGDD.

It is therefore necessary to determine whether, in the processing of personal data referred to in the complaint, the CBB violated the aforementioned principle of lawfulness. In this regard, the RGPD establishes a system for legitimizing the processing of data based on the need for one of the legal bases established in article 6.1 to be met:

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"1. The treatment will only be lawful if at least one of the following conditions is met:

- a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to responsible for the treatment;
- d) the treatment is necessary to protect the vital interests of the interested party or another physical person;
- e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child

(...)"

And in article 6.3 of the RGPD the following is provided:

"3. The basis of the treatment indicated in section 1, letters c) and e) must be established by:

- a) the Law of the Union, or
- b) the law of the Member States that applies to the person responsible for the treatment.

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person in charge of the treatment."

On the basis of the precepts that have been transcribed, the following considerations must be made.

2.1 On whether the action of the CBB meets all the requirements to consider that it has carried out lawful processing of personal data, based on article 6.1.e) RGPD.

First of all, it should be noted that the CBB is considered a public administration, in accordance with what is established in article 2.3 of Law 40/2015, of October 1, on the legal regime of the public sector (LRJSP). In this respect, article 118 of the LRJSP defines consortia as "public law entities, with separate and distinct legal personality,

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created by several public administrations or entities that are part of the institutional public sector, among themselves or with the participation of private entities, for the development of activities of common interest to all within the scope of their powers".

In accordance with the Statutes of creation of the CBB, this consortium "is configured as a local body, with its own legal personality, constituted by the Barcelona City Council and the Barcelona Provincial Council, attached to the City Council and subject to public law, to the regulations of local bodies and that which makes up the special regime of Barcelona, the provisions of this Statute and the internal regulations issued for its development." (art. 1).

It should be noted at this point that article 6.1 e) of the RGPD does not refer only to those entities that exercise public powers, but also to those that carry out a mission carried out in the public interest. Also, it should be emphasized that in accordance with article 6.3 of the RGPD, the basis of the treatment indicated in article 6.1.e) must be established in the law of the European Union or by the law of the Member States that 'applies to the treatment, a requirement that must be understood as referring to a rule with the rank of law.

In this respect, the Statutes of CBB - which do not have the status of law - provide as objectives, among others, "To promote initiatives for the improvement of reading habits, with the adequacy of the library collections, bearing in mind the needs of the community they serve, and with the impetus and organization of activities to promote reading" and "Articulate participation processes, both of the staff of the Consortium and of the general public, with mechanisms informative, consultation and participation" (art. 2).

Likewise, the Statutes of the CBB refer to the administrative powers contained in Legislative Decree 2/2003, of April 28, which approves the revised text of the municipal and local regime law of Catalonia (TRLMRLC), when they have in their article 3 that "The Consortium assumes, in relation to what is said in the present Statutes and within the scope of its functions, the powers and prerogatives that non-territorial local bodies can enjoy according to article 83 of the revised text of the municipal and local regime law of Catalonia, approved by Legislative Decree 2/2003, of April 28, (...)". In this sense, when responding to the request for information, the CBB stated that the legal or legal basis for the processing of the electronic address data for the sending of e-mails is "the compliance with a mission carried out in the public interest based on the Basic Law of the Local Regime 7/85: to guarantee the territorial balance and the quality of service in librarianship, as well as the access of all citizens to information, knowledge and the culture". This legal or legal basis is mentioned in the informative clause included at the foot of each monthly informative newsletter that the CBB sends through its electronic communications.

From everything that has been presented so far, it can be inferred that, at least some of the activities carried out by the CBB, could be understood as contained under the term "mission

of public interest" provided for in a rule with the rank of law, so that there would be the coverage of a legal basis for the controversial treatment, in accordance with articles 6.1.e) and 6.3 of the RGPD.

However, the considerations that have been made are not sufficient to determine that the action of the CBB subject to the complaint meets all the necessary requirements to consider that the treatment was lawful. Indeed, it is necessary to take into account at this point what this Authority indicated in Opinion CNS 45/2018, precisely in relation to the consultation of a consortium on whether the consent of those affected was necessary to provide information on cultural and educational activities . This Authority argued the following:

"regardless of the fact that some of the activities it may carry out may fit within the concept of a mission of public interest, the authorization for the processing of citizens' data by the Consortium cannot be understood as an authorization for process data of any citizen, but only those who participate in the activities carried out by the Consortium. In other words, it would be due to prior consent or the legal relationship previously established with the Consortium.

Obviously, at the time of establishing this legal relationship or of obtaining consent, the interested parties must have been informed of the various aspects referred to in article 13 RGPD (previously article 5 LOPD ) and, especially, on the purpose or purposes (in this case differentiating the consent for each of them) for which the data will be processed (...).

If so, and to the extent that these purposes include the transmission of information about the activities carried out by the Consortium, there would be no problem in being able to use the data contained for this purpose".

As indicated in the background, in the present case the CBB collected directly from the person reporting here the data relating to his email address, at the time when he had registered the library card, the year 2014. In this respect, the CBB has not certified that at that time the user had been informed of the different aspects then required by article 5 of the LOPD, and specifically, that the purpose, or one of the purposes for which the data would be processed, would be the sending of advertising or communications through email. Therefore, since it is not proven that this information had been provided to the complainant during the collection of the data, in this case all the requirements would not be met that would allow it to be considered that the CBB could treat the email address for the sending of information in this way, from the point of view of article 6.1.e) of the RGPD. It is worth saying, however, that on 31/05/2018 the CBB would have sent an email to all users, in which it seems that it referred to the data protection policy, although it is not sufficiently proven that with this action, to the person here

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complainant had been informed about the purpose of sending informative communications by e-mail.

This circumstance makes it necessary to analyze whether, in this situation, the processing of the data relating to the email for the sending of informative communications, could be considered lawful in accordance with article 6.4, to understand that this purpose would be compatible with the which had initially justified the collection.

2.2. On whether the CBB meets all the requirements to consider that it has lawfully processed personal data, based on article 6.4 RGPD.

In accordance with what has been set out in the previous section, it is therefore necessary to decide whether the action of the CBB consisting of sending to the e-mail of the complainant here, electronic communications about the activities he carries out, would be compatible with the initial purpose for which the complainant's personal data were collected, when registering for the library card.

In relation to this, article 5.1.b of the RGPD establishes the purpose principle, which provides the following:

"1. The personal data will be (...): b) collected for specific, explicit and legitimate purposes, and will not be processed subsequently in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose") "

This forecast, however, must be supplemented with what is established in article 6.4 of the RGPD, and specifically, what is provided by letters a), b) and id):

"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a Society democratic to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine if the treatment with another purpose is compatible with the purpose for which they were initially collected

personal data, will take into account, among other things:

- a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;
- b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;
- c) (...)
- d) The possible consequences for the interested parties of the planned subsequent treatment;

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(...)"

At this point it is necessary to refer again to Opinion CNS 45/2018 of this Authority, in which the arguments are set out for which both purposes could be considered compatible: "there would be a close relationship between the activities for which they would have collected data (activities deployed by the Consortium, such as exhibitions, studies and research) and the purpose to which they are intended (disclosure of activities of this same nature that the Consortium will carry out). Secondly, it would be about people who have previously approached the Consortium and who have shown their interest in this type of activity. On the other hand, the data intended to be used would only be contact data, and would not be disclosed to third parties, nor are there foreseeable risks for the rights of the affected persons, as long as with the first and subsequent communications that are made, it is informed to the affected persons in compliance with the principle of transparency, especially on the origin of the data and on the possibility of objecting to the treatment in a simple and easily accessible way (for example through the web page). "

On the basis of this argument, it should be borne in mind that the collection of the email address was carried out by the CBB at the time when the person making the complaint here had addressed the CBB to register for the library card. And with regard to the use that would have been made of this personal data of the email, of the documentation provided by the CBB in the framework of the investigation actions, it is verified that in the electronic communications information linked to the activities of the CBB, directly related to the activity for which the complainant had registered. Also, from the documentation provided by the CBB, it can be inferred that when sending electronic communications, the CBB informs about the possibility to unsubscribe and the procedure to follow, through a link included in the same electronic communication. In the documentation provided it is also observed that it contains the basic information related to data protection, and specifically, on the purpose of the treatment of the data collected: "to manage the newsletter plus libraries and the informative communications related to the activities and Barcelona Library services and the city's cultural initiatives".

Regarding this possibility of deregistering, the person making the complaint presented some difficulties. In any case, it is proven that the CBB, once it received the request for information from this Authority opened following the complaint of the affected person, deregistered it in the corresponding file, which should avoid the sending of further electronic communications from the CBB.

In short, based on everything that has been presented so far, it must be concluded that in the event that the CBB, on the occasion of the initial collection of the data of the complainant when he registered his library card, he had not informed him about the purpose of sending him electronic communications with information about the activities of the CBB, likewise such sending could not be considered as a violation of the RGPD, already what



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a purpose compatible with the initial one should be understood, in accordance with article 6.4 of the RGPD.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the previous information it has not been proven that there are rational indications that allow imputing 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 line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when in the instruction of the procedure clearly the following: "c) When the proven facts do not constitute, in a manifest manner, an administrative infraction".

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 305/2018, relating to the Consorci de Biblioteques de Barcelona.
2. Notify this resolution to the Consorci de Biblioteques de Barcelona and communicate it to the person making the complaint.
3. 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,