

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

File identification File resolution of
prior information no. IP 8/2019, referring to the Department of Education

Background

1. On 10/01/2019, the Catalan Data Protection Authority received a letter from a person who lodged a complaint against the Territorial Services of (...) of the Department of Education (in hereinafter, Department), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant, who during the 2017-2018 school year provided services as temporary staff at a center in (...) of the Department, stated that the director of Territorial Education Services (...) .), specifically Mr. (...) (...), would have communicated to his ex-partner information about the final destination of the teaching position that would have been awarded to him for the 2018-2019 school year, revelation which he would have done prior to the publication of the list of final awards.

The complainant explained that on 07/04/2018 he found out that in the published lists of allocations of provisional destinations he had been assigned a place at a center in (...), and that on that same day his son he asked about the square that had fallen to him. Later, on 16/07/2018, the final lists of awards were published where he was definitively assigned the place in the same educational center assigned to the provisional lists, and at the time of explaining this to his son ,

he said that "I already knew you were going to (...), the pope told me". The complainant added that from the conversation with his son it was inferred that his ex-partner knew the information relating to the allocation of his place at an educational center in (...) from the day of the publication of the provisional lists, on 04/07/2018, because "his friend (...) from ERC told him".

2. The Authority opened a preliminary information phase (no. IP 8/2019), 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 16/01/2019 the reported entity was required to report on the bodies and/or people of the Department that would have had

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access to the data contained in the award lists (provisional and final) for the 2018-2019 school year, between 07/04/2018 and 07/16/2018, and on the reasons that would justify such access based on the ordered functions. Likewise, the Department was required to confirm - if applicable - that Mr (...)(...) would have disclosed the information referred to in the complaint to the ex-partner of the person here reporting case, indicate the reasons that would have justified such disclosure.

4. On 01/30/2019, the Department responded to the aforementioned request through a letter in which he stated the following:

- That "The procedure for awarding provisional destinations is regulated by Resolution ENS/862/2018, of April 25 for the 2018/19 school year";
- That the bodies of the Department that have access to the data on the awards, both provisional and final, are:

"1) Central Services of the Department of Education

General Directorate of Teachers and Public Centers Personnel, to which are attached:

1.1 Subdirector General of Templates, Provision and Payrolls

1.1.1 Teaching Jobs Provision Service

1.1.2 Section for Provision of Child and Primary Teaching Jobs 1.1.3 Section for Provision of Secondary and Special Regime Teaching Jobs

2) Territorial Services

2.1. Head of the Teaching Personnel Service

2.2 Head of Teaching Staff Section

2.3 Head of Office of Child, Primary and Secondary Provision

Likewise, people attached to the aforementioned organic units can also access.

3) Educational Center

Management teams, which are made up of (...), secretary, head of studies and/or other positions that form part of the management team.

4) The interested person";

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- That the "Department of Education enables, through the department's website, the computer application PDA- for Destination Allocations, in which the organic units have access to the data of the allocations, both provisional and final previously mentioned (...). Likewise, the interested person also accesses through the same PDA- application for Destination Allocations, with a corporate user, with GIACR/ATRI identification and password";

- That "in this query the interested person sees his award, but the same program enables access to the data query of a center, it is only necessary to indicate the code of a center and search for all the awards, both provisional and the center's finals and here any teacher can see all the awards destined for a center";

- That "Mr(...), (...), states that he has not provided the ex-partner of the person making the complaint with the information to which the complaint refers";

- That "the department has mechanisms in place so that the data of the interested parties, if there is a motivated or duly justified request, do not appear as such in the previously mentioned resolutions. As far as the complainant is concerned, there is no request in this regard".

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 20 February, which approves the Statute of the Catalan Data Protection Agency, is competent to issue this resolution the (. . .) 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 reported facts. The first thing that needs to be highlighted is the appearance of verisimilitude in the account of the facts of the person reporting here, who identifies the director of the Territorial Services (...), as the person who would have communicated to the ex-partner of the person here denouncing, the educational center in which he would have been awarded the position as a teacher for the 2018-2019 school year, disclosure that would have occurred on the same day as the publication of the provisional lists of awards. But it is also necessary to show that, apart from the different units and bodies of the Central Services and the Territorial Services of the Department listed in the antecedents, they were also able to access the personal data contained in the lists of provisional and final awards - and therefore to the information about the center awarded to the complainant here-, the people who make up the management teams of the educational centers, and above all, all the teachers who participated in the process of awarding places for the 2018 school year-

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2019, a circumstance exposed by the Department and which has also been recorded in the records. In short, that following the processing of personal data carried out by the Department with the publication of the aforementioned lists, any participant could access the information contained in the lists.

Regarding the concept of "treatment" of personal data, it should be noted that article 4.2 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 treatment of personal data and the free circulation of these (hereafter, RGPD) defines this concept 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, dissemination or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction". Likewise, article 5.1.f) of the RGPD refers to the principle of integrity and confidentiality, which consists of the following:¹ Personal data will be: treated in such a way as to guarantee adequate security for personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

In relation to the principle of integrity and confidentiality provided for by the RGPD, it is necessary to mention the duty of secrecy that was included in article 10 of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), which established that "The person in charge of the file and those who intervene in any phase of the processing of personal data are bound by professional secrecy with regard to the data and the duty to keep it, obligations that remain even after ending their relationship with the file holder or, where appropriate, with its manager". At this point it is necessary to specify that the LOPD, which was the rule in force at the time of the events reported here (beginning of July 2018), has been repealed by Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), which maintains the regulation of the duty of secrecy in its article 5, in terms similar to how art. 10 of the LOPD. However, the LOPDGDD would not be applicable to the case at hand, given that the facts reported date back to before its entry into force, and consequently, it must be governed by the previous regulations, unless the later regulations would be more favorable for the alleged infringer, which does not happen in the present case.

At this point it is also necessary to mention article 13 of the LPAC, which contains a catalog of rights of people in their relations with public administrations, and which in letter h) expressly includes the right "To the protection of data of a personal nature, and in particular to the security and confidentiality of the data contained in the files, systems and applications of public administrations".

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Therefore, the eventual communication by a person of the Department of personal information - to which he had access due to his position - to the ex-partner of the person reporting here, in accordance with article 4.2 of the RGPD would constitute a processing of personal data, which should be subject to the principles of article 5 of the RGPD, and in particular those of lawfulness (art. 5.1.a) and integrity and confidentiality (art. 5.1.f), and also to the provisions on the duty of secrecy established in article 10 of the LOPD at the time of the events. And in case of breach of these principles, we could 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) the basic principles for the treatment, including the conditions for consent for consent pursuant to articles 5, 6, 7 and 9".

It is therefore necessary to determine whether, as argued in the complaint, the Department violated the aforementioned principles.

As indicated, access to the data contained in the provisional and final lists of educational centers awarded for the 2018-2019 school year was possible both for the different organic units of the Department mentioned in the background, as well as for the people participating in the selective process of awarding places, who - in the words of the Department - "with a corporate user, with identification and password" could have access, on the one hand, to the data relating to the people of the awarded educational center, but as indicated by the Department, "the same program enables access to a center's data query, it is only necessary to indicate the code of a center and search for awards in both the center's provisional and final awards, and here any teacher can see all the allocations destined for a center". That is to say, that potentially any person participating in that selective process could access the lists of people who had been awarded any other center, if the center's code was entered. As things stand, it is evident that there was a plurality of people who could access the personal data contained in the published lists, and in particular the information relating to the center awarded to the complainant here, without prejudice to the consideration that will do more about this level of advertising later.

3. In addition to all this, it should be emphasized here that in this case we are dealing with a process of competitive competition in order to access certain places offered in different schools, and that in general, advertising and transparency they are among the guiding principles that must govern selective procedures, and these principles must be connected to those of equality, merit and ability. It is based on the principles of transparency and publicity that the people participating in a competitive competition process, as is the case with us, must be able to know not only which position has been assigned to them (either the provisional assignment for like this

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to be able to present, if they consider it relevant, the allegations they consider relevant about this provisional assignment, such as the subsequent assignment of the final destination place), but also to know who the other people participating in the process are, that is to say, the his opponents

In this regard, it should be borne in mind that in accordance with article 58.4.c) of Law 26/2010 and article 45.1.b) of Law 39/2015, acts issued in the framework of selective procedures and/or of selective competition must be published as provided for in the corresponding call, publication that replaces personal notification. Likewise, the art. 9.1.e) of Law 19/2014, also requires the results of the selective procurement processes to be published on the Transparency Portal. Therefore, it is necessary to consider the disclosure of the identity of the applicants and of the assigned places in the manner established in the corresponding call.

As described by the Department itself, as part of the procedure for awarding assignments to teaching staff, it has implemented a system of restricted access to the provisional and final lists, in which the identification data appears together with the center assigned. Indeed, apart from the authorized persons of the Department, all the people who participate can access it through a user code and password, and once each of these people has accessed the system, not only can you view the information about the center that has been awarded to you, but you also have access to information about the rest of the people. On the basis of the above, the Department is recommended to assess the relevance of maintaining or introducing changes in the publication system used, which could be conditioned by the nature that needs to be recognized in the lists of the aforementioned processes of allocating places, in the sense that although the system guarantees that all participants in the selection process can have access to the information contained in the lists and the data of the other participants, nothing would prevent these lists from being published openly, from the same way as in other selection procedures and/or competitive competition.

Be that as it may, the question discussed here about who would have given the information to the ex-partner of the person reporting here about the educational center assigned in the provisional lists published on 4/7/2018, could not be framed within a eventual violation of the principle of integrity and confidentiality of article 5.1.f) of the RGPD and the duty of secrecy of article 10 of the LOPD -today collected in art.5 of the LOPDGDD-, given that the access to this information published in the provisional and final lists of allocation of destinations, should not be treated as information subject to restricted access, but rather information that, based on the principles of transparency and publicity, should be accessible to all participants without any restrictions, without prejudice to the possibility that, as already indicated, the right of opposition can be exercised.

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In addition to the above, according to the response given by the Department to the request for information made by this Authority, Mr. (...) "states that he has not provided the complainant's former partner with the information to which the complaint refers", so the person identified by the complainant here denies having communicated any information about the what is the subject of the complaint, a matter which in itself would already make it very difficult to impute the violation of the RGPD to the Department, in the supposed case that the disputed information was indeed subject to the duty of secrecy of article 10 of the LOPD, faced with the impossibility of obtaining other elements tending to corroborate the version of the reporting person, refuted by the person to whom the illegal conduct was attributed.

(...) In short, despite the verisimilitude of the story of the facts that the reporting person had made, it is not appropriate to demand responsibility for a possible violation of the principle of integrity and confidentiality of article 5.1.f) of the RGPD and the duty of secret of article 10 of the LOPD - today included in art. 5 of the LOPDGDD-. That being the case, it must be taken into account that the sanctioning administrative procedure is particularly guarantor because of the consequences that can be derived from it. That is why it is necessary, for its initiation, the existence of evidentiary elements or sufficient rational indications that allow the commission of an infringement to be imputed, elements that are not present in the case under examination. Therefore, based on the right to the presumption of non-existence of administrative responsibility until the contrary is proven (art. 53.2.b LPAC), the filing of the present proceedings proceeds.

4. In accordance with everything that has been set forth 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 "d) When the person or persons responsible does not exist or has not been able to be identified or appear exempt from responsibility".

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 8/2019, relating to the Department of Education, in accordance with what has been set out in the 2nd legal basis; and formulate the recommendation indicated in the 3rd legal basis on the publicity of the information system used in the procedure for awarding places.

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2. Notify this resolution to the Department of Education and communicate it to the person reporting
3. Order the publication of the resolution on the Authority's website (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,