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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 156/2019, referring to (...) of the Department of Education.

Background

1. On 18/05/2019, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against (...) (hereafter, the IES), located at municipality of (...), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant explained that on 05/14/2019, as part of the entrance exams to the training cycles of (...) professional training and sports education (call (...)) , in which students from the aforementioned IES participated, Mrs. (...), teacher and corrector of said entrance exams, *"announced out loud in front of those present (tutors and several students) some notes of the correction of the exams of the free call for the access tests (...)2019"*, specifically, the notes relating to the subjects of English, social sciences and Catalan of the son of the person making the complaint. This caused the affected student to complain to the teacher, who replied *"this is a (...)"*. The reporting person provided a copy of the *"Registration slip"* to the mentioned access test for the call for the year 2019.

2. The Authority opened a preliminary information phase (no. IP 156/2019), 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 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 05/30/2019 the reported entity was required because report on the system that is followed to communicate the academic qualifications to the students who have taken the access tests to the training cycles of (...)professional training and sports education, and in particular, the one followed by the IES mentioned Also, it was required to confirm whether the previously identified teacher made public in front of all the students present, the notes relating to said entrance tests, at least of one specific student who

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complained about this behavior, a complaint that would have prompted the teacher's response with the reference to a "(...)".

4. On 06/13/2019, the reported entity responded to the aforementioned request through a letter, supplemented by a second letter, in which it stated the following:

- That *"Mrs. (...), who was denounced for having made the grades public, was not a teacher and therefore could not be a corrector of the access tests to the training courses. Ms. (...) is a special education technician (administrative and service staff) and provides intensive support to the high school's inclusive schooling (...)."*
- That *"Mrs. (...) he was not a member of any court for the call for access tests to the training cycles of (...) and could not have access to any student's notes."*
- That *"On 5-14-2019, the date on which the facts are framed, the courts had not made the notes public."*
- That the system followed to communicate the grades is the one established by *"(...), by which the access tests to the training courses of professional training and to the training courses of visual arts and design are convened, the tests of a general nature for sports education and the tests for access to level 1 and level 3 sports training, corresponding to the year 2019."*, and makes specific reference to *"point 14 of Annex 1 Tests d'access to professional training cycles of (...) and higher degree:*

14. Publication of results

14.1 The qualification of the tests is published on the website of the Department of Education and can be consulted using the number of the personal identification document (DNI, NIE or passport) and the application code contained in the receipt of the registration:

a) Training cycles of (...)

Provisional qualifications: from 20 May 2019

Final qualifications: from May 27, 2019"

- That *"The center does not communicate any grades to students other than in the way explained just above these lines. Applicants who call by phone are informed that they must consult the website of the Department of Education and that they must go through the secretariat of the center themselves and identify themselves with an official document so that they can deliver the final certificate of the final qualifications".*
- That *"Of the students from the center that we know will take the tests because either they have informed us themselves, or because they have been guided by the psychopedagogues of the center to take them, no results of qualifications are communicated, because the teachers of the center*

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they do not have access to individual student results in these tests. They are considered to be tests external to the operation of the centers"

- That *"As part of the educational and guidance activities for these students, and as a self-assessment, the tests are reviewed with the correction guidelines that are posted on the website of the Department of Education. The students themselves do their own correction as a learning methodology."*
- That *"the aforementioned educator, on May 10, 2019, reviewed the tests only with (...) a student who appeared, in another center, for the entrance tests of (...) following the documents of correction and qualification criteria published by the Department of Education, calculating the student himself which qualification he would get with what he did during the test".*
- That *"The educator does not communicate any official grade of the tests of the student who appeared at the call (...). Nor is he aware of any official qualification."*
- That *"on May 16, the educator and the tutor were in the classroom separated into two groups doing mathematics and Spanish language activities with a total of 3 students. The student who took the tests entered the classroom with the activity already started. His attitude was one of constant interruption and of not doing the tasks that were entrusted to him. It is at this moment that he is made to reflect on the little use he has made of the classes and that has become evident in the self-evaluation he made of the access tests."*
- That *"we have no evidence that the educator, (...), has referred to the student's test in any derogatory way"*
- That *"At no time were any notes made public, which, on the other hand, in accordance with the procedure established by law, were only accessible by the student himself from May 20".*

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 events that has been set out in the antecedents section, it is necessary to analyze the facts reported, specifically, the alleged disclosure of the notes of the son of the complainant here, relating to the evidence of access to training cycles of (...) professional training and education

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sports, by a member of the IES educational community. Specifically, the complainant complained that one of the teachers at the IES, to whom she was also given the status of corrector of the said entrance exams, revealed the notes relating to the subjects of English, social studies and Catalan of his son in front of the rest of the students in a class and the tutor, and he also referred to these results with a derogatory expression ("(...").

The first thing to indicate is that, in accordance with what the IES invokes in the response to the request for information made by this Authority, the member of the educational community of the IES, which the complainant here points out as the person who would have revealed the results of the grades of the different subjects of the aforementioned entrance tests, is not a teacher at the IES or a test scorer, but a special education technician (administrative and service personnel) and provides its services to intensive support for the institute's inclusive schooling, but it does not have access to the mentioned exams or the competence to be a corrector. In fact, according to the declarations of the IES, no teacher has access to the individual results of the students of the IES in said tests, since they are considered to be *"tests external to the functioning of the centers"*.

Having established the above, it is also necessary to point out that the official results of the notes, in accordance with what is established in the resolution by which the said tests for access to the training cycles were called, to which the son of the person reporting here ((...)), provided that the provisional grades would be published on 05/20/2019 and the final grades on 05/27/2019. In the resolution it is indicated that access to the results is expected to be done through *"the website of the Department of Education and can be consulted using the number of the personal identification document (DNI, NIE or passport) and the application code on the registration slip"*. In this respect, taking into account that the events reported here happened on 05/14/2019, it can be concluded that, in fact, as stated by the reported entity in the written response to the request, on the date of facts, the qualifications (nor the provisional ones nor the final ones) had not yet been published, and were therefore not accessible even by the participants themselves. Likewise, it should also be noted that the system designed to access the qualifications, once published, imposes a series of measures, such as the identification of the user with the DNI number and the request code of the registration, which is difficult they could allow a third party access to the results of the students who took the said tests.

However, from the account of the facts presented by the entity in the response to the request, everything seems to indicate that the special education technician of the IES, to whom the person making the complaint here imputes the disclosure of his son's grades before the class, he would have been able to know the results of said tests in an indicative, but not certain, way. This is because on 05/10/2019 this person and the son of the person making the complaint, following the documents of correction and qualification criteria published by the Department of Education, were able to have an indicative idea of the results of the tests, calculation that did the student himself to find out *"what grade he would get with what he did during the test"*. In this respect, it should be noted that such correction based on the criteria and qualifications published by the Department of Education, can serve to help give

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approximation to the participant of the final qualification, but in no case has the nature of the official final qualification. This antecedent would explain the fact that the special education technician of the IES could have affirmed days later, during an incident in the class with the son of the person here denouncing, the little use he made of the classes and *"that he was evident in the self-assessment he did of the entrance exams."* In accordance with the above, the reported entity denies that this member of the educational community had referred to the test taken by the student in a derogatory way, in clear reference to the terms of "(...)" set out in the complaint, nor that he had revealed the specific notes of the son of the person making the complaint.

From all the above, it can be inferred that on the day of the events reported, the special education technician could not know the official and true qualifications of the student regarding the access tests to the training courses, only indicative results but not specific notes, and that the events reported would be in the context of an incident of attention-grabbing between a student and a member of the educational community of the IES. It should also be added that the IES denies the facts reported, the commission of which could lead to a possible violation of the principle of integrity and confidentiality of article 5.1.f) of the RGPD and article 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.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 156/2019, relating to (...) (...) of the Department of Education.
2. Notify this resolution to (...), of the Department of Education, and to the complainant.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.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 February 20, which approves the Statute of the Catalan Protection Agency

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of Data, the interested persons may file, on an optional basis, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within a period of one month from the day after its notification, d in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly 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, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,