

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

File identification

Archive resolution of the previous information numbers IP 309/2019, 331/2019 and IP 15 to 29/2020, regarding the Eduard Fontserè, Numància, Intermunicipal, Pablo Ruiz Picasso, El Cairat, Ermessenda, Terra Roja, Baix high schools Sea, El Morell, Ciutat de Balaguer, Torre Vicens, Samuel Gili and Gaya, Josep Lladonosa and Seròs.

Background

1. On 18/11/2019, the Authority became aware through different means of communication that the University of Lleida (hereinafter, UdL) was carrying out a research project called "Acculturation and linguistic acculturation of the descendants of migrated Challenges and potential for language learning and linguistic and socio-educational inclusion" (hereafter, the project). According to the media, as part of this project, a survey was carried out among compulsory secondary education (ESO) students, among whom were the students of the El Morell Institute in Tarragona. In this survey, students would be asked about their ideology, among other issues.

2. The Authority opened a preliminary information phase (no. IP 309/2019), 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 26/11/2019, the UdL was required to inform, among others, which ESO courses the survey was aimed at; the reasons why it was necessary to identify the person answering the survey, taking into account that according to the media, the answers were subsequently made anonymous; how the anonymization of the data of the surveyed students was carried out;

what would be the legal basis that would legitimize this data processing and in the event that special categories of data were collected, that it be specified which of the circumstances provided for in article 9.2 of the RGPD would allow its processing; as well as whether the students were required to answer the survey. In turn, the UdL was also required to provide copies of 3 surveys answered by students from the Institut El Morell in Tarragona.

4. On 10/12/2019, the Authority received, by referral from the Spanish Data Protection Agency, a letter from the Asociación Hablamos Español in which it filed a complaint against the UdL and the Department of Education of the Generalitat de Catalunya, due to an alleged breach of the regulations on personal data protection.

Specifically, the reporting entity stated that it had been carried out on 3rd and 4th grade ESO students

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

of the El Morell Institute in Tarragona a survey in which data was collected on the ethnic or racial origin, political opinions, religious or philosophical convictions of the students and their families, without the consent of the minors affected or their legal representatives. The reporting entity added that the survey was carried out in schools at the behest of the Department of Education, which sent the questionnaire drawn up by a UdL research group to several schools, the recipient of the data collected being UdL. The reporting entity provided various documentation.

This complaint was assigned the number IP 331/2019.

5. On 11/12/2019, the UdL responded to the request made on 26/11/2019, through a letter in which it set out, among others, the following:

- Que l'objectiu del projecte d'investigació era afavorir la incorporació, en condicions d'igualtat, en la societat espanyola en general, i en la catalana en particular, dels descendents de persones immigrades.
- That the project aimed to analyze the particular case of the descendants of Romanians and Moroccans who were in the last stage of ESO not only in Catalonia, but also in other autonomous communities, such as the Community of Madrid or Asturias.
- That the surveys carried out as part of the project identified the people interested in first and last names.
- That there was a survey model specifically aimed at students of foreign origin (survey with code "OI") and another model aimed at "native" students (survey with code "A").
- That, in addition to the survey, the collaboration of the teaching tutor responsible for the surveyed students was requested, so that they could carry out a small assessment of each one of them [on the general ability of the student and the level of their knowledge linguistics].
- That the information that emerged in the press according to which "the answers were later made anonymous" is not accurate, but that they were pseudonymized to guarantee the identification of each student surveyed and their inclusion within a certain profile.
- That the participation in the project of both students and teachers was voluntary, and this was expressly stated in the "informed consent" contained in the first page of the survey form.
- That there were students in some schools who refused to answer the survey. In these cases, the teachers assigned them alternative academic tasks, while their classmates answered the survey.
- That the information provided by the research group, at least that which is in writing, did not include all the content required by the regulations in force regarding the protection of personal data.
- That "There is no doubt that the surveys include questions that can reveal the ideology or the ethnic or racial origin of the students. El dos models d'enquesta inclouen preguntes d'identificació personal amb la cultura i llengua catalanes i espanyoles, o fins i

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

everything with the "independence movement"; preguntes sobre "sentir-se" català o espanyol; or if it is "more important to learn English or French than Catalan"; or if "Spanish is a beautiful language", among many others. At the end of the survey, it asks about the specific religion one professes and the degree of religious practice, if applicable."

- That all these data are essential for the project.
- That the Department of Education was not only informed by the research group about the scope of the project, and not only did it authorize its activities in the educational centers, but that there are signs of co-responsibility as an active collaborator and essential in this process of collecting and processing personal data.
As stated in the project report, the coordinator, in the Territorial Services in Lleida, of the Plan for Language and Cohesion is an active part of the working group Social Department of Education.
- That the Department provided the group with the dissociated data of all the students of the ESO degrees of all secondary schools in Catalonia, classified according to their nationality and the centers in which they were enrolled, with the aim that the group could identify suitable centers for the purpose of the research.
- That once the centers were chosen, the research group asked the Department to address an email to the chosen centers requesting their collaboration in the project based on an informative text that the research group wrote at the request of the Department.
- That the members of the research group contacted, by telephone and/or e-mail, the different institutes chosen to verify the receipt of the information sent by the Department; and to offer them the possibility of expanding the information in writing and, even if the centers considered it appropriate, to provide them with an informative letter addressed specifically to the parents of the students in the centers. Of the ten centers where the surveys were carried out, only three agreed to make use of the additional information provided by the group.
- That the different educational centers collaborated in the pseudonymization process of the students' identification data, since the research group assigned the codes to each survey and evaluation carried out by the teaching staff based on the official lists of the students of the institute. These lists were sent by the management of the center.
- That the lists were printed and the corresponding identification code was noted, which then it also carried over to each survey and each evaluation by the teaching staff.
- That the research group did not obtain, prior to the surveys, the authorization of the respective parents or legal guardians of the students, because it only wanted to offer the possibility of participation to 3rd and 4th grade ESO students. The group considered that these minors, in any case, would have reached the age of 14 at the time of the surveys.
- That the surveys were carried out during the hours that each center allocated for tutoring, with the aim of disturbing as little as possible the ordinary functioning of the academic activity, and always in the presence of the teaching staff responsible for the educational center.
- That the following educational centers participated in the project:

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

- INS Eduard Fontserè (Hospitalet de Llobregat), where the survey was carried out in 3rd and 4th year ESO students on 03/28/2019.
- INS Numància (Santa Coloma de Gramenet), where the survey was carried out in 2nd, 3rd and 4th ESO students on 04/05/2019.
- ÿ INS Intermunicipal (Sant Sadurní d'Anoia), where the survey was carried out for 3rd and 4th ESO students on 08/04/2019.
- ÿ INS Pablo Picasso (Barcelona), where the survey was conducted for 3rd and 4th year students of ESO on 24/04/2019.
- ÿ INS El Cairat (Esparraguera), where the survey was carried out for 3rd year ESO students on 26/04/2019.
- ÿ INS Ermessenda (Girona), where the survey was carried out for 3rd and 4th year ESO students on 08/04/2019.
- INS Terra Roja (Santa Coloma de Gramenet), where the survey was carried out in 3rd and 4th year ESO students on 05/03/2019.
- ÿ INS Baix a Mar (Vilanova i la Geltrú), where the survey was conducted for 3rd grade students of ESO on 06/19/2019.
- ÿ INS El Morell (El Morell), where the survey was carried out for 3rd and 4th grade ESO students in dates 06/11/2019 and 07/11/2019.
- ÿ INS Ciutat de Balaguer (Balaguer), where the survey was carried out for the students of 3rd and 4th year of secondary school on 11/15/2019.
- That the IP (the main investigator) also communicated that, following an urgent meeting with representatives of the Department of Education, it was decided to temporarily suspend the survey campaign in educational centers.
- That the UdL had the necessary legitimacy to process the essential data for the project's objectives, without the need for the consent or authorization of these minors or their parents or guardians, in accordance with article 6.1.f) [of context of the answer it is inferred that the UdL was referring to article 6.1.e) and article 9.2.j), both of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD). According to these precepts, special categories of data may be processed for the purposes of scientific research, as long as this scientific research is carried out in the public interest or in the exercise of public powers and unless a law in a specific field requires the consent or authorization of the affected persons.
- That the project is included in the scientific research plans regulated by Law 14/2011, of June 1, on science, technology and innovation (hereinafter, Law 14/2011); and that "intends to contribute to the full integration of minors in our society."

The statement of objections was accompanied by various documentation.

6. On 01/20/2020 the Authority received 15 letters by which several parents of students from the El Morell Institute in Tarragona and the Assembly for a Bilingual School

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

in Catalonia (entity that also represented the rest of the complainants), filed a complaint against the UdL and the Department of Education.

The complainants stated that since the beginning of 2019, the UdL had been carrying out the controversial project, in which the Department of Education collaborated. The complainants added that 2nd, 3rd and 4th grade ESO students from 10 schools had already participated in the said project. In turn, they stated that the surveys answered by the students asked about identity, ideology and religious beliefs. They also indicated that in certain cases the survey had not been voluntary, that the parents had not been informed beforehand and that consent had not been properly obtained to treat special categories of data. The complainants provided various documentation.

IP numbers 15 to 29/2020 were assigned to these complaints.

7. On 28/01/2020, the UdL provided a copy of the action protocol it had approved "to correct the deficiencies detected, and guarantee compliance with the data protection regulations, in relation to the project d Controversial 'research'.

8. On 02/13/2020 and still within the framework of this preliminary information phase, the Department of Education was required to inform, among others, whether it was co-responsible (together with the UdL) in relation to the treatments linked to the aforementioned project; what was the legal basis that would legitimize the communication of students' personal data to researchers; as if among the students who answered the controversial survey at the El Morell Institute in Tarragona, there were several who expressed their refusal to answer it. In turn, the Department was required to provide a copy of the "relationship of secondary schools, with the distribution of 3rd and 4th ESO students by nationality" that was provided to the researchers and of the lists that they would have sent the addresses of the educational centers; and the "additional" information that the research group offered to certain educational centers.

This requirement will be repeated on 03/12/2020.

9. On 03/13/2020, the Department of Education complied with this request by means of a letter stating, among others, the following:

- That the Department of Education is not co-responsible, in relation to the treatments linked to the study carried out by the UdL, since it does not participate, nor has it participated in the definition of the objectives or purposes of the research projects.
- That the Department of Education considers that the UdL is solely responsible for reviewing and approving the objectives and purposes of the project proposals it develops, and which includes the aspects derived from the analysis of the procedures and means involved and the legal foundations that enable its development, including the analysis

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

legal, technical and organizational that must guarantee compliance with the set of principles and guarantees that apply in matters of data protection, among others.

- That given the sociolinguistic study proposed by the UdL, personal data of the students was provided, in accordance with the legal basis provided for in article 9.2.j) of the RGPD, to consider the processing of the data necessary for statistical purposes, based on Law 1/2003, of 19 February, on Universities of Catalonia and Law 14/2011.

The Department of Education provided various documentation. The documentation provided shows that, prior to the survey, the following educational centers provided the research group with the personal data of their students, which are listed below:

- Intermunicipal Institute of Sant Sadurní d'Anoia: name and surname and nationality of 3rd and 4th year ESO students. According to the e-mails between the UdL research group and the Institute, the students' data was communicated between 25/03/2019 and 08/04/2019 (date on which the survey was carried out).
 - Institut Numància de Santa Coloma de Gramenet: name and surname, number of the Student Register (hereafter, RALC) and country of birth of the 2nd, 3rd and 4th ESO students of the 2018/2019 academic year.
 - Instituto Terra Roja de Santa Coloma de Gramenet: name and surname, RALC and nationality of 2nd, 3rd and 4th ESO students. According to the emails between the UdL research group and the Institute, the students' data was communicated on 04/02/2019.
- ÿ Institut Baix Mar de Vilanova i la Geltrú: the management only specifies that the lists were sent on paper.
- Institut Torre Vicens de Lleida: the new management team reported that "The data that was provided at the time to the UdL research team is not found, we know that they were 4th grade ESO students". However, he indicated that his center had participated in the 2016/2017 (between the months of May and June) and 2017/2018 (in the month of October) courses.
 - Institut Samuel Gili i Gaya de Lleida: it is reported that the list is not available.
 - Josep Lladonosa Institute of Lleida: it is reported that the list is not available.
 - Institut de Seròs: it is reported that the list of students has been sent.
 - Institut Ermessenda de Girona: first and last name, RALC, date of birth and, if applicable, whether the student was of immigrant origin. All this corresponding to 3rd and 4th year ESO students.
 - Institut del Morell: name and surname of 3rd and 4th year ESO students. As indicated by the Institute, the management of the center authorized on 22/10/2019 the submission of the lists of students to the research group of the UdL.

In turn, among the documentation provided it is also stated that in the e-mail messages exchanged between the Intermunicipal and Terra Roja institutes, the research group of the UdL requested before carrying out the survey in the facilities of the institute that "For

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

to be able to organize ourselves, we will need the lists of the different class groups where there is the nationality of the student, the RALC, and, if possible, that of the parents" (no institute mentioned directly the nationality of the parents).

On the other hand, in relation to the Morell Institute, the Department of Education reported that some students complained about the length of the survey, another about the content of the questions (the student's tutor explained to the student the content of the questions and convinced him of the usefulness of the survey); some students who had doubts when answering some questions (the interviewer told them that they could not leave answers blank) and 3 students who were upset with the content of some question (in this regard the interviewer told them that they had to answer and invited them to do so).

The Department of Education pointed out that some tutors did not remember exactly the number of students who had expressed a complaint, given that the survey had been carried out more than 3 months ago.

Apart from the above, the Institut Ciutat de Balaguer did not specify whether the UdL research group was provided with the data of its students before carrying out the survey. However, it provided lists of students who participated in the study.

Finally, from the documentation provided, it appears that the El Cairat d'Esparreguera Institute stated that it did not provide personal data to the UdL research group, but only the total number of students in each group.

10. In this information phase, on 04/06/2020, the Department of Education was once again required to specify whether the Institut Eduard Fontserè de l'Hospitalet de Llobregat and the Institut Pablo Picasso de Barcelona were send the researchers lists of their students prior to the completion of the survey; as well as so that in relation to all the educational centers that provided personal data of their students to the research team, prior to the survey, to certify how the right to information was made effective for the people affected.

11. On 06/20/2020, the Department of Education responded to the above-mentioned request in writing in which it stated the following:

- That the Intermunicipal Institute of Sant Sadurní d'Anoia sent a letter to the families of 3rd and 4th ESO about the project.
- That the Institut Numància de Santa Coloma de Gramenet stated that it had informed the families by email about the participation of the 2nd, 3rd and 4th ESO students (this end was not credited).
- That the Terra Roja Institute of Santa Coloma de Gramenet stated, among others, that it informed the families through a letter that the research team provided.

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

- That the Institut Baix a Mar de Vilanova i la Geltrú stated that they only asked for the number of students, so they did not provide any previous personal data and he notes that "we were informed that they did not want the data students' personal data."
- That the Institut Eduard Fontserè de l'Hospitalet de Llobregat stated that it had not implemented the right to information, apart from the prior explanation given to the students themselves. In turn, the Institute provided a copy of the data provided to the research group with the personal data of its 3rd and 4th grade students: first and last name, RALC and whether they were of foreign origin.
- That the Institut El Morell stated that taking into account that the information given by the UdL was consistent with that received from the Territorial Services of the Department of Education, regarding the guarantee of anonymity and confidentiality of the data of the our students, there was no doubt about sending the lists of groups to the UdL, so that the research group could carry out the survey and the subsequent study.
The Institute transcribed the email sent by the UdL research group on 11/10/2019 in which, among others, the lists of the different groups were requested.

The Department of Education attached various documentation to the letter, including the letter provided by the Intermunicipal Institute and which the UdL research team would have drawn up. In this letter that the Institute states that it would have been given to the families (which is not proven), it was not stated that the students' data would be communicated to the UdL research team. On the contrary, in that letter it was indicated that, unless otherwise stated, the student would participate in the study by completing a questionnaire, and in his case, an interview. In said letter it was also pointed out that the data would be treated anonymously.

12. On 06/23/2020, the Authority received a new letter from the Department of Education that supplemented the response to the request made on 06/04/2020. In this letter, the Department of Education stated the following:

- That the Samuel Gili i Gaya Institute of Lleida stated that at no time did it surrender a list of students participating in the study.
- That the Torre Vicens Institute in Lleida participated in the study between May and June 2016 and October 2017.
- That the Ermessenda Institute of Girona stated that a member of the UdL research team informed that he would stop by the center to leave information letters for the families. When they had the informative letters, the tutors explained and gave the letters to the students who met the requirements to be able to participate in the study.
- That the Josep Lladonosa Institute stated that it sent the families selected by the survey (a very small group, less than 10 students), the information and consent form drawn up by the University of

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

Lleida, and that the duly signed consents were given to the UdL researchers themselves.

- That the Seròs Institute stated that it had not participated in the controversial study, but in another different study but by the same UdL research group, which was carried out between May and June 2017 at its center. For this reason, the Institute pointed out that it had responded incorrectly to the previous request for information, sending the list of students who had participated in the 2017 study.
- That the Institut Ciutat de Balaguer stated that it did not provide student data to the research team. He only provided the number of students in each class to know the amount of surveys to pass. The Institute added that there were students who did not want to take the survey, considering it biased, and their right not to take it was respected.

The Department provided various documentation.

13. On 09/25/2020, the Barcelona Education Consortium (hereafter CEB) was requested to confirm whether the Pablo Ruiz Picasso Institute of Barcelona participated in the controversial study, and if so affirmative, in order to indicate whether, prior to the completion of the survey, the management of the institute sent the lists of students to the researchers.

14. On 10/28/2020 he received a letter from the Pablo Ruiz Picasso Institute in which he confirmed that the management of the center provided the researchers, via email, with the lists of the 3rd and 4th ESO class groups with nationality, country of birth and students' first and last names.

The institute provided a copy of the lists sent to the UdL researchers.

15. As of today, and in relation to the same facts set out in these antecedents, the director has also dictated:

- Seven agreements to initiate disciplinary proceedings for violation of the principle of data minimization by providing the UdL research group, prior to the completion of the survey, with the personal data of all 3rd and 4th year students from ESO (and in some cases, also from 2nd ESO). Specifically, an agreement to initiate disciplinary proceedings against each of the following institutes: Eduard Fontserè, Numància, Intermunicipal, Terra Roja, Ermessenda, Pablo Ruiz Picasso and El Morell.
- An agreement to initiate disciplinary proceedings against the UdL, for the unfair collection of data, for dealing with special categories of data, for not making effective the right to information in the collection of data, for not having carried out an analysis of risks, for not having carried out an impact assessment relating to data protection and for not allowing the participation of the data protection delegate in the controversial project.

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

Among the facts imputed to the UdL is not included the fact that it did not provide all the information provided for in articles 13 and 14 of the RGPD; on the one hand, to the students of El Cairat, Baix Mar, Eduard Fontserè, Numància, Intermunicipal, Terra Roja, Ermessenda and Pablo Ruiz Picasso high schools, because the infringement has been prescribed; and on the other to the students of the Torre Vicens, Samuel Gili and Gaya, Josep Lladonosa and Seròs high schools, since they did not participate in the controversial study and, in any case, the eventual violation of the principle of transparency would also be prescribed.

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 set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

2.1.- On the communication of student data to the UdL research group prior to the survey by the Eduard Fontserè, Intermunicipal, Numància, Terra Roja, Ermessenda, Pablo Ruiz Picasso and El Morell institutes.

As has been explained in the background, prior to the students answering the survey of the controversial UdL, the previous information actions carried out show that several institutes (Eduard Fontserè, Intermunicipal, Numància, Terra Roja, Ermessenda, Pablo Ruiz Picasso and El Morell) provided the UdL research group with the lists of their 3rd and 4th ESO students (Numància and Terra Roja institutes also provided data for 2nd ESO students). According to the e-mail messages exchanged between the UdL research group and the Intermunicipal and Terra Roja institutes, the researchers requested the names listed in order "to be able to organize ourselves". And the research group added that this information "we need to establish codes for the students to enter them in the statistical package or, in case we need to locate them in the second phase of the study. On the other hand, we also need the lists because, prior to the passing of the questionnaire, we prepare a sheet for each student and group with a simple assessment of the students' global and linguistic abilities."

In turn, the research group also asked the students' tutors to complete a short survey about each student's general ability and the level of their linguistic knowledge.

In the opinion in relation to the consultation of the data protection delegate of the UdL on the deletion of the data of minors employed in the framework of the project

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

of controversial research (CNS opinion 4/2020), this Authority has ruled that Organic Law 6/2001, of December 21, on Universities (hereinafter, LOU) considers that the research activity and research as an essential function of universities (and, in similar terms, Law 1/2003, of 19 February, on universities in Catalonia).

Specifically, article 39.1 of the LOU provides that:

"Scientific research is the essential foundation of teaching and a primary tool for social development through the transfer of its results to society. As such, it constitutes an essential function of the university, which derives from its key role in the generation of knowledge and its ability to stimulate and generate critical thinking, key to any scientific process."

So, to the extent that it is a mission of public interest attributed to a public university, the legal basis of article 6.1.e) of the RGPD legitimizes the processing of data by the research staff of this entity when this treatment responds to the purposes of scientific research.

In this sense, it should be added that in accordance with Law 14/2011, the State Plan for Scientific and Technical Research and Innovation is configured as the main programming instrument that the Spanish system of science and technology has for development and the achievement of the objectives of the "Estrategia Española de Ciencia y Tecnología y de Innovación" (article 6), and includes state aid intended for I+D+I.

As stated in the aforementioned opinion, the current State Plan 2017-2020 is integrated by the state R+D+I program aimed at the challenges of society which, in turn, is developed in sub-programmes in attention to thematic specificity and nature of the actions planned in each of them. Precisely, within the state program of R+D+I oriented to the challenges of society (4), the investigation of the social, economic and social impact of migratory flows is included ("reto en cambios e innovaciones sociales"), which covers, among other priorities, the investigation of migratory movements; of inequality, exclusion and poverty; of the impact and evolution of cultural, social and territorial identities in the processes of social and institutional change and transformation; and of individual characteristics, social values and collective dynamics ("cambio sociales y su impacto").

So, to the extent that we are faced with a research project aimed at achieving one of the objectives established in this State Plan and, therefore, in the programs and sub-programmes in which it is deployed, and its execution the carried out by any of the agents of the Spanish science and technology system (as could be the case of a university through its research staff), the processing of personal data (that are not considered special categories of data) that result

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

necessary for the realization of said project could be understood as responding to scientific research purposes.

In the present case, the legal basis of article 6.1.e) of the RGPD could protect the transfer of data from the institutes to the UdL, to the extent that a rule with the rank of law (LOU) that attributes to the UdL skills in a subject (scientific research) for the exercise of which it may be necessary to have the students' data.

Also, article 5.1.b) of the RGPD regulates the principle of limitation of the purpose by determining that personal data will be "collected with specific, explicit and legitimate purposes, and will not be subsequently treated in a manner incompatible with said purposes; in accordance with article 89, paragraph 1, the subsequent processing of personal data for archiving purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes".

In accordance with the above, the subsequent processing (such as the communication) of the students' data by the institutes for the purposes of scientific research, is compatible with the purpose for which it was initially collected by the institutes.

That being the case, the communication of student data by said institutes to the UdL, to achieve the purpose of scientific research, was lawful. However, the treatment must also conform to the rest of the principles established in article 5 of the RGPD, including the principle of minimization (art. 5.1.c RGPD) according to which the personal data have to be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In this sense, as has been explained in the antecedents, as of today a sanctioning procedure is initiated against these institutes (Eduard Fontserè, Intermunicipal, Numància, Terra Roja, Ermessenda, Pablo Ruiz Picasso and El Morell) for the alleged violation of the minimization principle.

2.2.- On the communication of student data to the UdL research group by the Torre Vicens, Josep Lladonosa and Seròs institutes.

On the other hand, there is another set of institutes (Torre Vicens, Josep Lladonosa and Seròs) which, from the documentation provided on 03/13/2020 by the Department of Education in response to this Authority's request, are inferred that they could have participated in the controversial study object of complaint.

However, none of these educational centers was among the institutes that, as indicated by the UdL by means of a letter dated 11/12/2019, had participated in the controversial study.

In this sense, on 06/23/2020, the Department of Education reported that the Seròs institute had stated that in 2017 it participated in a study led by the same research group, but different from the one that was the subject of the complaint .

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

As things stand, it can be inferred that the said institutes did not participate in the said study, but in another carried out previously.

In any case, the actions carried out show that the Torre Vicens Institute (in 2016 and 2017) and Seròs (in 2017) provided the research group with data on their students.

Regarding the Josep Lladonosa Institute, the date on which he would have participated is not documented, but for the reasons stated above, it is inferred that he would also have participated in the study carried out between 2016 and 2017.

Having said that, it should be pointed out that the data communications of their students by these institutes (Torre Vicens, Josep Lladonosa and Seròs) were carried out while Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD), which is why they are subject to this rule.

In view of the above, it is necessary to address whether the eventual infringement for the communication of data of its students, between the years 2016 and 2017, would be time-barred.

First of all, it should be taken into account that the facts reported could be constitutive of the serious infringement provided for in article 44.3.k) of the LOPD, which typified as an infringement "The communication or transfer of personal data without have legitimacy for this in the terms provided for in this Law and its implementing regulatory provisions, unless this constitutes a very serious infraction."

On the other hand, article 47.1 of the LOPD provided that serious infractions became statute-barred after two years. This limitation period begins to count from the day on which the offense was committed (art. 47.2 LOPD).

As things stand, the eventual infringement linked to the communications of data carried out by the Torre Vicens, Josep Lladonosa and Seròs institutes, which would have taken place no later than 2017, is already time-barred. The prescription of the infringement causes the extinction of the responsibility that could be derived from the eventual infringing conduct, which in turn would prevent the initiation of the corresponding sanctioning procedure, since no action could be taken to pursue the alleged infringement .

2.3.- On the eventual communication of data by El Cairat, Baix Mar, Ciutat de Balaguer and Samuel Gili i Gaya.

In relation to the rest of the institutes that would have participated in the controversial study (El Cairat, Baix Mar and Ciutat de Balaguer), from the previous actions carried out by this Authority it is not known that they had provided data on their students to the research group with character prior to the completion of the controversial study.

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

In this regard, the El Cairat, Baix Mar and Ciutat de Balaguer institutes have reported that they did not provide any personal data of their students to the research group prior to the survey (El Cairat Institute only provide the number of students in each class).

Regarding the Samuel Gili i Gaya high school in Lleida, this educational center was also not among the high schools that, as indicated by the UdL in a letter dated 11/12/2019, had participated in the controversial study . That is why it is also inferred that he would have participated in a previous study. In any case, this center also reported that it had not given any list of its students to the research group.

2.4.- On the right to information.

Without prejudice to the fact that the communication of student data prior to the survey by the Eduard Fontserè, Intermunicipal, Numància, Terra Roja, Ermessenda, Pablo Ruiz Picasso and El Morell institutes is considered lawful given that the subsequent processing of the data personal data for scientific research purposes is not incompatible with the initial purposes (art. 5.1.b RGPD), the affected persons had to be informed about this new purpose (scientific research).

This is inferred from article 14.4 of the RGPD, which provides the following:

"4. When the data controller plans the further processing of personal data for a purpose other than that for which it was obtained, it will provide the interested party, before such further processing, with information about that other purpose and any other relevant information indicated in the section 2."

So, when the data is used for a subsequent purpose for a purpose other than that which motivated the collection, it is not necessary to give effect to the right of information in a complete way (that is, it is not necessary to inform about all ends provided for in sections 1 and 2 of article 14 RGPD), but must provide information on the new purpose and any additional information that may be relevant in accordance with article 14.2 of the RGPD.

Having said that, this obligation to give effect to the right to information was required by the UdL, which was the entity responsible for the treatment that planned to use the data for another purpose. In this sense, it is worth saying that as of today it is agreed to start a procedure against the UdL in which the violation of the principle of transparency is imputed.

3. In accordance with everything that has been set out in the 2nd legal basis, it is appropriate to agree on the archive of the conduct addressed there.

resolution

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

Therefore, I resolve:

1. File the previous information proceedings numbers IP 309/2019, 331/2019 and IP 15 to 29/2020, in relation to what is set out below:

1.1. Firstly, regarding the communication of student data to the UdL by the Eduard Fontserè, Numància, Intermunicipal, Pablo Ruiz Picasso, El Cairat, Ermessenda, Terra Roja, Baix Mar, El Morell, Ciutat de Balaguer institutes, Torre Vicens, Samuel Gili i Gaya, Josep Lladonosa i Seròs, in accordance with what has been set out in legal grounds 2.1 to 2.3 of this resolution.

1.2. Secondly, regarding the obligation to give effect to the right of information to the affected persons regarding the subsequent processing of their data for another purpose, with regard to the Eduard Fontserè, Intermunicipal, Numància, Terra Roja institutes, Ermessenda, Pablo Ruiz Picasso and El Morell, in accordance with what has been set out in legal basis 2.4 of this resolution.

2. Notify this resolution to the Department of Education and the Barcelona Education Consortium.

3. Notify this resolution to the parents of students of the El Morell Institute who filed a complaint with the Authority, who are represented by the Assembly for a Bilingual School in Catalonia, regarding data processing of their children carried out by the El Morell Institute.

4. Communicate this resolution to the Asociación Hablamos Español and the Assembly for a Bilingual School in Catalonia.

5. 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 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in 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.

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

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

The director,

Machine Translated