

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

In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that if the name of the affected school is disclosed, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 92/2020, referring to the School (...)

Background

1. On 11/03/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the School (...) (hereinafter the School), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant (Mr. (...), mother of the minor (...), student at the School) stated that his principal had disclosed to third parties (Mr. (...) and Ms. (...), without any reason to justify it, her and her son's data, contained in a sentence that she herself had provided to the School in an email dated 03/13/2018.

In order to substantiate the facts reported, the following documentation was provided:

a) Handwritten document signed by Mr. (...) and Ms. (...) in which they gave their testimony about the content of the meeting they had held on 03/03/2020 with the director of the School.

According to this document, the director in that meeting, referring to the complainant here and his son, he made the following statements which are transcribed verbatim: *"you have to know the two parts and ironically we asked if we knew why they had taken the child away from (...).*

He commented that everything would be known since it was in the hands of the justicia (sic)".

In relation to this testimony, the complainant provided a copy of the IDs of the two people who gave it, and informed the Authority that he had a recording of the aforementioned conversation.

b) Copy of the email that the complainant had sent to the School on 03/13/2018, and which was accompanied by a copy of a judgment of the Provincial Court of Barcelona issued on (...)/2018, estimation of the appeal filed by the complainant here against the judgment issued on (...)/2017 by the Family Court which confirmed the declaration of preventive deprivation issued on 05 /10/2015 by the General Directorate of Childhood and Adolescence (DGAIA) in relation to his minor son. In the aforementioned sentence, the Provincial Court annulled the preventive deprivation decreed by the DGAIA (and confirmed by the Family Court) and ordered the return of the minor with his mother, without prejudice to maintaining the risk file if is considered appropriate.

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

2. The Authority opened a preliminary information phase (no. IP 92/2020), 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 06/23/2020 the reported entity was required to report on the following:

- Confirm if, as part of the meeting that on 03/03/2020 Mr. (...) and Ms. (...) they maintained with the director of the School, he made the statements contained in the written testimony provided by these people (transcribed in letter a/ of the 1st antecedent).
- If you answer in the affirmative, indicate the legal basis that would have enabled the communication to these people of the controversial data relating to the complainant here and his minor.

4. On 02/07/2020, the School responded to the aforementioned request through a letter in which it set out the following:

- That *"as part of the meeting that on March 3, 2020, Mr. (...) and Ms. (...) they maintained with the director of the School, he is not aware of having made the statements transcribed in the testimony given by the couple"*.
- That *"in a complementary way, with the purpose of clarifying the facts investigated by the Catalan Authority, the following information is made known:*
 - a) (...)
 - b) *The ostensible reason for the meeting was to air a series of complaints against the school, but the principal deduced that it was actually to find out what his position was on alleged bullying of Ms.'s son. (...) and on the actions taken.*
 - c) *Mrs.(...)has used Facebook and other social networks extensively and quite aggressively to spread this accusation and has had the help of her friends, as is the case with this couple.*
 - d) *Finally, the information about the family situation of Mrs. (...) was widely known by Mr. (...) and Ms. (...), not only because of their friendship but because Mrs.(...) herself had spread this information on social networks prior to the meeting held between the school director and the said couple (For example: Facebook social profile of "(...)". Note published on February 26, 2020).*

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

5. In view of the information provided, on 07/13/2020 a new request was sent to the Escola pet to provide details on the content of the Facebook posts to which he had alluded in the answer to the previous requirement.

6. On 07/15/2020 the School responded to this second request, providing a printout of an "entry" made on 02/26/2020 by "(...)", on the Facebook social profile of "(...)", and which contains the following literal:

"Hello everyone, we can now confirm that the City Council (...) has recognized us as an Association and we will be registered in the Municipal Register of Entities.

Now we can "work" and help tod@sl@s (...) (...)

Today the partners have had our first meeting as an Association, and we have invited to (...) (...) on facebok), where we will turn 100% to your case, since this mother has been taken from her underage son WITHOUT ANY REASON, the only sin he has committed is to report to this City Council for not doing anything because of the bullying his son suffered in a school (...).

He has provided us with a series of documents that we have to study in order to see all the alleged negligence that this City Council has committed, and which allegedly affects some Councilors and presumably the Mayor. Everything is in the corresponding Courts.

We will inform you of everything and all the people who want to help so that (...) 8-year-old comes back with his mother can collaborate and help us.

#TODOSCON(...)"

7. On 07/17/2020, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet:

- The user accesses the Facebook social network.
- The Facebook profile of "(...)" is accessed , verifying that it is a public profile, so that it is possible to access it without having previously logged in to Facebook.
- It is noted that on 02/26/2020 an "entry" was published to this profile by "(...)", with identical content to the print provided by the School (previous 6th grade).
- That this entry has 51 response comments, including two made by "(...)" el same day 02/26/2020, which have the following content:

"Necesitamos recuperar a (...) and que vuelva con su madre".

"In the next few weeks, we will explain all the suffering of a mother who has had her son taken away from her face. May no one, ever again, pass through this. Cheer up (...)"

8. On 19/11/2020 and still within the framework of this preliminary information phase, the Authority again accessed the Facebook profile of "(...)". From the analysis of the content of several entries contained there (all of them in the period between 26/02/2020 and 03/03/2020), made by different people/entities, it can be inferred that who is called " (...) (...)" is called (...), is linked to the municipality (...) of (...), and who is the mother of a minor named (...), 8 years old.

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

Likewise, it is noted that on 03/05/2020 an article was published in "(...)" (newspaper (...) of (...) (...)), entitled "*Convulso* (...)". This article addressed the case of alleged bullying that the minor son of a lady identified in the article with the initials "(...)" was suffering. In the same article it is indicated, in relation to the case of "(...)" that "*an abrupt intervention by the DGAIA (...)*
(...) (...) The minor remains under the provisional guardianship of the DGAIA (...)".

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. As has been said, the complainant (Mrs. (...)) complained about the alleged disclosure of data relating to her and her minor child (...), by the school director to Mr. (...) and Mrs. (...), as part of a meeting they held on 03/03/2020. As can be seen from the terms of the complaint, the data disclosed (the fact that the complainant had been deprived of custody of his minor child and that the matter was in the hands of justice, in the terms set out in Antecedent 1. a.) they were contained in a judgment of the Provincial Court of Barcelona of (...)/2018 that the same complainant had sent to the School by means of an email dated 03/13/2018; also provided with the complaint and were, therefore, data that the director had known because of his position.

(...)(...)(...)

Well, first of all it should be pointed out that in the context of this previous information the School has reported that the director did not remember having made the statements relating to the complainant and his son that Mr. (...) and Ms. (...) they refer to in their testimony. We meet so with different versions about what was said at the meeting regarding the complainant here. It must be said, however, that this eventual divergence is not relevant, since even taking as true the testimony given by Mr. (...) and Ms. (...), the filing of the complaint would proceed based on the following.

On the one hand, it is proven that, as the complainant claims, the School had a copy of the sentence of the Provincial Court of Barcelona of (...)/2018 which revoked the withdrawal of custody that the DGAIA had decreed in 2015. If this is so, the director had been aware of what was included in that sentence.

On the other hand, it should be noted that both the content of the posts on the Facebook profile of "(...)", as from the article published by (...), it follows that Ms. "(...)" the DGAIA had withdrawn from him

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

custody of his son (...) aged 8 at the end of January or beginning of February 2020 and that the matter was in the hands of justice. And, specifically, it is necessary to highlight the content of those publications made on the profile in question on dates prior to the meeting that took place on 03/03/2020 (precedent 7th), where it is revealed that the DGAIA had recently withdrawn the Mrs. (...) the custody of his son (...) aged 8, that the matter was in the hands of justice, and that Ms. (...) he had explained to the Association (...) his problem by providing documents.

In light of the above, it is clear that there were two times when the person making the complaint here would have had custody of their child removed from him: one in 2015 and another in January-February 2020, and that in both cases the matter would have gone to the hands of justice. That being the case, it is a matter of elucidating whether the school director, when he referred - always according to the witnesses - to the removal of custody of the minor, would have referred to the removal that took place in 2015 (and of which he had knowledge due to his position) or the most recent of January/February 2020; since this circumstance could depend on whether or not the principle of data confidentiality is considered violated (art. 5.1.f of Regulation 2016/679 on the protection of personal data). Indeed, just as it is proven that the director had knowledge of the first removal from custody in 2015 due to his position (the complainant herself had provided the information to the School), in relation to the second removal from custody, no it is known that the complainant did not provide the School with any information in this regard.

Well, in relation to this question, it must be said that the content of the conversation that took place according to the witnesses, does not allow us to determine without a doubt that the director is referring to the removal of custody in 2015. Moreover, everything points that he referred to the 2020 withdrawal, not only because it would be logical to refer to a more recent problem and not to one that took place in 2015, but also because in that conversation the director would not have alluded to any data contained solely and exclusively in the judgment of the Provincial Court of (...)/2018 (referring to the removal of custody in 2015).

As stated above, it is not recorded that the director was aware of specific data referred to second removal from custody in 2020 due to his position. In fact, it is clear from the actions that this was information that had been disseminated on the Facebook social network days before the meeting between the witnesses and the director. And not only that, but as it was published, this information would have been made known by the same person reporting to the members of the Association (...). It is true that in said publication on Facebook the complainant was not identified by his last name, but by his first name, given that, together with the unusual name of his son and his age, here clearly recognizable complainant. To the above must be added, as can be seen from the content of the article published in (...) and also from various information published on Facebook, the activism deployed by the complainant here in defense of his interest and of his minor son, which exponentially increases the number of people who could have knowledge of the controversial information (other members of the School -teachers, parents, students, staff-, neighbors, relatives, etc.).

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

In short, that within the framework of these actions it has not been possible to prove that the director of the School has facilitated third parties (specifically to Mr. (...) and Mrs. (...)) data relating to the reporting person and his child, of which he was aware because of his position.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that 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.

Therefore, I resolve:

1. File the actions of prior information number IP 92/2020, relating to the School (...).
2. Notify this resolution to the School (...) and to the person making the complaint.
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 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 its notification, in accordance with the which provides for 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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,