

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

## File identification

Archive resolution of the previous information no. IP 100/2020, referring to Escola Auró (Terrace) of the Department of Education

## Background

1. On 03/24/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Escola Auró of the Department of Terrassa (hereinafter the School), located in the municipality of Terrassa, due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant stated that he is the parent of a student from (...) of the School, and that at the beginning of the 2019-2020 school year he signed "the express authorization of the data of our child and family for exclusive use on platforms of the Department of Education on servers of the Generalitat de Catalunya". In this regard, he stated that the School, on 03/24/2020, published a statement on its website informing about the start of the use of the "Tokapp" application, and that on that same day he received an email sent by "TokApp", which would prove that the School would have transferred to the company "Tokapp Online SL", at least, the data relating to his email without his consent. In the last one, he added that on 19/03/2020 the Department of Education published the document "Action plan: online schools", in which the Department made available to schools three free platforms for in order to guarantee the online learning of the students and to accompany the teaching staff and the centers in the use of digital technologies, digital tools that, under the consideration of the person making the complaint, could have been used from the School as an alternative to the use of the "Tokapp" application.

The reporting person provided various supporting documentation of the events reported.

2. The Authority opened a preliminary information phase (no. IP 100/2020), 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 were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 10/06/2020 the reported entity was required to report, among others, on the use of the "Tokapp" application at the School, and in specific, on which personal data of the students and parents or legal representatives, are the subject of treatment by said application. Also, it was required if he had the authorization of the reporting person or the other parent of the minor, in order to transfer the processing of his personal data to "Tokapp Online SL", and if not if so, let me know

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on the legal basis that would legitimize said transfer of personal data. Finally, he was required to provide the form through which the complainant authorized the processing of his and his child's data "for exclusive use on platforms of the Department of Education on servers of the Generalitat de Catalunya".

4. On 06/22/2020, the School responded to the aforementioned request through a letter in which it stated, among others, the following:

- That "The purpose of TokApp is to manage information quickly and effectively. And, improve communication with the families of students and teachers. The contract signed by the school states that it complies with the LOPD, privacy and LSSI (data protection law) regulations."
- That "The data that the School had to provide to "TokApp", are Name and Surname of the child, phone number and email address of the parents".
- That "On March 2, the Director provides photocopies of the data processing authorizations to the tutors, and sends an email with the order to distribute the document to the families that same day."
- That in relation to the collection of consent for data processing "The family (...) was summoned for that purpose on March 5 and they did not attend the meeting. Subsequently, these meetings could no longer be held with any family due to COVID."
- That "We do not have said authorization, but we have not been able to check it until this week, since on March 14 in Royal Decree 463/2020 the state of alarm was declared and this prevented us from having access to the authorizations".
- That "The authorization he is talking about is the one at the beginning of the school year, which the father signed on November (...) after the tutor's insistence. And, which we reviewed today. In this authorization the father authorizes the use of images, publication of personal data and material. Authorize mobile device applications that require username and password. In this document Mr (...) specifies that only on platforms hosted on Department servers.
- That "From the School and following the instructions in section 2.2 of instruction 1/2020 of March 12, we assessed the need for the use of the application to have open communication channels with families. Given the exceptional situation we were living in, it was urgent to contact the families, we used TokApp."

The reported entity attached various documents to the letter, including the "Authorization relating to students under 14 years of age: use of services and digital resources a

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Internet to work in the classroom. Academic year 2019-2020", relating to the child of the person reporting. In the form, the "yes" box is marked for "my child uses, for academic work, telematics services and/or mobile device applications that require a username and password". In the form, the complainant states, despite not being provided for in the model form, that "with specific data of my child only if they are platforms hosted on the Department's servers".

5. On 03/06/2021 and still within the framework of this preliminary information phase, the Authority required the School to provide a copy of the contract referred to in its letter dated 18/ 06/2020.

6. On 08/06/2021, the School fulfilled this requirement with the contribution of the "Contrato de Encargo del Tratamiento" formalized by the School and the company Tokapp Online SL, on 02/03/2020. In said contract, the Escola Auró, as responsible for the treatment, entrusts the company Tokapp Online SL, as responsible for the treatment, with the "provision of messaging services via computer application" (Tokapp license).

The first clause of the contract, on the object of the treatment, stipulates the following:

"Through these clauses, the TREATMENT MANAGER, on behalf of the TREATMENT CONTROLLER, is empowered to process the personal data necessary to provide the SERVICE.

The TREATMENT MANAGER will only carry out the treatments strictly necessary for the provision of the aforementioned service."

The second clause of the contract provides for the following:

"For the execution of the services derived from the fulfillment of the aforementioned contract for the provision of services, the RESPONSIBLE makes available the I ORDER the information described below:

Personal data subject to treatment:

Number and surnames; Academic data; Electronic address; Telephone

Category of interested parties whose personal data is the object of treatment:

Contact Persons; Parents and/or guardians; Legal representative;

Users; Students/Students"

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 from

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Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution 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 the present archive resolution, specifically the question relating to the communication by the School to the company Tokapp Online SL of the data of the person reporting here, without the consent of the affected person.

The first thing to indicate is that, from the documentation provided by the School, it is certified that the School hired the company Tokapp Online SL, on 02/03/2020, for the provision of a service electronic messaging (Tokapp license) which involved access to personal contact details of students and/or their parents or legal representatives. In this regard, it is pertinent to point out that said contract was formalized in a context of a health crisis caused by the Covid-19 pandemic, which led to the closure of schools, which saw the need to establish new channels of communication with families and students in order to continue the school year, and in this case, the School chose to contract the services of the company Tokapp Online SL. In relation to this, Instruction 1/2020, of March 12, on preventive, protective and organizational measures applied to the centers and services of the Catalan Education Service due to the SARS-CoV-2 coronavirus, provided the Next:

"2.2 Availability of staff who provide services in educational centers and services

The staff who provide services there will not attend educational centers and services while this exceptional measure is in force. This staff must remain available during their regular working hours. The management teams of educational centers and services must have open channels of communication with the services of the Department of Education, the staff and the families of the centers, avoiding those of the face-to-face type."

Having said that, it should be noted that the legal relationship between the School and the company Tokapp Online SL fits into the data controller model regulated in article 28 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD), and article 33 of Organic Law 3/2018, of 5 of December, of protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD). In this regard, add that the requirement that the relationship between the person in charge and the person in charge must be governed by a contract or other legal act is also imposed by additional provision 25a of Law 9/2017, of November 8, of public sector contracts.

In the present case, the School is responsible for the treatment, and therefore determines the purposes and means of the data treatment (art.4.7 RGPD), and the company Tokapp Online SL, is the entity that carries out the treatment for responsible person's account (art. 4.8 RGPD). the

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personal data that the School made available to the company in charge of the contracted processing, are basically, in accordance with the provisions of the first clause of the contract, the minimum contact data necessary for the company to provide the messaging service to guarantee online education and also a communication channel between School and families, which as stipulated in the second clause of the referred contract are: the first and last name, academic data, email address and telephone of the students and / or of their parents or legal representatives or contact persons. In this regard, it must be specified that, according to the School, the data it finally provided to the company was limited to "First and last name of the child, telephone and email address of the parents."

That being the case, article 33.1 of the LOPDGDD is applicable, which, in relation to the communication of data between the person in charge of the treatment and the person in charge of the treatment, establishes the following: "Access by a person in charge of processing personal data that is necessary for the provision of a service to the person in charge is not considered a communication of data as long as the provisions of Regulation (EU) 2016/679, this Organic Law and its rules are complied with of deployment." Therefore, the exchange between the School and the company Tokapp Online SL of the personal data necessary for the provision of the contracted service, in accordance with the provisions of article 33.1 of the LOPDGDD, is not considered a communication of personal data for which it is not necessary to obtain the consent of the affected persons, nor does it require to be legitimized by any other legal basis than those provided for in article 6 of the RGPD. Well, to the extent that, as has been said, the provision of consent was not necessary in order for the person reporting here to allow the School to transfer to the company Tokapp Online SL certain contact data included in the files of the School, it must be concluded that the lack of consent referred to by the complainant here would not affect the legality of the treatment, consisting in the provision of data by the School to Tokapp Online SL, given , as has been said, the status of data controller held by the company.

Finally, in relation to the "Authorization relative to students under 14 years of age: use of services and digital resources on the Internet to work in the classroom" sheet. Academic year 2019-2020", which the person making the complaint here filled out on behalf of his minor child at the beginning of the school year, checking the box "Yes" to "that my child use, for academic work, telematic services and/or mobile device applications that require a user and password", and in which it was stated, despite not being provided for in the model form used by the School, that "with specific data from the my child only if they are platforms hosted on the Department's servers", it should be noted that the School, for the use of platforms that are necessary for the educational action, does not require the prior consent of the people affected, since this treatment has a legal basis other than consent, specifically that provided for in article 6.1.e) of the RGPD which establishes that the treatment will be lawful when it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers given to the person in charge of the treatment t. Therefore, based on this premise, what the affected person had added in said form no

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conditioned the processing of data that the School could carry out in relation to the use of digital platforms, in compliance with the exercise of the educational action that has been entrusted to it. When the complainant's complaint related to the fact that the School had opted for the hiring of an external company and not for one of the free platforms that the Department of Education made available to schools, it does not concern to this Authority to assess this question, because it exceeds its scope of competence to analyze the decision adopted by the School, only to point out that the Department of Education offered such a possibility but did not impose the use of these platforms.

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 previous information actions number IP 100/2020, relating to the Escola Auró of the Department of Education.
2. Notify this resolution to Escola Auró 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 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.

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

The director,