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File identification

Archive resolution of the previous information no. IP 330/2020, referring to the Ferran Sunyer School (Barcelona Education Consortium) of the Department of Education.

Background

1. On 10/28/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Ferran Sunyer School (hereinafter, the School), on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the person making the complaint explained that their children are students of the School and that a year ago the School had changed the system of communication with families, which used to be done by email and now it is done through of the communication platform (...). The complainant stated that school management assured them that parents who did not wish to receive communications through this platform would continue to receive them by email.

In his letter of complaint, the complainant stated that he chose to continue receiving school communications by email. But, as he assured, he has not received any communication from the School for months. He also explains that "*a few days ago*" (*without* specifying any date) the school received a call to inform him that from that moment the School's communication channel with parents would only be through the platform (...) or through the information panels located in the school center. On 10/5/2020, the complainant submitted a request to the School management (which he provides) complaining that he had not received school communications for months. On 6/10/20 he received a response from the Director of the school in which he explained that the communication channel towards families was (...) and that they could also find information on the information panel located in the school center. However, the person making the complaint asserted that not all the communications sent to parents are posted on the center's information boards. Finally, he argued that the consent requested from parents to receive school communications through the aforementioned platform is not free consent, since the consequence of not giving it implies that parents stop receiving the information, since ensures that the center does not offer an alternative that allows you to continue receiving school information.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 330/2020), 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 1 October, on the common administrative procedure of public administrations (now

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hereinafter, LPAC), to determine whether the facts were likely to motivate the initiation of a disciplinary procedure.

3. In this information phase, on 12/11/2020 the reported entity was required to report on:

- If the School currently uses the platform as the only means of communication with families (...). If you use other communication channels, you were asked to specify them.
- The legal basis that in your opinion would legitimize the processing of personal data carried out through this platform. In the event that it is the fulfillment of a legal obligation or the exercise of a mission in the public interest or in the exercise of public powers, indicate the precepts of the rule with the rank of law that provides for it. In the event that consent is indicated as a legal basis, it must provide a minimum of three consent collection documents duly completed by the affected families.
- Indicate the specific data that are the subject of treatment through (...) and the groups of people affected by the treatment.
- Provide the document of the risk analysis of the data treatment or treatments carried out through this platform and, if applicable, the impact assessment related to data protection.
- In relation to the processing of personal data carried out through (...), provide the data controller contract between the School, data controller and the company (...)
SL, responsible for the treatment.

4. On 19/11/2020, the School responded to the aforementioned request through a letter in which it stated the following: - *"Currently the school uses the following information channels: (...), the reporting family is sent emails from the school's xtec account and from the corporate email of the respective tutors about any information communicated through (...) that also affects their children. In total approximately 65 emails have been sent since the beginning of the use of (...)*

(September 2019).

- *All messages sent by (...) (general school or specific to each group) are uploaded to the school's information panel.*
- *The legal basis of the treatment is the consent of the person concerned, which has been collected in all cases.*
- *In the platform (...) enter the name, surname and group of the child and the email and/or telephone number of the parent. The people who can send messages through the platform are: the school management and administrative team throughout the school, cycle coordinators in their cycle and pedagogical team (tutors) in their group of students"*
- The school provided the documents relating to the collection of consent duly completed by three families and the treatment contract.

5. On 11/27/2020, also during this preliminary information phase, the reported entity was again required to:

- Provide the document of the risk analysis of the treatment or data treatments carried out through the platform (...).

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- Report on the functionalities of the platform used by the School of those specified on the website of this platform.

6. On 16/12/2020, the School responded to the previous request through a letter in which it stated the following:

- *"Of the functionalities that the platform has (...), at the School we only use the sending of messages (with various information, reminders and similar), documents are occasionally attached (generally pdf) and we review the confirmation of reading".*
- Provided various documentation, among others the data protection impact assessment relating to the platform, the Processing Activities Register of the data controller in relation to the processing carried out on behalf of the School.

7. On 05/10/2021, still in this preliminary information phase, the reported entity was required because:

- Provide a copy of the emails sent to the reporting family from the school's xtec account and the corporate email of the respective tutors from 1/1/2020 to 5/10/2020.
- In relation to the communications sent through the platform (...) corresponding to the same time interval, provide a copy of all the communications sent to another family with children in the same courses as those of the person reporting.

8. On 18/05/2021, the School answered the previous request through a letter in which provided a copy of the required emails:

- *"Emails sent from (...)@gmail.com to the reporting family: we used this gmail account to send information to school families before using (...). When we started using the platform (...) they coexisted for a while. The families' emails were linked to the students' names. In the case of the family (...) in "(...)", which you can find with a hidden copy in the first emails sent."* Please provide a total of 5 emails sent to the reporting family between 01/01/2020 and 01/16/2020.
- *"Emails sent from (...)@xtec.cat to the family (...): corporate account of the school".* It provides a total of 7 emails sent to the reporting family between 04/14/2020 and 06/23/2020.
- *"The emails sent by the Children's Coordinator to the family (...): emails sent by the coordinator (...)." It provides a total of 20 emails sent to the reporting family between 03/23/2020 and 06/17/2020.*
- *"The emails sent by the Tutor (...) to the Family (...): emails sent by the tutor of one of the family's children (...)." It provides a total of 11 emails sent to the reporting family between 04/16/2020 and 06/19/2020.*
- *"The emails sent by the substitute tutor (...) to the Family (...): These are the emails she sent to the family (...)." It provides a total of 6 emails sent to the reporting family between 05/04/2020 and 06/02/2020.*
- *"The emails sent by the tutor (...) to the Family (...): emails sent by the tutor of the other child in the family (...)." It provides a total of 23 emails sent to the reporting family between 04/15/2020 and 06/16/2020.*

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- Copy of the communications sent through the platform (...) to another family with children in the same courses as the family (...) from 1/1/2020 to 5/10/2020.

In addition, the School stated the following:

- *"That the School also uses other means of communication with all the families in the center:*

a) School notice board (photos attached): all messages sent to families using (...) (whether sent by the school, the coordinator of the different cycles, the school tutors or from the dining room service) are printed and hung on the two notice boards located at the entrance of the school and perfectly accessible to all families from 8:00 a.m. to 9:30 p.m. from Monday to Friday.

b) Website of the school, the AFA, the Eixample Sports Association and the Barcelona Education Consortium.

On the school's website information of a pedagogical nature is uploaded, all the information about the canteen service, extracurriculars and summer camp as well as news and activities that the school does; it is easily accessible through the following link (url). The school's AFA website also contains a lot of information about what is done at school, the dining service, extracurricular activities, proposed activities, etc. All this information is accessible through the following link (URL). The Eixample Sports Association manages the center's morning and afternoon reception, after-school and daycare services. All information relating to these services is easily searchable (URL). The website of the Consorci d'Educació de Barcelona collects all the information needed by families to carry out arrangements such as pre-registration and school registration, the application for dining grants and others, etc. (URL). WhatsApp groups

of the different courses: In each class of the school there is a mother or father who acts as coordinator of the families of that class; one of its functions is to facilitate communication between schools and families. With this aim, all families who want to participate have a WhatsApp group where the information provided by the school is disseminated by forwarding through WhatsApp the messages sent by the school through the platform (...). Meetings of delegates and their minutes: the minutes are posted on the AFA website".

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.

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The regulatory framework applicable to the case being analyzed is set out below and the roles of responsible and processor will be determined, as well as the personal data subject to treatment.

Article 25 Law 12/2009, of July 10, on education recognizes the right of students' families to receive information about:

- a) The educational project.
 - b) The centre's own character.
 - c) The services offered by the center and its characteristics.
 - d) The letter of educational commitment, and the co-responsibility it entails for families.

 - e) The rules of organization and operation of the center.
 - f) The complementary activities, if any, the extracurricular activities and the services that are offered, the voluntary nature that these activities and services have for families, the financial contribution that, if applicable, entails and the other relevant information related to the activities and services offered.
 - g) The center's annual general schedule.
 - h) Scholarships and study grants.
2. The mothers, fathers or guardians of students enrolled in a center have the right to receive information about their children's educational progress. (...), in particular through tutoring.

Article 90 of Law 12/2009, of July 10, on education, recognizes the autonomy of educational centers in the pedagogical, organizational and management of human and material resources. And article 99.1 of the same legal text establishes that the management of public centers is the responsibility of the management of each center and the autonomy includes, with the limitations applicable in each case:

- a) The management of teaching staff, educational care staff and administration and service staff.

- b) The acquisition and contracting of goods and services.
- c) The distribution and use of the center's financial resources.
- d) The maintenance and improvement of the center's facilities, in the case of centers that provide secondary education.
- e) Obtaining, or accepting, if applicable, additional financial and material resources.

Article 4.7) of the RGPD establishes the concept of data controller as *"the natural or legal person, public authority, service or other organism that, alone or together with others, determines the ends and means of the treatment; if the Law of the Union or of the Member States determines the purposes and means of the treatment, the person responsible for the treatment or the specific criteria for his appointment may be established by the Law of the Union or of the Member States."*

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The art. 4.8) establishes the concept of data controller as *“the natural or legal person, public authority, service or other organism that processes personal data for the data controller.”*

According to article 4.10), "third party" is considered: *“the natural or legal person, public authority, service or organism other than the interested party, the person responsible for the treatment, the person responsible for the treatment and the persons authorized to treat the personal data under the direct authority of the manager or manager.”*

In the case under analysis, first of all it is necessary to establish who is responsible for the treatment. When it comes to public educational centers, as is the case, we are dealing with centers that depend on the Department of Education of the Government of the Generalitat. Well, the Department of Education has published on its website the Register of processing activities where it is stated that the person responsible for the processing of the students' data is the management of the educational center.

The management of the educational center, in the exercise of the management autonomy conferred by Law 12/2009, can contract goods and services. From the point of view of data protection, when the provision of the service involves the processing of personal data, the entity that will provide the contracted service is considered to be in charge of the treatment, and will process the data on behalf of the person in charge of the treatment (article 28.1 of the RGPD). The relationship between the person in charge and the person in charge of the treatment must be regulated in a contract or other legal act that binds them (Article 28.3 of the RGPD). The contract or legal act must be in writing, including in electronic format (Article 28.9 of the RGPD). This contract will establish, at a minimum, the object, duration, nature and purpose of the treatment, the type of personal data and the categories of interested parties, as well as the obligations and rights of the person in charge. Likewise, it must foresee whether, once the provision of the services has been completed, the data will be returned to the person responsible or destroyed.

With regard to the data processed through the platform (...), the School says that they are: first name, surname and group of the child and the email and/or telephone number of the father/mother (and so on it appears in the record of treatment activities provided). And the people who can send messages through the platform: the management team of the school and the administrative team throughout the school, the cycle coordinators in their cycle and the pedagogical team (tutors) in their group of students .”

As reported on the website [www\(...\).com](http://www(...).com), it is a virtual web and mobile platform for communication between school and families. It offers several services, the most basic of which is the communication of information from the centers to parents. According to the contract for the provision of services provided by the School, it has contracted this basic service. In addition, to the information provided on the website of the platform, ensures that parents do not need to download the app to receive messages from the school. Parents who do not wish to do so will receive the messages by email.

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In the specific case under analysis, the management of the center (responsible for the treatment) contracted with the company (...), SL (responsible for the treatment) the service "(...)" in order to communicate the school information for families. In accordance with the purpose of the contract for the provision of services, (...) grants a single license to use the product to the customer, provides the "hosting" service and the maintenance and updating of the product. It should be added that this contract includes a section relating to confidentiality and data protection, which regulates the relationship between the person in charge of the treatment and the person in charge of the treatment, in accordance with the provisions of article 28 of the RGPD.

2. Based on the account of facts that has been set out in the background section and in view of the previous considerations, it is necessary to analyze here the reported facts that are the subject of the present filing resolution.

2.1. About the legality of the treatment.

Article 6.1 of the RGPD regulates the legal bases on which the treatments can be based of personal data. In the field of public administrations, the legal bases established in letters c) and e) of this precept are particularly relevant, according to which the treatment will be lawful when: *c) the treatment is necessary for the fulfillment of an applicable legal obligation to the person in charge of the treatment; and e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment.*

As can be seen from article 6.3 of the RGPD, the legal basis for the treatment indicated in letters c) and e) must be established by European Union Law or by the law of the Member States. In accordance with article 8.1 of the LOPDGG, the enabling rule must have the status of law and section 2 of the same article establishes that data processing can only be considered based on article 6.1 e) when it derives of a competence attributed by a norm with the rank of law.

In the case at hand, the purpose of the treatment activity consisting in the communication of school information from the School to families, is part of the educational and guidance action established Law 12/2009, of July 10, on education and in Organic Law 2/2006, of May 3, on education, specifically in the participation of families in the educational process and, in the right of families to receive information from the school about: activities and the services offered; the center's annual general schedule, scholarships and study grants or information about their children's educational progress, among others.

Therefore, the legal basis that protects the processing of data consisting in the communication of pedagogical information, services, activities, etc. in families it does not require consent of the persons affected, but is based on a treatment necessary for the fulfillment of a mission in the public interest or in the exercise of public powers conferred on the person responsible for the treatment.

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It must also be taken into consideration that the person responsible for the treatment, the School management, is the one who decides the purposes and means of the treatment and, based on this, can contract with a person or entity for the communication service with the families. However, it must be remembered that the data controller must make sure to contract with a person in charge who offers sufficient guarantees to apply appropriate technical and organizational measures, so as to guarantee the protection of the rights of the persons affected. In this case, the company (...) as data controller, processes personal data on behalf of the School. You must remember that as the person in charge of the treatment cannot even establish or decide the means of treatment, but must follow the instructions of the person in charge of the treatment, including in relation to international data transfers and be circumscribed by the contract of person in charge of treatment signed between parts. For its part, the School, as data controller, is responsible for choosing a data controller that offers sufficient guarantees to apply appropriate technical and organizational measures.

In the case at hand, the complainant complains that the fact that he did not give consent to receive school communications through the platform (...) has resulted in the violation of his right to receive school information. Specifically, he argues that he has not received communications from the School for months. In relation to this, it must be clarified that the complainant certainly has the right to receive school information from his children, and in fact the School has certified that it has provided this information through other means than the platform (...), as it states in the previous 8th of this resolution, but it is also necessary to emphasize that this right is framed in the educational regulations. Therefore, in the terms in which the complainant raises his complaint, that is to say, the effects derived from the lack of consent to the choice of a certain way of communication with the School, is not an issue that is can resolve from the data protection regulations.

In short, the legal basis that protects the processing of data consisting in the communication of information from the School to parents, is not consent, but that the treatment is necessary for the fulfillment of a mission in the public interest or in the 'exercise of public powers conferred on the data controller.

3. In accordance with everything that has been set out in the legal basis 2on, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts reported and addressed in this resolution, no action constituting any of the violations provided for in the legislation on data protection, it is appropriate to agree to its archive.

Therefore, I resolve:

1. File the actions of prior information number IP 330/2020, relating to the Ferran Sunyer School of the Department of Education.

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2. Notify this resolution to the Ferran Sunyer School 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,