

File identification

Archive resolution of the previous information no. IP 66/2021, referring to the Public Employment Service of Catalonia.

Background

1. 02/16/2021 , the Catalan Data Protection Authority received a letter from Mr. (...) by which he filed a complaint against the Department of Digital Policies and Public Administration - hereinafter, the PDA Department - (according to the denomination in force at that time), on the grounds of an alleged breach of the regulations on data protection personal _

In particular, the complainant explained that 11 years ago he worked for the Generalitat de Catalunya and that he had recently received a communication from VidaCaixa in which he was informed of the evolution of the joint promotion pension plan within the scope of the Generalitat of Catalonia. The complainant claimed that he was unaware of the existence of this pension plan and that it was opened without his consent.

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

2. The Authority opened a preliminary information phase (no. IP 66/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 01/03/2021 the PDA Department was required to report on the legitimation that would enable the treatment subject to complaint (registration as a participant).

4. On 05/03/2021, the PDA Department responded to the aforementioned request through a letter from the Office of Attention to Participants and Beneficiaries of the Pension Plan of the Administration of the Generalitat of Catalonia, in which exposed, among others, the following:

- That, on 09/01/2010, the complainant worked in the Extraordinary Orientation, Professional Training and Insertion Plan program. On that date, the promoting entity (which it did not specify) prepared the communication prior to discharge as a participant in the joint promotion employment pension plan of the Generalitat de Catalunya, where reported that on 01/09/2010 there were 30 days of effective work left to register him in the Pension Plan, in accordance with what is foreseen in the specifications of this Plan.
- That, on 09/30/2010, the complainant stopped providing services, thereby ceasing to fulfill an indispensable element of the requirements (he was one day short of completing a year of seniority).
- That, on 29/09/2010, the promoting entity interrupted the communication prior to the discharge as a participant in the Pension Plan.
- That, on 01/01/2011, the complainant returned to providing services to the Generalitat de Catalunya. On 08/03/2011, the promoting entity generated the communication prior to the discharge as a participant in the Pension Plan. According to the GIP, this communication is recorded as not sent.

- That, on 03/29/2011, according to the GIP, the complainant resigned from his job.
- That it is not recorded that the promoting entity had sent the prior notice of registration to the reporting person.
- That the management entity of the plan, VidaCaixa, informs that the complainant was registered in the Plan on 04/26/2013 [it is inferred that there is an error in the identification of the year, which should be in 2011, given that the requirements to be part of the plan were fulfilled then] by the promoting entity (Servei d'Ocupació de Catalunya).
- That according to internal regulations, shareholders are not sent notices of movements if there are none, except for changes or important news that there is a legal obligation to communicate to shareholders.
- That given that the complainant did not make any type of contribution to the pension plan and had 0 consolidated rights since she was registered, she has not received any information.
- That following the new EU Directive 2016/2341 of the European Parliament and the Council, VidaCaixa sent a statement to all participants. In the case of the person reporting this first communication was made on 01/26/2021.
- That article 6 of Organic Law 15/1999, of December 13, on the protection of personal data (hereafter LOPD), regulated the cases in which the consent of the affected person was not necessary.
- That article 11 of the LOPD enabled the communication of data when it was authorized by law (art. 11.2.a), when the data was collected from sources accessible to the public (art. 11.2.b) or when the treatment responds to the free and legitimate acceptance of a legal relationship whose development, compliance and control necessarily involve the connection of this treatment with third-party files (art. 11.2.c).
- That article 10 of the Regulation of the specifications of the joint promotion employment pension plan of the Generalitat de Catalunya (hereafter, the plan Regulation) establishes that any employee who accredits a stay of at least 12 months in the service of the promoting entities, in active service or similar situations; as well as that people who meet the requirements established to be participants will be registered and automatically incorporated into the plan, unless, within 20 calendar days following their automatic incorporation, they notify the entity promotes expressly and in writing its desire not to join it.
- That this precept also establishes that it is the sponsoring entity's obligation to notify the participant of his enrollment in the plan at least one month before the date on which he meets the seniority requirement provided for in point 1 above.
- That on 03/23/2006 the representatives of the pension plan and VidaCaixa signed a contract stipulating that the management entity and the depository entity would only have access to the personal data of the participants and beneficiaries precise to comply with the functions provided for in the specific regulations.
- That the joint promotion employment pension plan of the Generalitat de Catalunya originates from a collective agreement or equivalent provision (Working Conditions Agreement) that has the force of law between the parties that sign it and is binding for all the workforce and have been included in the Budget Laws of the Generalitat de Catalunya as possible deferred remuneration.
- That the reporting person can resign from the pension plan at any time.

5. In this information phase, on 01/06/2022, it was requested from the Department of the Presidency (which currently includes the Office of Attention to Persons Participating and Beneficiaries of the Pension Plan of the Administration of the Generalitat of Catalonia) to provide a copy of the contract signed by the representatives of the pension plan and

VidaCaixa on 03/23/2006; copy of the manager contract signed with the VidaCaixa entity , in the terms established by article 12 of the LOPD; and, in the case that a contract had been signed under the terms provided for in article 28 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 circulation thereof (hereafter, RGPD), a copy of that contract.

6. Public Employment Service of Catalonia (hereafter SOC), the promoter of the complainant's Pension Plan, was requested to provide a copy of the contract for the person in charge had subscribed with the entity VidaCaixa .

7. On 06/15/2022, the SOC responded to the request by means of a letter in which it indicated that it did not have the required documentation, given that it is the Directorate General of Public Service of the Department of the Presidency that manages the documentation relating to the pension plan

8. On 15/06/2022, the Department of the Presidency (which currently includes the Office of Attention to Persons Participating and Beneficiaries of the Pension Plan of the Administration of the Generalitat of Catalonia) responded to the request to through a letter in which he pointed out the following:

- That, with regard to the treatment order contract, after consulting the Office of Attention to Participating and Beneficiary Persons, it is found that it has not been formalized.
- That, when signing the contract, it was considered that VidaCaixa was acting as responsible for the treatment and that the departments and entities of the Generalitat communicated the data of the personnel in their service so that it was VidaCaixa who offered the service.
- That it would, therefore, be a communication of data carried out in compliance with a contract.

The Department of the Presidency provided a copy of the contract signed on 03/23/2006 between the representatives of the pension plan (the Pension Plan Control Commission) and the management and depository entities of the Plan; as well as the annex formalized on 10/10/2014, between the Pension Plan Commission, the management entity, the depository entity until then and the new depository entity.

9. on the antecedents that have been related and the result of the investigative actions carried out in the framework of the previous information, on today's date an agreement is also issued to initiate disciplinary proceedings against the Control Commission of the pension plan regarding the lack of subscription to the corresponding data processor contract.

The rest of the behaviors reported are addressed in this file resolution.

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 Catalan Authority of 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 background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

In advance, it must be made clear that when the complainant was registered in the pension plan, Organic Law 15/1999, of December 13, on the protection of personal data (in forward the LOPD).

Having said that, as established in article 10 of the plan's Regulations, any employed person who can demonstrate at least 12 months of service to the promoting entities, in active service or similar situations.

In this same precept it is contemplated that " persons *who meet the requirements established to be participants will be registered and automatically incorporated into the Plan, unless, within the period of 20 calendar days following their automatic incorporation, communicate to the promoting entity expressly and in writing their wish not to join it.*" And it is added that it is *"the sponsoring entity's obligation to notify the participant of his enrollment in the Plan at least one month before the date on which he meets the seniority requirement (...)"* .

Therefore, all employees of the Generalitat de Catalunya and its autonomous bodies who meet the required requirements are registered in the joint promotion employment pension plan of the Generalitat de Catalunya, which is a private savings instrument whose main objective is to allow employees to receive additional benefits to those granted by Social Security and, where appropriate, the corresponding mutual funds in the event of retirement, incapacity, death and dependency. These contributions are part of the remuneration of public employees.

In the present case, the reporting person's registration as a participant began to be managed once he had reached the minimum seniority requirement (1 year) and before he resigned from his job at the SOC on 03/29/ 2011 However, the discharge materialized at a later date (04/26/2011).

At this point, it should be mentioned that this plan was created in 2005, but from 2011 contributions to the pension plan were suspended. It is for this reason that the pension plan of the reporting person has 0 consolidated rights.

In relation to the legality of this treatment consisting of registering a person employed by the Generalitat de Catalunya in the pension plan, it is necessary to refer to article 6.2 of the LOPD, which established the following:

"2. Consent is not required when personal data is collected for the exercise of the functions of public administrations within the scope of their powers; when they refer to the parties to a contract or a pre-contract of a business, employment or administrative relationship and are necessary for its maintenance or fulfillment; when the purpose of data processing is to protect a vital interest of the interested party in the terms of article 7, section 6, of this Law, or when the data appears in sources accessible to the public and its processing is necessary for the satisfaction of the legitimate interest pursued by the person in charge of the file or by the third party to whom the data is

communicated, as long as the rights and fundamental freedoms of the interested party are not violated."

In accordance with the above, the processing of the data by the promoting entity to manage the registration of the reporting person (the SOC) as a participant in the pension plan did not require their consent, insofar as the treatment was necessary for the maintenance and execution of an employment or administrative relationship to which the reporting person was a party.

In the present proceedings, it is proven that, on 03/23/2006, the representatives of the pension plan and VidaCaixa and Caixabank signed a contract stipulating that the management entity and the depository entity would only have access to the accurate personal data of participants and beneficiaries to fulfill the functions provided for in the specific regulations.

This contract was signed, on behalf of the Generalitat de Catalunya, by the Pension Plan Control Commission, which is the body (currently, of the Department of the Presidency) that supervises the operation and execution of the pension plan; which decides the investment policy that the management entity must carry out; that selects the management and depository entities and signs the corresponding contract with these entities; as well as authorizing new entities to join the pension plan in accordance with the plan's Regulations (SOC joined on 11/24/2005).

Therefore, the plan management entity (VidaCaixa) and the depository entity (Caixabank , initially, and Cecabank , from 10/10/2014) would have the status of data processors, which entails that the access to the data by these entities on behalf of the Pension Plan Control Commission was not considered a communication of data (art. 12.1 LOPD). However, as reported by the Department of the Presidency, the data processor contract was not signed. It is precisely this circumstance that has motivated the initiation of disciplinary proceedings against the Pension Plan Control Commission.

In accordance with the above, it must be concluded that the registration of the complainant as a participant in the pension plan, which derived from the contractual or administrative relationship of the complainant with the SOC, was lawful treatment.

On the other hand, compliance with the right to information should be addressed. According to the information you have provided the Office of Attention to Participants and Beneficiaries of the Pension Plan of the Administration of the Generalitat of Catalonia, it cannot be guaranteed that the entity promoting the pension plan (SOC) had informed the complainant about his registered as a participant in the pension plan, as established in article 10 of the plan's Regulations.

However, from the perspective of the regulations on the protection of personal data, to the extent that the management and custodian entities of the plan acted as data processors, the SOC was not obliged to inform the reporting person of access to their data by those in charge of treatment, since access to personal data was not considered data communication.

3. In accordance with everything that has been set out in the 2nd legal basis, it is necessary to agree on the archive of the present actions of prior information.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure: "*c) When the proven facts do not manifestly constitute an administrative infraction . "*

Therefore, I resolve:

1. File the previous information actions number IP 66/2021, relating to the Public Employment Service of Catalonia .
2. Notify this resolution to the SOC and the reporting person.
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 denounced entity may the interested persons may file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within a period of one month from the day after its notification, d in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998 , of July 13, governing the contentious administrative jurisdiction.

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

The director,