

File identification

Archive resolution of the previous information no. IP 159/2021, referring to the Open Administration Consortium of Catalonia

Background

1. En data 13/04/2021, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava una denúncia contra el Consorci Administració Oberta of Catalonia (hereinafter, AOC), due to an alleged breach of the regulations on personal data protection .

The reporting person stated that the reported entity used their personal data, for purposes that they would not have authorized. Specifically, he explained that he provided his personal data to the AOC in order to obtain the IdCAT digital electronic certificate and denounced the fact that, subsequently, on 01/28/2021, from the electronic address < (...) > would have received an email to his personal email address < (...) > - the subject of which referred to " *Voting without leaving home*" - by means of which he was invited to request the vote by postal mail, using the recognized digital certificate. In this respect, he considered that this e-mail " *has no relation to the validity or effectiveness of the electronic signature of which the claimant is the certifying authority and therefore exceeds the functions that are proper (...)*". The now complainant added that, in said email, there were two sections called, respectively, " *Update subscription preferences* " and " *Unsubscribe from the list* ", and explains that he would never have consented to add it to any list, or subscribe to any service.

The reporting person provided the copy of the reference email.

2. The Authority opened a preliminary information phase (no. IP 159/2021), 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 07/02/2022 the reported entity was required to report, among other issues, on the date on which the data relating to the email address was obtained of the now complainant, and the purpose for which he obtained it.

4. On 02/16/2022, the AOC responded to the aforementioned request through a letter in which it stated the following:

- That, the personal data of the now complainant held by the AOC are the following: first and last name, ID number, email, postal address and telephone number.
- That, " *the complainant on 08/14/2020 renewed online his already valid idCat certificate. When doing the renewal on the screen, he was shown the details of the previous certificate and he confirmed that he wanted to continue the renewal procedure with the details that appeared on the screen, among which was that of the email* ".
- That, the purposes of the processing of the personal data of the now complainant are " *To carry out the management of the certification service offered to natural persons, that is to say, the issuance and management of the certificates that they request from Consortium*

AOC as well as manage the quality of these. The data can also be used to establish communications about requests, divulgative acts directly related to the service, new uses, satisfaction surveys or other services directly related to the service.

- That, the right to information was provided to the person now reporting in 2016 when he obtained the Idcat certificate . In relation to this, a document containing the “ *copy of the right of information that appeared in the document that the gentleman signed and was given to him. Subsequently, in August 2020, the complainant, as explained above , renewed the certificate online , at which time he was reminded of his right to information. A copy of which is attached as Annex III.*”
- That, “ *The reporting person received this email as the holder of the IdCat to inform him that with said certificate he could request a vote by mail so that he was aware of this new use. What the Consortium did was to send the mail to the people listed in the IdCAT database on that date as holders of a certificate and to do so it created in the mail application a list of people who were to receive it. List that once the transmission was done he deleted them. The use of the database is done in this way to ensure that the data is accurate on the date on which a new use of the certificate of the holder is reported. The words "subscription" or "list" are concepts commonly used by email marketing solutions and are not modifiable.*”
- That, “ *The AOC Consortium sends communications to users of the Certified IdCat about "disclosure acts directly related to the service, new uses, satisfaction surveys or other services directly related to the service" in a very exceptional way and, only when there is an important public interest. In the last four years, only one communication has been sent for these purposes, which is the one referred to by the complainant: the communication regarding the option to vote from home in the 2021 parliamentary elections, through the request to vote by mail with digital certificate. It must be taken into account, in addition to concretely, what was done was to inform that, with this certificate, he could apply to vote by mail in the Parliament elections and exercise the right to vote from home without any risk to his health, in a context of serious health crisis caused by the pandemic (...).*”

Also, the AOC pointed out that the legal bases that legitimize the processing of the complainant's personal data are article 6 sections c) and e) of the RGPD, as well as Law 29/2010, of August 3, of the use of electronic media in the public sector of Catalonia, and Law 26/2010, of 3 August, on the legal regime and procedure of the public administrations of Catalonia.

The reported entity attached various documentation to the letter. Of this, the information that was provided to the complainant, in August 2020, when he renewed the IdCat certificate , via *online , stands out , and he was informed that: " The purpose of the collection of 'this information is for this to be included in the certificate, and therefore, the issuing and subsequent management of the certificate, as well as the mechanism for checking the status of the certificates, can proceed. It may also be used by the Consorci Administració Oberta de Catalunya or by the entities that act as IdCAT registration entities to inform you, by means of sending to the email address or mobile phone indicated in the application, about disclosure acts, new uses , satisfaction surveys or other services directly related to the IdCAT certificate (...).*”

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.

The complainant complained about the fact that, on 28/01/2021, from the AOC, an email was sent to his private email account, the subject of which referred to " *Voting without leave the house*", without having previously consented to the processing of their personal data, for the sending of this type of communications. The now complainant pointed out that, although he requested the IdCAT certificate from the reported entity, he did not authorize information on services related to the reference certificate to be sent to him.

In this regard, the AOC has pointed out that in 2016, when the now complainant requested the digital electronic certificate, he was provided with information regarding the processing of his personal data. Also, the reported entity added that, in August 2020, when the complainant renewed the certificate electronically, they proceeded to provide him again with the information related to the processing of his personal data and provided a copy of the clause relating to the protection of personal data, which is transcribed in the preceding quarter of this resolution.

Well, with respect to the processing of personal data, article 5.1 a) of the RGPD, in literal terms, provides:

"1. Personal data will be treated lawfully, loyally and transparently in relation to the interested party ("lawfulness, loyalty and transparency".

For its part, article 4.2 of the RGPD defines the processing of personal data in the following terms:

" Any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission , diffusion or any other form of enabling access, comparison or interconnection, limitation, suppression or destruction " .

In accordance with the above, the sending of e-mails constitutes a processing of personal data that must be subject to the principle of legality enshrined in article 5.1 a) of the RGPD. For its part, article 6 RGPD establishes the system of legitimation of data processing which is based on the following terms:

"1. The treatment will only be lawful if at least one of the following conditions is met:

- a) The interested party gives his consent for the treatment of his personal data for one or several specific purposes;*
- b) The treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;*
- c) The treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;*
- d) The treatment is necessary to protect the vital interests of the interested party or another natural person;*

- 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;*
 - f) *The treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the a child is interested*
(...)
3. *The basis of the treatment indicated in section 1, letters c) and e) must be established by:*
- a) *The right of the Union, or*
 - b) *The law of the Member States that applies to the person responsible for the treatment.*

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person in charge of the treatment".

Having established the above, it is then analyzed whether the sending of the mentioned email constitutes a lawful processing of personal data, and whether the communication of information about services related to the Idcat certificate is compatible with the purpose for which data were initially collected.

2.1 On whether the processing of personal data carried out by the AOC was necessary to fulfill a mission carried out in the public interest, based on article 6.1.e) RGPD.

As a preliminary matter, it should be noted that the AOC is considered a public administration, in accordance with article 2.3 of Law 40/2015, of October 1, on the legal regime of the public sector (LRJSP) . In this respect, article 118 of the LRJSP defines consortia as "*entities under public law, with their own and distinct legal personality, created by several public administrations or entities that are part of the institutional public sector, among themselves or with the participation of private entities, for the development of activities of common interest to all within the scope of their powers*".

In turn, the Agreement of December 4, 2001, of the Government of the Generalitat, by which the AOC is constituted and its Statutes are approved, provides that it is integrated "*by the Generalitat of Catalonia together with the consortium local for the development of telecommunications networks and new technologies Localret*". Likewise, article 2 of the AOC Statutes specifies that this consortium is a public entity of an associative nature, with its own legal personality and full capacity for the fulfillment of its purposes.

At this point, it should be noted that article 6.1 e) of the RGPD does not refer only to entities that exercise public powers, but also includes those that carry out a mission carried out in the public interest. Regarding this, article 6.3 of the RGPD adds that the basis of the treatment, indicated in article 6.1 e), must be established in the law of the European Union or in the law of the member states, a requirement that has been to be understood as referring to a standard with the rank of Law.

In this respect, the Statutes of the AOC provide for the purposes of the consortium, among others, the promotion of the use of digital certificates, in the processes between public administrations and between public administrations and citizens in order to guarantee the simplicity, security and privacy of these processes.

Also, article 7 of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia, attributes to the reported entity, among others, the following functions:

- *" The extension of electronic media to guarantee identity and to accredit the will in the actions of citizens and public sector personnel".*
- *"Provides electronic signature services to the public sector of Catalonia to guarantee confidentiality, integrity, identity and non-repudiation in electronic communications carried out by public sector entities in Catalonia, and any other task entrusted to it".*

Also Law 26/2010, of August 3, on the legal regime and procedure of public administrations has provided, in its Seventh Additional Provision, when it refers to the Catalan Certification Agency (currently, Consorci AOC), the function of providing recognized electronic signature certificates to citizens.

In accordance with the aforementioned regulations, it is necessary to conclude that the activities carried out by the AOC fall under the term "mission of public interest", and that they are provided for in a standard with the rank of law, so that there would be the coverage of a legal basis to carry out the controversial treatment, as required by articles 6.1 e) and 6.3 of the RGPD.

With respect to the consent of the reporting person, for the processing of their personal data, it is necessary to bear in mind the Opinion CNS 45/2018 of this Authority, precisely in relation to the consultation of a consortium on whether it was necessary to obtain the consent of those affected to provide information on cultural and educational activities. In relation to the above, the following was argued:

"Irrespective of the fact that some of the activities it may carry out may fit within the concept of a mission of public interest, the authorization for the processing of citizens' data by the Consortium cannot be understood as an authorization for process data of any citizen, but only of those who participate in the activities carried out by the Consortium. In other words, it would be due to prior consent or the legal relationship previously established with the Consortium.

Obviously, at the time of establishing this legal relationship or of obtaining consent, the interested parties must have been informed of the various aspects referred to in article 13 RGPD (previously article 5 LOPD) and, especially, on the purpose or purposes (in this case differentiating the consent for each of them) for which the data will be processed (...)

If so, and to the extent that these purposes include the transmission of information about the activities carried out by the Consortium, there would be no problem in being able to use the data contained for this purpose".

As can be seen from the antecedents, the AOC collected the data relating to the email as part of the request made by the now complainant to obtain the Idcat certificate , issued by the

reported entity. However, it is not sufficiently proven that the complainant consented to the processing of his personal data for the specific purpose of sending informative e-mails about the services of the reported entity. For this reason, below, it is analyzed whether the sending of the controversial e-mail could be considered lawful in accordance with article 6.4, to understand that the purpose would be compatible with that which had initially justified the collection.

2.2 On whether the processing of personal data carried out by the AOC was in accordance with article 6.4 RGPD.

For the purposes of determining whether the action of the AOC was compatible with the initial purpose for which the personal data of the now complainant were collected, the principle of purpose, provided for in article 5.1, must be taken into account. b of the RGPD which, in literal terms, establishes:

"1. The personal data will be (...): b) collected for specific, explicit and legitimate purposes, and will not be subsequently processed in a manner incompatible with said purposes; in accordance with article 89, section 1, the further processing of personal data for archival purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose")

And this provision, for what is of interest here, must be supplemented with sections a), b) and d) of article 6.4 RGPD, which prescribe the following:

"4. When the treatment for a purpose other than that for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, paragraph 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data were initially collected, will take into account, among other things:

- a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;*
- b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;*
- c) (...)*
- d) The possible consequences for the interested parties of the planned subsequent treatment;*

(...)"

Well, following what was established by this Authority, among others, in Opinion CNS 32/2020, for the analysis of the compatibility of purposes, it is necessary to take into account recital 50 of the RGPD which provides the following:

" The processing of personal data for purposes different from those for which they were initially collected must only be allowed when it is compatible with the purposes of their initial collection. In such a case, a separate legal basis is not required, other than the one that allowed the personal data to be obtained. (...)"

In this regard, the already mentioned Opinion CNS 45/2018 sets out the arguments for which two different purposes could be considered compatible, in the following terms:

" there would be a close relationship between the activities for which the data would have been collected (activities deployed by the Consortium, such as exhibitions, studies and research) and the purpose to which they are intended (disclosure of activities of this same nature that will be carried out by the Consortium). Secondly, it would be about people who have previously approached the Consortium and who have shown their interest in this type of activity. On the other hand, the data intended to be used would only be contact data, and would not be disclosed to third parties, nor are there foreseeable risks to the rights of the affected persons, provided that with the first and subsequent communications that are made, inform the affected persons in compliance with the principle of transparency, in particular about the origin of the data and about the possibility of opposing the treatment in a simple and easily accessible way (for example through the web page) ."

For what is of interest here, it should be noted that the collection of the e-mail address was carried out by the AOC, at the time that the reporting person requested the Idcat certificate , and confirmed it when, subsequently, he request the renewal of the reference certificate.

In relation to the use of the data relating to the email, this would have been used to carry out an electronic communication in which information linked to the electronic certificate service was sent, specifically, for a new use of said certificate. Also, from the documentation provided by the AOC, it can be inferred that this is the only time the complainant's email address has been used to make communications related to the contracted certification service. So, in the case analyzed, those elements provided for in article 6.4 of the RGPD transcribed above (compatibility test) are present, which allow it to be considered that the reported data processing was compatible with the initial purpose for the which the data was collected, being therefore this subsequent treatment in accordance with the data protection regulations.

On the other hand, the complainant stated that he had never given consent to be included in a list or to have subscribed to a service. In turn, the reported entity alleged that " What the Consortium did was to send the mail to the people who appeared in *the IdCAT database on that date as holders of a certificate and to do this he created in the mail application a list of people who should receive it. List that once sent was deleted. The use of the database is done in this way to ensure that the data is accurate on the date on which a new use of the certificate of the holder is reported. The words "subscription" or "list" are concepts commonly used by email marketing solutions and are not modifiable .*

The allegations of the Consortium, in the sense that the AOC only listed the electronic addresses for the purposes of identifying which people should be the recipients of an email, prevent concluding that the personal data of the now complainant have have been included , contrary to data protection regulations, in a list for which it was necessary to obtain their consent.

Otherwise, it must be taken into account that the accused entity provided the information relating to the exercise of rights to the now complainant, and if he wished not to receive communications directly related to the contracted service, he could exercise his right of opposition before the AOC, in accordance with the provisions of article 21 of the RGPD.

Right that can be exercised at any time before the reported entity and, in the event that it is not attended to, make a claim for the protection of rights before this Authority.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have 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.

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 proceedings number IP 159/2021, relating to the Open Administration Consortium of Catalonia.
2. Notify this resolution to the Consorci Administració Oberta de Catalunya and 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,