

File identification

Archive resolution and transfer of previous information no. IP 351/2021, referring to the Department of Education

Background

1. On 09/09/2021, the Catalan Data Protection Authority (APDCAT) received a letter from a person making a complaint against the Department of Education, on the grounds of an alleged breach of the regulation on protection of personal data .

Specifically, the complainant complained that in the inbox of his corporate email address of the Telemàtica Educativa de Catalunya ("(...)") two messages sent by the Interim Teaching Platform had been received (henceforth, PINDO), without the reporting person having previously consented to the Department of Education communicating said corporate email address to the platform sending said emails.

Along with his letter, the complainant provided several emails (dated 07/09/2021 and 09/06/2021), addressed to his corporate email address, in which the sender address is (...), and in the sent text the PINDO logo.

2. The Authority opened a preliminary information phase (IP 351/2021), 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 1 October, on the common administrative procedure of public administrations (henceforth, LPAC), in order to determine whether the facts were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 09/14/2022 the reported entity was required to report on whether the Department of Education provided the reporting person's corporate email address to PINDO so that they could send information to the workers, and in such case, the legal basis that would legitimize said communication. Likewise, they were also required to report if at the time the events took place (07/09/2021 and 09/06/2021), PINDO had union representation within the Department of Education.

4. On 09/22/2022, the Department of Education responded to the aforementioned request through a letter in which it stated the following:

- That " *From the General Directorate of Teaching and Staff of Public Centers we have not provided any corporate e-mail of the teaching staff to the "Interim Teaching Platform", we only provide data of the corporate e-mails to the trade unions that have representation in the sectoral staff table non-university teaching staff and the teaching staff boards of the SSTT and Consorci d'Educació de Barcelona (unions that removed the legal representation of teaching staff through the last union elections held in 2019), in accordance with the criteria established in resolution 331/2018, of December 15, of the Commission for the Guarantee of the Right of Access to Public Information (GAIP).*

- That " *The Interim Platform teachers in Catalonia is none whose trade union organization presented themselves in the aforementioned electoral process previously , therefore they do not have representation OK with the results of the last elections unions to elect members of the teaching staff boards ."*

5. On 05/10/2022, also in the context of this preliminary information phase, the Authority made a request to PINDO in order for them to report on how they would have obtained the e-mail of the person making the complaint, and in what date and under what circumstances it would have been provided to them.

6. On 11/10/2022, PINDO complied with this requirement by means of a letter stating the following:

– That " *Plataforma interines docentes de Catalunya (PINDO) does not have the data of the reporting person. These emails that the person attached are sent through the CGT Union. The Unions are the only ones who have emails xtec because they are corporate from the Department of Education.*"

– That "*These emails are prior to the constitution of the Temporary Teachers' Association of Catalonia (PINDO), which was registered in the association register of the Generalitat of Catalonia, on December 9, 2021 (we attach a resolution document). The Platform prior to the Association also did not have the data because only the Unions can have it and it was done through delegates of the CGT Union: (...) (we attach a poster with the delegates of the CGT Union (...) and your contact and screenshots that prove it).*"

In order to substantiate the statement, the entity provided, among other things, the following information:

a) The image of several WhatsApp messages exchanged between several people who, according to PINDO, would prove that the controversial emails would have been sent by the CGT union acting "as PINDO".

b) Resolution of the General Directorate of Law, Legal Entities and Mediation, of the Department of Justice, dated 03/07/2022, on the registration of the PINDO Association in the Register of Associations; in which it is stated that registration in said register was requested on 09/12/2021.

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. As stated, the complainant complained that the Department of Education had provided, without his consent, his corporate e-mail address to the Interim Teaching Platform, as he had received several e-mails sent by this Platform.

2.1. Regarding the Department of Education.

As stated in the background, the Department of Education has stated that it has not provided any e-mail addresses of teaching staff on the PINDO platform, and in this regard, it has

added that they only provide e-mail data to organizations trade unions that have union representation within the entity, a category in which PINDO would not be included.

To the above, it should be added that, when asked about this, the PINDO platform reported that the directory of electronic addresses used to send emails would come from the CGT Union, and that it was this union that would have sent through union delegates.

At this point it must be said that the Department of Education could have communicated the electronic addresses of its staff to union delegates affiliated to organizations that could in turn be part of the PINDO platform (as would be the case of the CGT union). Well, in this respect it should be pointed out that the communication of this data to the trade union delegates for the exercise of their own functions (such as the representation and defense of working people), would be an action in accordance with the data protection regulations, which would be authorized in article 6.1.c) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of individuals physical regarding the processing of personal data and the free movement thereof (RGPD). In this sense, this Authority has pronounced in its report no. IAI 47/2018 (which can be consulted on the website www.apdcat.cat): *"In relation to the communication of data by the employer to the Trade Unions for the exercise of the functions that are legally entrusted to them, the Supreme Court, by Sentence 111/2018 (Sala del Social), of February 7, 2018, has highlighted: (...) "(...) the bodies representing the workers (art. 64 ET) and the trade union delegates (art. 10.3 of the Organic Law 10/19-5 - LOLS-) are the only ones that have recognized the right to access certain information to the extent that it constitutes the essential instrument so that they can develop the functions of 7 representation, defense, vigilance and control that are their own (...). Therefore, it will be justified for the company to communicate personal data of the workers to the legal and/or union representatives so that they can exercise the powers that the law confers on them, this being a scenario that conforms to the exception of art. 11.2 a) LOPD. It seems obvious that yes, both art. 64 ET, as 10.3.1 LOLS confers rights of information and documentation to unitary and union representatives, the obtaining of the same through the communication of the company will be covered by that exception when, in fact, it is data that have direct connection with the exercise of those powers" (...).*

In short, from the point of view of the data protection regulations, there would be sufficient authorization to provide the requesting union with the data of the corporate e-mail address of the staff of the Generalitat, to guarantee the exercise of the right to freedom of association (...)".

The subsequent use or treatment that the unions or the union delegates - as members of the PINDO platform - may have done, of the electronic addresses that the Department has lawfully communicated to them, as has been argued, would not be included in the area of competence of this Authority.

The way things are, the reported conduct consisting of improper communication of the electronic addresses of employees of the Department (with mail @xtec) cannot be attributed to the Department of Education, nor is there any indication of possible leaks or uses legal by the Department.

2.2. Regarding the performance of the PINDO Platform and/or related persons or entities.

As has been said, in the context of this prior information, PINDO has reported that the corporate email addresses - including that of the complainant - to which the controversial emails were sent, came from the CGT Union and that it was this entity who - according to them - would have sent them through its union delegates.

So, from the set of information compiled in this previous information, it follows that the entity or entities that apparently could be responsible for the processing of personal data with respect to what the complaint refers to - CGT Union, Pindo Platform and/or person or related entities-, would not be included in the cases that are the competence of this Authority, in accordance with the provisions of article 156 of the Statute of Autonomy of Catalonia and art. 3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

That is why, in accordance with what it provides article 141 of Law 40/2015, of October 1, on the legal regime of the public sector, public administrations are obliged to respect the legitimate exercise of the powers of other administrations, it is considered appropriate to transfer these actions prior to the Spanish Data Protection Agency, in order to elucidate any responsibilities that may have been incurred.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information it has not been proven that the Department of Education has committed any act that could be constitutive of any of the violations provided for in the legislation on data protection, it is necessary to agree on its archive.

Article 89 of the LPAC, in line 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 "a) The non-existence of facts that *could constitute the infringement*; b) *When the facts are not proven*".

For all this, I resolve:

- 1.** Archive the actions of prior information number IP 351/2021, relating to the Department of Education.
- 2.** Transfer the referenced actions to the Spanish Data Protection Agency, regarding the data processing carried out by the CGT Union, the Interim Teaching Platform (PINDO) and/or related persons or entities, with a certificate of this resolution translated into Spanish.
- 3.** Notify this resolution to the Department of Education, the Interim Teaching Platform and the reporting person.
- 4.** 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 can 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, in accordance with what provided for in article 123 et seq. of Law 39/2015. You can also file an administrative contentious appeal 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, regulator of administrative contentious jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,

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