

File identification

Archive resolution and transfer of previous information no. IP 460/2021, referring to the Department of Education.

Background

1. On 12/11/2021, the Catalan Data Protection Authority received a letter from a person who was filing a complaint, on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the person reporting stated that some person or entity had leaked their corporate email address from the Telemàtica Educativa de Catalunya network ((...)) to the Teaching Interns Platform (henceforth, PINDO), without his consent, since he had received at this address several emails sent by said platform.

Along with his letter, the complainant provided several emails (dated 26/05/2021, 09/07/2021 and 06/09/2021), addressed to his email address corporate, in which the address "(...)" appears as the sender, and the PINDO logo in the text sent.

2. The Authority opened a preliminary information phase (no. IP 460/2021), 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, by means of a letter of 15/02/2022 (notified on that same date), a letter was sent to the reporting person in order to provide additional information within 10 days, specifically, what was his connection with the Department of Education and in which center he provided services, and this with the aim of being able to precisely direct the investigations against the presumed person responsible for the reported leak.

This period expired without the reporting person providing the additional information requested.

4. On 04/03/2022 the Department of Education was required to report on the following:

- If he knew that the Department of Education, or any entity or educational center linked, had communicated to the PINDO platform the e-mail of the reporting person.
- If you answer in the affirmative, report the circumstances of this communication, of the date it occurred; and the legal basis that would have enabled such communication.

5. On 03/17/2022, the Department of Education responded to the aforementioned request through a letter in which it stated that *"neither from the central services of the Department of Education nor from the territorial service of the Department of Education in Barcelona"*

Counties, to which the teacher belongs, once questioned, it has been reported that they have no record of any publication or communication of this data nor, so far, have there been any indications that any incident may have occurred, error or illegal use of the staff directory regarding the data of the teacher who complained to the PINDO entity".

6. On 04/06/2022, also during this preliminary information phase, the PINDO Platform was required to report on how they obtained the complainant's email.

7. On 08/04/2022 PINDO responded to the previous request stating the following:

- That "PINDO does not have the data of the reporting person. These e-mails that the person attached are sent through the CGT union. The unions are the only ones that have e-mails xtec because they are corporate from the Department of Education".
- That "these e-mails are prior to the constitution of the Temporary Teachers' Association of Catalonia (PINDO), which was registered in the register of associations of the Generalitat of Catalonia, on the 9th of the 12th of 2021 (attached 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: (...) and (...)".

In order to substantiate the statement, PINDO provided 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 aforementioned 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, of 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 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.

2. Based on the background story, it is necessary to analyze the facts reported that are the subject of this file resolution. As stated, the complainant complained that some person or entity had provided, without his consent, his corporate email address to the PINDO Platform, as he had received several emails sent by this Platform.

2.1. Regarding the Department of Education.

As stated in the background, the Department of Education has stated that it is not aware that any communication has been made to third parties from the personnel directory, nor from the central services of the Department of Education, nor from the Service territorial of the Department of Education of Barcelona Comarques, to which the complainant belongs in his capacity as a teacher. Likewise, it reported that no signs of possible "errors or illicit use of the staff directory regarding the data of the teacher who complained to the PINDO entity had been found."

To the above, it should be added that, when the PINDO Platform was asked about this, it reported that the directory of electronic addresses used for sending mails would come from the CGT Union, and that it was this union that would have made the sending 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 in turn they could be part of the PINDO Platform (as would be the case of the CGT union). Well, in this respect it must be pointed out that the communication of this data to union delegates for the exercise of its own functions (such as the representation and defense of workers), it 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 natural persons with regard to 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 legally entrusted to them, the Supreme Court, by Sentence 111/2018 (Sala del Social), of February 7 of 2018, has highlighted: (...) "(...) the workers' representative bodies (art. 64 ET) and union delegates (art. 10.3 of the Organic Law 10/19-5 - LOLS-) are the only ones who have recognized the right to access certain information to the extent that it constitutes the essential instrument for them to be able to develop the functions of representation, defense, surveillance 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.

That being the case, the Department of Education cannot be blamed for the reported conduct consisting of the improper communication of people's electronic addresses

employees of the Department (with email @xtec), nor is there any indication of possible leaks or illicit uses by the Department.

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

As has been advanced, in the context of this prior information PINDO has informed that the corporate email addresses - including that of the person making the complaint - to which they went send the controversial emails, they came from the CGT Union and that it was this entity that - according to them - he would have sent them through his 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.

This is why, in accordance with the provisions of 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 competences of the other administrations, it is considered appropriate to transfer these previous actions 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 since during the actions carried out in the framework of the previous information it has not been proven that the Department of Education has committed any act that may constitute 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*".

Therefore, I resolve:

1. File the actions of prior information number IP 460/2021, 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.



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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 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 its notification, in accordance with the which provides for 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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,

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