

## File identification

Archive resolution of the previous information no. IP 523/2021, referring to the Town Council of Cerdanyola del Vallès

## Background

1. On 12/27/2021, the Catalan Data Protection Authority received a letter from a person making a complaint against the Guiera Municipal Sports Park (hereinafter, PEM Guiera), managed by the Cerdanyola del Vallès City Council, due to an alleged breach of the regulations on the protection of personal data .

Specifically, the person reporting stated that, on 27/12/2021, when he was preparing to enter the PEM Guiera facilities, the person who held the position of (...) of the center required him, as as a prerequisite for access to the sports center, the exhibition of your Covid-19 Passport. In response to this request, the complainant states that he informed the (...) that in order to access the indoor pool it was not necessary to show the Covid-19 Passport, and reported that " *this (...) he has obtained my personal data without my consent*" and that he would have communicated them to a third person, who reprimanded him for his attitude, in front of other members of the center.

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

2. The Authority opened a preliminary information phase (no. IP 523/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application 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 03/04/2022 , a letter was sent to the person making the complaint to report on whether he was able to show his Covid-19 Passport at the (...) that required him, and to identify, as far as possible, the third person to whom your personal data would have been communicated.

4. On 03/10/2022, the complainant submitted a letter to the Authority in which, with respect to the circumstances of the events reported, he explained that he did not present the Covid-19 Passport when required, given that, in accordance with the PROCICAT Protocol [Catalan Territorial Civil Protection Plan], it was not necessary to access the sports center swimming pools. In this regard, he pointed out that, from the direction of PEM Guiera, the access cards of all users were blocked and that access is only unlocked for those users who showed the Covid-19 certificate, when It required them, " *thereby creating a crossing and linking between the health and personal databases*" . Ultimately, he indicated that the person to whom the (...) communicated his personal data, and who would have reprimanded him for his attitude, is the (...) from the sports center.

5. On 05/24/2022, the City Council of Cerdanyola del Vallès was required to report on the functions attributed to the two people mentioned in the letter of complaint, and to indicate whether, from the PEM Guiera, they were blocked the cards of all the users of the center, and if the unlocking was conditional on the exhibition of the Covid-19 Passport.

6. On 08/06/2022, the Cerdanyola del Vallès City Council responded to the request for information indicated in the previous antecedent, in the following terms:

- That, the " *PEM Guiera is a municipal facility of Cerdanyola del Vallès, with direct management by the City Council (...) responsible for the treatment of the municipal activities carried out there and for the control of access to the facilities lations* ".
- That, " *it is confirmed that the complainant was interviewed as indicated by the (...) of the Centre. The COVID passport on the date of the events was a mandatory requirement for access to gyms and sports centers according to the decision of the Government of the Generalitat of Catalonia from November 2021, a requirement that was ratified by the Superior Court of Justice of Catalonia*".
- That, " *on the date of the events the complainant presented himself at the PEM Guiera, when he was required to have his COVID passport as required by the regulations he did not hand it over and, disregarding the prohibition of access as long as he did not he met the requirements, he accessed the facilities avoiding the access queue, without using his user card that would identify him as a subscriber, avoiding the (...) of the center that would require his COVID passport to unlock the access card. For this reason, the (...) of the center addressed the user to reprimand his action given that it was against the conditions of use of the center and current legislation. The user's card and access remained blocked due to non-compliance with the legal requirements to possess and present a COVID Passport.*"
- That, " *The events reported involve the participation of the following profiles: - Care staff and (...) of the center: with the functions of care for users (...), registration and management of users and other administrative tasks. The user registration and management functions necessarily involve the access and processing of subscriber data, it includes the management of accesses, including the fulfillment of the subscriber's access and behavior requirements. - (...) of the centre: Responsible for the management of the PEM Guiera, which includes the management and interlocution of the subscribers and - especially - ensuring compliance with the legislation at the center and the conditions of use at the centre*".

Ultimately, the City Council confirmed that the cards of all users were blocked; that he unlocked them as they presented the Covid-19 Passport, in compliance with the legal requirements; and that the action affected all the people who use the PEM Guiera facilities. In relation to this, he also explained that the sports center has a single common access control, regardless of the service that the users want to access, and that it does not have independent access controls "that allow the segregation of users". In this regard, he added that the subscriptions to this sports center allowed users to make use of any of the center's services, with no restrictions or subscriptions for specific services.

### **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. As explained in the background, the complainant complained about the fact that, on 12/27/2021, when he was preparing to enter the PEM Guiera facilities, the person who held the position of (...), required him, as a prerequisite for access to the center, to show the Covid-19 Passport. In this regard, he explained that, although he informed the (...) that, in accordance with the legislation in force at the time, it was not necessary to display the said certificate, *"this (...) has obtained my data personal without my consent"* and that he would have communicated them to (...) of the PEM Guiera who, in turn, reprimanded him for his conduct, in front of other users.

### 2.1 About the exhibition of the Covid-19 Passport

As a preliminary matter, it should be noted that the data referring to whether a person has been vaccinated or has recovered from an illness constitute data on their health, in accordance with article 4.15 of Regulation (EU) 2016/679 of the European Parliament and the Council, of April 27, regarding the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD). This precept describes the data relating to health in the following terms:

*"personal data relating to the physical or mental health of a person, including the provision of health care services, which reveal information about their state of health"*.

Having established the above, it should be borne in mind that, the "Covid-19 Passport" tool, which accredits the vaccination status of a person with regard to Covid-19, if the disease has passed or if they have a test negative diagnosis, is regulated in Regulation (EU) 2021/953, of the European Parliament and of the Council, of June 14, 2021, relating to a framework for the issuance, verification and acceptance of Covid-19 certificates, interoperable from vaccination, diagnostic and recovery test (EU digital COVID certificate), and which is implemented with the aim of facilitating free movement during the pandemic situation caused by Covid-19, within the European Union.

This is how things are, the events reported take place in a context of a health crisis in which the health authorities, in accordance with article 3 of Organic Law 3/1986, of April 14, on special measures in matters of public health, they could adopt *"the appropriate measures for the control of the sick, of the people who are or have been in contact with them and of the immediate environment, as well as those that are considered necessary in case of risk of a transmissible nature"*. In similar terms, article 55 of Law 18/2009, of October 22, on public health establishes the power of health authorities to intervene in public and private activities to protect the health of the population and prevent illness

Along the lines of the above, it should be borne in mind that, article 15 of Law 2/2021, of March 29 on urgent prevention, containment and coordination measures to face the health crisis caused by Covid-19, in relation in the facilities for the practice of sports activities and competitions, provides that the competent administrations must ensure compliance with the standards of capacity, disinfection, prevention and conditioning that are established.

Well, for the case that concerns us here, it should be borne in mind that, on 27/12/2021, when the events reported here occurred, Resolution SLT/3787/2021, of 23 December, had been approved, by which public health measures were established to contain the epidemic outbreak of the COVID-19 pandemic in the territory of Catalonia, which will come into force at 00:00 on 12/24/2021. This resolution, in its article 4.5, referring to *"cultural activities, public*

shows, recreational and sports and assemblies of entities " established the following (the emphasis is ours):

"2. (...)

Access by users to the rooms and gymnasiums where physical and/or sports activities are practiced, as well as to the High Performance Center of Sant Cugat, is subject to the conditions established in the section 3.4, headings 1 and 2, of this Resolution .

*If catering services are provided in these facilities and equipment, they must be developed subject to the access conditions established in section 3.4, headings 1 and 2, of this Resolution and the rest of the conditions of exercise of the activity established in section 4.7.*

*The indications of the sectoral plans approved by the Steering Committee of the PROCICAT Action Plan must be complied with, without prejudice to what is established in the last paragraph of section 2 of section 2.1.*

*(...)." "*

The aforementioned precept conditions the access of people using rooms and gymnasiums where sports activities are practiced - such as the PEM Guiera - to the provisions of section 3.4, headings 1 and 2 of the aforementioned Resolution. And, in line with the above, article 3.4, second section, relating to the use of the COVID certificate, foresees the requirement to present the vaccination certificates, diagnostic test or recovery of the Covid-19, in order to access , as users, in " *rooms and gymnasiums where physical and/or sports activities are practiced* " among others. Likewise, article 3.4 specifies that the access requirement consisting in the presentation of any of the aforementioned certificates, to the premises, establishments and planned activities, includes " *closed spaces, which includes indoor spaces and outdoor spaces that are covered and surrounded laterally by more than two walls, walls or facings* ".

In accordance with the above, given that Resolution SLT/3787/2021, of December 23, was fully in force at the time the reported events occurred, the PEM Guiera had the obligation to demand the presentation of the Certificate Covid-19 to people who wanted to access its facilities, including the indoor pool, to the extent that it is an indoor facility of the said sports center. And, on this, it is necessary to bring together the judgment of the Supreme Court of September 14, 2021 (Rec. 5909/2021) which ruled favorably on the proportionality of the measure, consisting in the exhibition of the Covid-19 Certificate , to access certain establishments, in the following terms:

*" Finally, the right to the protection of personal data aims to guarantee the person control over his own data, deciding on the use and destination of them in order to avoid illegal traffic. The owner is given the right to object to its use, without his consent, for purposes other than those that justified its acquisition. So that through the regulation of data protection, the dangers and risks that hang over the storage and indiscriminate use of computer data of any kind are combated.*

*Well, with respect to this fundamental right to data protection, no limitation is appreciated, when what is established, to enter the interior of a certain establishment, is the mere exhibition, that is to say, show or show the documentation to anyone of the three modalities required. (...)" "*

In view of the above, it must be concluded that the treatment object of complaint, which involves the treatment of data of a special category - health data -, is enabled by article 6.1 of the RGPD section c) "it is necessary to the fulfillment of a legal obligation applicable to the person in charge of the treatment ", concurrent with the exceptions provided for in article 9.2 g), which states that the treatment of health data must be necessary " for reasons of an

*essential public interest ” ii) “ it is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health ” of the RGPD.*

Ultimately, the person making the complaint complained about the fact that the PEM Guiera, from the unlocking of the access cards to the center of the users, crossed and linked health data (that the person in question had a COVID passport) with specific natural persons. In this regard, it must be noted that, regardless of the blocking of user cards, this was information that PEM Guiera would also have available to the extent that, on the one hand, the center had implemented access control at the sports center and, on the other hand, that access to the facilities on those dates was conditional on the exhibition of the Covid-19 Passport, by virtue of Resolution SLT/3787/2021. Thus, even if the cards of the users of the center had not been blocked, the entity still had this information, since simply by consulting the log of accesses to the center, the information relating to the users could be obtained who had entered the PEM Guiera and who, therefore, had the Covid-19 Certificate. In line with the above, it should be added that, regarding the people whose access card to the center was blocked, it is not plausible to say that they did not have the certificate in question, given that the card could remain blocked because the user had not tried access the center and not because you do not have the certificate. In these circumstances, to the extent that the information relating to the persons who held the Covid-19 Passport is obtained from data processing which, as has been argued, is lawful, no breach is observed of the data protection regulations.

## 2.2 About the processing of personal data by PEM Guiera staff

The letter of complaint also made it clear that, the person who held the position of (...), apart from requiring the presentation of the Covid-19 Passport to the person making the complaint, had also obtained their personal data, without his consent, and he would have communicated them to the (...) of the center who, in front of third parties, would have reprimanded the person here denouncing his conduct.

In this regard, consulted by this Authority, the reporting person specified that he did not show his Covid-19 Passport to the person (...), and that this information would have been required of him, for the purposes of unlocking his card access to the PEM Guiera facilities. On this, he explained that the sports center proceeded to block the cards of all the users, which only unlocked the cards corresponding to the users who showed the certificate in question, and that thus there was a crossover between "health databases and personal".

For its part, the reported entity has argued that the person reporting here disregarded the ban on access to the center, in breach of current regulations, and accessed the facilities, without showing the Covid-19 Certificate. For this reason, they pointed out that the (...) of the center - in charge of managing access control - communicated to the (...) of the PEM Guiera the incident that occurred to the effect that this, in the exercise of their functions, guarantee respect for current legislation. In these circumstances, they recognize that the (...) reprimanded the person here denouncing his action, given that "*it was against the conditions of use of the center and current legislation*".

Having established the above, it should be noted that, in response to this Authority's request for information, the Cerdanyola del Vallès City Council has set out in detail the circumstances in which the events reported here occurred, and has indicated that, both the person who was in the (...) of the center, and the (...) of the PEM Guiera, acted in the exercise of their functions, and in compliance with the legislation in force at that time.

In view of these circumstances, it must be concluded that the processing of the complainant's data, carried out in the context of a health crisis, conformed to the provisions of Resolution SLT/3787/2021, of 23 of December; and, he responded to the set of tasks attributed to the person (...), of access control to the sports center, and to the (...) of the center related to the measures to prevent contagion due to Covid-19. In line with the above, it is worth saying that, apart from the statements of the person reporting, there is no other element that corroborates that, the (...) of the sports center disseminated personal data from here denouncing third parties, who were at PEM Guiera at the time of the incident.

It is for all of the above that this Authority believes that the treatment subject to analysis does not violate the data protection regulations, which is why the present actions are archived.

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 been addressed in this resolution, any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

Article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(... ) *no charges will be drawn up and the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. This resolution will be notified to the interested parties*". And article 20.1) of the same Decree determines that the dismissal proceeds: " a) *When the facts do not constitute an administrative infraction;*".

Therefore, I resolve:

1. Archive the actions of prior information number IP 523/2021, relating to the Town Council of Cerdanyola del Vallès.
2. Notify this resolution to the City Council of Cerdanyola del Vallès and to the person making the complaint.
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,