

File identification

Archive resolution of the previous information no. IP 97/2022, referring to the Autonomous University of Barcelona

Background

1. 03/13/2022 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Autonomous University of Barcelona, due to an alleged breach of the regulations on protection of personal data .

First of all, the complainant stated that on 03/03/2022 he received an email sent from the address "<(...) > *in the name of General Secretary* <(...) > " to the his UAB student email address, through which he was informed of the celebration of the International Working Women's Day Institutional Act. The email sent by the UAB was also addressed to the email addresses specified below: "(...)". The complainant adds that, given that in recent months the UAB has sent him several emails unrelated to his degree studies, in response to the said email, he sent an email to <*General Secretary; (...)* > in order to communicate that he did not want to receive any more e-mails " *of this type*". He then points out that, after sending the reference email, he received different messages, sent by other students and members of the UAB, commenting on the content of the message he sent, and adds that different *tweets were also published* making reference to your email. In this sense, the letter of complaint points out that a computer and/or human failure of the UAB allowed the email sent to the aforementioned email addresses to reach not only the Secretary General of the reported entity , but also to members of the university community, thus affecting their privacy and honor.

The reporting person provided various documentation in order to substantiate the facts reported. Among other documents, he attached the email sent by the General Secretary of the UAB on 03/03/2022 with the subject "*Institutional act of the International Day of Working Women*" , the email he himself addressed in response to the said e-mail, as well as the e-mails the complainant received, from other members of the UAB university community.

2. The Authority opened a preliminary information phase (no. IP 97/2022), 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 03/23/2022 the reported entity was required to report, among other issues, on the identity of the recipients of the message that the General Secretariat of the UAB sent in date 03/03/2022 and which had as its subject "Institutional Act of the International Day of Working Women", which reported on the legal basis that legitimized the sending of the said e-mail to the recipients, and on the identity of the people who received the email sent by the complainant, in response to the aforementioned email from the UAB.

4. On 01/04/2022, the reported entity responded to the aforementioned request through a letter in which it stated the following:

- " *The Universitat Autònoma de Barcelona uses the distribution and dissemination lists to send information to the university community about activities and institutional acts related to the mission and purposes of the institution. The sending of information on institutional acts of the UAB is a processing of personal data based on the fulfillment of a mission in the public interest or in the exercise of public powers (art. 6.1 e RGPD). The object of the institutional act is framed in the obligations imposed on public administrations in matters of equality between women and men (...) this could even protect the processing of personal data that involves the dissemination of information about the act, in compliance with a legal obligation imposed on the data controller (art. 6.1.c RGPD). Email addresses with the format @listes.uab.cat are blind email addresses, so that the recipients of the information cannot know the identity of the recipients under any circumstances.*
- *Emails with institutional information are sent to the entire university community: academic staff, administration and services staff and students.*

The UAB letter also points out that the reference distribution lists (...) included the addresses of 5,376 administrative and service staff members, 11,074 addresses of teaching and research staff, 47,360 addresses of undergraduate students, master's and doctorate, both from own and affiliated centres, 616 addresses of teaching staff in training, 340 addresses of teaching and research staff and the general secretary.

Finally, the UAB highlights the fact that, in relation to the e-mail sent by the complainant, it would have been received by a total of 2,943 students at the center, given that the complainant used the "Reply to all" option. And he adds that, given that the electronic addresses in the @listes@uab.cat format are blind lists, there was no possibility of finding out the details of the electronic addresses of the recipients of the email sent by the UAB.

5. On 04/12/2022 and still within the framework of this preliminary information phase, this Authority made a second request to the reported entity in order to obtain more information, and, in this sense, it was required the UAB to, among other issues, report on whether the email address (...) is a distribution list, and on which people would have been the recipients of the reply email from the now complainant if instead of clicking the option "Reply to all" had clicked "Reply", addressing only the sender of the email.

6. On 04/22/2022, the UAB responded to the aforementioned request through a letter in which it stated the following:

- That " *the electronic address (...) is an address linked to the distribution list (...) that is used for notifications of interest to the UAB student community. The address includes about 47,260 students. From the IT service of the UAB they confirm that Mr. (...) was included in this list until he was recently deregistered at his own request*".
- That " *if the interested person had addressed the reply solely to the sender, it would have reached the General Secretariat of the University*".

The UAB's response is accompanied by several screenshots that allow you to view the information that is provided to the university's students at the time of registration. Among the information provided to students, it is noted that the data collected " *are processed for the*

purpose of managing registration, the academic record and communications between the UAB and the students" (the emphasis is ours).

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 antecedents, it is necessary to analyze the reported events that are the subject of this archive resolution and, in particular, if the fact that the email, sent by the now complainant, on 03/03/2022, the subject of which referred to "RE: Institutional Act of the International Working Women's Day", reaching different members of the university community of the UAB, constitutes an infringement of the personal data protection regulations attributable to an error human or IT of the UAB, as claimed by the complainant.

First of all, it should be noted that Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), establishes that all processing of personal data it must be lawful, loyal and transparent (art. 5.1.a).

In this respect, article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based and, specifically, section e) of the precept provides that the processing will be lawful if " *it is necessary to fulfill a mission carried out in the public interest or in the exercise of powers conferred on the data controller*". Also, article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.e) must be established by the Law of the European Union or by the law of the Member States that applies to the person in charge of the treatment. The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 CE), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

Well, as a preliminary question, it is necessary to determine what is the regulatory framework that protected the UAB from sending the email, the subject of which referred to the celebration of a day to commemorate the International Day of Working Women, to the now complainant.

The accused entity has alleged to have sent the information relating to the celebration of the XVII Institutional Day in commemoration of International Working Women's Day, scheduled for March 10, 2022 at 12 noon in the Rectorate's conference room, in fulfillment of a public interest mission (article 6.1 e RGPD).

In this regard, it is necessary to take into account the article of Organic Law 3/2007, of March 22, for the effective equality of women and men, which establishes the principles of action of the public authorities, and which regulates the rights and duties of natural and legal persons, both public and private, and foresees measures aimed at eliminating and correcting in the

public and private sectors any form of discrimination based on sex. Therefore, in accordance with what is established in article 24, the educational administrations, within the scope of their respective competences, must develop, among other actions, "*the establishment of educational measures aimed at the recognition and the teaching of the role of women in History*". Also in this sense, article 25 of the Law, relating to equality in the field of higher education, provides that, "*public administrations, in the exercise of their respective powers, must promote the teaching and research on the meaning and scope of equality between women and men*".

For its part, the eighth additional provision of Law 1/2003, of 19 February, on universities in Catalonia provides:

"Universities must promote actions to achieve equal opportunities between men and women in all university areas".

From the above it can be inferred that the email sent by the accused entity, based on the forecasts indicated, would constitute an institutional action with the aim of integrating the principle of equality between women and men, and that it would find fits in the fulfillment of a mission carried out in the public interest (article 6.1.e RGPD).

Having made this precision, it should be noted that the accused entity sent the email to the complainant, as well as to the following distribution lists: (...). Well, during the preliminary information phase, the accused entity has communicated to this Authority that the sending of the said e-mail was carried out, without using the option of the hidden copy, but through blind electronic addresses, in order to comply with the provisions of the data protection regulations, and adds that the recipients were all members of the university community.

In this regard, the letter of complaint attributes to a human and/or computer failure of the UAB, the fact that the email sent by the complainant on 03/03/2022, in response to the email sent by the UAB, reaching different members of the university community. However, the truth is that it was the complainant himself who, when replying to the UAB email, clicked on the "reply to all" option, which meant that his reply email was sent to other people, unrelated to the general secretary of the UAB. It should be noted that, since the UAB did not use the blind copy option when it sent the said email, the reporting person was able to see that this email had been addressed to several distribution lists, and therefore, could know or foresee that if he used the "reply to all" option, the reply would reach not only the sender, but all the members of the various distribution lists that were also listed as recipients.

Having reached this point, it must be taken into account that the sanctioning administrative procedure is particularly guarantor because of the consequences that can be derived from it. That is why it is necessary, for its initiation, the existence of evidentiary elements or sufficient rational indications that allow the commission of an infringement to be imputed, elements that are not present in the case under examination.

It cannot be ignored that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, the full virtuality of the principles of presumption of innocence *in dubio pro reo* being clear scope of sanctioning authority, which shifts the burden of proving the facts and their authorship to the accuser. In short, the presumption of innocence must always rule without exception in the penal system and must be respected in the imposition of any penalty.

In accordance with the above, it is considered that, in this case, the fact that the reporting person sent a response email, which was received by third parties unrelated to its sender, the Secretary General of the reported entity, it is attributable to their actions, and not to a human or computer error of the reported entity that has led to a violation of data protection regulations.

3. In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information, in relation to the facts reported, the commission of a violation provided for in the regulations on data protection attributable to the reported entity, it is necessary to agree on its archive.

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. Archive the previous information actions number IP 97/2022, relating to the Autonomous University of Barcelona.
2. Notify the Universitat Autònoma de Barcelona and the complainant of this resolution.
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,