File identification

Archive resolution of previous information no. IP 123/2022, referring to Aigües de Girona Salt and Sarrià de Ter, SA.

Background

1. On 02/04/2022, the Catalan Data Protection Authority received a letter of complaint against the company Aigües de Girona Salt i Sarrià de Ter SA (AGISSA), which offers drinking water supply services , due to an alleged breach of the regulations on the protection of personal data.

The complainant explained that during two different periods he had leased a property of his property, first to Mr. To and, subsequently, to Mrs. B. This property is associated with drinking water supply policy no. (...). Regarding this, he reports that AGISSA sent him several e-mails that contained data on those who had been his tenants, specifically, the amounts of the supply that each of these people had not satisfied. In order to substantiate the facts reported, he provided, among other things, documentation:

1.1. In relation to the tenant Mr. To:

- Email sent on 03/07/2020 from AGISSA to the email address of the person reporting. The message header contained the following reference: “Dear Mr. A.” The body of the email reported that, in relation to policy no. (...), "his bank" [which he does not identify] had returned the amount corresponding to an invoice for the water supply of the aforementioned property. Likewise, it also reported the number and amount of the invoice.

1.2. In relation to the tenant Ms. B:

- Emails exchanged on 06/02/2021, 15/03/2021, 16/03/2021 and 06/05/2021, between AGISSA and the complainant. In these messages, the reporting person explained to the company his desire to know the amounts that Ms. B owed AGISSA, referring to the period in which it leased the property of its property, in order to be able to satisfy them.

- Emails sent from AGISSA to the personal email address of the reporting person on 17/05/2021, 16/06/2021, 15/07/2021, 06/08/2021, 15/11/2021, 13 /12/2021, 12/01/2022, 15/02/2022 and 14/03/2022. The content of the messages was intended to inform the reporting person of the amount of several unpaid invoices of Ms. B. Regarding this, the complainant stated that the invoices attached to the e-mails "are not in my name and are in the name of the tenant."

- The invoices that were attached to the aforementioned emails, issued on 02/03/2021, 02/12/2020 and 03/09/2020 in the name of Mrs. B.

- Emails exchanged between the reporting person and AGISSA on the days 06/05/2021 and 07/05/2021. In one of these emails, the reported entity sent the reporting person a document (hereinafter, DOC 1). In this document, a series of unpaid invoices are related (issued between 03/11/2016 and 04/05/2020, all linked to policy no. (...), and it contains the signature of Mrs. B and the recognition of this debt with the water company.

2. The Authority opened a preliminary information phase (no. IP 123/2022), 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 (LPAC), to determine whether the facts were capable of initiating a procedure punisher

3. In this information phase, on 06/05/2022 the reported entity was required to report on the legal basis that would have legitimized the sending of the e-mails to the reporting person indicated in precedent 1, which would contain the data of third parties (Mr. A and Mrs. B).

4. On 05/19/2022, the reported entity responded to the aforementioned request with a letter stating the following:

- That the complainant contracted with AGISSA policy no. (...), corresponding to the water supply of the property located in (...). The policy was registered on 05/10/2006 in the name of the complainant, and remained so until 07/07/2020. That on 07/08/2020 ownership of the policy passed to Ms. B, until 11/05/2021, the date on which the complainant became the holder again.

- In relation to the email that AGISSA sent to the complainant on 03/07/2020, with data from Mr. To:

  - That, in January 2016, the complainant rented the flat to Mr. A. This person was never the holder of policy no. (...), that is to say, during the period in which this person rented the flat of the complainant, the policy continued in the latter's name.

  - That the legitimacy of the shipment "is found in the actual contractual relationship established between the [complaining person] and AGISSA, given that the person holding the policy was the [complaining person] and, as the owner of the receipts, she was the 'obliged before AGISSA to pay for the consumption made in his home, even though this consumption was made by his tenant Mr. A." The message stated the name of the lessee, because the same person who complained had sent AGISSA the rental contract that he had formalized with this gentleman, and indicated the bank account number where it should be make the payment. AGISSA added that "regardless of the contractual obligations established between Ms. [the complainant] and Mr. In the rental contract, the person obliged before AGISSA to pay the consumption of this home was the complainant."

  - That the complainant already had the data of Mr. A, since she was the one who communicated them to AGISSA.

- In relation to the emails that contained information relating to Ms. B:

  - That, on 01/05/2019, the complainant signed a rental contract with the Mrs. B. That, on 07/07/2020, the complainant and the lessee asked AGISSA to change the name of policy no. (...), in favor of Ms. B. The name change was formalized on 07/08/2020.

  - That, on 03/23/2021, the complainant sent an email to AGISSA in which she communicated that Mrs. B "had left the flat" and was asking for the invoice to be returned to his name. In relation to these events, AGISSA added that, on 06/05/2021, the complainant communicated that "he needed to know the outstanding debt left by Ms. B to put the matter in the hands of his lawyer, to make the necessary claim for breach of the rental contract."

  - That, on 06/05/2021, AGISSA sent the complainant the requested information, so that he could send it to his lawyer, as he had requested. Likewise, on 07/05/2021 the entity sent DOC 1 signed by Ms. B, through which he acknowledged the debt to the company.

  - That, during the period between 07/08/2020 and 05/11/2021, policy no. (...) remained in the name of Mrs. B. On this last date, AGISSA changed the ownership of the aforementioned policy in favor of the complainant, as he had requested.

  - That, in relation to the e-mails sent to the reporting person, referring to Mrs. B's debt, "the legitimacy is found in the reporting person's own contractual relationship with AGISSA, and in the [reporting person's] legitimate interest]." The complainant had a legitimate interest in obtaining the aforementioned information, to be able to claim judicially against Ms. B for breach of the rental agreement, in which he was obliged to pay the supplies and fees generated while he lived in the rented flat.

  - Qu , AGISSA carried out a weighting judgment between the rights affected "and understood that the right of the [complaining person] to obtain this information that was relevant to him to be able to make his claim and escape from the damages that these prevailed prevailed breaches of Ms. B were causing him."

The reported entity attached various documentation to the letter, including the lease signed by the reporting person with Mr. To and with Ms. B.

5. On 08/05/2023, and still within the framework of this prior information phase, the Authority again required AGISSA to inform it about what the consequences would have been for the [reporting person], if had not satisfied the financial amounts owed by Mrs. B, in relation to policy no. (...).

Likewise, the entity was also required to point out the reasons why, on 07/05/2021, it sent the person denouncing the DOC 1 through which Ms. B recognized a debt linked to the policy (...), considering that, on the one hand, the information contained in the document refers to amounts pending payment prior to the month of July 2020, when Mrs. B was not yet the holder of the policy and, on the other hand, it includes information referring to the years 2016 to 2018, when Mrs. B was not even a tenant of the flat.

6. On 05/22/2023, AGISSA responded to the request in the following terms:

- That, until 07/08/2020, the reporting person "was the owner of the policy and responsible for the accumulated debt" until that time.

- That in order to make a name change in favor of Mrs. B (tenant since the year 2019) it was necessary for the owner and owner of the property to sign the Transfer of Rights and Obligations document, and for the tenant to sign a document in which she undertook to settle the invoices left pending by the subscriber [complaining person].

- That DOC 1 "incorporates the invoices from 2016, because as indicated in article 17 (Assignment of the contract) of the Municipal Regulations for the supply of potable water, the user who is aware of the payment of the supply may transfer its contract to another user who is going to occupy the same premises under the same existing conditions. The fact that the subscriber [here the complainant] did not comply, given that, as we said previously, she had pending invoices since 2016. In the mentioned article of the Regulation it is also provided that, the service provider will try to expedite as much as possible procedures, looking for the greatest possible comfort for users. That is why, according to this last point of Article 17 of the Regulation, from the user service department, even if a policy has debt, in most cases, just as it was done in this case, if the current subscriber signs a document assigning rights and obligations in favor of the new holder and the latter signs a payment plan for all the outstanding debt, the department accepts the name change (even though that the service provider is not obliged to do so).
  This was the reason why in the payment plan there are invoices from the year 2016, which corresponded to the subscriber [here complainant]."

- That, "the change of ownership of policy no. (...), which was in the name of Mrs. B, to be in the name of the [complaining person] again, was made via email at the request of the [complaining person]. (...) Article 10 of the Service Regulation establishes the rights of the service provider, and in its section a) provides that the Service provider has the right to collect the services provided and the water billed to the user The [complainant], when she asked AGISSA to put the policy back in her name, accepted all the rights and obligations derived from the contract that she was reclaiming, in accordance with article 11 which establishes the user's obligation to satisfy with due punctuality the amount of the billed water service. So much so, that after the [complainant] regained ownership of the policy, she settled the 4 new invoices that were sent to her while she continued to be the owner of the property, because after the invoice dated 02/03 /2022, a new one was made
  change of name in favor of a new owner, and when it was done, the [complainant] had settled all the outstanding debt on the policy."

- That the fact of not settling the invoices for the supply of drinking water means that "Girona City Council will demand from the owner of the building the municipal fees for rubbish and sewerage that are included in these invoices. As usual and after one year has passed since the issuance of the pending invoices, these fees are passed on to the City Council and it is this who, by way of constraint, will be responsible for claiming them from the owner of the property, regardless of who be the holder of the drinking

water supply policy, as happened in the case of the [complainant]. On the part of the service operator, in the case of non-payment of invoices and before the prescription of these, what we do is initiate a judicial claim process through the monitoring procedure of pending invoices, and in case of opposition, the procedure turns into a verbal trial in which the judge ends up deciding. In this case, it was not necessary to reach the judicial claim procedure because the lady [complainant] settled all the outstanding debt of the policy."

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.

2.1. In relation to the sending of the email by AGISSA, dated 03/07/2020, which contained information about Mr. A.

On 01/31/2016, the complainant signed a contract with Mr. A for the lease of a property he owns, located in Girona. Regarding this, he denounced the fact that the company that provided the drinking water supply service – which is the entity denounced (AGISSA) – sent him an email on 03/07/2020, the addressee of which was Mr. A. Specifically, the message header contained the following reference: "Dear [Mr. A]." The body of the e-mail reported that his bank (which was not identified in this e-mail) had returned the amount corresponding to an invoice issued, linked to policy no. (...), within the framework of the water supply service.

For its part, AGISSA has acknowledged that it sent the aforementioned message to the complainant's email address. And, with respect to this, he stated that the complainant was the holder of the rights and obligations derived from policy no. (...), from 05/10/2006 to 07/07/2020 (previous 4th); therefore including the period of non-payment referred to in the disputed email. Thus, despite the fact that Mr. A, the person responsible for the payment of the water supplies before AGISSA was the reporting person, as she was the holder of the policy. And it justified the reference made in the email to Mr. A in the fact that it was the reporting person himself who provided this information, so that the invoices were debited to his (tenant's) bank account; Specifically, the complainant sent AGISSA the copy of the lease signed with Mr. A, as well as your current account number. In order to certify these facts, AGISSA provided copies of the aforementioned documents.

Despite the fact that the complainant considers that he was not the recipient of the email sent by AGISSA, the truth is that the purpose of the message was to report an incident related to the payment of an invoice linked to policy no. (...), of which he was the holder. And, in this sense, the aforementioned message referred to the lessee, given that Mr. A was the holder of the bank account on which the collection had been attempted.

In these terms, it can be ruled out that the aforementioned e-mail was sent to the complainant by mistake, as indicated in the complaint letter. It must be shown that in the controversial message, no information related to third parties, in this case, Mr. A.

- The name and surname of this third person were already known to the person making the complaint, as he was his tenant, and he also knew that he was directly responsible for the payment of the bills, by direct debit to a current account that the same person complainant had previously facilitated the reported entity.

- With regard to the amounts of the charges that had been returned by the bank, it should be noted that the complainant, as the holder of the policy, was obliged to pay the invoices (therefore also the one corresponding to the charge that had been returned your tenant).

In accordance with the above, it must be concluded that the sending of the email dated 03/07/2020 did not involve any action that contravened the data protection regulations.

2.2. In relation to the sending of emails by AGISSA that contained information relating to Ms. B.

On 01/05/2019, the complainant signed a contract with Mrs. B, which had as its object the lease of a property it owns, located in Girona. On 07/07/2020, the reporting person transferred the rights and obligations of the drinking water supply policy no. (...), contracted with AGISSA and associated with that property, in favor of Ms. B.

Regarding this, the complainant complained that AGISSA had communicated to him information about Ms. B and that he had thus violated the regulations for the protection of personal data. Specifically, that he had provided copies of three invoices "in the name of the tenant", as well as a document "according to which the tenant acknowledged and assumed the debt" (DOC 1).

It is stated in the proceedings that the same complainant sent AGISSA the copy of the rental contract signed with Mrs. B. The reported entity has sent this information to the Authority, in order to demonstrate that, in accordance with clause 18a of the contract, Ms. B obliged the complainant to assume the amounts derived from the water supply and the sewerage and garbage fees associated with the leased property. In literal terms, the aforementioned clause provided the following: "all the costs of services provided by the property that are individualized through meters, are for the account and charge of the lessees, even if the receipts are in the name of the lessor, as well as sewerage and garbage fees (...)".

It is also stated in the actions that the reporting person, on 03/23/2021, informed the reported entity that Mrs. B "had left the flat" and asked to return to being the holder of the aforementioned policy. On 06/05/2021, the complainant again insisted on this point and informed AGISSA that "she needed to know the outstanding debt left by Ms. B to put the matter in the hands of his lawyer, to make the necessary claim (...)". In response to this request, AGISSA provided the complainant with the requested information, which was included in several documents: DOC 1 (which includes unpaid invoices prior to

07/08/2020 - the date on which ownership of the policy of the person reporting to the tenant - because Ms.
B, when on that date he became the owner of the policy, he undertook to take charge of the unpaid invoices left by the previous owner - the complainant -) and the invoices issued on 02/03/ 2021, 02/12/2020 and 03/09/2020 (which correspond to the period in which Mrs. B was the holder of policy no. (...).

At this point, it should be mentioned that article 17 of the Regulation of the municipal drinking water supply and distribution system of Girona, approved on 09/10/2007, in force at the time of the events reported, provides as general rule that the user of the municipal drinking water supply service cannot transfer his rights to third parties, nor can he, therefore, exonerate himself from his responsibilities. However, the aforementioned article includes the following exception:

> "(...) the user who is up to date with the payment of the supply may transfer his contract to another user who is going to occupy the same premises under the same existing conditions. (...)"

In relation to the above, the reported entity argued that the transmission of the information relating to the debt of Ms. B was necessary so that the complainant could satisfy the outstanding debts to recover ownership of the policy and, also, satisfy his legitimate interest in judicially claiming the amounts due, related to the water supply and the associated fees. AGISSA also stated that, if Ms. B did not take over the debt, the Girona City Council could also demand from the complainant - as owner of the leased property - the garbage and sewerage fees, relating to the period in which Ms. B was the lessee of the property.
The amount of these fees was detailed in the aforementioned invoices. Likewise, the entity stated that the DOC 1 that was sent to the complainant included the debts associated with the policy.

In relation to the above, AGISSA informed the Authority that the information was delivered after weighing the rights affected and "understood that the right of [the reporting person] prevailed to obtain the information that was relevant to him for the purposes to be able to make your claim and recover from the damages that these breaches of Ms. B were causing him."

The RGPD provides that any processing of personal data must be lawful (article 5.1. *a*) and, in relation to this, establishes a system of legitimizing the processing of data which is based on the need for one of the legal bases to apply established in its article 6.1. For what is of interest here, section *f* of article 6 establishes that a treatment of personal data is lawful when it is necessary "f) for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that 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 interested party is a child."

It is appropriate to mention Opinion CNS 24/2021 of this Authority which, in relation to the weighting required by article 6.1 *f* of the RGPD, establishes the following:

> "In the weighting or weighing test required by the application of Article 6.1.f) the criteria defined by the Article 29 Working Group (WG 29), which analyzed the

application of the legitimate interest in the "Opinion 06/2014 on the concept of legitimate interest of the data controller under Article 7 of Directive 96/46/EC". These criteria, which were already applicable based on article 7 of the Directive, can be transferred to the regulation contained in article 6.1.f) of the RGPD to determine whether, in view of the specific circumstances of the case (the rights and interests involved, the reasonable expectations that those affected may have in their relationship with the person in charge and the safeguards offered by the person in charge), it is appropriate or not to resort to this legal basis.
To carry out the weighting of interests and determine whether there is a legitimate interest that can justify the processing of the data, the legitimate interest of the person in charge or of third parties must be taken into consideration; the impact of the treatment on the data subjects; and finally the additional guarantees that apply to the treatments."

For its part, recital 47 of the RGPD, in relation to the legal basis provided for in section *f* of article 6, provides that "In any case, the existence of a legitimate interest would require a meticulous evaluation, including if an interested party can reasonably foresee, at the time and in the context of the collection of personal data, that the treatment for this purpose may occur. (...)."

This Authority cannot ignore the need for the reporting person to obtain the necessary evidence to be able to exercise their right to effective judicial protection. As stated throughout this resolution, the reporting person notified AGISSA of his intention to obtain the information in order to take legal action against Mrs. B, for the breach of the signed rental contract. This interest is reinforced by the fact that, if the complainant did not settle the water supply bills associated with policy no. (...), the Girona City Council could claim – and, in fact, did – the amount related to the municipal fees for rubbish and sewerage that were detailed in these invoices (precedent 6th).

Likewise, it is also necessary to point out the interest of the owner of the property in continuing to be the holder of the policy that she registered on 05/10/2006, and which was associated with the meters installed in her housing

In these terms, it does not seem that the right to the protection of the debtor's data should prevail, given that the reporting person needed this information to take legal action against him and recover ownership of the policy.

In accordance with the above, it must be concluded that the processing of personal data carried out by AGISSA, when it sent the aforementioned information to the complainant, was protected by the legal basis provided for in article 6.1 f *of* the 'RGPD.

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

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, no act has been proven that could constitute any of the infractions provided for in the legislation on data protection, it is necessary to agree on its archiving.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 123/2022, relating to Aigües de Girona Salt i Sarrià de Ter, SA, given that during the actions carried out in the framework of the prior information it has not been established that there has been produced any act that could be constitutive of any of the infractions provided for in the legislation on data protection.

2. Notify this resolution to Aigües de Girona Salt i Sarrià de Ter, SA and communicate it to the reporting person.

3. Order that the resolution be published 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 articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, with discretion, the reported entity can file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification , in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with 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