

RESOLUTION of sanctioning procedure no. PS 2/2018, referring to the Rovira i Virgili University.

Background

1.- On 29/11/2016, the Catalan Data Protection Authority received a letter by which a complaint was made by a person against the Universitat Rovira i Virgili (hereafter, URV), on the grounds of an alleged breach of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD). Specifically, the complainant - a student at the URV - complained about the publication in the Virtual Training Environment (Moodle) of the grades of all the students in four groups of the subject "COURSE CITIZENSHIP" (URL address 2016- 2017 <https://moodle.urv.cat/moodle/course/view.php?id=60106>) of the fact that the names and surnames of each of the students were stated in said lists together with their full ID number. The complainant provided a copy of the four lists mentioned, all of them from the subject "Citizenship" and academic year 2016-17, with the following codes: 16224106; 16914108 (Group: Grp Magistral 1M -16204106-); and two more listings with different data but with the same code, 16204106.

2.- The Authority opened a preliminary information phase (IP 225/2016), in accordance with article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the 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, in order to determine whether the facts were likely to motivate the initiation of a procedure sanctioning body, the identification of the person or persons who could be responsible and the relevant circumstances concurrent with each other.

As part of this information phase, by means of an official document dated 12/16/2016, the URV was required to report on the system it usually uses to publish student grades, as well as the personal data included therein, and the circumstances in which the lists referred to in the complaint would have been published, and the reason why the names and surnames of the students along with the full ID number.

The URV responded to the previous request through a letter dated 01/02/2017 which stated, among others, the following: - That the usual way to publish the grades is the Moodle virtual platform, in which teachers can choose to publish the grade in a subject grade grid, where the student can access and see only their grades. On the other hand, the teacher can also choose to publish in the subject's virtual space a file with the list of all the students' grades to which only students enrolled in the subject have access.

- That this list of qualifications "is prepared by the teacher manually (...) by extracting the data from the academic file management application (...) From the list, the teacher manually customizes the document to turn it into a list of notes. As of today from

the university has not established any specific guidelines on what personal data should be used to publish the listings. This possibility of publishing the list of the grades of all the students in a subject is allowed to the University by application of Additional Provision 21a of Organic Law 4/2007, of April 12, which modifies the Law organic 6/2001, of December 21, of universities (LOU)). In the 3rd section it is expressly provided that the consent of the students will not be necessary for the publication of the results of the tests related to the evaluation of their knowledge and skills, nor of the acts that are necessary for the appropriate implementation and follow-up of this evaluation. For this reason, and unless there is a reasoned opinion to the contrary, the University has interpreted this way of publishing grades in the space of the specific subject in which only students who have enrolled can access , is correct."

- That in relation to the events that are the subject of the complaint, the professor of the subject "Citizenship" was consulted about the way in which he published them, who informed that "since it was a subject shared in different modules , was published in the two commonly used options that Moodle allows, that is to say, both in the personal grid (e.g. annex I) and in the space of the specific subject."

- That respects the reasons why the lists of students with first and last names were published along with the ID, "it is necessary to inform that it is an error in the publication of the list of grades (...) in the creation of the list , the teacher did not remove any of the columns, or DNI or first and last name. For this reason, having detected this error following the communication you sent us, a data protection incident has been opened" and the URV detailed a series of measures that would have been adopted following the incident, such as ensuring that it was no longer possible to access the controversial lists, and to indicate to the teaching staff which "data can be published (names and surnames or DNI or, if possible, the student's file number) for the purposes of notifying grades" .

4.- On 01/26/2018 the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the URV, for an alleged serious infringement provided for in article 44.3.c) in relation to the article 4.1, both of the LOPD. Likewise, he appointed the employee of the Catalan Data Protection Authority, Mrs. (...). This initiation agreement was notified to the imputed entity on 01/26/2018.

In the initiation agreement, the accused entity was granted a term of ten business days from the day following the notification to formulate allegations and propose the practice of evidence that it considered appropriate for the defense of its interests .

5.- On 16/02/2018 the URV presented a letter in which it referred to the statements it had made in the previous information phase, in which responsibility was admitted for the inclusion of the students' ID - that was qualified as "a mistake"-; and it was reported that corrective measures had already been taken.

Of all the actions taken in this procedure, the facts that are detailed below as proven facts are considered proven.

Proven Facts

At the end of November 2016 and for an indeterminate period of time, the URV published on the Moodle learning platform, and more specifically in the virtual space of the subject "Citizenship", different files containing the lists of grades of all students enrolled in this subject, which was shared in different modules. In these lists, for student identification purposes, their first and last names and full ID were included.

Fundamentals of Law

1.- The provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC), apply to this procedure; as well as in Decree 278/1993, of November 9, on the sanctioning procedure for application to the areas of competence of the Generalitat, as provided for in DT 2ª of Law 32/2010, of October 1, of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2.- In accordance with article 85.1 of the LPAC, and in accordance with what was indicated in the agreement initiating the present procedure, the present resolution should be issued without the need to formulate the proposed resolution beforehand, since the recognition by the imputed entity of its responsibility, implies the termination of the procedure.

3.- In relation to the fact described in the proven facts section, it is necessary to refer to the principle of data quality, in its aspect of the principle of proportionality. On the principle of quality, art. 4.1 of the LOPD determines the following: "1. Personal data can only be collected to be processed, as well as subjected to this processing, when they are adequate, relevant and not excessive in relation to the scope and the determined, explicit and legitimate purposes for which they are have obtained." Therefore, this precept enshrines the principle of proportionality, both quantitatively and qualitatively, in the treatment of data; that is to say, it clearly states that only pertinent, adequate and not excessive data will be treated in accordance with the purpose that justifies this treatment.

In this respect, during the processing of this procedure it has been proven that the URV carried out the data processing described in the section on proven facts, consisting of the publication of personal data that are considered excessive, due to the fact that once the students were identified with their first and last names in the published lists of qualifications, it was clearly superfluous to also add the complete DNI. Indeed, to the extent that the aforementioned publication constitutes data processing, this processing must be subject to the principles and guarantees provided for in the LOPD, and among these principles we find the principle of data quality, contained in art. 4.1 of the LOPD previously transcribed.

Well, the violation of this principle of proportionality is constitutive of the serious infraction provided for in article 44.3.c) of the LOPD, which typifies as such: "Processing personal data or using them subsequently with the collusion of principles and the guarantees established in article 4 of this Law and the provisions that deploy it, except when it constitutes a very serious infringement".

In this regard, it is worth noting that the legitimacy of universities to publish personal data of their students for the purpose of publishing grades, treatment for which the consent of those affected is certainly not required, is not questioned here by a rule with the rank of law, specifically DA 21^a of LO 4/2007, of 12/04I, which modifies LO 6/2001, of 21/12, on universities, which expressly establishes that " the consent of the students is not necessary for the publication of the results of the tests related to the evaluation of their knowledge and skills, nor of the acts that are necessary for the adequate performance and monitoring of the evaluation". What is imputed here, as explained above, is the publication of excessive personal data, given that for the purposes of student identification, the name and surname were sufficient, and only if the coincidence between two or more students (a circumstance that did not occur in the present case), it would be justified to also include a second identifying element such as the DNI, but not in full but only with the last 4 digits. This is the criterion of this Authority, reiterated in various resolutions published on the institutional website (www.apd.cat), section resolutions.

4.- Article 21 of Law 32/2010, in line with article 46 of the LOPD, provides that when the infractions are committed by a public administration, the resolution declaring the commission of an infraction must establish the measures to be adopted so that the effects of the infringement cease or are corrected. However, it is considered that in the case at hand it is not necessary to require corrective measures to correct the effects of the infringement, since the URV stated from the outset that it was a one-off error, and in any case he also added that "corrective measures have been adopted" in order to avoid repeating the same type of error. In this regard, the URV states that "a section has been added to article 4 of the URV Academic Regulations with the following wording: When publishing the results of the tests related to the evaluation of knowledge and competences and of the acts necessary for the proper performance and follow-up of the evaluation, in accordance with the principles of privacy of personal data, only an identifying data can be published (names and surnames, DNI, file code or any other identifying data known to the students)."

Regarding this, if the URV itself has attributed to each student a specific identification data for the university field, it would seem appropriate to use this data for the identification of students in the university context, as would be the case for the publication of lists of qualifications . In any case, with the measures accredited by the URV tending to avoid the publication of the complete DNI as an addition to other personal identifying data, the main purpose pursued with the exercise of inspection and sanctioning powers would have been achieved is entrusted with this Authority, which is none other than that of ensuring compliance with the regulations for the protection of personal data, thus preventing this fundamental right from being violated again.

Making use of the powers conferred on me by article 15 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Government of Catalonia,

RESOLVED

First.- Declare that the Rovira i Virgili University has committed a serious infraction provided for in article 44.3.c) in relation to article 4.1, both of the LOPD, without it being necessary to require corrective measures to correct the effects of the infringement in accordance with what has been set forth in the 4th legal basis.

Second.- Notify this resolution to the Rovira i Virgili University.

Third.- Communicate this resolution to the Ombudsman, by means of its literal transfer, as specified in the 3rd Agreement of the Collaboration Agreement between the Ombudsman of Catalonia and the Catalan Data Protection Agency dated 23 /06/2006.

Fourth.- Order the publication of the Resolution on the Authority's website (www.apd.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, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, on an optional basis, 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 provisions of article 123 et seq. of the LPAC

or you can file an administrative appeal directly before the Courts of Administrative Disputes, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction. If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended under the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity may file any other appeal it deems appropriate for the defense of its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)