

File identification Resolution
of sanctioning procedure no. PS 17/2018, referring to Palafolls Town Council.

Background

1.- On 06/30/2017, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Palafolls Town Council, on the grounds of an alleged breach of the Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD).

Specifically, the complainant complained that if he entered the names of several people who live in Palafolls in the Google search engine, he would access several documents that contain information about these people, such as the DNI and various information about farms located in the area municipal with which they would be linked as owners. Likewise, the complainant provided two URL addresses through which, as he stated, the said information could be accessed.

2.- The Authority opened a preliminary information phase (no. IP 186/2017), in accordance with 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 (hereafter, LPAC), in order to determine whether the facts were susceptible to motivate the initiation of a sanctioning procedure, 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, on 07/06/2017 and 07/10/2017, the Authority's Inspection Area carried out a series of checks via the Internet, in relation to the facts object of complaint. Thus the following was established:

2.1.- That through the following URL addresses (provided by the reporting person)

[https://www.palafolls.cat/files\(...\)\(...\)](https://www.palafolls.cat/files(...)(...))
(...)

access to individual documents in pdf format:

- "Project for the rezoning of the action unit UA-9 Ciutat Jardí de Sant Genís de Palafolls", relating to the "resulting estates and subzone C award proposal" (from now on, DOC1), which includes a list in which, among other information, the names and surnames of the owners of certain registered estates are recorded.
- "Project for the rezoning of the action unit UA-9 Ciutat Jardí de Sant Genís de Palafolls", relating to the "resulting estates and proposal for awarding the KL subzone" (from now on, DOC2), which includes a list in which, among

of other information, the first and last names of the persons holding certain registered estates are recorded.

2.2.- That when entering the search engine "Google" as a search term "(...) (...) "Palafolls" (one of the names provided by the complainant in his complaint), the following links appear on the results screen

[PDF]9 POLICE A 1 STREET NAME 1 Sup resulting plot U
(...)

PDF]PR UA9 Reparcellation Project Report 15-I-2014 - City Council of ...
[https://www.palafolls.cat/files/\(...\)](https://www.palafolls.cat/files/(...))

By pressing the first link, the document identified in the previous section as DOC 1 was accessed.

By pressing the second link , a 74-page document was automatically downloaded, in pdf format - on the first page of which is the Palafolls Town Council logo - entitled "REPARCELLATION PROJECT - UNIT OF ACTION UA- 9 "URBANIZATION CIUTAT JARDÍ DE SANT GENÍS DE PALAFOLLS", dated December 2013 (from now on, DOC3).

Pages 49 and following of this DOC3 include a list in which, among other information, the first and last names and other data of a plurality of people are recorded. Specifically, it contains the name and surname of the persons called "initial owner" and also of the "awardee", with respect to certain registered estates, as well as the DNI number of the awardee and a variable amount of euros in each case, called "repercussion compensations to the initial owner".

2.3.- That the DOC3 indicated in the previous section can be accessed openly through the Council's electronic headquarters (www.palafolls.cat).

3.- Also during this preliminary information phase, by means of an official letter dated 07/12/2017, the reported entity was required to report on the following issues related to the reported facts :

- Information on the regulations that would enable the publication of the documents referred to above with the inclusion of each and every one of the personal data contained therein.
- In the event that you consider that a rule would enable the publication of the referred documentation, indicate the reasons that would justify the need for this information to still be accessible online and open today, especially considering note that DOC3 is dated December 2013.

The Palafolls City Council responded to the previous request through a letter dated 07/20/2017, which set out, among others, the following:

- That "on 5.6.2017, the Local Government Board approved a modification of the urbanization project and the contract for the execution of the urbanization works of the action unit UA9 "Ciutat Jardí". The agreed processing is urgent. The public information of the two modifications started on 16.6.2017 with the last of the mandatory publications, produced at the BOP of Barcelona on that day and has a deadline of fifteen days. Therefore, the public information ended on 7.7.2017".
- That, to the extent that "what was exposed to the public was part of the integrated urban management file of the action unit", the publication of said file on the institutional website was authorized by the provisions of articles 119.c) of Legislative Decree 1/2010, of August 3, approving the Revised Text of the Urbanism Law, and 83.2 of Law 39/2015, of October 1, on the common administrative procedure of the administrations public

4.- On 05/28/2018 the Authority's Inspection Area carried out a series of checks via the Internet. Thus, in these verifications, it was found that by entering the search engine "Google" as a search term "(...) (...) Palafolls" (one of the names provided by the complainant in his complaint), the link appears

PDFJPR UA9 Reparcellation Project Report 15-I-2014 - City Council of ...
<https://www.palafolls.cat/files/...>

Clicking this link will take you to DOC3.

5.- On 12/06/2018, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Palafolls Town Council for an alleged serious infringement provided for in article 44.3.c) in relation with article 4.1 of the LOPD. Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file.

6.- This initiation agreement was notified to the imputed entity on 06/19/2018.

7.- In the initiation agreement, the imputed entity was granted a period of 10 working days, accountants from the day after the notification, to formulate allegations and propose the practice of tests that they consider appropriate to defend their interests.

8.- On 07/05/2018, the Palafolls City Council sent a letter to the Authority in which it did not question the alleged facts, but merely informed that they had been removed from the institutional website of the City Council the documents which publication had given rise to the present sanctioning procedure. To this end, he provided the corresponding documentary evidence.

9.- On 10/15/2018, the person instructing this procedure formulated a resolution proposal, by which it was proposed that the director of the Catalan Authority of

Data Protection declared that the Palafolls Town Council had committed a serious infringement provided for in article 44.3.c) in relation to article 4.1 of the LOPD.

This resolution proposal was notified on 15/10/2015 and granted a period of 10 days to formulate allegations. This deadline has passed and they have not been submitted allegations

proven facts

Of all the actions taken in this procedure, the facts detailed below are considered accredited.

On an undetermined date, the Palafolls City Council published on its institutional website the document titled "REPARCELLATION PROJECT - UNIT OF ACTION UA-9 "URBANIZATION CIUTAT JARDÍ DE SANT GENÍS DE PALAFOLLS" (DOC3). This document includes a list in which, among other information, the first and last names of the initial owners of the plots and of the people awarded, the latter together with the no. full ID

On 05/28/2018 it was found that this DOC3 was still available via the internet, and which can be accessed by entering the first and last name of one of the people included in the Google search engine document. Once this disciplinary procedure has started, in the process of allegations to the initiation agreement, the City Council has certified that it has withdrawn the document, so that it is no longer available on the internet.

Fundamentals of law

1.- The provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), and article 15 of the Decree apply to this procedure 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, according to what it provides 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.

As a preliminary consideration, it should be indicated that at the time this act was issued, the precept containing the infringing rate applied here has been repealed by Royal Decree-Law 5/2018, of 27/7, on urgent measures for the adaptation of Spanish law to the regulations of the European Union in the matter of data protection. But since it is a sanctioning procedure started before the validity of this rule - or in which the previous actions that had preceded it had started before -, it must be governed by the previous regulation (DT 1a RDL 5/2018).

Also, in this act, the eventual application to the present case of what is provided for in Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, regarding the protection of natural persons, has also been taken into account regarding the processing of personal data and the free movement thereof (RGPD). And as a result of this analysis, it is concluded that the eventual application of the RGPD would not alter the legal classification that is made here, and in particular would not favor the presumed person responsible for the infringement. In any case, it is worth saying that the facts imputed in application of the LOPD would also be so if the RGPD were applied to the case.

2.- The City Council has not made any objections to the proposed resolution. On the other hand, as explained in the 8th precedent, before the initiation agreement the City Council addressed a letter to the Authority in which no allegations were made, limiting itself to putting in the knowledge of this Authority that the documentation had been removed from its institutional website which publication on said website had given rise to the initiation of this procedure, which was documented.

As the instructor pointed out in the proposal, it is worth saying that this action carried out by the City Council does not alter either the imputed facts or their legal classification, but it will have an impact, as will be seen later, in terms of to any measures that may be imposed in order to stop or correct the effects of the infringement.

3.- In relation to the facts in the proven facts section, relating to the principle of data quality, it is necessary to refer to article 4.1 of the LOPD, which provides for the following:

"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".

As indicated by the instructing person, during the processing of this procedure it has been duly proven that the Palafolls City Council has infringed this principle of proportionality; first, to disseminate through its institutional website a document (DOC3) that contains the full name, surname and ID of the persons awarded plots of land in the urban plan relating to Ciutat Jardí de Palafolls; and, second, to keep this information openly accessible to everyone on the internet well beyond the period of time in which it was justified, that is to say the deadline for the public information procedure.

In accordance with the above, it is considered that this conduct is constitutive of the serious infringement of article 44.3.c) of the LOPD, which typifies as such:

"Treat personal data or use them subsequently in compliance with the principles and guarantees established in article 4

of this Law and the provisions that deploy it, except when it constitutes a very serious infraction"

4.- Article 21 of Law 32/2010, in line with article 46 of the LOPD, provides that when the offenses are committed by a public administration, the resolution declaring the commission of an offense must establish the measures to be taken so that the effects cease or are corrected. In this case, however, as indicated by the instructing person, it is not appropriate to require the City Council to adopt any corrective measures, to the extent that the Consistory has proven to have removed the controversial documentation from its institutional website.

resolution

For all this, I resolve:

1.- Declare that the Town Council of Palafolls has committed a serious infringement provided for in article 44.3.c) in relation to article 4.1 of the LOPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2.- Notify this resolution to Palafolls Town Council.

3.- Communicate this resolution to the Ombudsman and transfer it to him literally, as specified in the third agreement of the Collaboration Agreement between the Ombudsman of Catalonia and the Catalan Data Protection Agency, of date June 23, 2006.

4.- Order that this resolution be published 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 February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide

article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal 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, 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 in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)

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