

File identification Resolution  
of sanctioning procedure no. PS 27/2018, referring to Tarragona City Council.

#### Background

1. En data 06/04/2018 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, provinent de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava denúncia contra l'Ajuntament de Tarragona, due to an alleged breach of the regulations on the protection of personal data. The reporting person stated the following and provided various documentation about the events reported:
  - 1.1 That this City Council would have made public on its electronic headquarters, without its consent, information relating to its participation in the process of providing the job of head of the Information and Communications Technologies Service convened by this City Council by Decree of 04/04/2017 of the CEO of Human Resources.
  - 1.2 That the acts dictated within the framework of this provision process would still appear published on the City Council's electronic headquarters, despite having concluded at the end of 2017.
2. The Authority opened a preliminary information phase (no. IP 103/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the 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 they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.
3. On 04/12/2018, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that on the electronic headquarters of the Tarragona City Council (<https://seu.tarragona.cat/>), specifically, in the "Human Resources" section, there was a list of 7 procurement processes, of which six were "in process" and one "finalized".

The completed process was entitled "Provision of jobs: Internal competition of merit for the provision of the job of Head of Information and Communications Technologies", and is the process to which the person was referring reporting Through a link, the documents corresponding to the announcements and acts dictated as part of this procurement process were accessed, in which the name and surnames of the person making the complaint and of the other people participating in the competition appeared , as well as the score

obtained by each of them in each test and the final score, also individual. Specifically, the personal data mentioned appeared in the following three advertisements: (1) "Announcement of provisional list of admitted and excluded persons", published on 06/30/2017; (2) "Announcement: Catalan test result, evaluation of merits and date, time and place of interview", published on 25/09/2017, and (3) "Announcement personal interview qualification, total result and proposed appointment", published on 11/10/2017.

4. In this information phase, on 23/04/2018 and 30/05/2018, the Tarragona City Council was required to provide a copy of the instances presented by three of the people admitted in the aforementioned provision process, and indicate whether this was the form used to participate in selective or job provision processes convened by this City Council; he was also required to indicate whether the evaluation board of the procurement process had agreed to the publication on the electronic website of the City Council of the result, both of the evaluation of the merits and of the interviews carried out with the participants in said process; also to state whether the publication of the names and surnames of all the participants together with the score awarded to each of them was a regular practice of this City Council; and finally he was asked to point out the reasons why the acts corresponding to this provision process were still published on the City Council's electronic headquarters at the present time, the legal rule that in his opinion would protect the dissemination of the personal data that they contained, and if this was a regular practice of the council.
  
5. On 08/05/2018, the Tarragona City Council responded to the aforementioned request in writing in which it stated the following:
  - "(...) In accordance with article 66 of Law 39/2015, of October 1, on common administrative procedure of public administrations, interested persons may submit any type of request that includes the necessary data provided for in the aforementioned article (Attached document: applicant bodies).

On the Tarragona City Council website, at the addresses detailed below, you can find instance models (Attached documents: Application model 1, application model 2):

  - <https://tramits.tarragona.cat/Ciudadania/DescargarDocument.aspx?Codi=5NAAEX9R31>
  - [https://www.tarragona.cat/lajuntament/fitxers-1/altres/fitxersinstancies/personal/copy\\_of\\_solv7licitud-dadmissio-a-processos-selectius/view](https://www.tarragona.cat/lajuntament/fitxers-1/altres/fitxersinstancies/personal/copy_of_solv7licitud-dadmissio-a-processos-selectius/view)

Although in this call the application form for admission to the staff selection call was not published on the electronic headquarters, together with the announcement of approval of the rules, it could be downloaded from "another call (Attached document: Application form 3)."

  - "(...) With regard to the publication of the scores awarded to applicants in any selective process, Tarragona City Council relates

surnames and first names together with the score awarded. Unless the interested person requests, through an instance, that their data not be made public. In these cases the results are published by no. of registration of the request to take part in the selective process.

The protection of personal data, and more specifically in the area that concerns us, comes into conflict with other rights that are also recognized, such as the right to information, and directly related to transparency on the part of public administrations."

- "Once the selection process has been completed, the announcement with the final qualifications and the appointment proposal is published on the website, giving one month to file an appeal from the day after the aforementioned announcement is published. Yes, it is true that, in the case at hand, the announcement was published on October 11, 2017, the consequent task of filing and registering publications in the electronic headquarters should have been done. The electronic evidence is collected in the register (it is the trace that the content leaves in the headquarters and allows to demonstrate the moment in which it was published) in relation to the publication and availability of the contents of the headquarters. It should be noted, however, that archiving is not a task that is computerized automatically, but that when archiving a publication in the electronic headquarters it must be done individually for each publication."

Tarragona City Council attached various documentation to the letter.

5. On 07/17/2018, the Authority's Inspection Area verified that the announcements of the provision process mentioned with the person's personal data were still published on the electronic headquarters of the Tarragona City Council complainant, as well as the other people participating in the process. From the result obtained, the corresponding due diligence was carried out.
6. On 18/09/2018, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Tarragona City Council, for an alleged serious infringement provided for in article 44.3.c) in relation with article 4.1 of the LOPD in force at the time of the events and the initiation agreement.
7. This initiation agreement was notified to Tarragona City Council on 09/18/2018. In the initiation agreement, the accused entity was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests. This deadline has been exceeded and no objections have been made.
8. On 11/12/2018, the instructor verified that the announcements of the provision process mentioned with the data of the person reporting, as well as the rest of the people participating in it

process From the result obtained, the corresponding due diligence was also carried out.

proven facts

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

On 07/17/2018, the Tarragona City Council kept published in its electronic headquarters the announcements of the acts dictated in the process of providing the job of head of the Information and Communications Technologies Service convened by this City Council by Decree of 04/04/2017 of the CEO of Human Resources, despite that the mentioned process ended around the month of October 2017. In three of these published announcements appeared the first and last names of the people participating in the process, as well as the score obtained by each of them in the different tests, and the final score, also individual: "Announcement of provisional list of admitted and excluded persons", published on 06/30/2017; "Announcement: Catalan test result, evaluation of merits and date, time and place of interview", published on 09/25/2017; and "Announcement personal interview qualification, total result and proposed appointment", published on 11/10/2017.

At the time of issuing this resolution, the aforementioned announcements are no longer published on the electronic headquarters of Tarragona City Council, so that the personal data indicated above are no longer accessible.

Fundamentals of law

1. The provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (from now on, LPAC), and article 15 of Decree 278 apply to this procedure /1993, of November 9, on the sanctioning procedure for application to the areas of competence of the Generalitat, according to what is provided for in DT 2a of Law 32/2010, of October 1, of the Catalan Authority of Data Protection. 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, as well as the entry into force of the new Organic Law 3/2018, of December 5, on the Protection of Personal Data and the guarantee of digital rights (hereinafter, LOPDiGDD). But since it is a sanctioning procedure initiated before the validity of these two rules, it must be governed by the previous regulation, to the extent that the new later rule does not contain more favorable provisions for the entity concerned (DT 1st 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 with regard to the processing of personal data and the free circulation thereof (RGPD) and the LOPDGDD. 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.

2. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the Tarragona City Council has not made allegations a the initiation agreement. This agreement contained a precise statement of the imputed liability.
3. In relation to the facts described in the proven facts section, relating to the publication on the electronic site of personal data beyond the time necessary to achieve the purpose justifying its publication, it is necessary to go to article 4.1 of the LOPD, applicable at the time of the facts, which provides for 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."

In the initiation agreement, the Tarragona City Council was charged with the commission of certain facts based on the inspection actions carried out by this Authority, in which it was found that, at least until 07/17/2018 the announcements of the said selective process, despite having ended, were still published on the municipal website, with the consequent dissemination of the personal data of the participants in the said process. This initial imputation has not been questioned by the Tarragona City Council, as it has not formulated any allegation against the notification of the initiation agreement, which, as it contains a precise statement on the imputed responsibility, can be considered a proposal of resolution in accordance with article 64.2.f) of the LPAC, which is confirmed here in all its terms. The imputed facts are constitutive of the serious infringement provided for in article 44.3.c) of the LOPD, which typifies as such:

"c) Treat personal data or use them later in violation of the principles and guarantees established in article 4 of this Law and the provisions that deploy it, except when it constitutes a very serious infringement."

Continuing with what has been indicated in the 1st legal basis, the eventual application of the RGPD and the LOPDGDD to the present case would not alter the legal classification of the facts as constitutive of an infringement, nor would it favor the Tarragona City Council . On the contrary, yes

if the current regulations were applied at the time this resolution was issued, the imputed facts could constitute a very serious infringement, specifically, that contained in art. 72.1.a) of the LOPDGDD, which considers as such: "the processing of personal data violating the principles and guarantees established in article 5 of Regulation (EU) 2016/679", in relation to what is provided for in articles 5.1. c) ie) and 83.5.a) of the RGDP.

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 taken so that the effects cease or are corrected.

However, given that the investigating person found on 11/12/2018 that the announcements of the provision process mentioned with the data of the person making the complaint were no longer published on the electronic headquarters of the Tarragona City Council, as well as of the other people participating in the process, it is not appropriate to require the adoption of any corrective measures.

Such a finding, however, does not prevent recommending to the Tarragona City Council, in the light of the RGPD, the adoption of the necessary organizational and technical measures to ensure that, from now on, the publication on your website of the announcements of the selective or competitive processes that contain personal data, does not extend over time beyond the date on which the purpose justifying the publication is deemed fulfilled.

resolution

For all this, I resolve:

1. Declare that the Tarragona City Council has committed a serious infringement provided for in the article 44.3.c) in relation to article 4, all of them 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 fourth legal basis, without prejudice to the recommendation that has been formulated there.

2. Notify this resolution to Tarragona City 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, dated June 23, 2006.
4. Order that this resolution be published on the Authority's website ([www.apd.cat](http://www.apd.cat)), from \_\_\_\_\_ 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)