

File identification Sanctioning
procedure no. PS 30/2018, referring to Badalona City Council.

Background

1. On 25/0(...)/2018, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against Badalona City Council, on the grounds of an alleged non-compliance with 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 the coordinating person of district no. (...), (...), of Badalona City Council, called residents and presidents of neighborhood associations to a meeting held on 02/08/2018, in order to discuss various issues 'interest linked to the district, among which was the one referring to public security problems.
 - 1.2 That at the time when the last issue mentioned in the previous point was discussed, the district coordinator distributed to each of the people present (a total of 13) a police file from the Urban Guard, composed of 8 stapled sheets. In this police file, always according to the reporting person, there was personal data of several people, linked to calls, letters of complaint about incivility, drug sales, thefts, riots, etc.
 - 1.3 That one of the people present requested the coordinator to withdraw this dossier, but that the coordinator, not only did not do so, but would have stated explicitly and publicly: "if no está de acuerdo con este informe de la Guardia Urbana, you're going to report him to the court." And that such dissemination of personal data together with related information may pose a danger to that person.
2. The Authority opened a preliminary information phase (no. IP (...)9/2018), 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 1 October, on the common administrative procedure of public administrations (henceforth, LPAC), to determine if the facts 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 that were involved.
3. In this information phase, on 05/09/2018 the Badalona City Council was requested for him to report on several issues linked to the events reported and to contribute one copy of the aforementioned police file.

4. Given the lack of response from the City Council, on 06/22/2018 the request for information will be repeated.
5. On 08/02/2018, Badalona City Council complied with this written request stating the following:
 - "that the new municipal government, constituted by agreement of the City Council meeting of June 20, 2018, has brought about organizational and personnel changes, as is the case of the OMD coordinator (...), which currently does not work in this City Council. No however, OMD staff (...) have provided us with a document they identify as the Urban Guard police file distributed at the meeting of residents and presidents of neighborhood associations held on February 8, 2018, which 'attached to this report.'"
 - "we cannot express agreement or disagreement with the account of the events made by the person reporting, given that we have not been able to compare the mentioned events with the coordinating person of the OMD (...) who distributed the police file at the meeting of February 8, 2018."
 - "In the aforementioned document, reference is indeed made to two natural persons with first and last names (...)."

The City Council attached various documents to the letter, including the aforementioned police report, entitled "consensus dated 05/18/2016", consisting of 10 pages, which include a dated list of police actions - mainly of surveillance carried out by several agents of the Urban Guard of this City Council in several public spaces in district no. (...) from Badalona. As can be seen from its content, the surveillance actions would have been started from an email sent to them on 28/06/2017 by the then coordinator of district no. (...), in which he informed them about several complaints that the council had received, relating to acts of incivility in several public spaces in the district. The report contains the following personal data:

- On the first page of the report are the names and surnames of two people who live in the neighborhood - including the person making the complaint, who is said to have made 3 complaints related to riots, harassment and threats to a minor of age-.
- On the second page of the report, mention is made of the receipt by the Urban Guard of an email sent by the president of the community of owners of the street (...), relating to a complaint about acts of incivility carried out by a group of immigrants.
- On the third page of the report, mention is made again of a complaint made by the person making the complaint -identifying them with their first and last names-, regarding uncivil behavior by groups of people in public spaces.

- On the sixth page of the report, mention is made of the receipt of a letter to the Urban Guard, referring to a robbery carried out at a home in street (...), no. (...).
 - On the eighth page of the report, mention is made of the call made by the Urban Guard to a member of the "We make a neighborhood in Llefià" platform, in order to exchange opinions on security problems in the neighborhood.
6. On 02/(...)/2018, the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Badalona City Council, for an alleged serious infringement provided for in article 44.3.c) (...)(...) in relation to 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 Badalona City Council on 06/(...)/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 passed and no objections have been made.
 8. On 12/(...)/2018 the complainant sent a letter by email, accompanied by several attached documents, which were incorporated into the file.

proven facts

In February 2018, from the coordination of district no. (...) ((...)), of Badalona City Council, neighbors and presidents of neighborhood associations were summoned to a meeting held on 02/08/2018, in order to discuss various matters of interest linked to the district, among which was the one referring to public safety problems. At the time when this last question was discussed, the district coordinator of the City Council provided each of the people present with a copy of a police file from the Urban Guard, which contained the personal data of two people -among them the person reporting here-, linked to calls and letters of complaint about incivility, drug sales, thefts and disturbances. The dissemination of these personal data was carried out without the consent of the individuals

affected In fact, the complainant stated that he had expressly opposed the disclosure of the dossier at the said meeting, which did not, however, prevent the delivery to all the people present.

The personal data that appeared in said dossier were the first and last names of the people affected, linked to the date, number and reason for the complaint made at each time by each of them, together with information about their address.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of I 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 6(...).2.f) of the LPAC and in accordance with what is indicated in the agreement to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the Badalona City Council has not made any objections to the initiation agreement. This agreement contained a precise statement of the imputed liability.
3. In relation to the conduct described in the section on proven facts, relating to the dissemination of personal data of the complainants to the people attending the district meeting of 02/08/2018 called by the Badalona City Council, it is necessary to go to article (...) of the LOPD, which provided for the following in section 1:
 - "1. The personal data subject to treatment can only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the assignor and the assignee with the prior consent of the interested party.
 2. The consent required by the previous section is not necessary: a)
When the assignment is authorized by law. (...)"

In the initiation agreement, the Badalona City Council was charged with the commission of certain facts from the receipt of a complaint before the Authority, and the opening of a preliminary information phase in the during which the Badalona City Council acknowledged that it had disseminated the aforementioned police file from the Urban Guard at the meeting of residents and presidents of neighborhood associations held on 02/08/2018, file containing personal data of two people - including the person reporting here - linked to calls and letters of complaint about incivility, drug sales, thefts and disturbances.

This initial imputation has not been questioned by the Badalona City Council, as it has not made any objection to 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 6(...).2.f) of the LPAC, which is here confirmed in all its terms. Indeed, given the lack of consent of the affected persons and the lack of concurrence of any of the cases provided for in

the 2nd section of the art. (...) of the LOPD in which said consent is not necessary, the imputed facts are constitutive of the serious infringement provided for in article (...)(...)4.3.k) of LOPD, which typified as such:

"k) The communication or transfer of personal data without justification for this in the terms provided for in this Law and its implementing regulatory provisions, unless this constitutes a very serious infringement."

It is worth saying that at the time this act was issued, the precept containing the infringing rate applied here was 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. In turn, the RDL 5/2018 and the LOPD have been repealed by Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD). In any case, it will be the previous regulations that apply in this procedure, in accordance with the provisions of transitional provision 3a of the LOPDGDD.

On the other hand, article 26 of law 40/2015(...), of October 1, on the legal regime of the public sector provides for the application of the sanctioning provisions in force at the time of producing the facts, unless the subsequent modification of these provisions favors the alleged infringer. That is why, in this act, the eventual application to the present case of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, (...) has also been taken into account to the protection of natural persons with regard to the processing of personal data and the free movement thereof (RGPD), and also as provided for in the LOPDGDD. And as a result of this analysis, it is concluded that the eventual application of these rules 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, in accordance with the provisions of article 83.5.a) RGPD in relation to the articles 5.1.ai 6 of the RGPD. Likewise, if the LOPDGDD were applied to the present case, in the description of infringing conduct, the facts imputed here have been considered as a very serious infringement in article 72.1.b).

(...). Article 21 of Law 32/2010, in line with Article (...)6 of the LOPD, provides that when the infractions are committed by a public administration, the resolution declaring the commission of an infraction must to establish the measures to be adopted so that the effects cease or are corrected. However, the infraction declared here would be a *fait accompli*, which is why it is not appropriate to require the adoption of corrective measures, without prejudice to recommending to the City Council the adoption of the necessary organizational and technical measures to in order to prevent an event like the one imputed here from happening again.

resolution

For all this, I resolve:

1. Declare that the Badalona City Council has committed a serious infraction provided for in the article 44.3.k), in relation to article (...), both 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, without prejudice to the recommendation that has been formulated there.

2. Notify this resolution to Badalona 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), 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,