

## File identification

Resolution of sanctioning procedure no. PS 3/2019, referring to the Autonomous University of Barcelona

## Background

1. On 29/11/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Universitat Autònoma de Barcelona (hereinafter, UAB), on the grounds of a alleged breach of the regulations on the protection of personal data.

The complainant stated that when he searched with his ID number ((...)) through the Google internet search engine, the first result shown by the search engine corresponded to a URL address of a UAB domain ( (...) through which you could access a file in PDF format called "(...)". When opening this file, a document titled "(...)" was accessed, in which the person making the complaint stated that it contained a "list with the names, surnames and IDs of the people who enrolled to the degrees of Environmental Biology and Biomedical Sciences in 2012".

The complainant provided a copy of the aforementioned document, as well as a printout of the email he sent on 11/28/2018 to the data protection representative of the UAB, in which he made the complaint about the facts referred to, and the response obtained in the sense that the information would be removed from the internet.

2. The Authority opened a preliminary information phase (no. IP (...)/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 October 1, on the common administrative procedure of public administrations (from now on, LPAC), for to determine whether 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.

As part of this information phase, on 11/29/2018, the Authority's Inspection Area carried out a series of checks via the internet, in relation to the facts that are the subject of a complaint, of which the corresponding diligence was raised.

Thus, a Google search was made for the DNI of the reporting person, and it was found that the first result shown by the search engine corresponded to the file in PDF format referred to by the reporting person. Once this search result is clicked, the aforementioned file was automatically downloaded, which contained a list of students (101) from the Faculty of Biosciences of the UAB, identified with

your first and last name and ID number, together with the time allocated to formalize the registration on date (...) (2012-2013 academic year) for the "Environmental Biology" and "Biomedical Sciences" degrees. An automated copy of the file was made and incorporated into the actions.

3. Also within the framework of the previous information, on 05/12/2018, the Inspection Area carried out new checks via the internet, of which the corresponding due diligence was lifted.

In this new search using the DNI of the reporting person, it was found that the aforementioned document could no longer be accessed. However, it was detected that in the list of results displayed from the search, in the first place it showed a result corresponding to a URL address of the UAB (...) [which allowed access to a document](#) called "(. ..)", which contained a document entitled "(...)", which contained a provisional list of the assigned Final Degree Project in Environmental Biology, drawn up on 10/21/2016, in which the people students (54) were identified with their ID, among them, the person reporting here.

4. Also within the framework of this preliminary information phase, on 10/12/2018, the UAB was required to report on the reasons why they were kept accessible and open on the internet - and indexable for the Google search engine - the two referenced documents, taking into account the period that has passed.
5. On 19/12/2018, the UAB responded to the above-mentioned request in a letter in which it set out the following:

- That "In the specific case that has motivated the complaint, there was the mistaken belief that, with the replacement of the information coinciding with the change of the academic year, the previous versions would be automatically deleted."
- That "The UAB recognizes the breach, (...) and that the very day after receiving the request of the complainant, the information was no longer accessible"
- That "on the same day that the request arrived at the UAB, the other document with the complainant's personal data was also deleted and inaccessible through the browser."

6. On 01/22/2019, also in the context of this prior information, the Inspection Area verified that it was indeed no longer possible to access any of the aforementioned documents, as the UAB had announced.
7. On 01/29/2019, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the UAB, for an alleged infringement provided for in article 83.5.a) of Regulation (EU) 2016 /679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD) in relation

with article 5 of the RGPD. Likewise, he appointed Ms (...), an official of the Catalan Data Protection Authority, as the person instructing the file.

8. This initiation agreement was notified to the imputed entity on 02/01/2019.

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.

9. On 02/08/2019, the UAB submitted objections to the initiation agreement.

10. On 04/16/2019, the person instructing this procedure formulated a resolution proposal, by which it was proposed that the director of the Catalan Data Protection Authority declare that the UAB had committed the infringement provided for in article 83.5.a) in relation to article 5, all of them of the 'RGPD. This resolution proposal was notified on 04/18/2019 and granted a period of 10 days to formulate allegations. The deadline has been exceeded and no objections have been submitted to the proposed resolution.

proven facts

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

In an undetermined period, but which in any case included the period of time between the month of July 2012 and 29/11/2018 (date on which the first verification by the Authority was carried out), the UAB spread the file called "(...)" on the internet. In this PDF file there was a list of one hundred and one people, including the person making the complaint here, identified with their first and last names, their full ID number, the date and time they had to register (on 18 /07/2012), and the degree in which they enrolled (environmental biology or biomedical sciences).

Likewise, in an undetermined period but which in any case included 05/12/2018 (date on which the second verification by the Authority was carried out), the UAB disseminated via the internet a second file in PDF format called "(...)", which contained a document with the title "(...)", which included a provisional list of the Environmental Biology Degree Final Project assigned, drawn up on 10/21/2016 , in which fifty-four students of the UAB are identified with their ID number, including the complainant, along with a numerical figure that would seem to correspond to the qualification obtained in said Work, or the mention of "Free".

On 22/01/2019 this Authority verified that it was no longer possible to access any of the aforementioned documents.

## Fundamentals of law

1. The provisions of the LPAC and article 15 of Decree 278/1993 apply to this procedure, according to the provisions of DT 2a of Law 32/2010, of October 1, of 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. The accused entity has not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

Specifically, the imputed entity argued in its statement of objections to the initiation agreement, that the publication of the first controversial document (the list with the title "..."), in which identified the people who enrolled in the degrees of Environmental Biology and Biomedical Sciences, by means of the name, surname and national identity document (DNI), was carried out as part of the registration procedure and formalization university that "constitutes a process of competitive competition, given that, usually, the University does not have the number of places sufficient to meet the demand".

The UAB added that the purpose of publishing all the personal data of the affected persons was "in order to facilitate their identification". In the last one, the UAB recognized an "excess of information exposure time".

Regarding the legality of the publication, the UAB also invoked in its statement of objections the assumption established in article 6.1.c) of the RGPD, and understood that the legality of the treatment would be given by legal obligations which were contained in the already repealed Law 30/1992, of November 26, specifically in article 59.6 which provided for the publication of administrative acts "b) When it comes to acts that are part of a selective or competitive procedure of any kind (...), an obligation that is now included in terms similar to the LPAC, specifically in article 45, section 1, letter b): "when it comes to acts that are part of a selective procedure or competitive competition of any kind. (...)". However, as the instructor pointed out in the resolution proposal, at least it raises doubts that the publication of the controversial list in which the date and time assigned to each student for the enrollment procedure was recorded, fits seamlessly within the definition of what can be understood as "integral act of a selective procedure or competitive competition". In the case of the controversial document, it would only fit the transcribed definition, and therefore its original publication would be legitimate, if that document had the purpose of publishing the result of the competitive competition process through the list of selected people. On the other hand, the open publication of the controversial document could not be considered legitimate, if this element of competitive competition corresponded to a time prior to publication, so that with that document only the specific date and time was communicated by

carry out the registration procedure for the affected people, those who already know but previously that they had obtained a place.

In any case, it must be specified that this question was not the subject of imputation in the present procedure, since it did not refer to the possible violation of the principle of legality, but to the minimization of the data (article 5.1.c of RGPD) and limitation of the retention period (Article 5.1.e of the RGPD), which are then addressed separately.

## 2.1. On the principle of data minimization.

As has been said, in the controversial list the UAB identified the affected persons jointly with the first and last name and with the full ID number, so that two identifying personal data were published. At this point it is necessary to remember the definition of the concept "personal data", contained in article 4.1 of the RGPD: "all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of physical identity, shall be considered a natural person, physiological, genetic, psychological, economic, cultural or social of said person".

In relation to the behavior described, it is necessary to go to article 5 of the RGPD, which refers to the principles relating to treatment, among which is the minimization of data in letter c): "1. The personal data will be: (...) c) Adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("minimization of data")".

The accused entity alleged in this respect that both data were published in order to facilitate the identification of the affected persons, and specifically, "in order to facilitate their identification, in relation to possible requirements or correction of errors ". The UAB added in its defense that at the time of publication, the current Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), was not yet in force, in clear reference to the regulation contained in its seventh Additional Provision, relating to the identification of those interested in notifications by means of announcements and publications of administrative acts, the interpretation of which has been the reason for two recent opinions of this Authority (CNS 5/2019 and CNS 4/2019).

In this regard, as indicated by the instructing person in the resolution proposal, it must be said that the LOPDGDD was certainly not in force at the time when the events reported here occurred. Consequently, the regulation established there would not be applicable to the present case, in which it is determined that in no case should the first and last name and the full ID number be published together. However, this argument of the non-validity of the LOPDGDD is not sufficient to distort the violation that is imputed here, regarding the

publication of excessive personal data. In this sense, for the purposes of identifying the students who had to enroll, an identification data was sufficient, and in case of opting for the first and last name, only in the event that there was a coincidence between two or more students ( a circumstance that did not occur in the present case), the inclusion of a second identifying element, such as the DNI, would be justified, but not completely but partially, such as the last 4 digits. This is the criterion of this Authority, reiterated in several resolutions published on the institutional website ([www.apdcat.gencat.cat](http://www.apdcat.gencat.cat)), since long before the entry into force of the LOPDGDD.

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In short, the publication of the referenced list with the personal data contained there (name and surname and full ID) would be clearly excessive in application of the principle of minimization enshrined in article 5.1.c) of the RGPD.

## 2.2. On the principle of limiting the term of conservation

Article 5.1.e) of the RGPD includes this principle in the following form:

"The personal data will be processed: (...) e)

Maintained in a way that allows the identification of the interested parties for no more time than is necessary for the purposes of the treatment of the personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques that this Regulation imposes in order to protect the rights and freedoms of the interested party ("limitation of the conservation period").

The UAB recognized in its statement of objections to the initiation agreement that the two documents indicated in the proven facts section were published longer than necessary for the fulfillment of their purposes, so that in this point admitted the violation of this principle, which was already mentioned in the initiation agreement. Consequently, there is no disagreement here and the UAB accepts the qualification made by this Authority. In any case, the quick reaction of the UAB must be highlighted, since as soon as it became aware of the publication of the controversial documents, it proceeded immediately to withdraw them, an end that has been verified by this Authority with respect to the two documents .

Based on what has been set out in this legal basis, in the resolution proposal it was concluded that the allegations made by the UAB could not succeed, a consideration against which no allegations were made in the procedure of 'hearing, and that remains in this resolution.

3. In relation to the facts described in the proven facts section, relating to the violation of the principles relating to the processing of data, it is necessary to refer to article 5 of the RGPD, and specifically to



its section 1 and letters c) and e), relating to the principles of data minimization and limitation of the retention period.

"Article 5

1. The personal data will be:

(...)

c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("minimization of data")

(..)

e) maintained in a way that allows the identification of the interested parties for no longer than necessary for the purposes of the treatment of personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques that this Regulation imposes in order to protect the rights and freedoms of the interested party ("limitation of the conservation period")

Well, as indicated by the instructing person, during the processing of this procedure, and as has been argued in the previous legal basis in which the allegations made by the UAB have been analyzed, they have been proven properly the facts described in the section of proven facts, which are considered constitutive of the offense included in article 83.5.a) of the RGPD, which typifies as such the violation of "los principios básicos para el tratamiento includitas las conditions for consent pursuant to articles 5, 6, 7 and 9". Specifically, the principles of data minimization (art. 5.1.c) and limitation of the conservation period (art. 5.1.e) would have been violated.

4. Article 83.7 of the RGPD provides that each Member State may establish rules on whether administrative fines can be imposed on authorities and public bodies, without prejudice to the corrective powers of the control authority under art. 58.2 of the GDPR. And adds article 84.1 of the RGPD that the member states must establish the rules regarding other sanctions applicable to the violations of this Regulation, in particular those that are not sanctioned with administrative fines in accordance with article 83.

In this regard, article 21.2 of Law 32/2010 determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, if necessary, the initiation of disciplinary actions in accordance with what is established by the current legislation on the disciplinary regime of personnel in the service of the administrations

public This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

In this same sense, the art. 46 of the LOPD (valid until the entry into force of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights -LOPDGDD-), provided that in the case of infringements committed by the public administrations, in the resolution in which the infringement is declared, the measures to be taken must be established so that the effects of the infringement cease or are corrected.

This provision is similar to that of article 77 of the LOPDGDD. In the present case, as already pointed out in the resolution proposal, it is not considered necessary to require measures to correct the effects of the infringement, given that it has been established that it is no longer possible to access either of the two documents of constant reference

In short, with this action accredited by the UAB, the main purpose pursued with the exercise of the inspection and sanctioning powers entrusted to this Authority, which is to ensure that the regulations on the protection of personal data are met, would have been achieved personal and prevent him from violating this fundamental right again.

resolution

For all this, I resolve:

1. Declare that the UAB has committed the offense provided for in article 83.5.a) in relation to articles 5.1.c) and 5.1.e), all of them of the RGPD.

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 legal basis 4rt.

2. Notify the UAB of this resolution.

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)), 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 Agency is approved



Data Protection, the accused entity can file, with discretion, an appeal before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with what they foresee 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,