

File identification

Resolution of sanctioning procedure no. PS 5/2019, referring to the Autonomous University of Barcelona

Background

1. On 28/12/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Universitat Autònoma de Barcelona (UAB), on the grounds of an alleged breach of the regulation on protection of personal data.

The complainant explained that in 2009 he submitted to the UAB a request to participate in a call for the provision of a Technical Training and Career Guidance position, and that "Afterwards, I discovered on the internet that my personal and highly protected data appeared, such as my DNI, among others, (...)", the reason for which he stated that he had addressed the UAB from the internet by email dated 03 /09/2018, in order to remove their data

The complainant transcribes the e-mail he sent to the UAB data protection representative, in which he complained about the events referred to. It also provides a copy of the response obtained from the data protection representative, 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 procedure penalty 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 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 occurred.

In this information phase, on 01/03/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint, of which the due diligence

Thus, it was found that by doing a Google search with the name and surname of the person making the complaint together with the acronym "UAB", the first two results of the search corresponded to UAB domains ((...)(...)).

In both cases, clicking on the links automatically downloaded a file in PDF format. The first related to the TECHNICAL PUBLIC CALL FOR SUPERIOR Training and Professional Guidance for Doctors" for the Graduate School of the UAB; i

the second, referring to the "PUBLIC CALL FOR TEMPORARY TECHNICAL RECRUITMENT FOR SELECTION" of the Human Resources Development Area of the UAB. It was therefore a question of two documents, of dates (...), different from the document in respect of which the data protection delegate had been addressed for its elimination, which seems to have been carried out. In these two other documents that were still accessible on the internet, there was a list of applicants for the call, identified by their first and last names and ID, among which was the person making the complaint.

3. On 10/01/2019, the UAB was required to report on the reasons why the two referenced files were kept publicly accessible and open on the internet, and indexable on the Google search engine, taking into account the time elapsed since the processing of these calls would have ended.
4. The UAB responded to the aforementioned request through a letter in which it set out the Next:
 - That "in the specific cases that have motivated the complaint, the UAB had deleted the information and public links long before receiving the request from the person concerned. However, the physical documents in the content manager's repository were inadvertently kept indexed in Google, so the University acted with the conviction that it had met the data processing requirements, and that the information was no longer was accessible".
 - That "on the same day as the request from the Catalan Data Protection Authority was received, the UAB carried out the appropriate actions to definitively eliminate the information, which is currently inaccessible".
5. On 31/01/2019, 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.
6. On 06/03/2019, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Autonomous University of Barcelona, for an alleged infringement provided for in article 83.5.a) of RGPD Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file.
7. This initiation agreement was notified to the imputed entity on 08/03/2019.
8. 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 their interests. This deadline has been exceeded and no objections have been made.

proven facts

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

In an indeterminate period, but which in any case included 01/03/2019 (date on which the Authority's verification was carried out), the UAB disseminated through the internet the file in PDF format relating to the "SUPERIOR TECHNICAL PUBLIC CALL for Training and Professional Guidance for Doctors" for the UAB Graduate School, issued on (...), which included the list of applicants for the call, identified with their first and last name and ID, including the person making the complaint.

Likewise, also in an undetermined period, but which in any case included 01/03/2019, the UAB disseminated a second PDF file on the Internet referring to the "PUBLIC CALL FOR TEMPORARY TECHNICAL RECRUITMENT FOR SELECTION" for the Human Resources Development Area, issued on (...), which also included the list of applicants for the call, identified by their first and last names and ID, among them, also the person here reporting.

On 31/01/2019 it has been verified that it is no longer possible to access any of the documents mentioned.

Fundamentals of law

1. The provisions of the LPAC, and article 15 of Decree 278/1993, of November 9, on the sanctioning procedure applicable to the areas of competence of the Generalitat, are applicable to this procedure, according to what provides for the 2nd DT 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 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 accused entity has not made allegations in the initiation agreement. This agreement contained a precise statement of the imputed liability.

On the other hand, in relation to what was indicated in the agreement to initiate this procedure on the voluntary recognition of responsibility provided for in article 85.1 of the LPAC, it is necessary point out that in this case the accused entity has acknowledged its responsibility, but it did so through its written response to the request for information, that is to say in the framework of the actions prior to the initiation of this sanctioning procedure, and therefore in one

moment prior to the notification of the initiation agreement to the imputed entity. Thus, although the UAB has acknowledged its responsibility, this cannot be taken into account for the purposes of article 85.1 of the LPAC.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 5 of the RGPD. This precept refers to the principles relating to treatment, and section 1, letters c) and e), provides for the following:

"1. The personal data will be:

(...)

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

d) (...)

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");

Indeed, the publication of the lists identified in the proven facts section, with the personal data specified there, is considered data processing that violates the principles enshrined in article 5 of the RGPD. Thus, the publication of the set of personal identifying data contained there (name and surname and full ID) is clearly excessive, as is the maintenance of the document accessible on the internet, many years after its issue, so that has remained published for a period much longer than necessary for the fulfillment of its purposes.

In accordance with what has been set out, as indicated in the initiation agreement, the facts collected in the section of proven facts are constitutive of the violation provided for in article 83.5.a) of the RGPD, relative to the violation of "the basic principles for the treatment, including the conditions for the consent to the tenor of the articles 5, 6, 7 and 9". It is worth saying that the violation of the principles of art. 5 of the RGPD has been considered a very serious violation of article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) .

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 sense, art.

77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, 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 the present case, as has already been done in the section on proven facts, on 01/31/2019 this Authority verified that it is no longer possible to access any of the referenced documents via the internet. For this reason, the measures to correct the effects of the infringement should not be required.

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. Admonish the Universitat Autònoma de Barcelona as responsible for the infringement 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 this resolution to the Autonomous University of Barcelona.

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), 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,