

File identification

Resolution of sanctioning procedure no. PS 12/2019, referring to Olot City Council.

Background

1. On 05/09/2018, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Olot City Council, on the grounds of an alleged breach of the regulation on protection of personal data. The reporting person certified that the Olot City Council notified him of the settlement of the pet tax corresponding to the 2018 financial year at an address in Girona, even though it was registered in Olot. The complainant added that he had never provided the Girona City Council with the address of Girona.

The reporting person provided various documentation about the events reported.

2. The Authority opened a preliminary information phase (no. IP 262/2018), 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. In this information phase, on 28/09/2018 the City Council of Olot was required to report, among others, on the reasons why the fiscal address of the reporting person was not the place where this would have his usual residence (Olot); as well as because the person making the complaint was notified of the settlement of the pet tax at an address in Girona.

4. On 11/10/2018, the Olot City Council responded to the aforementioned request in writing in which it stated the following:

- That on 04/26/2012, in view of the complainant's deregistration in Olot, the Olot City Council requested the Girona City Council to facilitate the complainant's address, in accordance with that established in article 94 of Law 58/2003, of December 17, General Taxation (hereinafter, LGT).
- That on 08/29/2014 a new registration was made for residence in the register of the municipality of Olot of the person making the complaint.
- That on the dates on which this registration occurred, a change of computer application took place in the management of the movements of the population register. During a small period, concentrated in the third quarter of 2014, the automatic update of the data of the register in the taxpayer file of the City did not work.

- That for this reason, although the data was updated in the population register, the automatic update did not occur in the taxpayer file where the old Girona address was maintained.

5. On 04/12/2019, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Olot City Council, for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.d), both 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 circulation of these (RGPD).

6. This initiation agreement was notified to the imputed entity on 04/18/2019.

7. The initiation agreement explained the reasons why no charge was made with respect to the other facts reported. Firstly, regarding the collection of the Girona address by the Olot City Council, considering that this treatment was necessary for the exercise of the City Council's own functions in the scope of its powers provided for in the LGT, so it did not require the consent of the affected person. And, secondly, with regard to the use of the Girona address by the Olot City Council, given that the LGT contemplates that in the procedures initiated ex officio, as was the case in that case, the City Council of Olot could attempt to notify the person here by reporting to their tax domicile, their place of work or where they carry out their economic activity, or in any other appropriate place for this purpose.

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.

9. On 07/05/2019, the Olot City Council made objections to the initiation agreement.

The accused entity provided various documentation with its letter.

10. On 07/08/2019, the person instructing this procedure formulated a proposed resolution, which proposed that the director of the Catalan Data Protection Authority declare that Olot City Council had committed the infraction provided for in article 83.5.a) in relation to article 5.1.d), all of them from the RGPD.

This resolution proposal was notified on 07/15/2019 and granted a period of 10 days to formulate allegations.

11. The deadline has been exceeded and no objections have been submitted.

proven facts

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

From the third quarter of 2014 and, for an indeterminate period, but which in any case would include until 30/08/2018 (date on which the settlement of the pet tax corresponding to the year 2018 was issued to the person reporting here), the Olot City Council maintained in its information system the data relating to the fiscal address of the reporting person inaccurately, because it was linked to an address in Girona instead of the address in Olot in which the affected person was registered. This situation of maintaining an incorrect address for a prolonged period of time resulted from the fact that, due to an IT incident, the fiscal address had not been updated when this person was registered in the municipality of Olot on 29/08/ 2014

As reported by the City Council of Olot, "during a short period concentrated in the third quarter of 2014, the automatic update of the register data in the City Council's taxpayer file did not work", so that this situation which would have affected the accuracy of the fiscal address in the files of the Olot City Council, aside from the complainant here, it would affect more people who had been registered in the period indicated by the City Council.

Once that incident occurred, the City Council would not have carried out the necessary actions in order to correctly update the addresses of the affected persons, and in any case of the complainant here.

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 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. 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.
 - 2.1. About the technical anomaly.

In the first section of its statement of objections to the initiation agreement, the imputed entity stated that "in a short period of the third quarter of 2014, due to a change of computer application in the management of the movements of the register of inhabitants, the automatic update of the data of the register of inhabitants in the taxpayer file of the City Council did not work." He added that the duration of this technical anomaly was "very short" and that when it was detected, all the necessary actions were taken to fix it and update "practically all the data" in the taxpayer files.

In relation to the data of the complainant, the Olot City Council argued that "it has

been a very special case, since the affected person had previously resided in Olot, left for Girona and finally came back to the municipality (which is when the process failed)."

With its allegations before the initiation agreement, the Olot City Council admitted the facts imputed here, which resulted in the data contained in the taxpayer system being inaccurate, given that the taxpayer system is not updated when there was a change in the population register.

Also, as explained by the instructing person in the proposed resolution, it was also proven that the Olot City Council did not carry out the necessary actions to update the data in the taxpayer system, once it was aware of that incident. In this regard, with regard to the complainant, his data remained inaccurate in the taxpayer system since 2014, which led to the City Council issuing the tax settlement on 08/30/2018 of pets corresponding to the year 2018 to an incorrect address of the reporting person.

In application of the principle of accuracy, the actions carried out by the City Council once it became aware of the aforementioned incident, had to involve the review of all the changes (general or special) that occurred in the register during the course of the incident, while verifying that the data of the affected people was exactly recorded in the information system.

2.2. On the legal qualification of the imputed facts

Subsequently, the accused entity considered in its statement of objections to the initiation agreement that the RGPD did not apply, on the understanding that this rule had not entered into force at the time it was they produced the facts (year 2014).

Certainly, as the instructing person pointed out in the resolution proposal, the fact that originated the inaccuracy of the data in the taxpayer system took place in the third quarter of 2014. However, the inaccuracy of the data in the taxpayer system of the City Council was extended beyond 25/05/2018, the date on which the application of the RGPD began. We are therefore faced with a permanent infringement, which is inferred to have ceased after the request of this Authority, made on 28/09/2018 in the context of the previous information that preceded this procedure.

On the other hand, it is considered applicable in the present case the sanctioning regime of the Public Administrations provided for in article 46 of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD) . And this, because this precept remained in force until the entry into force (07/12/2018) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights -LOPDGDD-). This, in accordance with the single repealing provision of 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 (hereinafter , RDL

5/2018), rule that kept in force article 46 of the LOPD, until its repeal carried out by the LOPDGDD, a repeal that would have occurred after the cessation of the conduct imputed here.

Article 46 of the LOPD provided that, in the case of infractions committed by public administrations, the resolution in which the infraction is declared must establish the measures to be adopted so that the effects of the infraction cease or are corrected.

It is worth saying that this provision is similar to that of article 77.2 of the LOPDGDD.

2.3. About the prescription

In the last one, the accused entity pointed out in its statement of objections to the initiation agreement that the infringement would be time-barred, having been committed in 2014.

Regarding this allegation, as the instructing person pointed out in the proposed resolution, it is sufficient to point out that, in accordance with article 30.2 of Law 40/2015, of October 1, on the legal regime of the sector public "In the case of continuous or permanent infringements, the term begins to run from the end of the infringing conduct."

In the present case, there is no record of the exact date on which the conduct imputed here would have ceased, but in any case this would have taken place after 09/28/2018, the date on which the Authority notified the Olot City Council the request for information in the framework of the previous information phase, in which the inaccuracy of the data imputed here was highlighted.

In turn, article 5 of RDL 5/2018 (in force at the time the imputed conduct would have ceased) provided that the "infractions provided for in sections 5 and 6 of article 83 of Regulation (EU) 2016/ 679 prescribe after three years" and that "The initiation, with the knowledge of the interested party, of the sanctioning procedure interrupts the prescription, and the limitation period is restarted if the sanctioning file has been paralyzed for more than six months for reasons not imputable to the alleged infringer. (...)"

Therefore, the statute of limitations for the offense charged here had not expired at the time of initiating this procedure, the notification of which interrupted the calculation of the statute of limitations for the offense.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.d) of the RGPD, which provides that the personal data will be "accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy")."

For its part, article 48.2.a) of the LGT provides the following:

"2. The fiscal address is:

a) For natural persons, the place where they have their usual residence. However, for natural persons who mainly carry out economic activities, in the terms determined by regulation, the Tax Administration may consider the place where the administrative management and direction of the activities carried out is effectively centralized as a tax domicile. If the place cannot be established, the one where the maximum value of the immovable property in which the economic activities are carried out is located must prevail."

As indicated by the instructing person, during the processing of this procedure the fact described in the section on proved facts, which is considered to constitute the infringement provided for in article 83.5.a) of the RGPD, has been duly proven, which typifies the violation of the "basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9".

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.

As set out in the resolution proposal, in the present case it is inferred that the City Council of Olot corrected the inaccurate data in the taxpayer system, and in particular those of the complainant, once this Authority notify on 09/28/2018 the information requirement within the framework of the prior information phase.

However, in order to have it certified that, indeed, the City Council has correctly corrected this inaccuracy, it is necessary to require it so that as soon as possible, and at the latest within 10 days from the day after the notification of this resolution, certify that the erroneous data relating to the person here denouncing maintained in the taxpayer system following the incident produced during the third quarter of 2014, have been duly rectified. This certification must expressly refer to the data of the person reporting here.

Once the corrective measure described has been adopted, within the indicated period, the Olot City Council must inform the Authority within the following 10 days, without prejudice to the authority's inspection powers to make the corresponding checks.

resolution

For all this, I resolve:

1. Declare that the Olot City Council has committed the infringement provided for in article 83.5.a) in relation to article 5.1.d), all of them of the RGPD.

2. Request the City Council of Olot to adopt the corrective measures indicated in the 4th legal basis and accredit before this Authority the actions carried out by fulfill them
3. Notify this resolution to Olot City Council.
4. Communicate this resolution to the Síndic de Greuges and transfer it to him literally, as specified in the third agreement of the collaboration agreement between the Síndic de Greuges de Catalunya and the Catalan Data Protection Agency, dated June 23, 2006.
5. 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,