

## File identification

Resolution of sanctioning procedure no. PS 13/2019, referring to the Catalan Traffic Service

## Background

1. On 08/16/2018, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Catalan Traffic Service (hereinafter, SCT), on the grounds of 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.

Specifically, the person making the complaint stated that the SCT had notified him of the agreement to initiate a sanctioning file (file no.(...)), dated 07/20/2018, without taking effect, duly, the right to information in accordance with what is established in article 14 of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016 relating to the protection of natural persons regarding to the processing of personal data and the free circulation thereof (General Data Protection Regulation, hereinafter, RGPD), and in particular the lack of express information about the person that the SCT would have designated as data protection delegate. Likewise, the complainant added that in the agreement to initiate the file that would have been notified to him, reference was made only to article 5 of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD), and did not include all the information required by this article, such as the possibility of exercising the rights of access, rectification, cancellation and opposition.

The complainant provided a copy of said initiation agreement, issued on 07/19/2018, which stated that the date of the reported events was 05/20/2018. In said initiation agreement there was an informative clause in which the following was cited: *"For the purposes of article 5 of the LOPD, we inform you that the personal data collected in this document will be incorporated into an automated file of the Catalan Service of Traffic, in exercise of the sanctioning powers attributed to it. The person responsible for the file is the head of the Directorate of the Catalan Traffic Service"*.

2. The Authority opened a preliminary information phase (no. IP 243/2018), 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 05/12/2018 the reported entity was required to report on whether, in addition to the initiation agreement notified to the person reporting here, it was provided by a other way or system the rest of the information required by the article

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14 of the RGPD, and whether the notification models of the initiation agreement equivalent to the one referred to in the complaint had been adapted to the RGPD.

4. On 12/19/2018, the SCT responded to the aforementioned request in writing in which it set out the following:

- That *"The information required in article 14 of the RGPD was not provided directly, although the information on the protection of personal data adapted to the RGPD was available on the website of the Catalan Traffic Service from May 24, 2018."*

- That *"The notification models of the initiation of the sanctioning procedure equivalent to the complaint have been definitively adapted, both in paper and digital format, in September 2018. It is attached as an annex. (...)"*

The denounced entity attached to the letter a model of "Notification of agreement of ex officio initiation of a sanctioning file", which according to the SCT would be the document used to carry out notifications from September 2018. This model includes an informative clause relating to data protection that contains the following sections: *"Name of treatment: (...); Responsible for the treatment: (...); Contact of the Data Protection Officer: (...); Purpose: (...); Legitimation: (...); Recipients: (...); Rights of interested persons: (...); Conservation period: (...); Claim: (...); Additional information: <http://transit.gencat.cat/rgpdcat>"*

5. Also during this preliminary information phase, on 03/26/2019, the Authority's Inspection Area carried out a series of checks via the Internet. Thus, it was found that on the website of the SCT, and specifically at the URL address "<http://transit.gencat.cat/rgpdcat>", indicated by the SCT in its written response to the request for information, there was a section entitled *"Detailed information on treatments"*. In this section there were different tabs, with the following statements: *"Who is responsible for the processing of data collected by the Catalan Traffic Service?" "The Data Protection Officer" "For what purpose are your data processed?" "How long will we keep your data?" "To which recipients will we communicate your data?" "What are the rights?" "What avenues of complaint are there?" "What categories of data do we process?" "How did we get your data?"*. When each of these tabs was clicked, the corresponding information was obtained.

In this referenced web page, in addition to the same information contained in the informative clause of the model of *"Notification of agreement to initiate ex officio disciplinary proceedings"*, information related to the category of personal data processed (under the tab entitled *"What categories of data do we process?"*) and about the source from which the personal data comes (under the tab entitled *"How did we obtain your data?"*), although that the information contained under these tabs was solely an express reference to the File Regulation Orders published by the SCT (Order IRP/337/2009, of June 30; Order INT/137/2012, of May 22; and Order INT / 272/2012, of December 18).

6. On 06/05/2019, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the SCT, for an alleged infringement provided for in article 83.5.b), in relation to the articles 12.1 and 14; all of them from the 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 SCT on 05/07/2019.

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.

9. On 27/05/2019, the SCT submitted a letter in which it reported on the actions it had taken to correct the effects of the infringement.

10. On 19/06/2019, the Authority's Inspection Area carried out a series of checks via the Internet. Thus, it was found that on the website of the SCT ([http://transit.gencat.cat/ca/el\\_servei/proteccio\\_dades/](http://transit.gencat.cat/ca/el_servei/proteccio_dades/)) some content modifications had been made, with respect to the previously verified situation.

First of all, in said electronic address the contents are divided into the sections "*Detailed information on treatments*", "*Regulations of the Catalan Traffic Service on the protection of personal data*", "*Delegate or delegate of data protection*", "*Rights of interested persons*" and "*Register of treatment activities*". In turn, the section "*Detailed information on treatments*" was now made up of different subsections, among these, the one relating to "*Penalty files for traffic violations*". In this last section, information was offered on the disciplinary proceedings in the matter of traffic divided into different tabs entitled "*Who is responsible for the processing of my personal data?*", "*What are the purposes of the collection and processing of my personal data?*", "*Can the data be communicated to third parties?*", "*For how long are my data kept?*", "*What is the legitimacy for the processing of my data?*", "*What rights Do I have respect for the data I have provided?*", "*How can I exercise my rights?*", "*Can I make a claim?*", "*Which categories of data do we process?*", "*How did we obtain your data?*".

[\(http://transit.gencat.cat/ca/el\\_servei/proteccio\\_dades/informacio-detallad-dels-tratamentos/expedients-sancionadors-transit/\)](http://transit.gencat.cat/ca/el_servei/proteccio_dades/informacio-detallad-dels-tratamentos/expedients-sancionadors-transit/)

When clicking on the tabs "*Which categories of data do we process?*" and "*How did we obtain your data?*", the reference to the orders indicated in the 5th precedent is no longer included, but precise information is displayed regarding the category of personal data processed and the sources from which the data comes staff treated

11. On 08/29/2019, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Authority for the Protection of

Data admonishes the SCT as responsible for an infringement provided for in article 44.3.f) in relation to article 5, all of them of the LOPD.

This resolution proposal was notified on 29/08/2019 and a period of 10 days was granted to formulate allegations.

12. On 10/09/2019, the accused entity submitted a letter in which it reported on the actions it had taken in relation to the corrective measures proposed in the resolution proposal.

proven facts

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

On 07/19/2018, the SCT issued an agreement to initiate a disciplinary proceeding against the person here denouncing for the commission of events that occurred on 05/20/2018, which would be the subject of infraction in accordance with the specific traffic regulations. Specifically, in the clause that appeared in said initiation agreement, reference was made to article 5 of the previous LOPD, and information was given on the existence of a file and on the identity and address of the person responsible for treatment, but did not include other information required by article 5 of the LOPD, specifically that relating to the possibility of exercising the rights of access, rectification, cancellation and opposition.

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. As stated in the antecedents of this resolution, the SCT presented a letter on 09/10/2019, with which no allegations were made against the proposed resolution to distort the facts there accused or the qualification that was made there, but was limited to reporting on the changes made to the SCT website in order to make effective the recommendation proposed in the proposed resolution, and to refer to the measures that since the month of from May 2018 to the present the SCT has implemented in order to adapt the notification models of initiation agreements, measures that were already analyzed in the resolution proposal, but even so it is considered appropriate to mention them here, given that the submitted document refers to it again.

Firstly, it is necessary to highlight the good predisposition of the SCT in complying with the regulations that regulate the fundamental right to the protection of personal data. However, the adoption of several corrective measures, consisting of adapting the agreement notification models

initiation of disciplinary proceedings in the matter of traffic in the RGPD and the LOPDGDD, in no case can it lead to distorting the facts imputed to the initiation agreement and which are considered proven here, nor their legal qualification.

Having said that, here is a brief analysis of the measures implemented by the SCT. In September 2018, the SCT carried out some modifications in the notification model of agreements to initiate disciplinary proceedings in order to adapt it to the provisions of the RGPD, but in the information clause included not it contained all the information required by articles 13 and 14 of the RGPD, and consequently with the system implemented it did not comply with the provisions of the Regulation either.

Otherwise, article 11 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter, LOPDGDD), allows compliance with the duties of transparency and information to the affected person if provides the basic information mentioned there, with an indication of an electronic address or other means that allows easy access to the rest of the information, which is done in said clause with the following mention: *"Additional information: <http://transit.gencat.cat/rgpdcat>".*

However, the changes made by the SCT would also not comply with the complementary provisions applicable following the entry into force of the LOPDGDD (07/12/2018). On the one hand, because when accessing the indicated URL, in some of the sections the information provided did not meet the requirements of being concise, transparent, intelligible and easily accessible, with clear and simple language. As an example, this was the case for the sections *"Which categories of data do we process?"* and *"How did we get your data?"* And on the other hand, it must be borne in mind that in cases such as that of the person reporting here in which the sanctioning file initiated by the SCT derived from an image captured by a speed radar, or also in the cases initiated as a result denunciation of an official or an individual without the participation of the affected person in the collection of the data, we would be faced with a case that must be submitted to the provisions of art. 14 of the RGPD given that the SCT would not have obtained the data directly from the affected person. Well, for these cases the art. 11.3 of the LOPDGDD also allows only the basic information mentioned above to be provided, but expressly includes in this basic information the information relating to the categories of data subject to treatment and the sources from which they come (art. 14.1.d 14.2.f of I 'RGPD), without these extremes appearing in the information clause of the SCT initiation agreement notification model.

Following the notification of the agreement to initiate this procedure, the SCT modified the content of the relative sections *"Which categories of data do we process?"* and *"How did we get your data?"* which are contained in the URL address of continuous reference. For this purpose, the information contained in both tabs was expanded, so that there is no longer a reference to administrative rules, but precise information is displayed on the categories of personal data that are processed and on the sources of access to these data, respectively. However, the modification of the content of the SCT website also incorporated some changes in the location of information that makes its presentation more scattered, such as, for example, the information regarding the data protection officer, which is no longer in the section relating to

the detailed information on the processing of "Penalty files for traffic violations", together with the rest of the information required in articles 13 and 14 of the RGPD ([http://transit.gencat.cat/ca/el\\_servei/proteccio\\_dades/detailed-information-of-treatments/sanctioning-files-transit/](http://transit.gencat.cat/ca/el_servei/proteccio_dades/detailed-information-of-treatments/sanctioning-files-transit/)), but now it is located in a different tab, that of data" ([http://transit.gencat.cat/ca/el\\_servei/proteccio\\_dades/](http://transit.gencat.cat/ca/el_servei/proteccio_dades/)).

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Having said that, it must be specified that the corresponding analysis and pronouncement on the specific measures implemented by the SCT, will be made in the 4rt legal basis.

3. In relation to the facts described in the proven facts section, relating to the right to information about the processing of personal data, it is necessary to refer first to article 5 of the previous LOPD, which was the rule in force at the time when the events reported in the controversial agreement to initiate the sanctioning procedure issued by the SCT took place, the date on which the personal data of the person making the complaint was collected by the SCT (capture of the radar image), which provides for the following:

*"1. The interested parties to whom personal data is requested must be informed beforehand in an express, precise and unequivocal manner:*

- a) The existence of a file or a processing of personal data, of the purpose of the collection of the data and the recipients of the information.*
  - b) Of the mandatory or optional nature of the answer to the questions raised*
  - c) Of the consequences of obtaining the data or the refusal to supply them.*
  - d) The possibility of exercising the rights of access, rectification, cancellation and opposition.*
  - e) The identity and address of the data controller, if applicable, of his representative*
- (.....)*

*4. When the personal data have not been collected from the interested party, the latter must be informed expressly, precisely and unambiguously, by the person in charge of the file or by their representative, within three months following the moment of registering the data, of the content of the treatment, of the origin of the data and of what is foreseen in the letters a), d) and e) of section 1 of this article, unless it has already been previously informed."*

Now, although the date on which the first collection of personal data took place was still in force the previous LOPD, in view of the date on which the initiation agreement was issued by the SCT it was already fully applicable the RGPD, it is inferred that in this period of time between 05/20/2018 and the initiation agreement, the SCT would have carried out certain actions to check and collect other personal data apart from those captured initially by the radar, which were necessary for the initiation of the file, so that this subsequent collection of the majority of personal data would be subject to the provisions of the RGPD. In this regard, it is appropriate to refer to what is established by the RGPD on the duty of information, specifically in article 12.1 of the RGPD, which provides for the following:



*"The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible, with a clear and simple language, in particular any information aimed specifically at a child. The information will be provided in writing or by other means, including, if appropriate, by electronic means. When requested by the interested party, the information may be provided verbally as long as the identity of the interested party is proven by other means"*

In connection with article 12.1 of the RGPD, and taking into account the fact that in many cases - as happened in the case of the complainant here - the personal data being processed have not been collected from the interested party himself, it is necessary to go to article 14 of the RGPD, which provides the following:

*"1. When personal data has not been obtained from the interested party, the data controller will provide the following information:*

- a) The identity and contact details of the person in charge and, where appropriate, of their representative;*
- b) the contact details of the data protection officer, if applicable;*
- c) the purposes of the treatment for which the personal data is intended, as well as the basis legal treatment;*
- d) the categories of personal data in question;*
- e) the recipients or the categories of recipients of the personal data, as the case may be;*
- f) in its case, the intention of the person in charge to transfer personal data to a recipient in a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in the articles 46 or 47 or article 49, paragraph 1, second paragraph, refers to adequate or appropriate guarantees and the means to obtain a copy of them or the fact that they have been provided.*

*2. In addition to the information mentioned in section 1, the data controller will provide the interested party with the following information necessary to guarantee fair and transparent data processing with respect to the interested party:*

- a) the period during which the personal data will be kept or, when that is not possible, the criteria used to determine this period;*
- b) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge of the treatment or of a third party;*
- c) the existence of the right to request from the person in charge of the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, and to oppose the treatment, as well as the right to the portability of the data ;*
- d) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent in any*

- momento, without it affecting the legality of the treatment based on consent before his withdrawal;*
- e) the right to present a claim before a control authority;*
  - f) the source from which the personal data come and, where appropriate, if they come from publicly accessible sources;*
  - g) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

*(...)"*

On the other hand, article 11 of the LOPDGGD, relating to transparency and information to the affected, establishes that:

*"1. When the personal data is obtained from the affected person, the controller can comply with the duty of information established by Article 13 of Regulation (EU) 2016/679 by providing the affected person with the basic information referred to in section below and indicating an electronic address or other means that allows you to access the rest of the information in a simple and immediate way.*

*2. The basic information referred to in the previous section must contain, at least:*

- a) The identity of the data controller and his representative, if applicable.*
- b) The purpose of the treatment*
- c) The possibility to exercise the rights established by articles 15 to 22 of the Regulation (EU) 2016/679.*

*(...)*

*3. When the personal data have not been obtained from the affected person, the person in charge can comply with the duty of information established by Article 14 of Regulation (EU) 2016/679 by providing that person with the basic information indicated in the previous section and indicating an electronic address or another means that allows you to access the rest of the information in a simple and immediate way.*

*In these cases, the basic information must also include:*

- a) The categories of data subject to treatment*
- b) The sources from which the data come"*

Well, of the actions that have been carried out throughout this procedure, it has been duly certified that the agreement to initiate the sanctioning procedure in the matter of traffic for the commission of events that occurred on 20/ 05/2018, which was issued by the SCT on 07/19/2018 and notified to the complainant here, did not comply with the LOPD, nor with the RGPD. On the other hand, with regard to the notification model used by the SCT from September 2018 and until now, it would not conform to the provisions of the RGPD, nor to the complementary provisions of article 11 of the 'LOPDGDD.



As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is constitutive of the offense provided for in article 44.3.f) of the LOPD, has been duly proven, which typified as a serious infraction *"the breach of the obligation to inform the affected person about the processing of their personal data when the data has not been obtained from the same interested party"*. In turn, it should be indicated that article 83.5.b) of the RGPD also typifies as such the violation of *"the rights of the interested parties pursuant to articles 12 to 22"*. Also, this behavior has been collected as a minor infraction in article 74.a) of the new LOPDGDD, in the following form: *"Breach of the principle of transparency of information or the right to information of the affected by not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679."*

4. Article 83.7 of the RGPD provides that each Member State may establish rules on whether administrative fines can be imposed on public authorities and 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 infractions of this Regulation, in particular those that are not sanctioned with administrative fines in accordance with the article 83. In this sense, article 77.2 LOPDGDD provides that, in the case of infractions committed by those responsible 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."*

And section 3 of art. 77 LOPDGDD, establishes that:

*"3. Without prejudice to what is established in the previous section, the data protection authority must also propose the initiation of disciplinary actions when there are sufficient indications to do so. In this case, the procedure and the sanctions that must be applied are those established by the legislation on the disciplinary or sanctioning regime that is applicable.*

*Also, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment that have not been properly attended to is proven, in the resolution in which the penalty is imposed, to include a warning with the name of the responsible position and it must be ordered to be published in the "Official Gazette of the State" or the corresponding regional newspaper.*

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 addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. 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".*

By virtue of this power, the SCT should be required to carry out the necessary modifications as soon as possible, and at the latest within 10 days from the day after the notification of this resolution model of "Notification of agreement to initiate ex officio a sanctioning file" and certify before the Authority that it fully complies with the RGPD and the LOPDGDD. In particular, it is necessary to incorporate in the informative clause of the referenced notification model, the information relating to the categories of data and the sources from which they come (art. 14.1.di 14.2.f of the RGPD).

In this regard, it must be recognized that the corrective measures that the SCT has implemented since September 2018 until now have resulted in an improvement, but have not been sufficient in order to fully adapt the notification model to the RGPD and the LOPDGDD regarding the information contained in the informative clause on data protection, which does not include all the information required by article 14 of the RGPD and 11.3 of the LOPDGDD for those cases in which the personal data do not have been collected from the affected person, as already indicated.

Once the corrective measure described has been adopted, within the specified period, the SCT must inform the Authority within the following 10 days, without prejudice to the Authority's inspection powers to carry out the corresponding checks.

Apart from the said requirement for corrective measures, in the resolution proposal it was recommended that the SCT incorporate on its website, in the section "*Penalty files for traffic infractions*", also the information relating to the person delegated for the protection of data, which is now located in a separate section entitled "*Personal data*". In this way, the person who accesses the website of the SCT would have access jointly and in a single space, to all the information required in articles 13 and 14 of the RGPD. In this regard, it should be noted that following the notification of the resolution proposal, the SCT has modified the "*Penalty proceedings for traffic violations*" section on its website , and now among the information included in the tab "*Who is the person responsible for the processing of my personal data*" also contains the electronic address of the delegated person for data protection of the SCT. Even so, it is not superfluous to once again recommend that the information on the data protection representative is contained in a separate tab in the section "*Penalty proceedings for traffic violations*", so that people who access the web page of the SCT can find the information required in articles 13 and 14 of the RGPD in an orderly manner and with greater clarity.

resolution

For all this, I resolve:

1. Admonish the Catalan Traffic Service as responsible for an infringement provided for in article 44.3.f) in relation to article 5, all of them of the LOPD.
2. Request the Catalan Traffic Service to adopt the corrective measures indicated in the 4th legal basis and accredit before this Authority the actions carried out by fulfill them
3. Recommend to the Catalan Traffic Service that it carry out the modification indicated in the last paragraph of the legal basis 4rt.
4. Notify this resolution to the Catalan Traffic Service.
5. Communicate the resolution issued to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
6. 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 the provisions of 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,