

File identification

Resolution of sanctioning procedure no. PS 14/2019, referring to the Department of Culture

Background

1.- On 03/12/2018 the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Department of Culture of the Administration of the Generalitat of Catalonia (hereinafter, Department of CLT), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that the Human Resources Management Service of the CLT Department, as part of a selection process to fill a job that was published through the ATRI portal (CLT_147_2018), on 03/12/2018 sent an email without using blind copy to all non-selected participants, and therefore the email address of all of them was readable. The complainant provided a screenshot of this email with the subject "Selection result CLT_147_2018", which shows that it was sent from an email address linked to the Human Resources unit (Cu RRHH Cultura 1) to numerous recipients, although the document provided did not show the date of dispatch or the exact number of these recipients.

2.- The Authority opened a preliminary information phase (no. IP 343/2018), 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 (hereafter, LPAC), in order 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 concurrent with each other.

As part of this information phase, by means of an official letter dated 5/12/2018, the Department of CLT was required to report on the reasons why in the indicated electronic submission the 'hidden copy option; the date of the email and the number of recipients to whom it was sent; whether all recipients of the email participated in the contested selection process, and whether the post had previously been published. He was also required to indicate whether the hidden copy option was usually used in the rest of the electronic shipments issued by the Resource Management Service and of a nature similar to the one that is the subject of the complaint, as well as whether they had any protocol or instruction on the use of e-mail.

3.- The Department of CLT responded to the previous request through a letter dated 02/18/2019, which set out, among others, the following:

- That "the alleged incident would have occurred in an open administrative procedure, in which all the people affected are interested persons who can access the file in exercise of their rights".

The reported entity provided various documentation with its letter, including the "Instruction 1/2012, on the use of information and communication technologies in the Administration of the Generalitat of Catalonia", and the report issued by the head of the Management Service of

Human Resources of the Department of CLT, dated 14.02.2019, entitled "Report relative to the Prior Information IP 343/2018 of the Department of Culture", which set out, among others, the following:

- That "Temporary offers are published on the Atri portal and on the website of the Department of Culture. Candidates' CVs are received in generic mailboxes that are managed by the aforementioned service";
- That "To communicate the result of the selective processes, it is done by email from a generic mailbox. Different communications (3 different models) are made to the participants depending on the selection process they have reached:
 - official communication to the selected person
 - mail for participants whose CV is only assessed
 - run for participants who take a test or interviewThere is no form or application that generates automatic responses to participants in the selective processes.(..)";
- That "Communications are always sent from the C/o option (blind copy), in this case, due to human error, it was done from the A/c option (mail open to all recipients). It is worth saying that the data that was disseminated were the electronic addresses of the participants in the provisional provision process.";
- That "The reference email was sent on 3.12.2018 at 8.50am and the number of recipients to whom it was sent was 154 people";
- That "All 154 recipients participated in the CLT_147_2018 selection process. The participation of the candidates had not previously been published".

4.- On 12/06/2019, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of CLT, 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.

5.-This initiation agreement was notified to the imputed entity on 06/13/2019.

6.- 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 tests that it considered convenient for defend their interests. This deadline has passed and no objections have been made.

proven facts

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

The Department of CLT, as part of a selective process to cover a vacant job that had been published through the ATRI portal, through an announcement in which it was not warned that lists of participants would be published, on 3 /12/2018 sent an email to all participants who had not been selected (154), without using the bcc tool or option. This allowed all the recipients of said mail to access the email address provided to the CLT Department by the rest of the people to whom the message was addressed, and therefore to know their identity and information regarding their participation and that they had not been selected.

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. In accordance with article 64.2.f) of the LPAC and in accordance with what was indicated in the agreement to initiate 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.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 5.1.f) 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 thereof (hereinafter, RGPD), which refers to the principle of integrity and confidentiality, which consists of the following:

"1. The personal data will be: processed in such a way as to guarantee adequate security of the personal data, including protection against unauthorized or illegal processing and against its loss, destruction or damage

accidental, through the application of appropriate technical or organizational measures ("integrity and confidentiality")."

In relation to this principle of integrity and confidentiality provided by the RGPD, it is necessary to complement it with the duty of secrecy that was included in article 10 of Organic Law 15/1999, of December 13, on data protection of a personal nature (former LOPD), which established that "The person in charge of the file and those who intervene in any phase of the processing of personal data are bound by professional secrecy with regard to the data and the duty to keep them, obligations that subsist even after ending their relationship with the owner of the file or, where appropriate, with its manager".

At this point it is necessary to specify that the LOPD, a rule still in force at the time of the events reported here (3/12/2018), has been repealed by Organic Law 3/2018, of 5 December, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), which maintains the regulation of the duty of secrecy in its article 5, in terms similar to how it was done in art. 10 of the old LOPD.

Likewise, it is appropriate to mention at this point article 13 of the LPAC, which lists a catalog of rights of people in their relations with public administrations, in which it is expressly included in letter h) the right "A the protection of personal data, and in particular the security and confidentiality of the data contained in the files, systems and applications of public administrations".

In accordance with what has been set forth, as indicated in the initiation agreement, the facts collected in the proven facts section are constitutive of the violation provided for in article 83.5.a) of RGPD, relating to the violation of "the basic principles for the treatment (...)", specifically the one relating to integrity and confidentiality.

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. 46 of the LOPD - not repealed by Royal Decree-Law 5/2018, of 27/7, on urgent measures for the adaptation of Spanish law to EU regulations on data protection, and therefore valid until at the entry into force of the new LOPDGDD-, 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 offense. In this same sense, article 21.2 of Law 32/2010, determines the following:

"2. In the case of infringements committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the infringement and establishing the measures to be adopted

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".

In the present case, it becomes unnecessary to require corrective measures for the effects of the infringement given that the CLT Department had pointed out - in the investigation phase that preceded this procedure - that the system for sending electronic communications is always done with hidden copy option, and that in this sense the Department follows the provisions of its Instruction 1/2012, of June 15, on the use of information and communication technologies (ICT) of the Administration of the Government of Catalonia. The Department added that the case imputed here refers to a specific event, the result of a human error on the part of a person who has extensive experience and training in the use of ICT. That is why it is not considered appropriate to require the adoption of any corrective measures

resolution

For all this, I resolve:

1. Declare that the Department of Culture of the Administration of the Generalitat de Catalunya has committed an infringement provided for in article 83.5.a) of the RGPD in relation to article 5.1.f) of the RGPD and the article 10 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 legal basis 4rt.

2. Notify this resolution to the Department of Culture of the Administration of the Generalitat of Catalonia.

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 the deadline

of 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,