

File identification

Resolution of sanctioning procedure no. PS 19/2019, referring to the Town Council of Lliçà de Vall

Background

1. On 19/07/2018, the Catalan Data Protection Authority received a letter from an entity for which it filed a complaint against Lliçà de Vall Council, on the grounds of an alleged breach of the regulation on protection of personal data.

Specifically, in the letter of complaint it was stated that on the "cork" board of the police headquarters, the City Council would have posted several letters that contained personal data, so that this data would have been disseminated without have the consent of the affected persons. The documents disclosed were the following: 1) Letter dated 12/7/2018 from the mayor addressed to the president of the City Council's (...) Committee; 2) Letter dated 07/16/2018 from the councilor of (...) of the City Council addressed to the president of the Committee of (...); 3) Three letters dated 25/6/2018, 5/7/2018 and 13/7/2018 addressed both to the mayor and to all the municipal political groups, two of which are from the Committee of (...) the City Council and one of the person representing the civil servants of the City Council; 4) Letter dated 20/06/2018 from the mayor addressed to the representative of civil servants of Lliçà de Vall Town Council; and 5) Form entitled "*Annex 1. Notification of the election of prevention delegates*", in which the prevention delegates are identified through their first and last names, NIF, email address, sex, year of birth, and there is also other information related to the functions of the position they represent such as: effective date, organization, training in (...) and votes. The reporting entity provided images of said documentation.

2. The Authority opened a preliminary information phase (no. IP 211/2018), 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 23/07/2018 the reported entity was required to report on the purpose for which the personal data included in the documents cited in the board of the prefecture of the Local Police, as well as the specific place where the board was located, the people who had access to it, and the date the documents were posted on the board. Likewise, the reported entity was also required to specify the legal basis that in its opinion would legitimize this processing of personal data.

4. On 31/7/2018, the reporting entity sent an email to the Authority through which it informed that the request for information dated 23/07/2018 that the Authority had addressed to the Authority denounced entity, had been hanged "*in the very cork of the prefecture of police*".

5. On 01/08/2018, the Lliçà de Vall City Council responded to the above-mentioned request in a letter stating the following:

- That " *As the Chief Inspector of Police states in his report, the only documents, of those indicated in your letter, which have been posted on the Prefecture's desk, are:*

-Letter from the Alderwoman of (...), dated 12/7/2018 addressed to the Trade Union Section of (...) and President of the Committee of (...) of the Town Hall which was posted in the Prefecture desk on 7/13/18.

-Annex 1. Communication on the election of prevention delegates, copy submitted on July 13 to the town hall's entry register, which was posted on the Prefecture's desk on 7/17/18"

- That *"The purpose of posting information on the Prefecture's desk responds to the legitimate fulfillment of informing Corps officials of internal municipal activity that is of interest to them, they must be aware of it and have the right to it as public employees of the City Council. In the legitimate exercise of the functions delegated by the mayor's office, as Councilor of (...) and Secretary of (...) we understand that it is essential for the good functioning of the organization to guarantee the internal mechanisms of communication with public employees and it is this the objective for which we make known with full transparency the information that we understand is relevant and to which they have the right to it"*

- That *"This information is related to labor matters, internal regime and operation and, as it is in this case, the field of occupational risk prevention."*

- That *"no personal data or information that is considered confidential or protected has been disseminated, beyond the names of people who represent a public office such as the name of the President of (...), the members of this Committee, the adviser of the union or my name as Councilors and Secretary of the aforementioned Committee. (...) The personal data of the people mentioned above have been made manifestly public previously by the interested parties themselves."*

- That *"from the presidency of the City Council staff committee, secretary of the Section Union of (...) and presidency of (...). prior to the date of the communications made by the City Council, it has continuously sent to all the municipal staff (including the local police) via e-mail, the documents submitted to the City Council register and the minutes of the meetings signed by the attendees, publicly disseminate the personal data of these same people and the representation they hold."*

- That *"Given what is established by the RGD in article 6.1.e) and article 9.2.e), in our interpretation, it was not necessary to obtain consent since these personal data have been made manifestly public previously by the affected persons to the recipients of the information"*.

- That *"as long as we do not have the corresponding confirmation that these internal information actions comply with the aforementioned regulations, we will omit in our information releases addressed to municipal staff, the names of the people who have representation and we will transfer this matter to the President of the Committee so that she is aware of it and acts with co-responsibility"*.

The City Council attached various documentation to its written response, specifically the following:

- Printing of several emails sent during the month of July 2018 from the corporate email address assigned to Workers Commissions (hereafter, (...)) in which they attach copies of the minutes of the meetings held by the Bureau general, and of the various documents that (...) has submitted to the City Council's registry.
- Copy of the report of the chief inspector of the local police, dated 30/07/2018, in which he states that *"in the "briefing" and recreation room of the police departments there are five desks of cork (...). That this room is for the exclusive use of body officials and administrative staff assigned to the Local Police"*, and in this sense it details the measures of (...) aimed at restricting the passage to these spaces to people outside of the workers of the police departments.

In the last one, he states that *"on the Prefecture's information desk there is a letter signed electronically by the Councilor of (...) on July 12 and addressed to the Trade Union Section of (...) of the City Council of Lliçà de Vall and a copy of Annex 1 "Communication of the election of occupational risk prevention delegates"*, and denies that any other document that *"comes close to the data provided"* in reference to the documents that were detailed in the request made by the Authority to the City Council.

6. On 29/07/2019, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Lliçà de Vall Council for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.c); all of them from 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 (hereinafter, RGPD). Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file.

This initiation agreement was notified to the imputed entity on 07/31/2019.

7. On 09/08/2019, the City Council submitted a letter in which it requested an extension of the 10-day period granted to submit objections to the initiation agreement formulated in the reference sanctioning procedure. On the same date, the Authority notifies the entity that the period of 10 days granted to the entity to formulate allegations is extended by 5 more days, in accordance with the provisions of article 32 of the LPAC

8. On 06/09/2019, Lliçà de Vall City Council made objections to the initiation agreement.
9. On 30/10/2019, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the Lliçà de Vall City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), all of them of the RGPD.

This resolution proposal was notified on 31/10/2019 and a period of 10 days was granted to formulate allegations.

10. On 12/11/2019, 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 proposed resolution, and in this sense attached the report of the human resources manager dated 11/12/2019.

proven facts

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

Lliçà de Vall City Council, on 07/17/2018 - or on a date close to this date - published on the "cork" board of the local police headquarters of the City Council, a form entitled "*Annex 1. Communication on the election of prevention delegates (paragraph 2 of article 35 of Law 31/1995, of November 8, on the prevention of occupational risks)*", which includes an information grid relating to the data of the three people who hold the position of prevention delegates, structured in several boxes where the following data is displayed: name and surname, NIF, email address, effective date, union organization to which belong, training in (...) and health, sex, year of birth, votes obtained and reason. The space where the aforementioned board is located can be accessed, at least, by all the workers who provide service in those departments.

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 City Council presented on 12/11/2019 a letter in which no objections were made to the proposal of

resolution to distort the facts imputed there or the qualification that was made there, but was limited to informing through the report of the human resources manager of the same date, of the measures adopted in order to comply with the measures corrections proposed in the proposed resolution. The imputed entity has not properly formulated 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 On the legitimacy of the publication of excessive personal data based on the purpose of informing workers and acting with "maximum transparency".

The City Council stated in its defense that the reason why they did not delete from the document "*Annex 1. Communication on the election of prevention delegates*" those personal data of the three prevention delegates in the scope of the union organization of (...) that exceeded the scope of the personal data that would have been sufficient for the identification of the three delegates, it was to inform "*the officials of the municipal internal activity body of their interest*", to act "*with the maximum transparency*", and avoid any action that could be considered by the City Council to be "*a manipulation*" of an official document such as the one referenced.

In this regard, first of all, it should be noted that the group of workers in a work center must certainly know and have at their disposal the information relating to the identification of the three prevention delegates, especially considering that in accordance with Law 31/1995, of 8 November, on the prevention of occupational risks (hereafter, LPRL), the prevention delegates "*are the representatives of workers with specific functions in the field of risk prevention at work*". In this sense, the proposed resolution was not questioned the lawfulness of the communication of the first and last names of the three prevention delegates to the workers together with their electronic address, which would be legitimized by their status as representatives of the workers in matters of risk prevention at work, bearing in mind note that for the effective exercise of their functions, established in article 36 of the LPRL, workers must be able to identify and also contact the people who represent them in this matter. However, to identify the three prevention delegates it is not necessary, and in this sense it was considered excessive to publish the rest of the data contained in the document "*Annex 1. Communication on the election of prevention delegates*".

In relation to the invocation made by the City Council in general terms to "*transparency*" to justify the publication of the controversial document with all the personal data contained therein, it is necessary to refer to Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC). The purpose of the LTC, among others, is to regulate and guarantee the transparency of public activity, and in this sense, it determines in its articles the information subject to the transparency regime (art.8). For the case at hand, it should be noted that article 9.1.i) of the LTC includes among the information relating to the organization that the Administration must make public "*the agreements, agreements and pacts of an official nature, labor and union*". However, this legal provision does not in itself legitimize the publication of all the data that was published about the union representatives, and in this sense it was considered that the City Council

to have complied with this obligation of transparency regarding the identification of the three prevention delegates without the need to publish all the personal data contained in the controversial document "*Annex 1. Communication on the election of prevention delegates*". That is to say, the proven facts do not question that the publication of the information about the union representatives did not have a legal basis that legitimized the lawfulness of the treatment of this information, either derived from the provisions of the LPRL or the LTC, but that what is being questioned is whether the same purpose of informing the workers that was pursued with the publication of the document could have been made effective only by publishing those essential data of the three union representatives.

In this regard, the proposed resolution also affects how the LTC establishes limits to transparency obligations, in relation to which it determines that "*they are the same as those established by title III for the right of access to public information, especially those relating to the protection of personal data*" (art . 7 LTC). In accordance with article 20 et seq. of the LTC, the right of access to public information may be denied or restricted for the reasons expressly established in the laws. Specifically, and with regard to information containing personal data, the regime provided for in articles 23 and 24 of the LTC must be applied.

Article 23 LTC establishes the limitation of access to information on specially protected personal data "*such as those relating to ideology, trade union affiliation, religion, beliefs, racial origin, health and sexual life, (...)*". In the present case, it must be taken into account that, although the data contained in the controversial document revealed information about the union affiliation of the three prevention delegates identified there, and therefore data specially protected under the terms of the article 23 of the LTC, it is also necessary to indicate that the data relating to trade union membership were precisely from people who held the status of delegates of (...) trade union representation in the workplace, and that as and as already has indicated, the correct exercise of their functions implies that the workers have at their disposal the information relating to their identification as well as the electronic address as a way of contact with their union representatives. This, without prejudice to the fact that the people who have been chosen as prevention delegates, as a result of the exercise of the functions entrusted to them, have necessarily had to make public their membership of a certain trade union, given that according to with the provision in article 35.2 of LPRL "*prevention delegates must be appointed by and among the staff representatives*" and, this circumstance must be known in the work environment of these people. Therefore, in this case, with regard to the personal data disclosed of the three delegates relating to "*trade union membership*", it is considered that the circumstance provided for in article 9.2.e) of the RGPD would occur which would lift the general ban on the processing of personal data from special categories when: "*e) the treatment refers to personal data that the interested party has made manifestly public*".

Thus, the publication of the names and surnames of the workers who have been designated as prevention delegates in their capacity as representatives of the workers, would not incur the prohibition provided for in article 23 of the LTC, to the extent that these people would already have previously revealed their union affiliation in the corresponding electoral procedures. Now, for the

rest of the information that was published that went beyond the identification with the names and surnames of the three representatives, and that did not hold the category of specially protected personal data, it is necessary to take into account the provisions of article 24 LTC and carry out a reasoned weighting between the public interest in the disclosure of this information and the right of the persons concerned. In this respect, article 24 LTC establishes a series of circumstances to be taken into account to carry out the referenced weighting, among which: *"b) the purpose of the access, especially if it has a historical, statistical purpose or scientific, and the guarantees offered"*. In this sense, it can be inferred from the City Council's allegations that the main purpose behind the controversial document being hung on the "cork" board of the City Council's local police headquarters was to identify the three prevention delegates to the workers and inform them about the changes in the ownership of the three positions, but to comply with that purpose it would have been sufficient to publish the name and surname together with their contact email address.

In accordance with these legal provisions, and from the point of view of the principle of data minimization, it is considered that the publication of all the personal data contained in the document *"Annex 1. Communication on the election of delegates/ from prevention"*, would be an excessive processing of personal data, since it was considered that the purpose pursued did not require the inclusion of all the personal data contained therein.

The City Council also alleged that removing the excessive personal data contained in the document would amount to "manipulating" an official document. In this regard, the proposed resolution indicated that in order to achieve the purpose of publicizing the identification of the three prevention delegates, it would have been sufficient to publish a copy of the document in which excessive personal data was omitted or well, for example, publish an extract from the document.

2.2 About the prior dissemination of this data through the president's email
of the Committee of (...)

Next, the City Council stated that it is the president of the City Council's (...) Committee who would also have disseminated the controversial document through an email sent on 07/13/2018 to *"all the City Hall staff"*.

About this, and leaving aside that the email referred to by the City Council was not sent to *"all City Council staff"* but to the generic address *"List AjLLDV-Politics"*, and that the attached document it contained personal data both of the person who sent the email and also of the other two prevention delegates - and therefore, the previously mentioned case of Article 9.2.e) of the RGPD does not apply. It should be noted that in this resolution does not personal data carried out by the president of the Committee of (...) of the trade union section of the City Council with the sending of said e-mail had sufficient legal protection or not, and this because such conduct is not part of what is the object of this procedure and which is determined by the facts imputed to the initiation agreement, the publication by the City Council of the controversial form entitled *"Annex 1. Communication on the election of prevention delegates"*.

2.3 About the space where the announcement desk is located

In the last one, the City Council reiterated that the room where the announcement desk of the local police prefecture of the City Council is located has restricted access to local police personnel: *"agents, administrative staff and of cleaning"*. However, the fact that access to the room is limited to the workers who provide service in those departments does not distort the alleged facts, given that the personal data that were published there should not be available to the workers in so that their knowledge is unnecessary for the development of their tasks, they are clearly excessive data in relation to the purpose for which they were published - to know the identification of the people who are the legal representatives of the workers -, and their publication offered information about certain aspects or situations of the affected persons that were excessive and violated the principle of data minimization established in the RGPD.

3. In relation to the facts described in the proven facts section, relating to the publication on the notice board located in the police offices of Lliçà de Vall Council of a document containing personal data of the different trade union representatives, it is necessary to go to article 5 of the RGPD. This article refers to the principles relating to treatment, and section 1, letter c), provides that *"1. The personal data will be: adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (minimization of data)"*.

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 83.5.a) of the RGPD, has been duly proven, which typifies the violation of *"the basic principles for treatment (...)"*.

Article 26 of Law 40/2015, of October 1, on the legal regime of the public sector provides for the application of the sanctioning provisions in force at the time of the facts, unless the subsequent modification of these provisions favor the alleged offender. That is why, in this act, the provisions of the RGPD apply, given that the commission of the offense charged here was carried out when the RGPD was already fully applicable. Likewise, the provisions of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD) have also been taken into account - which came into force after the imputed facts - for the purposes of assessing whether its application could favor the alleged infringer. And as a result of this analysis, it is concluded that the eventual application of the LOPDGDD would not alter the legal classification that is made here, and specifically would not favor the presumed person responsible for the infringement. In any case, it is worth saying that the facts imputed as constitutive of a more serious infringement in application of the RGPD would also be constitutive of an infringement of the same or greater gravity, if the LOPDGDD were applied to the present case, which has specifically characterized the conduct imputed here as a violation of *"the processing of personal data in violation of the principles and guarantees established in article 5 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 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, 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 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 infractions committed by public administrations, the resolution in which the infraction is declared shall establish the measures to be adopted so that the effects of the infraction cease or are corrected. This provision is similar to that of article 77 of the LOPDGDD.

In this regard, it must be recognized that the measures adopted by the City Council, which are included in the report issued by the council's human resources manager dated 11/12/2019, relating to the deletion of the document entitled "Annex 1. Communication on the election of prevention delegates (paragraph 2 of article 35 of Law 31/1995, of November 8, on the prevention of occupational risks)" of excessive personal data, in the sense of unnecessary, of the three people who hold the position of prevention delegates in the field of the trade union organization of (...) (specifically, the full number of their ID card - given that publishing the names and surnames of the three delegates /des is sufficient to identify them in front of the workers-, the effective date, health and safety training, year of birth, votes obtained and reason), as well as the fact that they have been removed from the notice board of the local police the said document, is considered that have complied with the corrective measures proposed in the proposed resolution. For this reason, measures to correct the effects of the infringement should not be required in this resolution.

In short, with this action accredited by the City Council, the main purpose pursued with the exercise of the inspection and sanctioning powers entrusted to this Authority, which is to ensure that the data protection regulations of personal character and prevent this fundamental right from being violated again.

resolution

For all this, I resolve:

1. Admonish Lliçà de Vall City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), 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 Lliçà de Vall Town Council.

3. Communicate the resolution issued to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published on the Authority's website (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,