

File identification

Resolution of sanctioning procedure no. PS 23/2019, referring to the General Directorate of Media of the Department of the Presidency of the Generalitat of Catalonia.

Background

1. On 18/01/2019, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the General Directorate of Media of the Department of the Presidency (hereinafter, the DG), due to an alleged breach of the regulations on the protection of personal data.

In his letter, the complainant (Mr. (...)) stated that on (...)/2019 he had been notified at the offices of the Association (...), with which labora, an office that had been directed to him by the General Sub-Directorate for the Planning of the Audiovisual Communication Space (hereinafter, the Sub-Directorate) -dependent on the aforementioned DG-, for which he was required to provide certain information related to the (...) "(...)", means of communication (...) on (...). The person making the complaint complained that a copy of this letter addressed to him had been the subject of full dissemination in various digital media, specifically, in the newspapers "(...)" and "(...)" .

The complainant accompanied his complaint with various documentation, including the following:
a) a list of links which, according to the complainant, would allow the download/viewing of the request that the Sub-Directorate had addressed to him; and, b) printing of the "authentic electronic copy" of said request.

2. The Authority opened a preliminary information phase (no. IP 21/2019), 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 the framework of this prior information, a series of checks were made via the Internet on the facts subject to the complaint.

3.1.- On 21/01/2019 it was found that by accessing the digital newspaper "(...)" and entering the words "(...)" into the search engine, you could access the following news item dated (.. .):
"The Government sends a request (...)". Through the newspaper's website, it was possible to download a document in pdf format with identical content to that provided by the complainant (the latter, however, in "authentic electronic copy" format), with the only difference that in the one published in the newspaper, the address to which the letter was sent to the complainant is crossed out.

3.2.- On 01/24/2019, it was found that by accessing the email address provided by the complainant (...), the following news item -dated on (...)- was accessed published on the website of "(...)"- "*The Generalitat requires (...)*". Through the newspaper's website, it was possible to download a document in word format with identical content to the writing provided by the person making the complaint (this one in "authentic electronic copy" format)

It was also found that the following information appears in the properties of said word document which was accessed via the internet:

"Authors (...)", "Last saved by (...)", "Generalitat de Catalunya Company", "Administrator Sub-Directorate General for Audiovisual Communication Space", "Created on (13/01/2019) 13:54:35", "Date

4. In this information phase, on 01/30/2019 the DG was required to comply with the following:

- Indicate what explanation you would give to the fact that the specific document in word format mentioned above was accessible via the internet, and specifically on the website of the newspaper "(...)"
- Indicate which people were allowed access to the original word document created by the Sub-Directorate, from the day of its creation (between (...) January 2019), until (...).

5. On 12/02/2019, the DG responded to the aforementioned request in writing in which it set out the following:

- That with respect to the first of the questions, and to the extent that *"there is no recorded security incident in relation to the affected information and that it has not been possible to determine who or how could have sent this document outside the systems of the Department of the Presidency"* it is not known how the specific document in word format could have been accessible via the Internet.
- That between the days (...) of January 2019, there were several people who had been able to have access to the document in question, all of them people who provide service to the Sub-Directorate; in addition to the Director General of Media who can have access to the documentation generated by the DG.
- That *"with respect to the properties of the word document indicated by the ACPD in its writing, it must be agreed that "(...)" ((...)) is an employee of the General Sub-Directorate of Ordenació de the Audiovisual Communication Space and is the material author of the document, but it is unknown who "(...)" is.*
- That, according to the complainant, the request was notified *"at the offices of the Association (...). Well, these data expressed by the complainant are not correct"*, since the request could not be delivered to the address of the association from which

provided, *"this was notified electronically, in electronically signed pdf format, to the aforementioned Association"*.

6. In view of the information provided by the DG, on 08/03/2019 this body was again requested to provide the following documentation:

- Copy of the evidence of the notification that was made by electronic means to the person reporting through the Association (...), in relation to the request for information about the (...) "(. ..)".

7. On 11/03/2019, the DG complied with this requirement by providing a copy of the evidence of electronic notification of the document referred to in the previous section. This document states that the cited document was made available on (...)/2019 at 13:35:49 and was accessed that same day.

8. On 07/29/2019, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the General Directorate of Media for an alleged infringement provided for in article 83.5.a), in relation 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 movement of these (hereinafter, RGPD) and 5 of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

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

10. On 02/08/2019, the DG made objections to the initiation agreement.

11. On 30/10/2019, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the General Directorate of Media as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f) of the RGPD and 5 of the LOPDGDD

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

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

proven facts

Based on all the actions taken in this procedure, the following are considered proven facts.

On an undetermined date but in any case between (...) and (...), some person who provided services to the Sub-Directorate General for the Organization of the Audiovisual Communication Space,

employee of the General Directorate of Media of the Department of the Presidency, leaked - without the consent of the affected person - to unauthorized third parties, a document in Word format, from which the aforementioned Sub-Directorate had generated another document in an electronically signed pdf format, which was forwarded to the person making the complaint. With the leakage of this document in word format, it was revealed that the person reporting here had been required to provide certain information related to the (...) "(...)" - means of communication (. ..)el (...) and that (...)-, the specific terms of the request, as well as the address to which it was addressed.

This word document was disseminated in various digital media as part of news dated on date (...).

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. In this regard, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations, which, in essence, questioned the facts attributed to the initiation agreement based on the following: : a) that in the metadata of the Word document accessible via the internet appears the name of "(...)", a person *"who does not provide services to the General Sub-Directorate or the Department of the Presidency, who appears to have accessed to the document for the last time"*; and, b) *"the inconsistency in the properties of the word document that the ACPD states in its writing, as it indicates a time of creation that is later (by 1 and a half hours) than the last printing of the document .*

Specifically it states: "content created (...) 14:35" and "printed for the last time (...) 13:05".

In this regard, as explained by the instructing person in the proposal, it must be said that none of the elements mentioned by the DG in its statement of allegations in the initiation agreement detract from the facts imputed in the initiation agreement initiation and declared as proven in this resolution, on the contrary, in fact one of them, specifically the one cited in point a), reinforces the imputed fact to the extent that it shows that a person who does not provide services even to the Sub-Directorate nor in the Department ("(...)") appears in the properties of a word document - published on the internet by a digital means of communication - which is known to have been drawn up by a person who worked in said Subdivision, as as reported to this Authority (5th precedent).

Regarding the element pointed out by the DG regarding *the "inconsistency in the properties of the document"*, it must be said that the DG did not argue in its statement of objections to what extent this element would question the facts imputed In any case, it is worth saying that this apparent "inconsistency" in the metadata is usually given when working on documents

in word format (such as if you print a document and later save it under another name using "name and save").

In short, what needs to be highlighted is that in the course of this procedure it has been shown that third parties outside the Sub-Directorate had access to a document in word format (the one that was published on the internet) - prepared as prior to the generation of the document in pdf format that was notified to the person making the complaint, thus violating the principle of confidentiality in relation to the data of the person making the complaint.

3. In relation to the facts described in the proven facts section, it is necessary to refer first to the concept of "personal data", defined in article 4.1 of the RGPD:

"all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person"

Based on this concept, it is necessary to go to article 5.1.f) of the RGPD, which in relation to the principle of data confidentiality determines the following:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee an adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality").

On the other hand, the LOPDGDD, establishes the following in its article 5, relating to the duty of confidentiality:

"1. Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with its applicable regulations. (...)"

As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is considered constitutive of the infringement provided for in article 83.5.a) of the RGPD, has been duly proven, which typifies as such the violation of "them

principios básicos para el tratamiento (...), which include the principle of confidentiality transcribed above.

The conduct addressed here has been included as a very serious infraction in article 72.1.a of the LOPDGDD, in the following form:

"The processing of personal data that violates the principles and guarantees of legality of the processing established by Article 5 of Regulation (EU) 2016/679"

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

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

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

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects. In 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 case, and as stated by the instructing person in the proposal, it is considered that it is not appropriate to require the adoption of any corrective measures, since it would be a matter of specific facts already accomplished.

resolution

For all this, I resolve:

1. Admonish the General Directorate of Media as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f) of the RGPD, and 5 of the LOPDGDD.

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 4t..

2. Notify this resolution to the General Directorate of Media

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 (apdcat.gencat.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 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,