

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 12/2020, referring to the City Council of (...).

Background

1. En data 21/12/2018 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit pel qual una persona formulava una denúncia contra l'Ajuntament de (...), on the occasion of an alleged breach of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these (hereafter, RGPD). The complainant, deputy director of a branch of the Bank (...) in that locality, stated that on 11/15/2018 the Local Police of that City Council had communicated his data to a third person, a client, without his consent of this bank.

Specifically, she pointed out that on 09/08/2018 this client approached the bank branch to make a refund through the cashier, and that he did not hand over the money (70 euros), which is why she went inside the branch to claim them. The person making the complaint pointed out that he told him that it was not possible to give him the 70 euros until the cashier paid the amount, and from this refusal a discussion began. The client called the local police, and two police officers went to the branch, identified both people (assistant manager and client) and gathered information about the events. Then, on 11/15/2018, the client appeared before the municipal police departments, and was given a copy of a police report entitled "daily intervention report" (ref. (...)), issued in date 11/15/2018 by a sub-inspector of the local Police. Then, according to the complainant, the client went to the branch of the banking institution and handed him a copy of this report, at which point he would have learned that the local police had communicated his data to the client, without their consent. Specifically, the data of the reporting person that appeared in the said report were: first and last name, private address and NIF. The police report also included these details of the client, plus her number. mobile phone The complainant expressed his complaint about the fact that the client could appear at her private address, where she lives with her family.

2. The Authority opened a preliminary information phase (no. IP 363/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of 1

of October, of the common administrative procedure of public administrations (from now on, LPAC), to determine if 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 involved.

3. In this information phase, by means of official document dated 07/1/2019, the City Council was required of (...) to report on several issues relating to the events reported.
4. On 07/17/2019, the City Council responded to the aforementioned request through a letter dated 07/16/2019 from its Data Protection Delegate -DPD- (DIBA), accompanied by a report issued on 07/09/2019 by the sub-inspector who signed the controversial police report, in which report the following was noted, among others:

"The person concerned (the customer of the banking entity) (...) requested...a report of the police intervention carried out by the Local Police of this municipality on 09-08-18 at his request, in the office of Bank of (...) of (...). (...).

On 11-15-2018 this sub-inspector drew up the daily intervention report (...) which included the account of the police intervention written by the officers who intervened and the identification of the two involved in the intervention: the petitioner and the person from the banking entity that served him, the deputy director.

This is the usual procedure for this type of request. The generation of the report is done through the computer program of the Local Police department, which contains the corresponding template with the combined data fields based on the introduction made by the officers who intervene (...)

On 11-16-18, a telephone call was received at the local police headquarters from the deputy director of the local Bank of (...) complaining about the processing of his personal data in the daily intervention report no. (...) (...) At that very moment I realized that the data that appeared in the report about him was personal and not professional. With that, I admitted an error in the preparation of the report and apologized accordingly.

Based on this call, I made the reliable check that the data that had been combined in the template were their personal data (address, population and ID) and not the professional data, which would correspond to having acted in the labor sphere in the moment of police intervention. Immediately, I drew up a new daily intervention report with the professional data of the deputy director and made an official notification to the applicant of the error in the original report, the making available to him of the new report with the correct data and the warning not to make use of the personal data of the deputy director, which appeared in the first report."

Apart from this, the DPD's statement of objections pointed out, among others, the following:

"2. On 09/08/2018 the Local Police officers who carry out the action verify, from the statements made by the deputy director, that the customer is a regular customer of the bank, so it follows that the customer already knows the identification data (name and surname) of the deputy director, as professional data.

3. The personal data (private address and ID) of the deputy director were included due to an involuntary error by the Local Police in the generation of the report of daily interventions (...) (...)"

The statement of allegations was accompanied by the documentation mentioned in the aforementioned police report.

5. On 02/06/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of (...) for an alleged infringement provided for in article 83.5.a) in relation to article 5.1.c), both of the RGPD. This initiation agreement was notified to the City Council on 06/12/2020.
6. In the initiation agreement, the City Council of (...) 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 he considered appropriate to defend his interests.
7. On 06/24/2020, the City Council made objections to the initiation agreement.
8. On 09/15/2020, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority declare that the City Council of (...) was responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), both of the RGPD.

This resolution proposal was notified on 09/25/2020 and a period of 10 days was granted to formulate allegations.

9. The deadline has passed and no objections have been submitted.

proven facts

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

On 08/09/2018, as a result of a discussion originating in a bank branch of the Bank (...) in (...) between a customer and the deputy manager of the branch, two officers from the Local Police impersonated , who identified both people and collected information about the events.

Subsequently, on 16/11/2018, the Local Police handed over to the customer of the bank who had taken the lead in the incident, a copy of the "daily intervention report" (ref. (...)) corresponding to the police intervention carried out on 08/09/2018, at the request of this person. In the "persons involved" section of this report, in addition to the first and last name and VAT number of the deputy director, his home address was included. The communication to the bank customer of the home address of the deputy director was carried out without his consent.

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 City Council of (...) has not formulated allegations in the proposed resolution, but it did so in the initiation agreement. Regarding this, it is considered appropriate to briefly reiterate the response of the instructing person to these allegations.

In the letter dated 06/23/2020, the City Council referred to the allegations made during the preliminary information phase that preceded the present sanctioning procedure, which it summarized by noting the following:

"- The report was generated through the computer program used by the Local Police and which combines the data fields based on the introduction made by the officers who intervened.

- Once it was verified that personal data and not professional data had been combined in the report, due to an involuntary error, a new intervention report was issued and the person making the request was informed of the error in the issue of the original report, making available the new report with the correct data, with the warning not to make use of the personal data of the deputy director.

The City Council carried out the necessary actions to correct its error and informed the person requesting the report that the personal data (private address and ID) of the deputy director had been mistakenly included in the report and it was warned that they could not be used."

As the instructor pointed out, the City Council would come to recognize the commission of the imputed facts - now considered proven - when it reiterated that an involuntary error was made in the preparation of the police report due to the fact of including "data personal" - referring to the private address - and not "professionals" - referring to the address of the bank branch where the affected person is the deputy director-. It must be noted that the lack of will in the commission of the act constituting the offense is not a reason for imputability of the offense committed, since the type

sanctioning body only requires that the conduct was carried out negligently, and there is no doubt of its concurrence, given that the police officer author of the report of daily interventions should have reviewed the report he had drawn up - because in that case he would have noticed the mistake - and, as far as it is concerned, before handing it over he should also have checked the personal data it contained, especially those relating to a different person than he usually tendered the report, and more so considering that the report referred to the conflict that occurred between the two people, which was precisely what the police intervention had required.

On the other hand, it should be noted that the actions carried out subsequently by the City Council to correct its error do not alter the classification of the facts or their imputation.

3. In relation to the facts described in the proven facts section, relating to the communication of data, it is necessary to go to article 6.1 of the RGPD, referring to the legality of the treatment, which includes the legal bases that legitimize a treatment, as follows:

"1. The treatment is only lawful if at least one of the following conditions is met:

- a) The interested party has given consent for the processing of their personal data, for one or several specific purposes. b) The treatment is necessary to execute a contract to which the interested party is a party or good to apply pre-contractual measures at your request.*
- c) The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment.*
- d) The treatment is necessary to protect the vital interests of the person concerned or of another natural person*
- e) The treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment.*
- f) The treatment is necessary to satisfy legitimate interests pursued by the person in charge of the treatment or by a third party, as long as the interests or fundamental rights and freedoms of the interested party that require the protection of personal data do not prevail, especially if the interested is a child.*

What is provided in letter f) of the first paragraph does not apply to the treatment carried out by public authorities in the exercise of their functions."

In order to assess the legality of the data communicated, it is also necessary to take into account that article 5.1.c) RGPD provides that the personal data must be: *"Adequate, relevant and limited to what is necessary in relation to the purposes for to which they are treated (data minimization)"*.

The communication of the aforementioned police report with the inclusion of the deputy director's home address is considered contrary to the principle of data minimization.

As indicated by the instructing person in the proposal, during the processing of this procedure this fact has been duly accredited taking into account the complainant's statement before

the Authority, the report containing the data, and the fact that the City Council has not only not contradicted the alleged facts - now proven -, but has recognized the mistake made, that is, the disclosure of these data in the controversial police report. The communication of data carried out in the terms indicated is considered constitutive of the infringement provided for in article 83.5.a) of the RGPD, which typifies as such the violation of: *"a) The basic principles for the treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9"*.

The Royal Decree-Law 5/2018, of July 27, on urgent measures for the adaptation of Spanish Law to the regulations of the European Union in the matter of data protection, in force at the time of the imputed facts, provided for the art. 4 that: *"The violations of Regulation (EU) 2016/679 referred to in sections 4, 5 and 6 of its article 83 constitute infringements"*.

4. Article 21 of Law 32/2010, in accordance with article 46 of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD) – this last article of application in accordance with the provisions of the single repealing provision of Royal Decree-Law 5/2018, of July 27-, provides that when the infractions are committed by a public administration, a resolution will be issued that declares the commission of the corresponding infringement, and which establishes the measures to be taken so that the effects of the infringement cease or are corrected:

"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 the present case, it is not considered necessary to require the adoption of corrective measures, given that the infraction charged is due to a specific event, and during the prior information phase the City Council certified that, once it became aware of the error in drawing up the police report, drew up a new one with the affected person's professional address, and communicated the error to the transferee who had been given a copy of the erroneous report , giving him a new report without including the deputy director's private address, along with "the warning not to make use of the personal data of the deputy director, which appeared in the first report".

resolution

For all this, I resolve:

1. Declare that the City Council of (...) is responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), both 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 4th legal basis.

2. Notify this resolution to the City Council of (...).

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

4. Order that the 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 City Council of (...) can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, 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 administrative contentious jurisdiction.

If the City Council of (...) 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 LPAC.

Likewise, the City Council of (...) may file any other appeal it deems appropriate to defend its interests.

The director,