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Autoritat Catalana de Protecció de Dades

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File identification

Resolution of sanctioning procedure no. PS 19/2020, referring to Vila-seca City Council

Background

1. On 07/03/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Vila-seca City Council, on the grounds of an alleged breach of the regulations on personal data protection.

The complainant stated that on 06/03/2019 he received an email with the subject *"Seats not assigned for the family concert (...)",* that the teaching area of the City Council *((...))* would have sent to 54 recipients, without using the blind copy option, and therefore the address of all of them being legible. In the body of the email message it was stated that the reason for the denial of tickets was that *"This activity is aimed at*
families with children schooled in Vila-seca or registered, and since you do not meet the requirement, we have not been able to assign you invitations. We could only assign you if there were vacancies and, given the high demand, that is not the case."

The reporting person provided, among other documents, a screenshot of the indicated email.

2. The Authority opened a preliminary information phase (no. IP 72/2019), 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 this information phase, on 03/14/2019, the reported entity was required to report, among others, on the reasons why in the aforementioned electronic submission the 'hidden copy option, and if all recipients of the email had previously requested tickets and/or invitations for the referenced family concert. And, in the event of an affirmative answer, the entity would inform about the channel it would have enabled so that people interested in attending the concert could request the invitations. Also, the City Council was required to report if it had any protocol or instruction on the use of e-mail.

4. On 03/28/2019, Vila-seca City Council responded to the aforementioned request in writing in which it stated the following: - That *"Unintentionally and due to human error, the electronic message was sent without using the blind copy option. The reasons why it proceeded in this way were the*

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uncertainty and the lack of knowledge of the virtual environment that was used by the teaching area, since the staff is a recent addition."

- That *"the recipients of the email had previously requested tickets for the family concert (...) through the form on the website of the Vila-seca City Council enabled for this purpose and also through the event created for the same purpose on the Facebook page of Ensenyament Vila-seca".*

- That *"in the rest of the electronic shipments that were issued with the same or similar purpose, and for the same event, during those days, use was made in any case of the hidden copy option, since it is practical usual that is used for this type of event or of a nature similar to that which is the subject of this complaint."*

- That *"the City Council is currently working on the development of a protocol on the use of e-mail and other matters related to data protection, in accordance with the RGPD".*

5. On 06/02/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Vila-seca City Council for an alleged violation provided for in article 83.5.a), in relation to article 5.1.f); all of them from 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 movement thereof (hereinafter, RGPD).

6. In the initiation agreement, the accused entity was granted a term 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. This deadline has been exceeded and no objections have been made.

proven facts

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

Vila-seca City Council, through the e-mail of the education area *((...)),* sent an e-mail on 03/06/2019 to a list of 54 recipients, with the relative subject *"Seats not assigned for the family concert (...)",* through which he informed them that they had not been assigned tickets for said concert since they did not meet the requirement to have children enrolled in school or registered in the municipality . The email was sent without using the bcc tool or option. This made it possible for all the recipients of said mail to access the email address of the rest of the people to whom the message was addressed, and to know the relative information that did not meet the requirements required to acquire the tickets of the 'family show.

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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 is indicated in the agreement initiating 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, relating to the sending of an email without using the blind copy option, it is necessary to refer to article 5.1.f) of the 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 (hereafter, RGPD), which provides for the following:

"1. Personal data will be: (...) f)
treated in such a way as to
guarantee adequate security for personal data, including protection against unauthorized or illegal treatment and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")".

This principle of integrity and confidentiality provided for by the RGPD must be complemented with the duty of secrecy contained in Article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), which establishes the following:

"Article 5. 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 the Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with the applicable regulations.
3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or in charge of the treatment has ended.
Likewise, it is appropriate to mention article 13 of the LPAC, which lists a catalog of rights of people in their relations with public administrations, in which the right *"To the protection of personal data, and in particular*

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to the security and confidentiality of the data contained in the files, systems and applications of the public administrations".

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 (...)".*

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form: *"i) The violation of the duty of confidentiality established by article 5 of this Organic Law."*

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. 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 the present case, it becomes unnecessary to require corrective measures for the effects of the infringement given that the infringing behavior refers to a single and already accomplished event, the sending of an email, which due to its instantaneous nature cannot be corrected with the application of corrective measures.

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resolution

For all this, I resolve:

1. Admonish Vila-seca City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), 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 legal basis 4rt.

2. Notify this resolution to Vila-seca City 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 (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,