

File identification

Resolution of sanctioning procedure no. PS 21/2020, referring to the Department of Business and Knowledge of the Generalitat de Catalunya.

Background

1. On 15/07/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Department of Business and Knowledge of the Generalitat of Catalonia, on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the person making the complaint explained that "All the information relating to the health data of the Department's staff, temporary incapacities due to their own health or that of their family members works on the tables and is visible to everyone." And he added that the people who were in charge of receiving and managing these documents openly asked the affected person or their relatives why they were on leave, in front of the other colleagues with whom they shared an office or area; and that these managers then discussed this information with other colleagues. On the other hand, the complainant indicated that when "personal matters need to be dealt with, Human Resources managers refuse to close the doors."

2. The Authority opened a preliminary information phase (no. IP 206/2019), 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 25/07/2019, the Authority carried out an inspection at the headquarters of the Department of Business and Knowledge, to verify certain aspects related to the events reported. In that face-to-face inspection, the representatives of the Department stated, among others, the following:

• That in the Department's Personnel Service, paper documentation related to personnel (such as temporary incapacity for health reasons) is kept in order to prevent access by unauthorized third parties, depositing the documentation in files for part of the people in charge of payroll (on the 6th floor).

The personnel file is also stored in locked devices (on the 5th floor).

- That, once the person responsible for its processing ends the working day, the staff documentation is kept in these cabinets.
- That when a person employed by the Department hands over the notice of resignation to the Personnel Service, the person concerned is not asked the reason for it.

- That there is no record that employees of the Personnel Service had ever asked the family members of the employee on leave, the reason for this.
- That there is no record that the colleagues of the affected person were asked, the reason for leaving
- That there is no evidence that the staff of the Personnel Service has disclosed to third parties outside the said service, the reason for the termination of any employee.
- That when an employee requests to treat a matter confidentially, privacy is guaranteed by closing the office where the matter is being treated.
- ÿ That a person made a suggestion to modify the circuit for presenting documents supporting terminations, as this person considered it unsafe to leave the document on the desk of the person managing the unit (other than human resources) in terms of to hourly control. This person was informed that he could deliver the documentation directly to the human resources unit.
- That in this last sense, there is no instruction to leave that documentation on the table of the person managing the unit, when he is not present. The documentation must be delivered by hand.

Also, on this same date, the Authority's inspection staff verified, among others, the following:

- That in the office where personnel files are kept (floor 5a) there was a filing cabinet equipped with a locking mechanism. The people who provided services in that department stated that, once the working day was over, that filing cabinet was closed.
- In the same office, there was another cupboard where proof of absence, such as medical visits, was stored. This cabinet had a locking mechanism, but the people who provided services there stated that it was never locked since the key was not available.
- ÿ That in the offices where termination notices were processed (floor 6a), there was a shelf where the people who provided services there stated that termination notices were stored. This shelf did not contain any elements that prevented access to its contents. In turn, the same people stated that the office was not locked either.

4. On 02/06/2020, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of Business and Knowledge for an alleged infringement provided for in article 83.4.a), in relation to article 32; 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).

Also on 02/06/2020, the Director of the Authority issued a filing resolution regarding the rest of the reported conduct related to the collection of the reason for

the termination and the lack of confidentiality in relation to the personal matters that employees deal with the Department's Human Resources managers. In that resolution, the reasons that led to its archive are justified.

5. On 30/06/2020, the Department of Business and Knowledge formulated objections to the initiation agreement.

6. On 14/10/2020, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority admonish the Department of Business and Knowledge as responsible for an infringement provided for in article 83.4.a) in relation to the article 32, both of the RGPD.

This resolution proposal was notified on 10/20/2020 and a period of 10 days was granted to formulate allegations.

7. On 03/11/2020, the Department of Business and Knowledge presented a letter with statements related to the corrective measures proposed by the person instructing to correct the effects of the infringement. In this letter, the Department did not formulate any allegation on the merits to discredit the offense imputed in the resolution proposal.

proven facts

The Department of Business and Knowledge does not guarantee the security of the data, on paper, included in the evidence of absence (such as due to medical visits) and in the termination notices.

Firstly, the certificates of absence were stored in a cupboard in which the locking mechanism could not be used to prevent its opening, given that the corresponding key was not available.

And, secondly, the termination notices were kept on a shelf in an office without any restrictions on their access. In turn, this office was not locked.

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 has been advanced, on 03/11/2020 the imputed entity has submitted a letter to certify the adoption of the corrective measures that the instructing person proposed to require from the Department in the resolution proposal. In said letter, however, no allegation was made regarding the proposed resolution.

On the contrary, the accused entity did make allegations against 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. About the facts that are the subject of the archive resolution.

In the 1st section of its statement of objections to the initiation agreement, the Department of Business and Knowledge cited the lack of foundation and veracity of the statements made by the person making the complaint regarding the events that were the subject of the archive resolution mentioned above; as well as he emphasized the scrupulousness with which the command staff in the field of human resources addressed each and every one of the issues of the assigned staff that required confidential treatment, through meetings in closed rooms equipped for the purpose.

As the instructing person explained in the resolution proposal, given that the Department was referring to some facts regarding which the Director of the Authority had already issued an archive resolution, and therefore, which were not the subject of this sanctioning procedure, it was not appropriate to make any mention of it.

2.2. About the corrective measures.

Next, in relation to the cupboard where the proofs of absence were stored and which could not be closed (as it did not have the corresponding key), the Department stated in its statement of objections to the agreement of 'initiation that during the week following the Authority's inspection the controversial cupboard was checked to ensure it was locked and staff were reminded of the obligation to keep it locked, designating the person responsible for keeping the key safe. Likewise, the Department added that it implemented a mechanism for processing proof of absence electronically, so it indicated that this documentation would not be processed in paper form.

With regard to the termination notices that were kept in a bookcase in a certain office on the 6th floor of the Department's headquarters (which was not locked) without any restrictions on access, the Department also explained that during the week following the Authority's inspection, the security protocol for the information relating to termination notices was reviewed in order to guarantee their safe custody, reinforcing some security aspects which included the closing of the office at the end the working day. In turn, the Department also indicated that for the presentation of notices of discharge, discharge and confirmation of temporary incapacity, it had been

enhanced the use of the already existing specific mailbox and a folder in a network unit restricted to the people who strictly participated in the processing of the corresponding personal data (although it was inferred that it was still possible to process it on paper).

Well, as the instructing person pointed out, the proactive attitude shown by the Department consisting of implementing measures aimed at correcting the effects of the imputed infringement, once the in-person inspection by the Authority's inspectors had taken place, must be positively assessed.

However, despite the measures that the Department pointed out to have implemented in its statement of objections to the initiation agreement, it was considered that it was necessary to require the adoption of additional measures regarding the storage of termination notices on a shelf.

Having said that, it was also pointed out that the adoption of measures to correct the effects of the infringement did not distort the imputed facts, nor did they change their legal classification.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 5.1.f) of the RGPD, which regulates the principle of integrity and confidentiality determining that personal data will be "treated as in such a way that an adequate security of personal data is guaranteed, including protection against unauthorized or illegal treatment and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures".

For its part, article 32.1 of the RGPD, regarding data security, provides the following:

"1. Taking into account the state of the art, the costs of application, and the nature, scope, context and purposes of the treatment, as well as risks of variable probability and severity for the rights and freedoms of physical persons, the person in charge and the person in charge of the treatment will apply appropriate technical and organizational measures to guarantee a level of security adequate to the risk, which if applicable includes, among others:

- a) pseudonymization and encryption of personal data;
- b) the ability to guarantee the confidentiality, integrity, availability and permanent resilience of the treatment systems and services;
- c) the ability to quickly restore availability and access to personal data in the event of a physical or technical incident;
- d) a process of regular verification, evaluation and assessment of the effectiveness of the technical and organizational measures to guarantee the security of the treatment."

In the present case, the risks entailed by the treatment in paper form of the previously identified documentation must determine the need to implement the technical and organizational measures necessary to avoid unauthorized access, an objective expressly established in article 5.1. f) of the RGPD.

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 infringement provided for in article 83.4.a) of the RGPD, has been duly proven, which typifies the violation of "the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43", among which there is that provided for in article 32 RGPD.

The conduct addressed here has been included as a serious infraction in article 73.f) of the LOPDGDD, in the following form:

"f) The lack of adoption of technical and organizational measures that are appropriate to guarantee a level of security adequate to the risk of the treatment, in the terms required by article 32.1 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".

As has been advanced, on 03/11/2020 the Department of Business and Knowledge has presented a letter through which it reports on the measures implemented to give

compliance with the requirement proposed by the instructing person, consisting in adopting the appropriate measures to guarantee the security of the personal data contained in the paper termination notices, which were stored on a shelf in a certain office of the 6th floor of the Department's headquarters.

In this regard, the Department certifies that it has enabled a locked cupboard in order to save staff leave certificates. In turn, it specifies that a certain person has been designated as responsible for the custody of the key.

Well, the measures that the Department claims to have diligently implemented must be considered appropriate to prevent unauthorized persons from accessing said documentation, which is why no corrective measures should be required in this regard.

Aside from the above, the Department informs that it will review its general and specific actions regarding the protection of paper-based information in order to guarantee compliance with the applicable regulations, which should be evaluated positively.

resolution

For all this, I resolve:

1. Admonish the Department of Business and Knowledge of the Generalitat of Catalonia as responsible for an infringement provided for in article 83.4.a) in relation to article 32, 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 Department of Business and Knowledge.

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 what they provide

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

count 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 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,

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