

File identification

Resolution of sanctioning procedure no. PS 26/2020, referring to Torredembarra City Council.

Background

1. On 08/14/2019, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against Torredembarra City Council, on the grounds of an alleged breach of the regulations on protection of personal data. In particular, the complainant stated that to access "a part of the municipal building" it was necessary to have a card that opened an electronic door. To this end, the complainant indicated that the City Council identified the people who wanted to access these offices by means of their ID, which was written down on a piece of paper without giving effect to the right to information. On the other hand, the complainant also stated that the City Council's website (torredembarra.cat) "does not comply with the regulations and does not provide the mandatory information".

2. The Authority opened a preliminary information phase (no. IP 229/2019), 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 10/01/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported.

Thus, the following was established, among others:

- If you filled in the electronic form to sign up for the "Newsletter Service" on the left side menu of the City Council's website (torredembarra.cat), you had to accept the legal notice to send it. The content of which was as follows:

*"The personal data you have provided to us will be processed and incorporated into a responsibility file of Torredembarra City Council.
In accordance with the provisions of articles 15 and 16 of the Organic Law 15/1999, of December 13, on the Protection of Personal Data, we inform you that you can exercise the rights of access, rectification, cancellation and opposition to info @torredembarra.cat."*

- That if you click on the icon in the form of an envelope, located in the top right menu of the City Council website, you will access the contact form. In this sense, it was found that the contact form could be sent without having previously provided the affected person with any information about the processing of the data.

4. On 15/10/2019, also during this preliminary information phase, the reported entity was required to, among others, confirm whether it collected the ID of people accessing certain facilities municipalities and prove how the right to information was made effective.

5. On 10/24/2019, the Torredembarra City Council responded to the aforementioned request in writing in which it stated the following:

- That in order to access the upper floors of the Town Hall headquarters, you must first be accredited. To access the public assistance office located on the ground floor, accreditation is not necessary.
 - That in order to be able to limit access to the upper floors of the City Hall, and in order to be able to guarantee the safety of workers and facilities, the first and last names, as well as the ID number of the person who 'accredit as a visitor.
- ÿ That there are informative posters in the space where this data is collected, with the following content:

*"INFORMATION RELATING TO THE DATA PROTECTION LAW EN
ACCESS CONTROL:*

We inform you that the personal data you have provided us at this access control point will be processed and incorporated into a File called "Access Control" responsibility of TORREDEMBARRA COUNCIL.

The purpose is the management and control of access by people outside the council who access certain areas reserved for the City Council's own staff.

Your refusal to provide the requested data makes it impossible for you to access certain reserved sites.

In accordance with the provisions of Organic Law 3/2018 of December 5, Protection of Personal Data, we inform you that you can exercise your rights of access, rectification, cancellation and opposition to: Torredembarra City Council. Plaça del Castell n. 8, 43830 Torredembarra (Tarragona).

Likewise, you can also submit a claim to the Catalan Data Protection Authority or contact the Data Protection Delegate of this entity at the address dpo@torredembarra.cat

6. On 08/06/2020, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Torredembarra City Council for three alleged infringements, all of them provided for in article 83.5.b), in relation to article 13 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 movement of these (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 07/01/2020.

In the initiation agreement, the accused entity was granted a period 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 its interests.

7. On 09/08/2020, Torredembarra City Council submitted a letter in which it acknowledges its responsibility for the alleged acts and accredits the measures it has implemented to correct the effects of the violations.

proven facts

1. In the collection of data from visitors in order to control access to the upper floors of the headquarters of the Torredembarra City Council, not all the information established in article 13 of the RGPD was provided.

In particular, no information was provided on the end provided for in article 13.1.c) - the legal basis of the treatment was not indicated; nor of what is contemplated in clauses a) ib), that is to say there was no information on the retention period of the data or criteria for its determination, nor on the possibility of exercising the right of limitation of the article 13.2 GDPR.

2. Torredembarra City Council also did not provide all the information established in article 13 of the RGPD in the collection of personal data through the electronic form on its website (torredembarra.cat) to register for the "Newsletter Service".

In particular, no information was provided about the ends provided for in the statements a) - the contact details of the person in charge were not indicated -, b) - the contact details of the data protection delegate were not indicated - and) - no the purpose of the treatment and the legal basis were indicated-

of article 13.1 RGPD; nor of what is contemplated in terms a) -no information was given on the term of data conservation-, b) -no information was given on the possibility of exercising the right of limitation-, ic) -for the if the treatment was based on consent, it was not indicated that it could be withdrawn at any time - from article 13.2 RGPD.

3. In the collection of the data of the people who filled in and processed the contact form on the website of the Torredembarra City Council, the right to information did not take effect.

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 85.1 of the LPAC and in accordance with what is indicated in the agreement to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the imputed entity has not disputed the imputed facts and has acknowledged its responsibility, and this implies the termination of the procedure.

3. In relation to the facts described in points 1 and 2 of the proven facts section, it is necessary to refer to paragraphs 1 and 2 of article 13 of the RGPD, which provide the following:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;*
- b) the contact details of the data protection officer, if applicable;*
- c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment;*
- d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party;*
- e) the recipients or the categories of recipients of the personal data, as the case may be;*
- f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section*

1, second paragraph, refers to adequate or appropriate guarantees and the means to obtain a copy of them or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee a fair and transparent data processing:

- a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period;*
- b) the existence of the right to request from the person responsible for the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ;*
- c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal;*
- d) the right to present a claim before a control authority;*
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;*
- f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the person concerned."*

During the processing of this procedure, the facts described in points 1 and 2 of the proven facts section, which constitute two violations, both provided for in article 83.5.b) of the RGPD, have been duly proven. which typifies the violation of *"the rights of the interested parties pursuant to articles 12 to 22"*, among which is the right to information provided for in article 13 RGPD.

The conduct addressed here has been included as a minor infraction in article 74.a) of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), in the following form:

"a) Breach of the principle of transparency of information or the right to information of the affected person for not providing all the information required by articles 13 and 14 of Regulation (EU) 2016/679."

4. With regard to the fact described in point 3 of the proven facts section, it is also necessary to refer to article 13 of the RGD of the RGPD previously transcribed.

The fact recorded in point 3 of the section on proven facts constitutes the violation provided for in article 83.5.b) of the RGD of the RGPD, previously transcribed.

In turn, this conduct has been included as a very serious infraction in article 72.1.h) of the LOPDGDD, in the following form:

"h) The omission of the duty to inform the affected person about the processing of their personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 016/679 and 12 of this Organic Law."

5. 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, the Torredembarra City Council has reported on the measures implemented to correct the effects of the imputed infractions linked to the

right of information In this sense, the actions of the Torredembarra City Council in order to make effective the right to information of the affected persons should be positively assessed.

However, despite the measures applied by the City Council, some irregularities related to the right to information continue to be detected, which is why it is necessary to request the reason as soon as possible, and at the latest within 10 days of count from the day after the notification of this resolution, carry out the following measures:

- 5.1. Regarding the collection of data from visitors in order to control access to the upper floors of the Torredembarra Town Hall headquarters (proved fact 1), it is necessary to delete from the information provided to the affected persons, the right to portability In this sense, it should be borne in mind that in accordance with article 20 of the RGPD, the person concerned can only exercise the right of portability when the treatment is based on consent (art. 6.1.a RGPD) or on a contract (art. 6.1.b RGPD). And in the present case, the City Council informs that the processing of data is based on the fulfillment of a mission in the public interest (art. 6.1.e RGPD).
- 5.2. Regarding the collection of data from people who, through the electronic form on their website (torredembarra.cat), requested to register for the "Newsletter Service" (proven fact 2); the information provided to the affected persons must include the right to withdraw consent at any time (art. 13.2.c RGPD), given that the City Council informs that this treatment can be based on consent.
- 5.3. Regarding the collection of data from the people who filled in and processed the contact form on the website of the Torredembarra City Council (proved fact 3), it should be pointed out that the City Council has incorporated the same information clause regarding the collection of data for registration to the "newsletter". Given that the purpose of collecting data through the contact form is not exclusively the sending of the "newsletter", it is necessary to draw up a specific information clause relating to the collection of data through said contact form, in the terms provided for in article 13 of the RGPD.

Once the corrective measures described have been adopted, within the period indicated, the Torredembarra City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to make the corresponding checks.

resolution

For all this, I resolve:

1. Admonish Torredembarra City Council as responsible for three infringements, all of them provided for in article 83.5.b) in relation to article 13 of the RGPD.
2. To require the Torredembarra City Council to adopt the corrective measures indicated in the 5th legal basis and to accredit before this Authority the actions taken to comply with them.
3. Notify this resolution to Torredembarra City Council.
4. Communicate the resolution issued to the Grievance Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. Order that this resolution be published on the Authority's website (www.apd.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 considers convenient to defend their interests.

The director,