

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

File identification

Resolution of sanctioning procedure no. PS 29/2020, referring to the School (...)

Background

1. On the dates 06/05/2019 and 08/05/2019, the Catalan Data Protection Authority received three letters from three different people, for which they made three complaints against the School (...) (henceforth, the School), in relation to an alleged breach of the regulations on personal data protection.

Specifically, the three complainants complained that the School published on its website openly and therefore accessible to everyone via the internet, as well as at other URL addresses, such as "(...)google. photos/share" and on the YouTube platform, different photographs and videos in which their minor children appeared, without their consent having been granted for such dissemination of images. Likewise, two of the complainants added that the supports or mobile devices (such as a tablet) in which the images of the students of the aforementioned center are stored, would have left the school premises, considering that many images were uploaded on the internet outside school hours or during school holidays.

The reporting persons attached the images to which they referred, and also informed the Authority of the URL addresses where said images and videos could be viewed.

2. The Authority opened a preliminary information phase corresponding to each complaint (no. IP 141/2019, IP 142/2019 and IP 144/2019), in accordance with the provisions of article 7 of Decree 278 /1993, of November 9, on the sanctioning procedure for application to 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 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 that were involved.

3. On 05/27/2019, 07/03/2019 and 07/15/2019, as part of this preliminary information phase, the Authority's Inspection Area made a series of checks through the Internet about the facts that are the subject of the complaint. Thus, it was found that they were published openly on the School's website and platforms

(...)//photos.google.com/share and YouTube, the photographs and videos in which the minor children of the persons making the complaint appeared.

Specifically, the verifications carried out affect the following sites and URL addresses:

- On the School's website, (...)(...)videos could be viewed that correspond to what is reported. The same images were also published openly on the YouTube Channel ((...).

- The School also had published images of its students, among them the children of the people here reporting, and in some cases in the foreground, on the platform (...)//photos.google.com/share.

(...) (...) (...)

4. In this information phase, on 10/25/2019 the reported entity was required to report on the reasons why all the aforementioned information was publicly published, and whether the School had the consent of the parents or legal representatives of the minors to whom the complaints referred for the publication of their images openly on the internet. Likewise, the School was required to inform the center's authorized person (charge) to publish images on the Internet, and if the supports or mobile devices (such as a tablet) in which the students' images are stored, they went outside the school grounds. In case of an affirmative answer, the School was asked to report whether it had carried out a risk analysis to determine the measures to be applied to guarantee the security of the data with respect to devices that leave the premises.

5. On 11/14/2019, the School responded to the aforementioned request in writing in which it stated the following:

- That "as soon as it became known that the images that concern us were published, they were taken down, if the families had let us know we would have done it sooner. We recognize our mistake in trusting that the teachers reviewed it carefully, (...). From now on, the multimedia material that is uploaded to the School's website will be published directly without going through any open platform (such as YouTube) as until now".

- That "Web plans (Nodes) today are an essential element in the knowledge and dissemination of educational centers, they allow to create direct communication with families. (...).The fact of doing it in the open, is to facilitate access for all families so that no one finds any difficulty in being able to easily follow the different contents."

- That in relation to whether consent was available to upload the images of the three minor students "We must recognize that the family had signed their NO consent to the publication of the images of their child, and in all cases we believe what is

rigorously reviewed the possibility of it appearing there, although in some cases it seems that it was not done carefully."

- That "At our school until now, the entire faculty is an administrator of the Nodes and therefore everyone is authorized to upload the images, since any teacher can record activities they consider interesting. Even so, the TAC Coordinator of the center is the one who mostly edits and reviews the images. From now on the administration will be limited and therefore who will post content on the website will be the management of the center and the TAC coordinator, in order to ensure that it does not happen again."

- That "The recordings are made with the center's tablets, which at the end of the day are left connected to their place (Magatzem TAC) so that the images can be uploaded to the center's clouds, accessible only with a user and password, so that if any teacher wants to take advantage of non-school hours (non-school hours and/or holidays, since during school hours they usually don't have time) they can access from any computer as an administrator and manage what is needed from the Nodes platform. In no case do the teachers take the tablets home".

6. On 23/04/2020 from the Inspection Area it was verified that, as the School had indicated, the controversial videos were no longer published on the School's website or on the YouTube channel . However, the photographs that had been published through the URL address (...)google.photos/share, continued to be published openly.

7. On 08/06/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the School (...) for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.a); 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). This initiation agreement was notified to the imputed entity on 07/01/2020.

8. The initiation agreement explained the reasons why no charges were made with respect to other reported facts. Regarding this, in the section of reported facts not attributed to the initiation agreement it was stated that from the information and documentation provided it would not have been established that any of the supports or mobile devices (such as a tablet) in how the images of the students are stored, had they left the school premises, and in this sense, according to the information given by the School, the images would be hosted in virtual storage spaces - cloud storage - which allows its treatment without the need to remove any physical device from the School. In this regard, then, it would not be proven that the facts reported here referenced were constitutive of any of the violations provided for in the RGPD and in Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD).

9. 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 their interests.

10. On 07/09/2020, the entity made objections to the initiation agreement, and provided with his writing, a screenshot of the only two photographs that are still published on the google.photos/ share platform and on the side of the image it is reported that said publication was "shared" by one of the people here reporting

11. On 09/17/2020, the person instructing this procedure formulated a proposed resolution, by which it proposed that the director of the Catalan Data Protection Authority admonish the School (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), all of them of the RGPD.

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

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

proven facts

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

The School (...) published on its website, as well as on the YouTube Channel, videos containing images of underage students recorded during different school activities, in which the children of the persons reporting here, without the consent of the legal representatives or any other legal basis to the contrary.

These videos were available to anyone with an internet connection for an indeterminate time, but at least until 10/25/2019, the date on which the School removed them when it became aware of the allegations in through the request made by this Authority.

The School also published photographs through the URL "(...)google.photos/share".

These images have already been removed, with the exception of two photographs that continue to be published openly through this platform, but which according to the information linked to the publication, are images that would have been shared publicly by one of the persons reporting here, and not for the School

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. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

First of all, it should be noted that the allegations that the accused entity made before the initiation agreement are not allegations in themselves tending to distort the facts that motivated the initiation of the procedure or question the qualification legal established in the initiation agreement.

In this sense, the allegations presented by the entity focused on exposing the corrective measures implemented when they became aware of the complaints made as a result of the requirements made by this Authority, and with the notification of the initiation agreement.

In this regard, they explained that "all the images and links that allowed access to these photographs and videos were removed" and "the people who could access as administrators when uploading images was limited" and that from now on "all the multimedia material that is uploaded to the School's website will be published directly without going through any open platform (such as YouTube)". Also, the entity added that the corrective measures had been informed to the people who reported here, who would have expressed their agreement, and that following the events reported, a protocol to be followed for the publication of images of the students had been approved. That being the case, the accused entity did not dispute the facts attributed to it in the initial agreement.

Given the above, the School's action to remove all those images and videos published on the School's website, on the open YouTube channel, and on the URL address "(...)google .photos/ share", which did not have the consent of the legal guardians of the minors who were recorded there. In relation to the two photographs that continue to be published openly on the platform for sharing photographs "(...)google.photos/share", the entity provided documentation from which it is inferred that the published image was shared by a of the people reporting here, and not the School. In this sense, it is considered that the measures implemented by the center aimed at complying with the RGD and the LOPDGDD have been sufficient.

Having said that, it is also necessary to point out that the adoption of measures to correct the effects of the offense do not detract from the alleged facts, nor do they modify their classification legal

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5 of the RGPD, relating to the principles of treatment, which in its section 1 letter a), provides that personal data must be treated "lawfully, loyally and transparently in relation to the interested party ("lawfulness, loyalty and transparency").

In this sense, the RGPD provides that all processing of personal data must be lawful (article 5.1.a)) and, in relation to this, establishes a system for legitimizing the processing of data which is based on the need for it to any of the legal bases established in its article 6.1.

In this regard, it should be noted that the controversial publication of the images and videos on the School's website, on the open YouTube channel, and on the photo-sharing URL "(...)google.photos/ share", was made without the consent of the legal guardians of the registered minors, given that they are minors under the age of 14. This lack of consent has been admitted by the School expressly in the investigation phase that preceded the initiation of this sanctioning procedure, when responding to the request for information that had been made. Likewise, it should be noted that the data processing carried out with the publication of the controversial images and videos would not be covered by any of the other authorizations provided for in Article 6 of the RGPD, which, in turn, have not been invoked by the reported entity.

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 "basic principles for treatment (...)".

The conduct that is addressed here has been collected as a very serious infringement in article 72.1.a) of the LOPDGDD), in the following form: "The treatment of personal data in violation of the principles and guarantees established in the article 5 of Regulation (EU) 2016/679", in relation to the principle of legality established in article 5.1.a) of the same RGPD.

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 the present case, it becomes unnecessary to require corrective measures for the effects of the infringement since the entity has already removed all the images and videos they had published in opened on the internet without prior consent, as noted by this Authority. For what about the two photographs that continue to be published through the platform by share images (...)google.photos/share, it should be indicated that no measures should be required correctors addressed to the School, as it can be inferred from the documentation provided by the entity that the person who would have shared the image publicly would be one of the people complainants, and therefore, is the authorized person to be able to release the controversial ones images

resolution

For all this, I resolve:

1. Admonish the School (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), 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 the School (...).

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 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,