apdcat
Autoritat Catalana de Protecció de Dades

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File identification

Resolution of sanctioning procedure no. PS 30/2020, referring to the Foundation for the Open University of Catalonia.

Background

1. On 05/09/2019, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Foundation for the Open University of Catalonia (hereinafter, UOC), with reason for an alleged breach of the regulations on the protection of personal data. In particular, the complainant stated that she was interested in taking specific courses and that the UOC recommended that she register for the virtual classroom in order to be able to contact the tutor and ask her questions. However, the person complainant stated that in the end she did not enroll, so she sent an e-mail to the UOC Student Services (to which she was answered with an e-mail inviting her to use the attention of the virtual campus to process your request), with a copy to the tutor (which was not answered), to inform that you would not enroll and to request that your personal data be deleted.

Given the above, the complainant used the "Contact" electronic form on the UOC website (uoc.es) to exercise his right of deletion. In this sense, he explained that in the electronic consultation form it was mandatory to provide the sex and the date of birth; as well as to consent to the processing of the data in order to manage the sending of information regarding the training, academic and institutional offer of the UOC and the transfer of their data to the companies of the UOC group.

2. The Authority opened a preliminary information phase (no. IP 241/2019), 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 30/09/2019, the Inspection Area of the Authority accessed the UOC website (uoc.edu). Thus, the following was established, among others:

- That, by pressing the "Contact" option from the top menu of the website (https://www.uoc.edu/portal/ca/universitat/contacte-seus/index.html), an electronic contact form was opened.
- That said form required, obligatorily, filling in the following data: name and surname, sex, date of birth, reason for the consultation (selecting from the options already defined - Enrollment, access, validations, scholarships, evaluation, learning resources, degrees,

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contact and headquarters or others – and having to fill in the text field of the query), contact phone number and contact email address.

- That, in order to send the query, it was also necessary to accept the *"legal terms and conditions".* By clicking *on "legal terms and conditions",* you access the UOC's *"Privacy Policy" (https://* www.uoc.edu/portal/ca/_peu/avis_legal/politica-privacyt/index.html), of which a copy was kept.

- That, once the form has been filled in, if *"Send the query"* is clicked, a window with the *"Information on the data protection policy" will be displayed.* Specifically, the following was reported there:

> *"RESPONSIBLE: Foundation for the Open University of Catalonia (from now on, "UOC") (http:// www.uoc.edu/ portal/ ca/ universitat/ organizacio/ grup uoc/ index.html).*
>
> *PURPOSE: To manage the sending of information about the UOC's training offer in the selected training area and to know your opinion on the information we have provided you.*
>
> *Likewise, manage the sending of academic and institutional information related to the acts carried out by the UOC, through the creation of profiles both by the UOC and by third parties, and the sending of surveys related to research and innovation, among others.*
>
> *LEGITIMATION: Consent of the interested party.*
>
> *RECIPIENTS: UOC Group companies.*
>
> *International transfers may also occur.*
>
> *RIGHTS: You can exercise your rights of access, rectification, deletion, opposition and other legally established rights at any time by clicking here.*
>
> *More information"*

- That, in order to submit the form, it was necessary for the interested person to mark the box (which was not marked) in the same window as *"I consent to the UOC processing my personal data as established below" [the* information that 'just transcribed].

- That if *"More information" is awarded,* the *"Privacy policy"* is accessed .

4. On 10/14/2019, also during this preliminary information phase, the reported entity was required to report on the reasons why the electronic inquiry form on the UOC website was mandatory that the person indicate the gender and date of birth; and, in relation to the purposes for which consent was requested in the form indicated and the

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transfer of data to companies of the UOC group, indicating how it was guaranteed that this consent for each treatment was specific.

5. On 28/10/2019, the UOC responded to the aforementioned request in writing in which it set out, among others, the following:

- That in the contact form on the UOC website, gender and date of birth are requested *"so as not to duplicate records in the database and thus be able to offer a better, more personalized service to the interested party and oriented to the excellence To give an example, if a person is called "Pedro García Rodríguez", it is very likely that there are other people with this name and surname in our databases, which is why having information about the date of birth of the person in question and its gender allows us to identify which person it is and to be able to locate their data quickly in the event that we have to attend to a request from them. Therefore, the aim of this request is to be able to offer a better service, especially considering the large volume of data that the UOC manages on a daily basis."*

- That the opening of this preliminary information phase has led the UOC to review the information on data protection that is provided to those interested in the "Contact" form on the website and, *"we consider it necessary to improve the information provided in a more generic, simple, comprehensible and transparent manner."*
- That *"we have proceeded to initiate the procedures for the modification of the information on protection of data from the "Contact" form and that the following information appears:*

> *INFORMATION ON UOC DATA PROTECTION*
>
> *Purpose: Manage and respond to your requests for information and, where applicable, the documentation provided. If the requested information refers to non-regulated training, the query is managed by UOC X and/or UOC Corporate. As well as receiving information about other training offers and general information from the UOC.*
>
> *Rights: You can withdraw your consent at any time, as well as exercise your right of access, rectification, deletion and opposition and other legally established rights by clicking here.*
> *Additional Information: You can expand the information in the Privacy Policy link. The contact details of our Data Protection Officer are: dpd@uoc.edu.*
>
> _____
>
> ÿ *I agree to receive information about other training offers and general information from the UOC.*
>
> ÿ *I have read and accept the Privacy Policy."*

- That in relation to the consents and information provided, *"make it clear that (i) under no circumstances will the data be transferred to all the companies of the UOC Group, only to UOC X - Xtended*

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Studies and UOC Corporate, SL being two entities that could inform the interested parties according to the type of consultation and information requested, especially if it is non-regulated training; (ii) no international transfer occurs; (iii) no information is sent regarding informative offers from the UOC, nor academic and institutional information related to acts carried out by the UOC; and (iv) no profiles are drawn up by the UOC or by third parties."

- That the data provided by the complainant through the "Contact" form, *"have not been used for the other purposes reported therein and have not been transferred to the companies of the UOC group."*

The reported entity attached various documentation to the letter.

6. On 07/14/2020, also during this preliminary information phase, the Authority's Inspection Area verified via the Internet that, with respect to the verification carried out on 09/30 /2019, the content of the *"Privacy Policy"* which was accessed by pressing *"legal terms and conditions"* on the contact form on the UOC website had not been modified ; nor the content of the *"Information on the data protection policy"* that was displayed once said form was sent.

7. On 08/06/2020, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the UOC for three alleged infringements: an infringement provided for in article 83.5.a) in relation to the articles 6.1.a) and 7; another offense provided for in article 83.5.b) in relation to article 13; and a third offense provided for in article 83.5.a) in relation to article 5.1.c); 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).

8. The initiation agreement explained the reasons why no charges were made with respect to other reported facts. Specifically, regarding the collection of data relating to gender (female/male) through the contact form on the UOC website, since it was considered that the collection of data relating to gender was adequate, relevant and limited to what is necessary in relation to the purposes pursued with said contact form.

In this sense, it was taken into account that the name usually marks the gender of the person, so that the collection of the data referring to the sex in appearance would not provide more information to the person in charge of the treatment. However, there are names that do not allow the person's gender to be determined a priori (Àlex, Aran, Ariel, Pau, etc.). Therefore, in order to contact the people who fill out the said form and address them based on their gender (for example: Mr. or Mrs.), the collection of data relating to sex would indeed be justified.

On 07/15/2020, the UOC made objections to the initiation agreement.

9. On 09/30/2020, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Authority for the Protection of

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Data impose on the UOC, in the first place, the sanction consisting of a fine of 6,000.- euros (six thousand euros), as responsible for an infringement provided for in article 83.5.a) in relation to articles 6.1. a) and 7; secondly, the sanction consisting of a fine of 6,000.- euros (six thousand euros), as responsible for an infringement provided for in article 83.5.b) in relation to article 13; and thirdly, the sanction consisting of a fine of 10,000.- euros (ten thousand euros), as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c); all of them from the RGPD.

This resolution proposal was notified on 01/10/2020 and a period of 10 days was granted to formulate allegations.

10. On 16/10/2020, the accused entity submitted a letter in which it attests to the voluntary advanced payment of the pecuniary penalty that the investigating person proposed in the resolution proposal, once the corresponding reduction has been applied.

In this same letter, the UOC also certified compliance with the corrective measures proposed by the instructor in the resolution proposal.

proven facts

1. As reported in the contact form on its website, the UOC collected the consent of interested persons to *"Manage the sending of information about the training offer of the UOC in the training area selected and to know your opinion on the information we have provided you"* and to *"manage the sending of academic and institutional information related to the acts carried out from the UOC, through the elaboration of profiles both by the UOC as from third parties, and the sending of surveys related to research and innovation, among others."* In turn, as reported by the UOC, the data collected could also be communicated to *"Companies of the UOC Group."*

The affected person could not decide, freely and specifically, the purposes or treatments for which they gave their consent.

2. In the information that the UOC provided to the persons affected in the collection of their data *("Information on the data protection policy")* through the contact form on its website, it was indicated that profiles were drawn up on the part of *"UOC and third parties",* that there could be international transfers; as well as that the recipients of the data could be the *"Companies of the UOC Group",* without further specification.

This information provided was not accurate or precise in relation to the treatment carried out by the UOC. In this sense, by means of a letter of 28/10/2019, the UOC specified that no international transfers were made; and that no profiles were drawn up (neither by the UOC, nor by third parties). In the same letter, the UOC specified that only the UOC X - Xtended Studies and the UOC Corporate, SL could be recipients of the data, in certain cases, and not the other companies of the UOC Group.

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Apart from the above, in the basic information provided to the affected persons in relation to the processing of their data, although it was specified that *"You can exercise at any time your rights of access, rectification, deletion, opposition and other legally established rights by clicking here",* the possibility of exercising limitation and portability rights was not specified.

3. Among the personal data collected by the UOC in the contact form on its website for the purposes previously indicated in point 1, was the date of birth, given that it was not necessary to achieve the intended purpose (manage the request).

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 85.3 of the LPAC, the voluntary advanced payment of the proposed pecuniary penalty involves the application of a reduction. The effectiveness of this reduction is conditioned on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction and entails the termination of the procedure.

Although it presented allegations in the initiation agreement, the accused entity has not formulated allegations in the resolution proposal, since it has accepted the option to reduce the amount of the penalty consisting of the voluntary advanced payment of the pecuniary penalty. In this regard, it is considered appropriate to reiterate below the most relevant of the reasoned response that the instructing person gave to the allegations made before the initiation agreement.

2.1. On consent (proved fact 1st).

In the 1st section of its statement of objections to the initiation agreement, the accused entity admitted that in the contact form on its website, the affected persons were informed that the purposes for which collected their data were *"Manage the sending of information about the training offer of the UOC in the selected training area and know your opinion on the information we have provided you"* and *"manage the sending of information academic and institutional related to the events carried out from the UOC, through the preparation of profiles both by the UOC and by third parties, and the sending of surveys related to research and innovation, among 'others.'*

However, the UOC stated that the data of interested persons collected through this form, *"were not and are not the subject of treatment for the aforementioned purposes, but the exclusive purpose of the collection and treatment of this data*

is and has always been the management of the specific request made and the processing of responses to specific queries and the generic information requested by the user." In turn, the UOC indicated that, based on the legitimate interest, *"these data are also processed to evaluate and monitor the services offered by the UOC through statistics and satisfaction surveys, with the aim of improving the service attention and response to users."*

Well, as the instructing person pointed out in the resolution proposal, regardless of whether the data were not used for any of the reported purposes, or whether the treatment for one of these purposes could be based on a other legal basis (such as legitimate interest), the truth is that the UOC collected consent for the two purposes described above and that this was neither free nor specific.

On the other hand, it is not superfluous to remember that article 5.1.a) of the RGPD provides that personal data must be treated in a loyal manner in relation to the person concerned.

Linked to the principle of loyalty, as indicated by this Authority in opinion CNS 4/2020, it is worth remembering that the determination of the legal basis on which to base a certain data treatment must always be carried out in advance of start of processing operations, given that it is necessary to inform those affected by this base at the time of collection of their data (Article 13.1.c RGPD).

This opinion also states that *"the choice of this legal basis will determine the regime applicable to the treatment in question, so if the person in charge decides to base the treatment on consent, he must be prepared to respect this option. Thus, for example, you must bear in mind that, in the event that the affected person withdraws his consent, he will have to stop processing his data or that, in the event of subsequent problems with the validity of the consent granted by him, he will not be able retrospectively resort to another legal basis in order to justify the treatment in question."*

Given the above, in the present case, the UOC had foreseen that the processing of the data of the affected persons that were collected through the form on its website, was based on consent, so it cannot be admitted in virtue of the principle of loyalty that the processing of the data collected for any of the purposes informed on the basis of consent, can be based on a different legal basis afterwards.

Another thing is that once this sanctioning procedure has been initiated, the UOC has modified the basic information provided to the affected persons when their data is collected through the contact form on its website. On the one hand, it has provided that the data collected from said modification through the controversial form with the purpose of *"Managing and responding to specific inquiries and generic information"* are treated based on the person's consent affected And that in relation to the data collected through the same form with the purpose of *"Evaluating and monitoring the services offered by the UOC through statistics and satisfaction surveys",* the treatment is based on the legitimate interest, as reported by the UOC

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Therefore, with this action, the UOC corrected the effects of the infringement analyzed here, since the affected person can decide whether or not to consent to the processing of their data for the aforementioned purpose. It is for this reason, as explained by the instructing person in the resolution proposal, that it was not necessary to require corrective measures in this regard.

2.2. On the right to information (proved fact 2nd).

Subsequently, the accused entity alleged in its statement of objections to the initiation agreement that had modified the privacy policy to adapt to the requirements of article 13 of the RGPD. The UOC stated that the modification of the privacy policy, which had to be approved by the Board of Directors (body that approved the modification on 05/25/2020) and ratified by the Board of Trustees (body that ratified it on 07/10/2020) 2020), suffered from difficulties caused by the declaration of the state of alarm through Royal Decree 463/2020, of March 14, by which the state of alarm was declared for the management of the situation of the health crisis caused by COVID-19 (hereinafter, RD 463/2020).

Well, in this last sense, it should be noted that the UOC stated in writing dated 10/28/2019 (4 and a half months before the state of alarm was declared), that the procedures had been initiated for modify the information on data protection provided in the contact form on its website, so it was not observed in the proposal that the declaration of the state of alarm on 03/16/2020 had affected the implementation of this measure that was not subject to any deadline. And, in any case, it was pointed out that during the course of the state of alarm, the fundamental right to data protection was not suspended, so also during that period it was necessary to comply with the obligations imposed by the regulations on data protection.

Having established the above, it must be emphasized that the accused entity did not question the facts attributed to it in the initial agreement in relation to the right to information (the information provided by the UOC regarding the profiling, in international transfers and recipients, was not accurate or precise in relation to the treatment carried out by the UOC. In turn, the affected persons were also not informed about the possibility of exercising their rights limitation and portability).

Having said that, in the resolution proposal 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.

On the other hand, it was specified that the imputed fact that is addressed here, referred exclusively to the content of the information provided when filling out the contact form on the website. That is, from the first layer or basic information.

This is why the content of the privacy policy (2nd layer) is not the subject of this sanctioning procedure. Without prejudice to the previous, in the resolution proposal it was put from

manifest that the privacy policy of the UOC referred to various treatments of personal data, which did not allow the affected person who consulted the 2nd layer to distinguish which of the aspects that were reported referred to one treatment or another (or all).

In addition to the above, the instructor found that the UOC had modified the basic information that was provided to people interested in the collection of their data through the contact form on the website.

In this regard, in the basic information provided to the affected persons, the information relating to the creation of profiles, international transfers or the eventual recipients of the data had been deleted. In this regard, the UOC informed by means of a letter of 28/10/2019 that no international transfers were carried out and that no profiles were drawn up either.

Regarding the communications, in the said letter of 10/28/2019 the UOC specified that the only recipients of the data could be the UOC X - Xtended Studies and the UOC Corporate, SL, in certain cases. However, in the basic information that is now provided, it is expressly pointed out that *"The data will not be communicated to third parties, except for legal obligation."* So, as the instructing person pointed out in the resolution proposal, it is necessary to warn that said entities cannot be recipients of the personal data collected through the contact form, unless they were acting on behalf of the UOC (in the present case , however, there is no record that these two entities were in charge of the treatment of the UOC).

At the same time, in the basic information that was subject to modification, the reference to the fact that the UOC processed the data in order to manage the sending of information about the UOC's training offer, of academic or institutional information.

And finally, the UOC added in the basic information the possibility that the affected people can also exercise the rights of limitation and portability.

This being the case, as stated by the instructing person in the resolution proposal, it must be concluded that the UOC had corrected the effects of the infraction that is addressed here, which is why it became unnecessary to require corrective measures in this regard.

2.3. On the principle of minimization (proved fact 3rd).

With regard to the collection of data relating to the date of birth through the contact form on the UOC website, the accused entity alleged in its statement of objections to the initiation agreement that this data was collected in order not to duplicate records in the database (people with the same first and last name), and to be able to offer a better, more personalized and excellence-oriented service. The UOC added that this data was also necessary to determine whether the person was an adult or a minor, for the purposes of checking whether he met the legal and/or academic requirements for access to the study in which he had been interested (such as vocational training courses or language courses).

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In this last sense, in the proposed resolution it was made clear that the UOC was referring to a specific case, in which it considered that age could become a legal or academic requirement. In this regard, the instructor pointed out that the consultation form was
generic, so the queries could refer to any issue.

Having said that, it was considered that it could not be admitted that, in advance and without determining whether it was necessary to know the age in order to solve the query, the date of birth was requested as mandatory in order to formulate a query.

Even in those specific cases in which the UOC considers that this data could be relevant, it would be sufficient to inform the affected person of the legal or academic requirements linked to age, without the need to collect this data. Indeed, this data (if indeed it was necessary) would already be collected when the affected person requested to contract a certain training activity.

Linked to the principle of minimization, it was also recalled that article 25.1 of the RGPD requires that the protection of the privacy of those affected by any treatment be articulated already from the design of any treatment, and that the necessary guarantees be integrated to in order to adequately protect this privacy, prior to the start of treatment:

> *"1. Taking into account the state of the art, the cost of the application and the nature, scope, context and purposes of the treatment, as well as the risks of varying probability and severity that the treatment entails for the rights and freedoms of natural persons, the responsible for the treatment will apply, both at the time of determining the means of treatment and at the time of the treatment itself, appropriate technical and organizational measures, such as pseudonymization, designed to effectively apply the principles of data protection, such as the minimization of data, and integrate the necessary guarantees in the treatment, in order to fulfill the requirements of this Regulation and protect the rights of the interested parties."*

Minimization therefore becomes a relevant technique in the context of data protection by design.

For its part, Recital 78 of the RGPD provides that the controller must adopt internal policies and apply measures that comply with the principles of data protection by design and by default. These measures may consist, among others, of minimizing the processing of personal data. And adds the finger considering that those responsible for the treatment must pay attention to the state of the technique of those responsible and those in charge of the treatment and in this way, ensure that they are in a position to fulfill their obligations in terms of protection of data

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So, data protection in the design must be taken into account when determining the means of treatment, but also when the treatment itself is being carried out. In other words, once the treatment has started, the person in charge has the obligation to maintain data protection in the design.

Apart from the above, the UOC also argued that it requested the date of birth of the people who made inquiries in order not to duplicate records in the database and to be able to offer a better, more personalized and Excel-oriented service. lens

Well, as indicated by the instructing person in the resolution proposal, if these circumstances became the reason for the collection of data relating to the date of birth, a unique identifier of the person would be requested instead of the date of birth birth

In any case, it was considered that the UOC already collected a series of sufficient data from the interested person (name and surname, gender, telephone number and email) to achieve the intended purpose, which is none other than to respond to the query, without the reasons adduced justifying the collection of other data that were not essential for the aforementioned purpose.

3. In relation to the facts described in point 1 of the proven facts section, it is necessary to go to article 4.11 of the RGPD, which defines the consent of the interested person as *"any manifestation of free will, specific, informed and unequivocal because the interested party accepts, either by means of a declaration or a clear affirmative action, the treatment of personal data that concerns him".*

Article 6.1.a) of the RGPD provides that the treatment will be lawful if *"the interested party gives his consent to the treatment of his personal data for one or several specific purposes;"*

For its part, article 7.2 of the RGPD, relating to the conditions for treatment, establishes that *"If the consent of the interested party is given in the context of a written statement that also refers to other matters, the request of consent will be presented in such a way that it is clearly distinguished from the other matters, in an intelligible and easily accessible form and using a clear and simple language. No part of the declaration that constitutes an infringement of this Regulation will be binding."*

And recital 43 of the RGPD provides that *"(...) Consent is presumed not to have been given freely when it does not allow separate authorization of the different operations of personal data processing despite being adequate in the specific case, or when the fulfillment of a contract, including the provision of a service, is dependent on consent, even when it is not necessary for said fulfillment."*

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In turn, sections 1 and 2 of article 6 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), referring to the treatment based on the consent of the person affected, establish that:

> *"1. In accordance with the provisions of article 4.11 of Regulation (EU) 2016/679, the consent of the affected person is understood as any manifestation of free, specific, informed and unequivocal will by which the latter accepts, either through a statement or a clear affirmative action, the processing of personal data concerning you.*
>
> *2. When it is intended to base the processing of the data on the consent of the affected person for a plurality of purposes, it is necessary to state specifically and unequivocally that this consent is granted for all of them."*

As indicated by the instructing person, during the processing of this procedure the fact described in point 1 of the proven facts section, which is constitutive of the offense provided for in article 83.5.a, has been duly proven) of the RGPD, which typifies the violation of the *"basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9"*, among which the principle of legality is contemplated (art. 6 RGPD) and the conditions for consent (art. 7 RGPD).

The conduct addressed here has been included as a very serious infraction in article 72.1.c) of the LOPDGDD, in the following form:

> *"c) Failure to comply with the requirements required by Article 7 of Regulation (EU) 2016/679 for the validity of the consent."*

4. With regard to the fact described in point 2 of the proven facts section, it is necessary to go to article 5.1.a) of the RGPD, which contemplates the principle of transparency, determining that personal data will be *"treated way (...) transparent in relation to the interested party".*

Also in relation to the transparency of information, sections 1 and 2 of article 13 of the RGPD, establish the information that must be provided when personal data is obtained from the person concerned:

> *"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;*

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e) the recipients or the categories of recipients of the personal data, in your case;
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 the adequate or appropriate guarantees and the means to obtain a copy of these 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."

For its part, sections 1 and 2 of article 11 of the LOPDGDD, regarding transparency and information of the affected, provide that:

"1. When the personal data is obtained from the affected person, the controller can comply with the duty of information established by Article 13 of Regulation (EU) 2016/679 by providing the affected person with the basic information referred to in section below and indicating an electronic address or other means that allows you to access the rest of the information in a simple and immediate way.
2. The basic information referred to in the previous section must contain, at least:

a) The identity of the data controller and his representative, if applicable.
b) The purpose of the treatment.

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c) The possibility of exercising the rights established by articles 15 to 22 of Regulation (EU) 2016/679.
If the data obtained from the affected person must be processed for profiling, the basic information must also include this circumstance. In this case, the affected person must be informed of his right to object to the adoption of automated individual decisions that produce legal effects on him or significantly affect him in a similar way, when this right is given in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

In accordance with what has been presented, as indicated by the instructing person, the fact recorded in point 2 of the section on proven facts constitutes the violation provided for in article 83.5.b) of the RGPD, which typifies the violation of *"the rights of 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 the 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."

5. With regard to the fact described in point 3 of the proven facts section, it is necessary to refer to article 5.1.c) of the RGPD, which regulates the principle of data minimization determining that personal data will be *" adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".*

In accordance with what has been presented, as indicated by the instructing person, the fact recorded in point 3 of the proven facts section also constitutes the infringement of article 83.5.a) of the RGPD previously transcribed.

The conduct addressed here has been included as a very serious infraction in article 72.1.a) of the LOPDGDD, in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

6. Since the UOC is a private law entity, the general sanctioning regime provided for in article 83 of the RGPD applies.

Article 83.5 of the RGPD provides for a maximum fine of 20,000,000 euros, or in the case of a company, an amount equivalent to a maximum of 4% of the total global annual turnover of the previous financial year, opting for the higher amount. This, without prejudice to the fact that, as an additional or substitute, the measures provided for in clauses a) ah) ij) of Article 58.2 RGPD may be applied.

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In the present case, as explained by the instructing person in the resolution proposal, it is appropriate rule out the possibility of replacing the sanction of an administrative fine with the sanction of reprimand provided for in article 58.2.b) RGPD, given that the imputed infractions affect the essence of the conditions for granting consent, of the obligation to provide the right to information and the principle of minimization.

Once the application of the reprimand as a substitute for the administrative fine has been ruled out, it is necessary to determine the amount of the administrative fine sanction that must be imposed for each of the infractions.

6.1.- Regarding the conduct described in the 1st proven fact (consent)

According to what is established in article 83.2 of the RGPD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, as indicated by the instructing person in the proposed resolution, the penalty of 6,000 euros (six thousand euros).
This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

As mitigating criteria, the concurrence of the following causes is observed:

- The damages caused to the affected persons, given that there is no evidence that serious damages have been caused to the affected persons (art. 83.2.a RGPD).
- The category of personal data affected by the infringement - there is no evidence that it affected special categories of data - (art. 83.2.g RGPD).
- The lack of benefits as a result of the commission of the offense (art. 83.2.k RGPD and 76.2.c LOPDGDD).
- And, especially, the measures adopted by the UOC in the framework of the present sanctioning procedure, determining that only the data collected for the purpose of *"Managing and responding to specific inquiries and generic information"* are based on the person's consent affected

On the contrary, as aggravating criteria, the following elements must be taken into account:

- The continuing nature of the infringement, given that it was not an isolated event (art. 83.2.a RGPD and 76.2.a LOPDGDD).
- The intention (which the UOC invoked as a mitigating factor in its statement of objections to the initiation agreement), given that it was the UOC that initially determined that consent was the legal basis enabling the treatment of the data collected for various purposes, without providing for consent to be given freely and specifically (art. 83.2.b RGPD).

- Infractions previously committed by the UOC - sanctioning procedures numbers PS 40/2014 and PS 29/2017 (art. 83.2.e RGPD).

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- Linking the offender's activity with the practice of processing personal data (art. 83.2.k RGPD and 76.2.b LOPDGDD).

6.2.- Regarding the conduct described in the 2nd proven fact (right to information)

According to the provisions of article 83.2 of the RGPD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, a penalty of 6,000 euros (six thousand euros) should be imposed. This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

As mitigating criteria, the concurrence of the following causes is observed:

- The damages caused to the affected persons, given that there is no evidence that serious damages have been caused to the affected persons (art. 83.2.a RGPD).
- The category of personal data affected by the infringement - there is no evidence that it affected special categories of data - (art. 83.2.g RGPD).
- The lack of benefits as a result of the commission of the offense (art. 83.2.k RGPD and 76.2.c LOPDGDD).
- And, especially, the measures adopted by the UOC in the framework of the present sanctioning procedure, modifying the basic information in the terms set out in legal basis 2.2 of this proposal.

On the contrary, as aggravating criteria, the following elements must be taken into account:

- The continuing nature of the infringement, given that it was not an isolated event (art. 83.2.a RGPD and 76.2.a LOPDGDD).
- The intentionality (which the UOC invoked as a mitigating factor), given that it was the UOC that drew up the basic information that was provided to the persons affected in the collection of their data through the web contact form (art. 83.2.b GDPR).
- Infractions previously committed by the UOC - sanctioning procedures numbers PS 40/2014 and PS 29/2017 (art. 83.2.e RGPD).
- Linking the offender's activity with the practice of processing personal data (art. 83.2.k RGPD and 76.2.b LOPDGDD).

6.3.- Regarding the conduct described in the 3rd proven fact (principle of minimization)

According to the provisions of article 83.2 of the RGPD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, a penalty of 6,000 euros (six thousand euros) should be imposed. This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below.

As mitigating criteria, the concurrence of the following causes is observed:

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- The damages caused to the affected people, given that there is no evidence that they have occurred caused serious damage to the affected persons (art. 83.2.a RGPD).
- The category of personal data affected by the infringement, which do not have the consideration of special categories of data (art. 83.2.g RGPD).
- The lack of benefits as a result of the commission of the offense (art. 83.2.k RGPD and 76.2.c LOPDGDD).
- And, especially, the measures adopted by the UOC in the framework of the present sanctioning procedure, which has certified that it no longer collects the data relating to the date of birth through from the contact form on their website. It is worth saying that this circumstance has been highlighted by the UOC by means of a letter dated 15/10/2020, once it has been notified of the resolution proposal. So things are, the application of this mitigating criterion that was not taken into account in the proposed resolution, is what entails that the sanction proposed by the person instructing (10,000 euros) must be reduced in this resolution to 6,000 euros.

On the contrary, as aggravating criteria, the following elements must be taken into account:

- The continuing nature of the infringement, given that it is not an isolated event (art. 83.2.a RGPD and 76.2. to LOPDGDD).
- The intentionality (which the UOC invoked as a mitigating factor), since it is the UOC that has planned to collect the data relating to the date of birth in the contact form on its website (art. 83.2.b RGPD).

- Infractions previously committed by the UOC - sanctioning procedures numbers PS 40/2014 and PS 29/2017 (art. 83.2.e RGPD).
- Linking the offender's activity with the practice of processing personal data (art. 83.2.k RGPD and 76.2.b LOPDGDD).

7. On the other hand, in accordance with article 85.3 of the LPAC and as stated in the initiation agreement, if before the resolution of the sanctioning procedure the accused entity made the voluntary payment of the pecuniary penalty, a 20% reduction should be applied on the amount of the penalty provisionally quantified in the resolution proposal (22,000 euros as a whole).

As has been advanced, the effectiveness of this reduction is conditional on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction (art. 85.3 of the LPAC, *in fine).*

Well, as indicated in the antecedents, by means of a letter dated 15/10/2020, the imputed entity has certified that it has paid in advance 17,600 euros (seventeen thousand six hundred euros), corresponding to the amount of the resulting penalty that was indicated in the resolution proposal, once the cumulative reduction of 20% has been applied.

8. Given the findings of the violations provided for in art. 83 of the RGPD in relation to privately owned files or treatments, article 21.3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, empowers the director of the Authority because the resolution

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that declares the infringement establishes the appropriate measures so that its effects cease or are corrected. In the present case, it is not considered necessary to require any corrective measures, given that the UOC has carried out the relevant actions to guarantee that the consent given in the collection of data through said contact form is free and specific; to adapt the basic information provided in the aforementioned data collection, in an exact and precise manner, to the treatment and to what is foreseen in article 13 of the RGPD; and to stop collecting data related to the date of birth through the contact form on its website.

resolution

For all this, I resolve:

1. To impose on the Foundation for the Open University of Catalonia in the first place, the penalty consisting of a fine of 6,000 euros (six thousand euros), as responsible for an infringement provided for in article 83.5.a) in relation to articles 6.1.a) and 7; secondly, the sanction consisting of a fine of 6,000.- euros (six thousand euros), as responsible for an infringement provided for in article 83.5.b) in relation to article 13; and thirdly, the sanction consisting of a fine of 6,000.- euros (six thousand euros), as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c); all of them from the RGPD.

Once the reduction for voluntary advanced payment of the pecuniary penalty that the instructing person proposed in the resolution proposal (22,000 euros as a whole) is applied, a reduction that is provided for in article 85 of the LPAC, the resulting amount is of 17,600 euros (seventeen thousand six hundred euros), amount already paid by the UOC.

2. Notify this resolution to the UOC.

3. 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.

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Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,