

File identification

Resolution of sanctioning procedure no. PS 31/2020, referring to the Selva del Camp City Council.

Background

1. On 09/22/2019, the Catalan Data Protection Authority received a letter from a person (Mr. AAA) in which he filed a complaint against the Selva del Camp City Council, on the grounds of 'an alleged breach of the regulations on the protection of personal data. In particular, the complainant stated that the Selva del Camp City Council sent a certain person (Ms. BBB) a letter from a councilor dated 04/12/2019 (with exit registration no. (...), on 04/16/2019), in response to a previous letter that this person had submitted to the City Council on 10/26/2018.

Along with that letter of 12/04/2019, the City Council also forwarded a letter from the mayor addressed to the Ombudsman of Catalonia in relation to a complaint that the person reporting here had made before that Institution. In this last letter, the complainant was identified by his first and last name.

The complainant provided a copy of the documentation that was registered at the City Council on 04/16/2019; as well as a copy of the letter dated 05/15/2019 that the Ombudsman addressed to the complainant in relation to his complaint.

2. The Authority opened a preliminary information phase (no. IP 253/2019), 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 02/10/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported. Specifically, the electronic document validation service of the electronic headquarters of the Selva del Camp Council was accessed (<https://laselvadelcamp.eadministracio.cat/document-validation>) and the secure verification code was entered ((...)) corresponding to the document provided by the person making the complaint, with exit registration from La Selva del Camp City Council of 04/16/2019 (no. (...)), noting the following:

- That the secure verification code allowed access to the named electronic document "Response (...) entry (...) -2018".
- That the validated document was integrated by a City Council office addressed to a third person - Mrs. BBB- (1st leaf); as well as by the response office of the City Council a

a complaint made by Mr. AAA (2nd and 3rd leaf), which from its content it was inferred that it was addressed to the Ombudsman of Catalonia.

- That this document corresponded with the one provided by the person making the complaint together with his letter of complaint.

4. On 08/06/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Selva del Camp City Council for an alleged violation provided for in article 83.5.a), in relation to article 5.1.f); both 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 thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 07/01/2020.

5. On 07/28/2020, the Selva del Camp City Council made objections to the initiation agreement.

6. In view of the allegations presented by the City Council, on 10/09/2020 the instructing person agreed to the opening of a test period, in order to carry out the test consisting of the La Selva del Camp City Council provided the following:

- Documentation or other means of proof that proved the invoked condition of interested person of Ms. BBB in the administrative procedure processed by the City Council following the complaints relating to the parking of vehicles on Carrer Major de la Selva del Camp, which would have resulted in the complaint that Mr. AAA presented before the Complaints Ombudsman of Catalonia.
- Documentation or other means of proof that would certify the public demonstrations that Mr. AAA and Mrs. BBB on the various complaints presented to the City Council or the Ombudsman in relation to the parking of vehicles on the main street of the municipality, or that Ms. BBB was aware of these complaints, prior to the alleged facts (16/04/2019).

This agreement was notified to the Selva del Camp City Council on 09/10/2020.

7. On 06/10/2020 he received a letter from the City Council in which he provided the following:

- To certify the status of an interested person of Mrs. BBB in the administrative procedure processed by the City Council following the complaints relating to the parking of vehicles on Carrer Major de la Selva del Camp, the City Council submitted a letter presented by Ms. BBB before the City Council on 03/27/2018, through which he requested that the bollard installed on Calle Major be fixed and that the City Council sanction vehicles parked on the sidewalks.
- To accredit the public demonstrations that Mr. AAA and Mrs. BBB on the different complaints presented to the City Council or the Ombudsman in

in relation to the parking of vehicles on the main street of the municipality, the City Council contributed a report issued by the head of the Municipal Security Service on 09/15/2020, through which some "of the incidents collected in the daily parts" were recorded:

- That on 07/12/2012, Mr. AAA called the city guards because he couldn't get his vehicle into the garage.
- That on 01/17/2018, Mr. AAA requested a report from the chief bailiff because he felt that not all municipal officers were reporting improperly parked vehicles on Main Street.
- That on 18/10/2018, Mrs. BBB called the municipal guards indicating that there was an improperly parked vehicle on Main Street that prevented him from removing his vehicle.
- Apart from the "incidents" described, the report indicated that Mr. AAA had complained ("often loudly") to the guard service staff, on the public road, in relation to the vehicles parked at the gate where his vehicle is parked.

8. On 05/11/2020, the person instructing this procedure formulated a resolution proposal, for which it was proposed that the director of the Catalan Data Protection Authority admonish the Selva del Camp City Council as responsible of an infringement provided for in article 83.5.a) in relation to article 5.1.f), all of them of the RGPD.

This resolution proposal was notified on 05/11/2020 and a period of 10 days was granted to formulate allegations.

9. The deadline has passed and no objections have been submitted.

proven facts

The Selva del Camp City Council included in the sending of a letter addressed to a certain person (Council outgoing register no. (...) of 04/16/2019), a sheet of the letter from the mayor of the City Council in which he responded to the Complaints Ombudsman of Catalonia to a complaint that the person making the complaint had presented to that Institution, where it was identified through his first and last name.

Through the secure verification code of the documentation sent by the City Council on 16/04/2019 (...), the two documents mentioned could be accessed.

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, in its statement of objections to the initiation agreement, the City Council admitted that together with a written response to a request by Mrs. BBB, there was a letter of response to the Ombudsman of Catalonia in which the name of the son of Mrs. BBB (Mr AAA).

As indicated in the proposed resolution, from the previous statement it is concluded that the City Council wanted to notify a letter to Ms. BBB (relating to a collaboration agreement), but which also included in the shipment part of a letter that was not linked to the previous one. Specifically, he attached a leaf from the letter that the City Council sent to the Ombudsman of Catalonia, where the person making the complaint (Mr. AAA) was identified as the person who had submitted several complaints to that Institution .

It should therefore be noted that the addressee of the letter that was attached to the shipment addressed to Ms. BBB was not that person, nor was the person here reporting.

At this point, it is also considered appropriate to point out that Ms. BBB, despite being the mother of the reporting person, is for the purposes of the regulations on data protection a third person. The concept of a third party is defined in article 4.10 of the RGD as the "natural or legal person, public authority, service or organism other than the interested party, the person responsible for the treatment, the person responsible for the treatment and the persons authorized to treat the personal data under the direct authority of the manager or manager".

On the other hand, for the purposes of justifying the imputed facts, the City Council stated in its statement of objections to the initiation agreement that this "communication is due to the fact that a previous document was used (by coincidence of the notification address, which is the same in the case of Ms. BBB and her son), without removing the rest of the previous letter."

Well, aside from the fact that this circumstance did not detract from the obligation to guarantee due confidentiality in the processing of personal data, it must be pointed out that the destination addresses contained in the two letters were different (one was addressed to the address of Mrs. BBB and the other to the Ombudsman).

In turn, the circumstance invoked by the City Council made it clear that it did not want to send Ms. BBB part of the letter that was intended to be addressed to the Ombudsman, but only to send him a letter referring to a collaboration agreement.

Next, the City Council indicated that both Ms. BBB, like Mr. AAA, had the "consideration of interested parties and third parties in the file processed following the complaints in the matter of urban traffic that resulted in a complaint" filed by Mr. AAA before the Ombudsman.

To accredit this demonstration, in compliance with the test agreement dictated by the instructing person, the Selva del Camp City Council contributed a letter presented by Ms. BBB before the City Council on 03/27/2018, through which he requested that the bollard installed on Calle Major be fixed and that the City Council sanction vehicles parked on the sidewalks.

With this letter, however, it was not certified that Mrs. BBB became interested in the same administrative procedure processed by the City Council following the complaints relating to the parking of vehicles on Carrer Major de la Selva del Camp, nor in the procedure processed by the Ombudsman following the complaint submitted by his son in relation to these same facts.

In other words, the mere fact that both people, mother and son, were interested in the resolution of the same problem related to the circulation and parking of vehicles, did not accredit or presuppose that they had the status of a person interested in the complaints presented or in the any proceedings initiated by the other party; nor, therefore, that the data processed in these procedures can be disclosed to the other.

On the other hand, in its statement of objections to the initiation agreement, the City Council also pointed out that both Ms. BBB, like Mr. AAA, "have made public demonstrations regarding the various complaints they have presented to the City Council, as well as the complaints presented, for example, to the Complaints Board" and that "even a municipal political group contributed this complaint and the response given by the City Council so that it was a plenary session of the Corporation, which is also public".

To prove this end, also in compliance with the trial agreement, the City Council provided a report issued by the head of the Municipal Security Service on 09/15/2020, through which some "of the incidents collected in the daily parts" (calls and complaints by Mr. AAA and Ms. BBB described in factual background 7).

However, beyond the fact that these two people (Mr. AAA and Mrs. BBB) brought several complaints related to the parking of vehicles on Carrer Major to the attention of the municipal supervisors, it cannot be inferred from this that these affected people had made manifestly public the complaints that each of them had presented to the City Council or the Grievance Ombudsman.

Aside from the above, the City Council also pointed out in its statement of objections to the initiation agreement that the data contained in the letter addressed to the Trustee, which was sent to Mrs. BBB, they were not particularly protected.

Well, as the instructing person explained in the resolution proposal, in the present case the City Council is not accused of having disclosed special categories of data. And despite the fact that the controversial document did not contain this type of personal data,

the City Council was also obliged to observe the principle of data confidentiality provided for in article 5.1.f) of the RGPD.

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

For its part, article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) regulates the duty of confidentiality in the following terms:

- "1. Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.
2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with its applicable regulations.
3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or person in charge of the treatment has ended."

As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is constitutive of the offense provided for in article 83.5.a) of the RGPD, has been duly proven, which typifies the violation of "the basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which the principle of confidentiality is contemplated (art. 5.1.f RGPD).

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

- "i) The violation of the duty of confidentiality established in article 5 of this Organic Law."

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 appropriate measures to adopt because

cease the conduct or correct the effects of the offense that has been committed.

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 spite of the above, as explained by the investigating person in the resolution proposal, it is not considered appropriate to require the adoption of corrective measures to correct the effects of the infringement, given that it would be an isolated and already consummated event.

resolution

For all this, I resolve:

1. Admonish the Selva del Camp City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the Selva del Camp City Council.

3. Communicate the resolution 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 of

replacement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with what they foresee 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,