

File identification

Resolution of sanctioning procedure no. PS 33/2020, referring to the Department of (...)

Background

1. On 04/17/2019, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Department of (...) (hereafter, (...), with reason for an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant stated that, following the presentation in February of (...) of a request for action by the Occupational Risk Prevention Service (SPRL) of (...) regarding an occupational risk situation, the aforementioned Service prepared in April of (...) a document entitled "Assessment of psychosocial factors", made up of 63 pages and of which he provided a copy. This document was the result of a study carried out based on the participation of all the people who made up the organic unit where the person who requested the SPRL's intervention provided their services, who was (...)-(...)-, assigned to the General Directorate of (...), and that there were about twelve people.

In accordance with the action protocol indicated by the SPRL and which appears in point 4 of the evaluation report, once this report has been drawn up, a copy would be sent to all the participants, but not the full report, since annex 3 was omitted (corresponding to the pages 62 and 63), entitled "action proposal", which contained personal data of the person who requested the intervention of the SPRL, as well as of the person against whom the request for intervention was made (his boss). The full report (with annex 3) would only be sent to these two people, as well as to their superior (the head of the General Directorate of (...), hereinafter DG(...)), given that in annex 3 of the report their participation was proposed to address the solution of the conflict.

The reason for the complaint presented was the stated fact that, contrary to the indicated reservation, the complete report, including Annex 3, would have been accessible to all the people of the organic unit ((...)) who had participated in the evaluation study, since it was saved with Annex 3 in the common electronic repository or network unit G of this unit to which these people from (...) had access.

The complainant stated that with this action he had revealed to all colleagues that the person requesting intervention felt harassed by his boss, that this was affecting his health, and that he had asked the SPRL to activate the harassment protocol against his boss. And he added that this had caused him an increase in occupational risk, since in the months following that publication the alleged harasser had increased the harassment against that person. In the last one, he pointed out the possibility that the aforementioned boss, responsible for the unit's filing system, had ordered the document to be publicized.

In addition to the full assessment report, the complainant accompanied the complaint letter with the following documentation:

- 1) An email dated 22/03/(...) that the SPRL addressed to the twelve people who made up the (...), through which it communicated the receipt of a risk statement to the organic unit in which they provided services, and the initiation by the SPRL of a specific assessment of the unit's psychosocial risks in order to identify the risk factors present, through the FPSICO method, which would be completed with an interview personal to all the people of the (...). In this email, neither the person who had requested the intervention nor the person against whom it was formulated were identified.
 - 2) A second email dated 03/05/(...) that the secretary of the Director General of (...) sent to the person who had initially submitted the request for intervention before the SPRL and the person against whom he had presented himself, through which he sent them the complete document for the assessment of psychosocial factors (file name: (...)_Complete.pdf), and informed them that the same report, but without the 'annex 3, it would be sent to all the staff of the (...) who had participated, and who would call both people to a meeting in order to work on it, and subsequently transfer it to the rest of the workers from'(...).
 - 3) A screenshot of the common electronic repository or shared unit (G) made on 04/17/2019, in which the "Occupational Safety and Health" folder had been selected, and within this the "Evaluation" subfolder of psychosocial risks (...)", where the file with the title "(...)_Complete", of 578 KB, with the preview option activated, was in .pdf format, and the first page of the document (out of a total of 63), with the title "ASSESSMENT OF PSYCHOSOCIAL FACTORS. (...)".
2. The Authority opened a preliminary information phase (no. IP 123/2019), 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 07/05/2019 the Department (...) was requested because confirmed or explained his version of the facts reported; also to report on the reasons and the date on which the document with annex 3 mentioned had been saved in the indicated folder, accessible to all workers in the unit where the person who made the request is assigned 'intervention of the PRL Services, and if it remained accessible in the terms and for the people indicated. In all cases, he was required to provide documentation to prove his answer.
4. Given the Department's lack of response (...), on 10/20/2019 the request for information was reiterated.

5. On 01/28/2020, the Department (...) responded to the above-mentioned request in a letter stating the following:

"Indeed, a unit of the Department requested the intervention of the Occupational Risk Prevention Service (SPRL) in what was considered an occupational risk situation. Consequently, the SPRL carried out an assessment of psychosocial risk factors, which is part of its competences in the specialty of applied psychosociology, in accordance with the occupational risk prevention regulations (Law 31/1995, of November 8). The conclusions of the analysis of the situation carried out by the SPRL and its intervention proposal were incorporated into the report issued on April 19 of (...) and entitled "Assessment of psychosocial factors", which saved to a SPRL folder, specifically in the following path:

(...)

This route where the document is saved corresponds to the workspace of the SPRL and not to that of the unit where the intervention was carried out. Therefore, only people assigned to the aforementioned service have access to it. Through the management of users in the basic collaboration spaces (ECB) it is controlled that only the people who work in a certain unit have access to the ECB that it has been assigned. It is even possible to limit access, within the ECB, to certain level 1 folders so that only those people who need it due to their tasks can access them, when it is considered that the information stored there it deserves greater confidentiality.

On the other hand, and in accordance with the established protocol, when an assessment of psychosocial risk factors is carried out in a unit, the results are sent to all the people who are part of it. However, data relating to individuals who are involved in an open conflict do not form part of the body of the assessment report. In the case we are dealing with, the document "Evaluation of psychosocial factors" the personal data are only contained in annex 3 of the document which, as was advanced to the people involved, was not sent to all the members of the unit. Specifically, the entire document, including Annex 3, was only sent to three people: the two who had requested the intervention and the person in charge of the General Directorate where the unit is organically attached, given that it was his responsibility to make the decision to carry out or not the corrective measures that the report established.

Consequently, the Occupational Risk Prevention Service did not keep the document mentioned in the ECB of the unit affected by the intervention, to which it does not even have access."

The Department did not accompany its written response with any documents.

6. On 11/06/2020, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of (...) for an alleged infringement 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 by

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regarding the processing of personal data and the free circulation thereof (hereafter, RGPD). Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file. This initiation agreement was notified to the Department of (...) on 07/02/2020.

In the initiation agreement, the Department 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.

The deadline has been exceeded and no objections have been submitted.

proven facts

The Department of (...) allowed access to the reserved content of a report (its annex 3) issued by its Occupational Risk Prevention Service (SPRL) on 27/04/(...), with the title "ASSESSMENT OF PSYCHOSOCIAL FACTORS. (...)(...)", which was stored in a common electronic repository (unit G) of the organic unit (...), to which the people who made up this organic unit had unrestricted access ((. ..)) where the person who submitted the occupational risk statement to the SPRL in February of (...) was attached, as a result of which the said report was issued.

Annex 3 of the report contained the following personal data: the name and surname of the person who requested the intervention of the SPRL and of the person against whom it had been formulated (the alleged harasser), the fact that both people had requested the intervention of the SPRL, both of whom felt harassed by the other and referred to effects on their health, and the consequent request of the person reporting here for the intervention of the SPRL due to harassment by of his head; it was also pointed out the lack of agreement between both people on the interpretation of the controversial events, as well as the conclusions of the report (the SPRL did not qualify the events as harassment but as an interpersonal conflict) and the proposed actions to resolve the conflict.

It has not been determined the date on which the complete report (with annex 3) was included in the common electronic repository to which the people assigned to the organic unit (...) have access, nor the period of time during which it has been accessible and if it is currently accessible. But it does appear that the full report has been accessible in the terms indicated, at least, on 04/17/2019, the date on which the reporting person took a screenshot of this shared unit (G), in the that the report is viewed, in the terms set out in the 1st heading of the antecedents section.

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, la

resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the (...) has not made any objections to the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. With regard to the fact described in the proven facts section, it is necessary to refer to article 5.1.f) 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), which establishes that personal data must be: *"Processed in such a way as to guarantee adequate security, including protection against unauthorized or unlawful processing and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")"*.

During the processing of this procedure, this fact has been duly certified, taking into account the complainant's statement before the Authority, and the screen printout of the common electronic repository (shared unit G) - to which all the people of the organic unit ((...))- in which the complete report can be viewed, which contained Annex 3 with the personal data of the person reporting.

From the imputed facts - now considered proven - it follows that the (...) did not guarantee the confidentiality of the person who requested the intervention of the SPRL (nor of the person against whom it was formulated and who would also have requested the intervention of the SPRL), exposing within the reach of the members of the (...), without the consent of at least the person making the complaint here, that this person was the one who requested the intervention of the SPRL, the succession of meetings with the SPRL and the consideration that he felt harassed by his boss and that this was affecting his health, as well as revealing what the SPRL's proposed course of action was to address the conflict.

This imputed fact constitutes an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as such the violation of *"a) The basic principles for treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9"*.

4. The conduct addressed here has been included as a very serious infringement in article 72.1.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: *"The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679"*. 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".

According to the transcribed precepts, the (...) should be sanctioned with a warning.

With regard to the corrective measures to be adopted, it is based on the consideration that access to the "Assessment of psychosocial factors (...)" report through a common repository accessible to all the people of a organic unit, it would not conform to the data protection regulations even if the report *uploaded* in this unit did not contain annex 3 where the personal data of the persons directly affected appear, and this because it cannot be ruled out that the published information could be used to identify the affected persons. In addition, access to the report could occur through the common repository by people who, despite being part of the organic unit and therefore having access to the common repository, had not participated in the report (for example, for having joined the unit after its creation), or even access could occur by people outside the unit but with a legitimate access profile to this network unit. Ultimately, the report could be accessed by people other than the recipients referred to in the application protocol.

In accordance with this premise, and also based on the fact that the Authority does not know whether the "Evaluation of psychosocial factors (...)" report is currently accessible through the common repository of the organic unit (...), it is necessary to require the (...) so that as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of this resolution, adopt, in the event that the report remains accessible there, the necessary measures to prevent its access through the said common repository. In the event that the report is no longer accessible through the common repository, it is also required to certify such end before the Authority within the same period.

Once the corrective measure described has been adopted, within the specified period, the Department must inform the Authority within the following 10 days, without prejudice to the Authority's inspection powers to carry out the corresponding checks.

Finally, it is not superfluous to recommend to the Department the review of the part of the SPRL action protocol regarding the submission of the psychosocial risk assessment report to all the people who make up the organic unit to which they belong the reporting and reporting persons, and who have participated in the evaluation study. Even if the part of the report where these two people are clearly identified (with first and last names) is omitted, it cannot be ruled out that in certain cases - which would not be the case analyzed - this dissemination of the report could identify the affected persons (complainant, reported or other participants in the study).

resolution

For all this, I resolve:

1. Admonish the Department of (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), both of the RGPD.
2. Request the Department of (...) to adopt the corrective measures indicated in the 4th legal basis and certify before this Authority the actions carried out by fulfill them
3. Notify this resolution to the Department of (...).
4. Communicate the resolution to the 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 (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.

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

The director,

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