

File identification

Resolution of sanctioning procedure no. PS 41/2020, referring to the Catalan Traffic Service

Background

1. En data 27/06/2019, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, provinent de l'Agència Espanyola de Protecció de Dades, un escrit pel qual una persona formula una denúncia contra el Servei Català de Trànsit (hereinafter, SCT), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant explained that on 19/03/2018 he had proceeded to request a change of address, before the General Directorate of Traffic (hereinafter, DGT) of the province of Pontevedra, in the "Registro de conductores and vehicles". In relation to this, on 04/03/2018 he sent a certified letter to the Girona Territorial Service of the SCT, through which he requested to exercise his right to rectify his personal data, specifically, the data referring to the postal address to the effect that "if there is any sanctioning document directed at me by means of "transit", I will be notified of said document in the same act at the address indicated ((...))". In this regard, the complainant added that the SCT would have transferred his personal data to the Local Network of Municipalities of the Diputació de Girona (hereinafter, Xaloc), without having previously proceeded to modify the data relating to his address, reason for which is the notification by Xaloc of a coercive provision derived from a traffic penalty (file no. (...)) to the postal address of the person here reporting, on the dates 24 and 25/01/2019, would have been unsuccessful, and which resulted in the act being notified through an announcement published in the "Official State Gazette" (BOE) dated (...), with the title "Network Local Municipality of the Diputació de Girona (Xaloc). Notice of notification of (...) of 2019 in the procedure related to the notification of the provision of urgent ATC".

The complainant provided various documentation in this regard, including the following:

- Copy of the "certificado del cambio de domicilio de notificaciones", processed by the Pontevedra Provincial Traffic Prefecture, which states that the domicile of the person reporting here, and there owner of the vehicle with registration (...), is located at the locality of "(...)". The date of 03/09/2018 is recorded in the document.
- Copy of proof of certified mail, which states: as delivery date 04/03/2018, as recipient, the "Girona territorial traffic service", and as sender, the person making the complaint here . Also, a copy of the content of the certified letter, where the person making the complaint here requests the rectification of the data relating to his address to "efectos de notificaciones" and "that I be notified in writing of the result of the rectification carried out. "

- Copy of the announcement "Local Network of Municipalities of the Diputació de Girona (Xaloc). Notice of notification of (...) of 2019 in procedure relative to the notification of the provision of urgent ATC", published in the BOE of date (...). The announcement contains an annex with a grid which, among others, lists: the national identity document of the person making the complaint, the file number ((...)/2017), and the 'debt amount (...)

- Copy of proof of certified mail, which states: as delivery date 18/03/2019, as recipient "Xaloc local network of municipalities of the Diputación de Gerona", and as sender, the person here reporting Also, a copy of the content of the letter, in which the person making the complaint here requests, among others, that "notifise a mi domicilio the sanctioning procedure with receipt (...) of the year 2017 (as stated in the BOE) to be able to make the relevant allegations to the same, for not knowing or not remembering what I am being accused of."

2. The Authority opened a preliminary information phase (no. IP 192/2019), 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 07/22/2019, the reported entity was required, among others, to report on whether the Girona Territorial Service of the SCT received the certified letter through the which person making the complaint here requested the modification of the data relating to his address in the Register of drivers and vehicles, and whether the SCT proceeded to take any action in order to carry out the requested rectification. Likewise, the entity was asked if it had evidence that Xaloc, before making the notification of the provision of restraint of the file (...) through an announcement published in the BOE, made the two attempts of personal notification to the address indicated by the affected person.

4. On 07/29/2019, the SCT responded to the aforementioned request in writing in which it set out the following:

- That "the Territorial Traffic Service, on April 5, 2018, received a certified letter from this person in which it informs them that the General Directorate of Traffic of the Ministry of the Interior has proceeded, on dates 7 and March 14, 2018, to rectify his personal data in the Register of drivers and vehicles and requests that his new address be taken into account for the purposes of notifications".

- That "On that date or on subsequent dates, the Catalan Traffic Service did not have any sanctioning administrative file opened in relation to this holder, which is why personal data of correspondence could not be modified."
- That "the Catalan Traffic Service is not competent to rectify the Register of drivers and vehicles but the General Directorate of Traffic is." The Catalan Traffic Service can rectify personal data on addresses, exclusively with regard to its sanctioning procedures, even if there was no open file on the date of the writing of the person making the complaint. The last procedure is from the previous February".
- That "the Local Network of Municipalities of the Diputació de Girona, by delegation of the Catalan Tax Agency, could not carry out the personal notification of the provision of constraint of the file in either of the two attempts (...) , given the absence of the interested party (I attach a supporting document)".
- That "The data of the Local Network of Municipalities of the Diputació de Girona comes from the Tax Agency of Catalonia, which obtains the tax domicile of the holders of the debt through its own means."
- That "the Catalan Traffic Service, once the administrative file has become final and the debtor has not paid the penalty, transfers the executive route to the Tax Agency of Catalonia. The Catalan Traffic Service does not know if, among the sources to obtain the tax address, the ATC uses the Register of drivers and vehicles".

The denounced entity attached to the letter a copy of the receipt, issued by the courier company "Rdpost", of the proof of delivery of a notification in the name of the person here denouncing, and addressed to an address located in locality of (...). The proof of delivery contains two notification attempts with the result of being absent in both cases (24/01/2019 and 25/01/2019).

5. On 09/03/2020, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the SCT for an alleged infringement provided for in article 83.5.a), in relation to the 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).

6. In the initiation agreement, the accused entity was granted a term 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.

7. On 05/10/2020, the SCT made objections to the initiation agreement.

8. On 24/11/2020, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority admonish the SCT as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), both of the RGPD.

This resolution proposal was notified on 27/11/2020 and a period of 10 days was granted to formulate allegations.

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

proven facts

The Tax Agency of Catalonia (hereinafter, ATC), in charge of the processing to process, on behalf of the SCT, the personal data necessary for the processing of the procedure for the provision of restraint of the SCT's sanctioning files, did not use in practice of the notification addressed to the person here denouncing the address to which it belonged. This fact caused said notification to be made, on the dates 24 and 25/01/2019, at a different address to the address of the person reporting here. In this respect, the SCT, responsible for the treatment, did not sufficiently ensure that the ATC used for the practice of the notification the legally corresponding address, which would be the one contained in the Vehicle Registry, as specifically establishes article 90 of RDL 6/2015, of October 30, which approves the revised text of the Law on traffic, movement of motor vehicles and road safety.

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.

In this respect, the allegations that the accused entity made before the initiation agreement, focused on defending that the SCT was not responsible for informing the ATC, about the changes of address that the person sanctioned by a traffic violation, could communicate for notification purposes.

In this sense, the SCT argued that on the date it received the communication of the change of address, on 04/05/2018, "there was no pending act to notify the interested party

by the SCT", because the penalty imposed on the complainant here was final on 11/25/2017. This is how things are, on 09/19/2018, "not having paid the penalty once the voluntary period for its payment has ended, the debt is reported to the Catalan Tax Agency (ATC), which initiates a procedure of coercion against the debtor". In this sense, the accused entity alleged that the ATC did not act as the person in charge of the treatment, but that its action is within the framework of an independent procedure, which is why the ATC, in the processing of the collection during the enforcement period of the sanctions imposed by the SCT, "is not linked either by the domicile recorded by DGT, nor by the domicile in which the processing of the sanctioning procedure has been carried out, but by the tax domicile recorded by the debtor or the one who, in the course of the tax procedure, expressly points out the interested party.", and in this context, he invoked article 48 of Law 58/2003, of December 17, General Taxation (hereinafter, LGT).

First of all, as was explained in the proposed resolution, it should be noted that the case in question is not the enforcement of a tax (taxes, special contributions or taxes), but a penalty of a traffic fine, that is to say, a non-taxable income of public law, and therefore, the LGT does not apply. Having said that, note that article 90 of RDL 6/2015, of 30 October, which approves the revised text of the Law on traffic, movement of motor vehicles and road safety, referring to the practice of notification of complaints, provides the following:

"1. The Administrations with disciplinary powers in the matter of traffic will notify the complaints that are not delivered in the act and the other notifications that result in the disciplinary procedure in the Dirección Electrónica Vial (DEV).

In the event that the accused does not have it, the notification will be made at the address that was expressly indicated for the procedure, and failing that, at the address that appears in the records of the autonomous body Central Traffic Directorate."

In accordance with the above, and by virtue of article 5.1.c of the RGPD which provides that "personal data will be adequate, relevant and limited to what is necessary with the purposes for which they are processed (minimization of data)", the SCT is responsible for ensuring that the notifications of its resolutions are carried out in the address that corresponds legally, which is what the interested party designates for these purposes or in his case what appears in the Vehicle Register, in accordance with the specific provision contained in article 90 RDL 6/2015.

In relation to the above, the first thing to note is that, despite the fact that the SCT maintained on the contrary, in its statement of objections to the initiation agreement, the ATC acts as the person in charge of the treatment in relation to the management of the collection in the executive period of the fine sanctions imposed by the SCT. In this regard, it should be noted that article 4.8 of the RGPD defines the data controller as "the natural or legal person, public authority, service or any other body that processes personal data on behalf of the data controller". According to this definition, the person in charge can be either a natural person

as a legal person, or a public authority or any other body, which provides a service to the data controller that involves the processing of personal data on its behalf.

In this sense, it should be indicated that according to article 2 of Law 14/1997, of December 24, the SCT has the function of "instructing and solving the disciplinary proceedings that are filed against the infractions committed against the regulations of traffic, vehicle circulation and road safety, object of transfer". Article 11.5 of the mentioned legal text provides that the "amount of the fines and penalties can be demanded by means of coercion". Also, point out that, in accordance with article 7 of the General Collection Regulation, approved by Royal Decree 939/2005, of July 29, the Generalitat is responsible for collecting the debts whose management they are assigned, and it can carry out directly, in accordance with what is established in its rules for the attribution of powers, or through other public law entities with which the corresponding agreement has been formalized or in which this has been delegated faculty. That being the case, it is necessary to point out the current validity of the Agreement between the Catalan Tax Agency and the Catalan Traffic Service for the collection in the executive period of the fines imposed by the Catalan Traffic Service in the scope of its powers, in which the SCT entrusts the ATC with the management of the collection in the executive period of the referenced traffic penalties. In the resolution publishing the Agreement (Resolution VEH/339/2017, of February 16), the nature of "management assignment" is granted to the Agreement, and on this, article 11.2 of Law 40/2015, of October 1 of the Legal Regime of the Public Sector (LRJSP), in regulating the management order, expressly provides that the body to which the assignment is made will have the status of data controller with respect to the processing of the data to which it has access in execution of this assignment.

For all of this, it can be argued that the condition in which the ATC is placed in this legal relationship is that of the processor, which is able to process the personal data related to the provision of the service that has been commissioned through the referenced agreement.

Having said that, it is considered that the SCT, as responsible for the data processing carried out by the ATC in the area of the collection in the executive period of the sanctions imposed by the entity, must ensure that this processing is adapted to the principles and regulations for the protection of personal data, given that such action would form part of the responsibility in vigilando that corresponds to him as responsible for the treatment. In this sense, you must ensure that you provide sufficient information to your data controller, so that he can carry out the tasks that have been entrusted to him correctly and in accordance with the law. Thus, the SCT was responsible for communicating to the ATC the address that the interested party indicated for the purposes of notifications, so that the ATC could address the notifications relating to the enforcement of the penalty imposed by the SCT.

So things are, the fact that the SCT received the communication of the interested person's new address when "there was no pending act to notify the interested party by

the SCT", is not a sufficient argument to exonerate the entity from notifying the ATC of the new address of the person concerned. In addition, as the entity itself states in its statement of objections, the complainant here notified the SCT of the change of address on 04/05/2018, and therefore, months before the SCT communicated the debt to the ATC, on 09/19/2018.

In the last one, the accused entity set out the different operations implemented for years so that the notifications of the sanctioning procedures are addressed to the correct addresses of the persons reported, an action which, as already indicated in the resolution proposal, is positively assessed by this Authority. Likewise, the SCT stated that the data of the new address of the person reporting here and reported there, was rectified by the DGT in the Register of Vehicles and Drivers, on 02/19/2018, and therefore, the eventual sanctioning procedures that the SCT may initiate against the person reporting here, they would already address the updated address. In relation to this, just add that this data highlights that, if care had been taken at the time, so that the entity in charge of notifying the resolution of the restraint would have addressed it to the legally established address of in accordance with article 90 RDL 6/2015, said notification should have been addressed to the correct postal address.

So things are, the action of the SCT, as responsible for the treatment, violates the principle of minimization established in article 5.1.c of the RGPD, given that it did not transmit to the ATC the relevant data of the address of the here reporting person and there reported, for the purposes of the notifications of the acts issued during the processing of the executive collection of the traffic penalty.

It is for this reason that this plea is held to fail.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.c) of the RGPD, which provides that "personal data will be adequate, relevant and limited to what is necessary for the purposes for which they are processed (minimization of data)".

As indicated by the instructing person, during the processing of this procedure the fact collected in the section of proved facts, 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 "the 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 article 5 of the Regulation (EU) 2016/679", in relation to the principle of data minimization established in article 5.1.c) of the 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 given that the infringing conduct refers to a single and already consummated event, which due to its instantaneous nature cannot be corrected with the application of corrective measures. However, it should be noted that the SCT, as the person in charge of the processing, must verify, at the time of transferring the disciplinary files to the ATC, that the data contained therein correspond to the data that the reported persons may have reported to effects of notifications of the resolutions, and ensure that the resolutions are notified to the legally established domiciles according to the provisions of article 90 RDL 6/2015

For all this, I resolve:

1. Admonish the Catalan Traffic Service, as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), 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 Catalan Traffic Service.

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 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,