

File identification

Resolution of sanctioning procedure no. PS 42/2020, referring to the Management Body Tax Office of the Provincial Council of Barcelona.

Background

1. On 01/14/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Sociedad Estatal de Correos y Telegrafos, SA (hereafter, the Post Office) - previous information number IP 9/2020- and against the Tax Management Body of the Provincial Council of Barcelona (henceforth, OGT) - previous information IP number 10/2019-, due to an alleged breach of the regulations on personal data protection. Specifically, the complainant stated that the OGT sent him, through the Post Office, a notification of a traffic complaint at his old address (Sant Andreu de la Barca). In this regard, the complainant added that the notification was not addressed to the road electronic address (DEV); nor to the address (in Barcelona) that he provided when he was reported by the Local Police and that was included in the report; nor to that contained in the records of the autonomous body Prefecture Central de Trànsit, in accordance with article 90 of Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, movement of motor vehicles and road safety (hereafter, RDL 6/2015).

On the other hand, the complainant also pointed out that Correus delivered that notification, on 03/02/2019, to a third person.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase, in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (from now on, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 16/01/2020 the OGT was required, the reported entity was required, among others, to report on the reasons for which the controversial notification was addressed, linked to a sanctioning procedure in traffic matters, to a different address than that established by article 90 of RDL 6/2015.

4. On 30/01/2020, the OGT responded to the above-mentioned request in writing in which it stated, among others, the following:

- That the Prat de Llobregat City Council has delegated to the Provincial Council of Barcelona the powers of management and collection of traffic fines imposed in the traffic sanctioning procedures instituted by said Consistory.
- That by virtue of this delegation, the OGT practices the notifications and issues the collection documents.
- That on 16/01/2019, the City Council of El Prat de Llobregat registered a complaint in the OGT computer system against the complainant, for the commission of a traffic offence.

- That at the time of the recording of the complaint by the City Council "it was recorded that the complaint form was hand-delivered to the offender by the reporting agent, although the signature is not recorded" by the reporting person.
- That on 22/01/2019 the Town Council of El Prat de Llobregat issued the initiation agreement of the sanctioning procedure.
- That the notification of the initiation agreement and complaint to the person making the complaint was made at the address of Sant Andreu de la Barca, address that "worked in the database of this Organization as the address of notifications coming from the Register of Inhabitants."

- That "currently this address has been modified, and that the address corresponding to Carrer (...) de Barcelona is listed as address."

The OGT attached various documentation to the letter.

5. On 03/09/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the OGT for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.d); all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 09/17/2020.

6. On 10/05/2020, the OGT made objections to the initiation agreement. The accused entity provided various documentation with its letter.

7. On 06/11/2020, the person instructing this procedure formulated a resolution proposal, by which it was proposed that the director of the Catalan Data Protection Authority admonish the OGT as responsible for an infringement provided for in the article 83.5.a) in relation to article 5.1.d), both of the RGPD.

This resolution proposal was notified on 12/11/2020 and a period of 10 days was granted to formulate allegations.

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

proven facts

For the purposes of notifying the person reporting an agreement to initiate disciplinary proceedings for an alleged traffic violation issued by the Ajuntament del Prat de Llobregat, the OGT did not use one of the addresses provided for in article 90.1 of the RDL 6 /2015, but addressed said notification to the address (in Sant Andreu de la Barca) that appeared in the OGT database, which no longer corresponded to the person reporting.

In the complaint form, the Prat de Llobregat Local Police officers recorded the current address of the person making the complaint (in Barcelona).

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.

2.1. About the facts object of claim.

In its statement of objections to the initiation agreement, the OGT explained that it was acting on behalf of the Prat de Llobregat Town Council, limiting itself to the practice of notifying the complaints made by the staff of the City Council. He added that the City Council of Prat de Llobregat (which is competent to issue administrative acts in the framework of the sanctioning procedure in traffic matters) resolved that the complaint was correctly notified to the person making the complaint at the time of the infringement, in accordance with article 89 of RDL 6/2015. However, he stated that the OGT processed a second notification of the complaint with which the deadlines for allegations and payment were extended, which he admitted was sent to the previous address of the person making the complaint. In the last one, the OGT indicated that the address indicated in the complaint bulletin was not communicated because the officers considered that the complaint was notified on the spot.

In advance, as stated by the accused entity in the final part of its statement of objections to the initiation agreement, it should be noted that it is not the Authority's responsibility to pronounce on any defects in the sanctioning procedure in the matter of traffic inflicted on the person here reporting.

Having made this clarification, regardless of whether the complaint was notified to the person affected at the time (that is, when the officers of the Local Police of Prat de Llobregat reported it), it must be taken into account that the OGT practiced a second notification to the reporting person that contained the report and the agreement to initiate disciplinary proceedings for

an alleged traffic violation issued by the Prat de Llobregat City Council. In addition, as the OGT recognized in its statement of objections to the initiation agreement, this notification was sent to a previous address of the person making the complaint.

In this sense, as reported by the OGT on 01/30/2020 in response to the request made by the Authority, the controversial notification was made at the address of Sant Andreu de la Barca, which "worked at the base of data of this Organization as address of notifications coming from the Population Register."

However, in accordance with article 90.1 of RDL 6/2015, for the notification referred to, the OGT did not have to use the address contained in its database (which comes from the population register), but had to use the electronic street address (hereafter, DEV), or failing that (as was the case in the present case), the address that the affected person had expressly indicated in the procedure.

At this point, the OGT alleged that the City Council did not communicate the address contained in the complaint bulletin. As the instructing person explained in the resolution proposal, it must be made clear that the minimum due diligence required of the OGT required that it carry out the notifications at the addresses indicated in the regulations and that it carry out the procedures necessary to find out the addresses of these addresses before sending the notification.

And in any case, as provided in article 90 RDL, in the absence of a DEV or address expressly indicated by the affected person, what corresponded was to consult the address contained in the records of the autonomous body Central Traffic Prefecture. However, as advanced, the OGT obtained the address from its own database.

Therefore, it must be concluded that not making the notification in the terms established in article 90 of RDL 6/2015, is what led to the OGT inaccurately treating the address of the person reporting where to make the notification of the complaint and the agreement to initiate the procedure in traffic matters.

2.2. About the corrective measures.

Subsequently, the accused entity admitted in its statement of objections to the initiation agreement that the address where the disputed notification was made was not the correct one, but that it updated it when it became aware of its inaccuracy.

In this regard, as the instructing person pointed out in the resolution proposal, it is worth highlighting the diligence of the OGT to correct the address of the person making the complaint, as soon as it became aware of its inaccuracy.

Having said that, it is also necessary to point out that the adoption of measures to correct the effects of the infringement do not distort the imputed facts, nor do they change their legal classification.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.d) of the RGPD, which provides that the personal data will be "accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed".

For its part, article 4.1 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), in relation to the accuracy of the data, establishes what:

"1. In accordance with article 5.1.d) of Regulation (EU) 2016/679 the data must be accurate and, if necessary, updated."

In turn, article 90.1 of RDL 6/2015, regarding the practice of reporting traffic complaints, provides the following:

"1. The administrations with sanctioning powers in traffic matters must notify the complaints that are not delivered to the act and the other notifications that result in the sanctioning procedure to the road electronic address (DEV).

In the event that the accused does not have it, the notification must be made at the address that has been expressly indicated for the procedure and, if there is a lack, at the address that appears in the records of the autonomous body Prefecture Central Traffic."

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 it 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 accuracy is contemplated (art. 5.1.d RGPD).

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

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, infringements that involve a substantial violation of the articles mentioned in that article and, in particular, the following, are considered very serious and prescribed for three years.

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

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".

Despite the above, as stated by the investigating person in the resolution proposal, the adoption of corrective measures should not be required to correct the effects of the infringement, given that the OGT, when it received the request from the Authority in the previous information phase, he already rectified the address of the reporting person that was in his database.

For all this, I resolve:

1. Admonish the Tax Management Body of the Barcelona Provincial Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.d), 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 OGT.

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,