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apdcat
Autoritat Catalana de Protecció de Dades

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File identification

Resolution of sanctioning procedure no. PS 45/2020, referring to the School (...)(...), of (...).

Background

1. On 04/07/2019, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the School (...)(...), of (.. .), due to an alleged breach of the regulations on personal data protection. Specifically, the person making the complaint stated that, through the school's address (...) there was unrestricted access to a website of this school, which contained a table entitled "Table of applications of dental treatments", which included numerous personal data, corresponding to more than 3,000 people who voluntarily participated in the dental treatment service that was offered from the school, through the form or web address (...). The complainant added that the users of the service had not been informed about the publication of their personal data on the internet.

The person making the complaint accompanied the letter of complaint with 3 documents:

1.1) A screenshot of the dental treatment application form, where there were 5 fields with the following information required of the applicant: first and last name, email address, no. phone number, the dental treatment requested (where "hygiene" appeared by default), and an observation field.

At the foot of the form was the following informative legend:

"These data are for the exclusive use of (...)(...), and only to facilitate the requested service. In compliance with the LOPD (15/1999) you have the right to consult, rectify, cancel or oppose the processing of your data by contacting the School (...)(...). (...), or via the email address (...)."

1.2) An image that contained a table or list of people who would have requested dental treatment *(cleaning* or teeth whitening) during the period between 1/10/2015 and 6/11/2016. This list included the fields of the aforementioned application form, and also included the day and time assigned to perform the dental treatment. In the observations section there were various types of data, of which the following should be highlighted:

- Health data related to 17 people, such as: *"congenital heart disease", "chronic hepatitis C, renal dialysis and diabetes mellitus I", "HTN", "diabetes mellitus II, arterial stenosis with 3 stents", "stroke, allergy penicillin and antisióticos", "chronic renal insufficiency (dialysis three times per week, he is waiting for a kidney transplant)", "HIV*, epilepsy", "impoc", "Mr. with hypertension, essential thrombocytosis and allergic to aspirin, ischemic heart disease".*

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- Data relating to the intervention of the Social Services, such as: *"derived by PRIMARY ATTENTION TEAM (...)", "user derived by Trabajador Social CAP (...)".*

- Data relating to the CAP where they would be registered and that would have derived it, such as: *"Derived CAP (...)".*

- Other personal data, such as: *"No se lava nunca los dientes".*

1.3) An Excel file that would contain the same information that was displayed in the screen print of the aforementioned table (1.2), but unlike the screen print, this Excel file contained information regarding a period of time broader and referring to more people.
Specifically, the file contained 3,583 records, of which around 3,377 corresponded to people who would have requested dental treatment (cleaning or whitening) during the period between 1/10/2015 and 7/06/2019. With regard to the comments section, some of the personal data listed there should be highlighted (some of the personal data collected between 7/11/2016 and 7/06/2019 are mentioned):

- Health data, such as: *"patient with heart valve and symptron", "Mr. with permanent total disability, does not have sufficient resources to cover the cost of oral care and cleaning", "diabetic, high blood pressure, cholesterol", "second trimester of pregnancy", "penicillin allergy and caffeine, lactose intolerance".*

- Data on the performance of social services, such as: *"Person cared for by the CAP social worker (...), insufficient income".*

- Other types of data, such as: *"patient who lives in a supervised apartment for alcoholism rehabilitation. Foundation (...), "boyfriend of (...) (friend of (...))", "I work in a nursery", "girls aged 5 and 8 with father (...) ".*

2. The Authority opened a preliminary information phase (no. IP 195/2019), 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. On 07/08/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that through the web address indicated by the complainant ((...)) a page was accessed that contained the same table that this person provided with the complaint letter ("Table of requests for dental treatments"), made up of 3,549 records, with the personal data indicated in the preceding 1st. If you clicked on the "x" button in the "Actions" field of any record, a window was generated asking if the request was deleted. too

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it was found that if you clicked on the "Download CSV" button, you could download the information in an excel file, confirming the report made by the reporting person.

On the other hand, through the website of the School (...) the dental treatment request form ((...)) mentioned by the complainant was accessed, which contained the information legend that has been transcribed in the 1st antecedent. Through this website, a direct link to the taula.php file (hereinafter, table) was not detected, that is to say, access to the table was made by entering the full address that the person had indicated complainant ((...)).

As a result of these inspection actions, the corresponding due diligence was lifted.

4. In this information phase, on 11/07/2019 the School (...) was required to report on whether the published data that appeared in the aforementioned table corresponded to students and/or other people linked to the school; to confirm the number of people and the period of time to which the personal data collected referred; and that it specified the circumstances regarding the group or groups of people affected. He was also required to point out the reason why these personal data were accessible via the internet, i
that it specified the time during which this table had been accessible on the internet through the indicated address; also to indicate whether the affected persons were informed of the publication on the internet of the mentioned personal data. And in the event that the open publication was due to a mistake, he was required to point out the circumstances in which it had occurred, and to explain the security measures that the school generally has implemented in the management of personal data through the internet, in order to avoid illicit access.

5. On (...)/2019, the School (...) responded to the above-mentioned request in a letter in which it stated the following:

"1.- The data shown in the table mostly correspond to students of the school, relatives of the students and other people linked to the school such as former students and relatives of these former students.
During the two academic years, our students of the Higher Degree Professional Training Course in Oral Hygiene carry out practical work with real patients who volunteer to receive this service.

These practices (oral examinations, cleanings, etc.) take place in the school's oral hygiene technical classroom. On most occasions the "patients" are students from lower cycles, their relatives as well as former students. In a small percentage, there is also data from "patients" who have no connection to the school and which are referred to us by the Catalan Institute of Health under a collaboration agreement between both entities which has as for the purpose of solidarity care for oral health treatments to patients who are in a situation of social exclusion.

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The purpose of processing this data collected through a form is to be able to manage patient appointment reservations in order to be able to access Oral Hygiene treatment.

The type of data collected is purely identifying data, specifically: first and last name, email and telephone, and is collected for the sole purpose of being able to check the reservation in advance. Under no circumstances are health data requested on this form.

2.- For the management of data collection by means of a form, we have chosen the "Google Forms" tool, a tool from the Google family. This tool has been recommended to educational centers by the Department of Education and incorporates elements and functionalities based on the "Google Apps" technology for Education (...).

The reason that caused the incident is that, while the form was being redesigned via Google Forms, direct access to this table was generated from the computer in the health classroom (where the practices described in point 1 of this document). Access to this form was done through a password, with the aim of restricting access to unauthorized persons. The person doing this task was on sick leave on (...) of 2018. This person is currently on sick leave and the completion of this form via "Google Forms" was not completed.

3.- Regarding the information provided to users of the service and in order to comply with article 13 of the RGPD and article 11 of Organic Law 3/2018 of December 5 on Data Protection and Guarantee of Digital Rights , both relating to the duty to inform, at the time of the collection of personal data, users were informed when they sent the request from the Google Forms form, with the corresponding informative clause, verbatim: "These data are from exclusive of (...) and only to facilitate the requested service. In compliance with the LOPD (15/1999) you have the right to consult and object to the processing of your data by contacting the School (...) (...), (...), or through email address." Currently this clause has been updated with the requirements established by the current regulations on Data Protection.

On the other hand, once they showed up for the appointment, and before performing the oral treatment, they filled in a sheet with medical data, signed the authorization for the treatment and that the medical data they stated were correct.
4.- The public publication is due to a human error. The table was kept connected to the web, although not public, via the URL while the form was redesigned via Google Forms. This task was left incomplete when the person who carried out this work initiated a leave for (...), still valid, without the possibility of passing on the information related to the status of the task and what were the pending steps to be able to complete it satisfactorily and with the appropriate guarantees (...)

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5.- As soon as we received the request from this administration, we proceeded to block access to the URL address (...) and we requested Google to remove any indexed trace from this table (. ..).

6.- (...) We understand that although the table was temporarily accessible due to human error, it was not publicly accessible, since it was necessary to know the URL address (...) in order to see the its content (...).”

6. On 05/22/2020, the Authority's Inspection Area carried out a new check via the Internet on the facts subject to the complaint. It was found that the table containing the personal data of the people who had requested dental treatment at the school was no longer accessible through the web address indicated by the person reporting - and also through another link on the school's website-, and that the dental treatment application form had been modified, which as far as is concerned now contained a button that had to be selected to process the application, which referred to the provision of consent, and which contained a link to the website's privacy policy. In the Data Protection section of the Privacy Policy, information was provided on the ends provided for in Article 13 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 circulation thereof (hereafter, RGPD.
From the result obtained, the corresponding due diligence was lifted.

7. On 21/09/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the School (...) for two alleged infringements: an infringement provided for in article 83.5. b), in relation to article 13, and a second infringement provided for in article 83.5.a), in relation to article 5.1.f); 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 School (...) on 09/21/2020.

8. In the initiation agreement, the School (...) was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of tests that he considered appropriate to defend his interests.

9. On 09/25/2020, the School (...) submitted a letter, through which it acknowledged the commission of the alleged acts and expressed the will not to make allegations and to make the voluntary payment before that the resolution of the sanctioning procedure be issued.

10. On 09/29/2020, the instructor made a new check via the Internet about the imputed facts. He found again that the table containing the personal data of the people who had requested dental treatment at the school was not accessible through the web address indicated by the person reporting - and also through a another link on the school's website, or through the Google search engine. He also noted the modification of the dental treatment application form. However:

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- Regarding the old form: it was found that it was still accessible on the internet, through at least three different addresses entered in the Google search engine: the address web (...): also when the phrase "Dental treatment request form - School (...)" was entered in the search engine; and also through the school's Facebook account.

- Regarding the new form: it was found that it contained a button that had to be selected to process the request, that referred to the provision of consent, and that it contained a link to the website's privacy policy.

From the result obtained, the corresponding due diligence was lifted.

11. On 05/11/2020, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority declare that the School (...) had committed two infringements: an infringement provided for in article 83.5.b), in relation to article 13, and a second infringement provided for in article 83.5.a), in relation to article 5.1.f); all of them from the RGPD.

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

12. On 16/11/2020, the School (...) submitted a letter certifying that it had paid in advance three thousand euros (3,000 euros), corresponding to the pecuniary sanction proposed by the instructor in the proposal of resolution, once the two reductions provided for in article 85 of Law 39/2015 have been applied.

13. On 07/12/2020, the instructor made a final check via the Internet about the alleged facts. He found again that the table containing the personal data of the people who had requested dental treatment at the school was not accessible through the web address indicated by the person reporting - and also through a another link on the school's website, or through the Google search engine. On the other hand, unlike the result obtained in the actions carried out on 09/29/2020, it found that through the three internet addresses verified on 09/29/2020 (including the Facebook account of the School) it was no longer possible to access the old form or the new form.

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proven facts

1st The School (...) collected, through a form accessible through the school's website, data from applicants for free dental treatment provided by school students in the framework of the practices of two academic courses of the Training Cycle
Higher Degree Oral Hygiene Professional, without having previously informed them of the extremes provided for in art. 13 of the GDPR.

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Specifically, the school collected the first and last name, the email address, the number. phone number, the dental treatment requested and various data in the comments section of the form, without informing them beforehand about the following: the contact details of the data protection representative; the legal basis of the treatment; the eventual recipients of the data; the retention period of the data, or failing that, the criteria used to determine it; the right to request from the person responsible for the treatment the limitation of the treatment or the right to the portability of the data; the right to withdraw consent at any time; of the right to submit a claim to the supervisory authority; and if the interested person was obliged to provide the required personal data.

These data were collected without reporting the ends indicated, at least, from 25/05/2018 to 7/06/2019, the latter date corresponding to the last treatment request recorded in the table.

2nd The School (...) has allowed access, through a school internet address, of public or unrestricted access, to the data of the persons requesting dental treatment mentioned, violating their duty of confidentiality.

This is clear from the documents provided with the complaint, from the checks made by this Authority and from the statements made by the School in the written response to the Authority's request for information made in the prior information phase, in which he acknowledged that this table *"remained connected to the web...through the URL address while the form was being redesigned via Google Forms",* but that the task was stopped *"when the person who was doing this work initiated a cancellation for (...)* ((...)/2018), *still valid* ((...)/2019), *without the possibility of transferring the information regarding the status of the task and what the steps were pending in order to complete it satisfactorily and with the appropriate guarantees (...)".* And finally, this is clear from the recognition of the imputed facts that the School has carried out in the letter dated 09/25/2020 before the initiation agreement. These manifestations highlight a lack of active and diligent custody of the personal data processed.

In any case, the table with the indicated data would have been accessible without restrictions from 07/04/2019, the date on which the reporting person provided a copy of the table with all the indicated data, until at least 07/8/2019 , in which the Authority verified this unrestricted access. The access also allowed the information to be downloaded in an excel file.

This situation has allowed access, through the internet, to personal data of around 3,377 people, many of them minors, students or former students of the school and their relatives, as well as other people derived of Social Services or a Primary Care Center (CAP), linked to the ICS. Among the information that was accessible, in addition to the identification data indicated (name and surname, email address, telephone number), there are health data (HIV, diabetes mellitus, HTN, pregnancy, disability, etc.), data relating to the referral made by the Social Services (due to economic insufficiency or other reason), and other data of various kinds, other than merely identifying data (information on the relationship of kinship or

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affectivity with a student at the school, the CAP that corresponded to them, the type of work done, among others).

Fundamentals of law

1. The control of the reported treatment falls within the competence of the Authority, by virtue of what is provided for in article 156.b) of the Statute of Autonomy of Catalonia (EAC) and article 3.h) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, to the extent that personal data has been collected and processed within the framework of the practices carried out by the students of the Training Cycle of Higher Degree Professional Training in Oral Hygiene, which is included in the educational concert regime for the provision of the Catalan Education Service, and therefore within the competences attributed to the Generalitat Administration in educational matters. On the other hand, the School has stated before the Authority that part of the personal data processed correspond to users of the public health service provided by the Catalan Institute of Health, by virtue of an agreement signed between both entities on dental care, and therefore within the framework of the powers attributed to the Administration of the Generalitat in the field of public health care in Catalonia.

On the other hand, the provisions of the LPAC and article 15 of Decree 278/1993, in accordance with DT 2a of Law 32/2010, apply to this sanctioning procedure. The resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority
in accordance with articles 5 and 8 of Law 32/2010.

2. In accordance with article 85.3 of the LPAC, both the recognition of responsibility and the voluntary advanced payment of the proposed monetary penalty lead to the application of reductions. The effectiveness of these reductions is conditioned on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction. For both cases, sections 1 and 2 of article 85 of the LPAC provide for the termination of the procedure.

This has been the case, since before the initiation agreement the School (...) presented a letter dated 09/25/2020, through which it stated the following:

"- That, once the file has been read, it does not make any allegation about the conduct described in it.

- That he voluntarily acknowledges responsibility for the conduct recorded in the file.
- That he intends to make the voluntary payment of the pecuniary penalty before the resolution."

The section of the initiation agreement called "Applicable penalty" indicated that the determination of the amount of the fine would be made in the resolution proposal, as the instructor did, granting him a hearing procedure, during which the School has made the advanced payment of the penalty proposed by the instructor, without formulating allegations, therefore accepting the reductions provided for in article 85 of the LPAC.

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3. Legal qualification of the proven facts.

3.1. Qualification of proven fact 1st: violation of the right to information of the affected persons.

In relation to the conduct described in point 1 of the proven facts section, relating to the lack of the duty to provide information on some of the ends provided for in article 13 of the RGPD, it should be remembered that this precept determines the following:

"1. When the personal data that refer to the interested party are obtained from the interested party themselves, at the time of collecting them, the data controller must provide 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 representative, if applicable.
c) The purposes of the treatment for which the personal data are intended and the legal basis of the treatment.
d) If the treatment is based on article 6, section 1, letter f), the legitimate interests of responsible or of a third party.
e) The recipients or the categories of recipients of the personal data, if applicable.
f) If applicable, the intention of the person in charge to transfer personal data to a third country or an international organization, and whether or not there is a Commission adequacy decision, or, in the case of the transfers mentioned in articles 46 or 47 or in article 49, section 1, second paragraph, reference to adequate or appropriate guarantees and the means to obtain a copy, or to the fact that they have been provided.

2. In addition to the information mentioned in section 1, when obtaining the personal data, the data controller must provide the interested party with the following information, necessary to guarantee fair and transparent data processing:
a) The term during which the personal data will be kept. If this is not possible, the criteria used to determine this term.
b) The right to request from the person in charge of the treatment access to the personal data relating to the interested party, to rectify or delete them, to limit the treatment or to oppose it, as well as the right to data portability.

c) When the treatment is based on article 6, section 1, letter a) or on article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without this affecting the legality of the 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 requirement necessary to sign a contract, as well as if the interested party is obliged to provide personal data and is informed of the possible consequences of not doing so.
f) The existence of automated decisions, including the elaboration of profiles, referred to in article 22, sections 1 and 4, and at least in these cases, it must provide significant information about the logic applied as well as the importance and expected consequences of this treatment for the interested party (...)."

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This imputed fact constitutes an infringement, according to the provisions of article 83.5.b) of the RGPD, which typifies as such the violation of: *"The rights of the interested parties, in accordance with articles 12 to 22" .*

As indicated by the person instructing, during the processing of this procedure this imputed fact, which the school has acknowledged having committed in the letter of 09/25/2020, has been duly proven. The violation of the duty of information has been included as a minor infraction in article 74.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:

> *"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..."*

3.2. Qualification of proven fact 2nd: violation of the duty of confidentiality.

With regard to the conduct described in point 2 of the proven facts section, regarding the breach of the duty of confidentiality, it is necessary to refer to article 5.1.f) of the RGPD, which provides that personal data will be: *"Processed in such a way as to guarantee adequate security, including protection against unauthorized or unlawful processing and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")".*

Law 41/2002, of November 14, basic regulation of patient autonomy and rights and obligations in terms of information and clinical documentation - of supplementary application to processes that do not have special regulation, by virtue of the provisions in its additional provision 2a-, it establishes in articles 14, 17 and 19 some obligations of custody of the clinical history to guarantee the security of the personal data collected, which are applicable to the data collected by the School in the aforementioned table. The custody obligation also comes from what is established in articles 9 and 12 of Law 21/2000, of December 29, on the rights of information concerning the health and autonomy of the patient, and the clinical documentation in the articles 9 and 12.

As the instructor pointed out in the proposal, the statements made by the School in the written response to the Authority's request for information on the long-term absence from work of the person who was in charge of the redesign of the form of request for dental treatment, *"without the possibility of passing on the information regarding the status of the task and what were the pending steps to be able to complete it satisfactorily and with the appropriate guarantees",* in no way can they justify that the School does not adopt the necessary measures to guarantee the confidentiality of the personal data collected. More if we take into account that the School has stated that the layoff began in (...)/2018 and would continue, at least, until (...)/2019, the date on which the School stated that this person was still on leave from work.

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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: *"The basic principles for treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9".*

During the processing of this procedure, the imputed fact has been duly proven, which the school has also acknowledged having committed in the letter of 09/25/2020. The violation of the principle of confidentiality has been included as a very serious infringement in article 72.1.i) of the LOPDGDD, in the following form:

"The violation of the duty of confidentiality established by article 5 of this organic law."

4. As the School (...) is an entity governed by private law, the general sanctioning regime provided for in article 83 of the GDPR applies.

Article 83.5 of the RGPD provides that the infractions provided for in this article and section will be sanctioned with an administrative fine of 20,000,000 euros at most, or in the case of a company, an amount equivalent to a maximum of 4% of the global total annual business volume of the previous financial year, opting for the higher amount. This, without prejudice to the fact that, with an additional or substitute character, some other of the measures provided for may be applied clauses a) ah) ij) of article 58.2 RGPD.

In the present case, as explained by the investigating person in the resolution proposal, the possibility of replacing the sanction of an administrative fine with the sanction of reprimand provided for in article 58.2.b) RGPD should be ruled out, given that the infractions imputed refer to the treatment of health data (which are part of the so-called special categories of data), and of data that correspond to minors.

Once the application of the reprimand as a substitute for the administrative fine has been ruled out, the amount of the administrative fine to be imposed must be determined.

Article 83.2 of the RGPD determines the following regarding the graduation of the amount of the administrative fine:

"2. Administrative fines will be imposed, depending on the circumstances of each individual case, as an additional or substitute for the measures contemplated in article 58, section 2, letters a) ah) yj). When deciding the imposition of an administrative fine and its amount in each individual case, the following shall be duly taken into account:

a) the nature, severity and duration of the infringement, taking into account the nature, scope or purpose of the treatment operation in question

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as well as the number of interested parties affected and the level of damages they have suffered;
b) intentionality or negligence in the infringement;
c) any measure taken by the person responsible or in charge of the treatment to alleviate the damages and losses suffered by the interested parties;
d) the degree of responsibility of the person in charge or of the person in charge of the treatment, given the technical or organizational measures that have been applied by virtue of articles 25 and 32;
e) any previous infringement committed by the person in charge or the person in charge of the treatment;
f) the degree of cooperation with the control authority in order to remedy the infringement and mitigate the possible adverse effects of the infringement;
g) the categories of personal data affected by the infringement;
h) the way in which the control authority became aware of the infringement, in particular if the person in charge or the manager notified the infringement and, if so, to what extent;

i) when the measures indicated in article 58, paragraph 2, have been previously ordered against the person in charge or the person in charge in relation to the same matter, the fulfillment of said measures;
j) (…)
k) (…).”

In turn, article 76.2 of the LOPDGDD provides that, apart from the criteria established in article 83.2 RGPD, the following can also be taken into account:

"a) The continuing nature of the infringement.
b) Linking the offender's activity with the practice of processing personal data.

c) The profits obtained as a result of the commission of the infringement.
d) The possibility that the conduct of the affected person could have led to the commission of the offence.
e) The existence of a merger process by absorption subsequent to the commission of the infringement, which cannot be imputed to the absorbing entity.
f) Affecting the rights of minors.
g) Have, when not mandatory, a data protection delegate.
h) The submission by the person in charge or person in charge, voluntarily, to alternative conflict resolution mechanisms, in cases where there are disputes between them and any interested party."

According to what is established in articles 83.2 RGPD and 76.2 LOPDGDD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, as indicated by the investigating person in the proposed resolution, fines should be imposed following administrative:

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4.1. With regard to the 1st proven fact, relating to the lack of information on some of the ends provided for in article 13 of the RGPD: 1,000 euros (one thousand euros).

4.2. Regarding the 2nd proven fact, related to the violation of the duty of confidentiality: 4,000 euros (four thousand euros).

This quantification of the fines 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 lack of intentionality in the infringement (83.2.b RGPD), the measures taken by the person in charge when he became aware of the facts reported (83.2.c RGPD), the lack of a previous infringement committed by the person in charge of the treatment (83.2. e RGPD), and the lack of profits obtained as a result of the commission of the infringement (art. 76.2.c LOPDGDD).

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

- The nature, seriousness and duration of the infringement, taking into account the large number of people affected (art. 83.2.a RGPD), the category of personal data affected by the infringement (art. 83.2.g RGPD), and the affecting the rights of minors (art. 76.2.f LOPDGDD).

On the other hand, according to article 85.3 of the LPAC, it is stated that if before the resolution of the sanctioning procedure the alleged person responsible acknowledges his responsibility or makes the voluntary payment of the pecuniary penalty, a 20% reduction should be applied on the amount of the proposed penalty (therefore, the penalty would be 4,000 euros). If the two aforementioned cases occur, the reduction is applied cumulatively (40%, therefore, the penalty would be 3,000 euros).

The effectiveness of the aforementioned reductions 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 25/09/2020, the School (...) has acknowledged his responsibility. Likewise, on 16/11/2020 he paid three thousand euros (3,000 euros) in advance, corresponding to the amount of the penalty resulting once the cumulative reduction of 40% has been applied.

6. 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 for the resolution declaring the infringement to establish the appropriate measures so that its effects cease or are corrected.

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In the present case, it becomes unnecessary to require the adoption of corrective measures, since on 07/12/2020 the instructor found that it was no longer possible to access the old form via the internet, and with regard to the new form , also noted that it was not possible to access it due to the fact that the link to the form had been deleted on the School's website, while informing that the oral hygiene service had been interrupted due to the COVID-19 pandemic .

Having said that, it is not superfluous to recommend that the School, before offering the oral hygiene service again, review the new form following the instructions indicated in the proposed resolution (legal basis 6.2) regarding the information that must be provided in accordance with article 13 RGPD.
Likewise, it is recommended that you review the regime provided for the provision of consent, taking into account the provision in art. 7 of the LOPDGDD, and the rest of the applicable precepts.

resolution

For all this, I resolve:

1. Impose on the School (...) two sanctions consisting of two administrative fines: a fine of 1,000 euros (one thousand euros), as responsible for an infringement provided for in article 83.5.b) in relation to the Article 13, both of the RGPD; and a fine of 4,000 euros (four thousand euros), as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), both of the RGPD. The total amount of the two sanctions amounts to five thousand euros (5,000
euros).

2. Declare that the School (...) has made effective the advanced payment of three thousand euros (3,000 euros), which corresponds to the total amount of the two sanctions imposed, once the 40% deduction percentage has been applied corresponding to the reductions provided for in article 85 of the LPAC.

3. Notify this resolution to the School (...)(...).

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 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.

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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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