

File identification

Resolution of sanctioning procedure no. PS 48/2020, referring to Reus City Council

Background

1. On 30/09/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Reus City Council, on the grounds of an alleged breach of the regulations on protection of personal data.

Specifically, the complainant states that the Reus City Council notified him of the resolution dated (...), by which it is decided to estimate the right to refund and to proceed with the payment of the amounts paid by a series of people when they signed up for course and workshop activities at the municipal civic centers during the 2018-2019 school year. Said resolution contained a list of affected persons (7) identified with their first and last names, ID, amount of the refund, current account number and reason for the refund.

2. The Authority opened a preliminary information phase (no. IP 263/2019), 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 15/10/2019 the reported entity was required to report on what was the legal basis that would legitimize the notification of the resolution dated (...), revealing the identity of all the people who are agreed to be entitled to the refund, as well as the rest of the personal data relating to the amount of the refund, current account number and reason for the refund.

4. On 22/10/2019, the complainant submits a new letter, through which he explains that the City Council, on (...)/2019, has informed him that the notification of the resolution dated (...), was carried out incorrectly because it included personal data of third parties, and, it is indicated that "you cannot make any use of the data of third parties contained in the notification you received, nor reproduce them by any medium or make them known to other people".

5. On 29/10/2019, the City Council responded to the above-mentioned request in writing, in which it stated, among others, the following:

- That "The legality of the notification of the date resolution (...) of the file for the return of undue income is made in accordance with article 6 section a), "The interested party has given consent for the processing of your personal data, for one or more

specific purposes.", in this case the management of the course in which she enrolled, and to notify her of the content of the resolution approving the return of the amount of a course that the complainant paid, be annulled and the City Council had the obligation to return it to him."

- That "The notification of date (...) contained the full text of the resolution, as indicated in article 40.2 of LPAC 39/2015, but it was made without considering that there were multiple interested parties/affected in the same resolution and therefore also had to comply with the provisions of the seventh additional provision of the LOPDGDD regarding the identification data of the interested parties of the file".
- That "In this case, given that the notification of the resolution affected multiple interested parties but was done with the aim of notifying individually and not to publicize the resolution, the seventh additional provision of the LOPDGDD specifies that the affected person must be identified exclusively by means of the full number of their national identity document, foreigner's identity number, passport or an equivalent document. The minimization criterion provided for in should also have been applied article 5.1.c) of the RGPD and pseudonymization techniques on the personal data of the resolution."
- That "The procedural inaccuracy of the notification of the resolution has highlighted the need to draw up a guide of recommendations to follow for the identification of interested in the management of personal data in notifications/communications and publications in bulletins and boards of administrative acts that clearly indicate how these administrative acts must be carried out. (...). The guidelines and recommendations of the guide have also been immediately transferred to the department managing the notification that generated the complaint and their procedures have been reviewed in order to modify them".

6. On 14/10/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City of Reus for an alleged 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 imputed entity on (...)/2020.

7. In the initiation agreement, the accused entity 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 their interests.

8. On 04/11/2020, the City Council made objections to the initiation agreement.

9. On 12/15/2020, the person instructing this procedure formulated a resolution proposal, by which it was proposed that the director of the Catalan Authority of

Data Protection admonishes the City Council of Reus as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), all of them of the RGPD.

This resolution proposal was notified on 12/30/2020 and a period of 10 days was granted to formulate allegations.

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

proven facts

The City Council of Reus, on (...), notified the person denouncing the mayoral resolution issued on the same date, by which it was decided to estimate the right to refund and to proceed with the payment of the amounts paid by a number of people when they signed up for course and workshop activities at the municipal civic centers during the 2018-2019 school year. Said resolution contained a list of affected persons (7), including the person making the complaint, identified by first and last name, ID, amount of the refund, current account number and reason for the refund.

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 regard, it must be said that the allegations made in the initiation agreement were not allegations in themselves tending to distort the reality of the facts that motivated the initiation of the procedure or the legal qualification established in the agreement of initiation, but focused on exposing the corrective measures implemented by the entity in order to prevent similar events from being repeated: the approval of "Instruction 07/2020, of the general secretary, on the processing of personal data in notifications and publications in bulletins and boards" and the publication of this on the transparency portal, the issuance of a report on the publication of data in selective processes, and, the adoption of training actions in terms of data protection to all the organization's staff. Likewise, they set out the actions taken by the City Council in order to minimize the consequences of the controversial notification, such as informing the affected people of the facts, with the warning and request that they do not misuse the personal data of third parties consigned there. Also, it was stated that, when detecting and qualifying the facts here

proved to be a security breach, they notified it to the Authority for the purposes of processing the corresponding procedure.

This Authority evaluates the measures adopted by the entity very positively, but it should be noted that the adoption of said measures does not distort the imputed facts or their legal qualification.

In the present case, certainly, the notification of the mayor's resolution, dated (...), involved data processing that violates the principle of confidentiality of the personal data of those affected, since the controversial notification should only have included the personal data of each of the recipients, and not the complete list of names and surnames, DNI, refund amounts, and current account numbers, of all the people affected.

Finally, in the proposed resolution, the entity's statement was analyzed invoking mitigating criteria to be taken into account, in the event of a possible financial penalty.

In this regard, it should be noted that, as will be explained in the 4th legal basis, in this case the graduation criteria to establish a certain financial penalty are not applicable since, due to the nature of the infringing subject, the regulations of data protection provides that violations will be sanctioned by means of a non-pecuniary penalty.

3. In relation to the facts described in the proven facts section, relating to the violation of the confidentiality principle, it is necessary to refer to article 5.1.f) of the RGPD, which provides for the following:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee adequate security for personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures ("integrity and confidentiality")."

This principle of integrity and confidentiality provided for by the RGPD must be complemented with the duty of secrecy contained in Article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), which establishes the following:

"Article 5. Duty of confidentiality 1.

Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of the Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with the applicable regulations.

3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or in charge of the treatment has ended.

Likewise, it is appropriate to mention article 13 of the LPAC, which lists a catalog of rights of people in their relations with public administrations, in which the right "To the protection of personal data, and in particular the security and confidentiality of the data contained in the files, systems and applications of public administrations".

As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is constitutive of the offense provided for in article 83.5.a) of the RGPD, has been duly proven, which typifies the violation of "principios basic para el tratamiento (...)".

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form: "i) The violation of the duty of confidentiality established by article 5 of this Organic Law."

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the 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 since the infringing behavior refers to a single and already completed fact, the notification of the controversial resolution, which due to its instantaneous nature cannot be corrected with the 'application of corrective measures. Moreover, it should be added that, all measures

implemented by the entity to prevent similar incidents from happening here, are considered sufficient and appropriate.

For all this, I resolve:

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

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

2. Notify this resolution to Reus City Council.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal 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,