

File identification

Resolution of sanctioning procedure no. PS 49/2020, referring to the General Directorate of Care for the Family and the Educational Community, of the Department of Education of the Generalitat.

Background

1. On 09/09/2019, the Catalan Data Protection Authority received a letter from a person who lodged a complaint against the Official Language School of Terrassa (hereinafter, EOI of Terrassa) and the General Directorate of Family Care and Educational Community of the Department of Education of the Generalitat (hereinafter, DGAFCE), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the person making the complaint stated that, through an internet address of the EOI of Terrassa ((...)) the name and surname of the people who had requested to take the level d test was disseminated English in this school.

The list to which the complainant referred, corresponded to an admission process to study English at the EOI of Terrassa during the 2019-2020 academic year. The complainant had pre-registered online in September 2019, through a DGAFCE application that was common to all official language schools of the Department of Education of the Generalitat. He stated that, once the pre-registration had been carried out, the list containing his name and surname had been published on the Terrassa EOI website.

In order to prove the facts he reported, the reporting person provided 2 documents:

1) A copy of the list of people who had requested to take the English level test, which included 532 people with the following personal data for each of them: the name and surname, the number assigned in the process of 'admission, the day, time and classroom assigned to take the English level test.

2) A document with information that appeared to be taken from a website of the Department of Education during the pre-registration process, with the title "Sign me up", referring to the ends provided for in article 13 of the 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 (hereafter, RGPD), in which the following was pointed out, among other information: that the DGFCE is responsible for the treatment whose purpose is: *"to process and solve the admission processes of students in the educational centers paid for with public funds"*, that *"the legal basis that allows the processing of personal data is the mission in the public interest, in accordance with Law 12/2009, of July 10, on education"*, which will retain the data *"for the period necessary to manage the process of 'admission"*, and which will communicate them, among others, *"to the educational center requested in pri mere option (for the purposes of scale, advertising and monitoring of the admission process)"*.

In the last one, the complainant expressed his fear of the eventual publication on the same website of the result of the level tests.

2. The Authority opened a preliminary information phase (no. IP 246/2019), 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 09/19/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint.

It was found that, through the web address indicated by the person making the complaint, the page of the EOI of Terrassa was accessed which contained the title: "*LEVEL TEST, DAYS AND HOURS. New students pre-registered for the 2019-2020 academic year*", and then it was indicated "*admin06/09/2019*", which alluded to the date of publication of the information. This website contained five links, which allowed access to the lists of people pre-registered for teaching courses in five languages: German (46 people), French (68 people), Arabic (7 people), Italian (28 people) and English (532 people). Each list contained the name and surname, the registration number, the day, the time and the classroom assigned to each of them, to take the corresponding level test in each case. The level tests were scheduled to take place between September 9 and 13, 2019. On the same website it was then reported that the results of the tests could be consulted on 09/16/2019 "*in the same pre-registration application.*"

Finally, in the same act of inspection, a basic navigation was done on the website of the Terrassa EOI, and no other listing or publication of personal data related to the events reported was observed. From the result obtained, the corresponding due diligence was carried out.

4. On 06/04/2020, the Authority's Inspection Area again carried out a series of checks via the Internet on the facts subject to the complaint, and from the result obtained, the corresponding diligence of constancy

During the inspection, it was found that, through the web address indicated by the complainant, it was still possible to access the Terrassa EOI page that contained the title: "*LEVEL TEST, DAYS AND HOURS . New students pre-registered for the 2019-2020 academic year*", which included the links to the same lists of people pre-registered for courses in five languages, which contained the same personal data that had been observed in the verification act carried out by the Authority on 09/19/2019.

On the other hand, the publication in DOGC no. 7821, dated 1/03/2019 of *Resolution EDU/452/2019, of 21 February, which approves the rules for pre-registration and registration of students in the centers of the Catalan Education Service and other centers educational,*

in the various courses supported with public funds, for the 2019-2020 academic year, which contained Annex 11 referring to the teaching of languages in EOI. This annex 11 contained, as far as is now relevant, the following information:

"2. Submission of applications

(...)

To access a course higher than the first there are two options:

- Make pre-registration for the requested course without taking the level test as long as you have the certification or accrediting documentation of the corresponding level achieved - Make pre-registration asking to take the level test.

(...)

Pre-registration, unified for all official language schools in Catalonia, is done electronically.

Pre-registrations are numbered correlatively at the time of registration. The pre-registration number is valid both for the draw to take the placement test, when applicable, and for the place allocation draw.

3. Pre-registration and enrollment calendar

(...)

- Draw for the allocation of places for the level test: 6 September 2019, at 10 am, at the central services of the Department of Education (Via Augusta, 202, Barcelona).

Public consultation of results from 6 p.m., in the pre-registration application.

- Placement test: from 9 to 13 September 2019 (check the day and time on the website of each centre).

- Choose a time in the pre-registration application (only students who have taken the level test): from 12 pm on September 16, 2019 to 1 pm on September 18, 2019.

- Lottery for the allocation of places: 18 September 2019, at 2 pm, at the central services of the Department of Education (Via Augusta, 202, Barcelona). Public consultation of results from 6 p.m., in the pre-registration application.

- Online enrollment period (admitted students): from 6 p.m. on September 18 to September 20, 2019.

- Online registration period for vacant places: September 25, 2019 from 12 noon (English); September 26, 2019 from 9 a.m. (all languages, including English).

(...)

4. Information published by the EOIs on the pre-registration process

(...)

On the day of the draw to obtain a place to take the level test, each EOI publishes, from 6 p.m., on its website, information on the days and times that the level tests will be held for each language.

On the day of the draw for the allocation of places, each EOI publishes, from 6 pm, the list of accepted applications.

(...)"

On the other hand, it was found that it was not possible to access the pre-registration application corresponding to this admission process, nor to lists of people with places assigned after the completion of the level tests.

Finally, and in order to verify the information provided by the reporting person about the person responsible for the treatment and the other extremes provided for in article 13 RGPD, the address <http://ésénysó.gencat.cat/ca/Detail/preinscripcio-alumnes>, where it was stated that the person responsible for the treatment was the General Directorate of Family Care and Educational Community, that the purpose of the treatment was *"to process and resolve the admission processes of students in the educational centers paid for with public funds"*, that it was expected that the data would be kept *for the period necessary to manage the admission process*, and that the legal basis of the treatment expressed was: *"the mission in the public interest, according to with Law 12/2009, of July 10, on education"*.

5. On 09/10/2020, the Authority's Inspection Area carried out a new check via the internet of the facts reported, and verified that, through the address of the EOI of Terrace that the complainant indicated, it was no longer possible to access the web page entitled *"LEVEL TEST, DAYS AND HOURS. New students pre-registered for the 2019-2020 academic year"*, and which contained links to the different lists of people who had pre-registered to take the level test of the chosen language, to qualify for a place for the 2019-2020 academic year in the 'EOI of Terrassa. On the other hand, it was also found that, through the Google search engine and the website search engine of the Terrassa EOI and browsing the website of the Department of Education, it had not been possible to directly access these lists, nor to other information that contained personal data of the participants in this pre-registration process or in another of the Terrassa EOI.

As a result of these actions, the corresponding due diligence was carried out.

6. On 14/10/2020, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the DGAFCE for two alleged infringements: an infringement provided for in article 83.5.a) in relation to the 'article 5.1.c), and a second infringement provided for in article 83.5.a) in relation to article 5.1.e) all of them of the RGPD. This initiation agreement was notified to the DGAFCE on 10/21/2020.

7. On 04/11/2020, the DGAFCE made objections to the initiation agreement.

8. On 21/01/2021, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Department of Education as responsible for 'an infringement provided for in article 83.5.a) in relation to article 5.1.e), both of the RGPD, and did not maintain the imputation of the other infringement indicated. This resolution proposal was notified on 28/01/2021 and a period of 10 days was granted to formulate allegations.

9. The DGAFCE has not submitted any objections to the proposed resolution.

proven facts

1. On the official website of the EOI of Terrassa, five lists of people who, in the process of admission to courses corresponding to the 2019-2020 academic year (Resolution EDU/452/2019, of 21 February), had been published requested to take a level test in one of the languages offered by this school (German, French, Arabic, Italian or English), and had been assigned a day, time and classroom to take it between 9 and on September 13, 2019. In the lists published, the selected people were identified with the pre-registration number assigned to each one, followed by their first and last names, the classroom, the date and time to take the test level. By language, the lists included the following number of people: 46 people (German), 68 people (French), 7 people (Arabic), 28 people (Italian) and 532 people (English).

2. Although these level tests took place between September 9 and 13, 2019, and the registration period ended on September 26, 2019, the aforementioned lists continued to be publicly published and therefore accessible to everyone, at least until 06/04/2020, the date on which the Authority verified it.

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 Department of Education has not formulated allegations in the proposed resolution, but it did so in the initiation agreement. Regarding this, it is considered appropriate to refer briefly to the response of the instructing person to these allegations.

2.1. On the imputation that was initially made in the initiation agreement, referring to the violation of the principle of minimization.

Initially, in the initiation agreement, the Department of Education was charged with the violation provided for in article 83.5.a) of the RGPD, considering that the publication of the aforementioned lists with the names and surnames of the pre-registered persons together with the rest of the data indicated, it was contrary to the principle of data minimization.

Faced with this imputation, the DGAFCE stated that the publication on the website of the centers of the names and surnames of the admitted persons was covered by point 1 of DA 7a of the LOPDGDD.

Faced with these allegations, the instructor made the following considerations, which are maintained here:

Effectively, DA 7a of the LOPDGDD establishes some guidelines to identify the persons interested in notifications by means of announcements and in the publication of administrative acts.

And in this respect it must be said that none of them strictly conforms to the one used by the DGAFCE in the case that concerns us. However, despite the strict application of the principle of minimization, it leads to consider that the identification of interested persons through their pre-registration number would be sufficient for the purpose of advertising the place, date and time of the language level test, so it would not be necessary to add any more identifying data, the truth is that the fact of using a different system to identify the interested persons, such as indicating first name, surname and the pre-registration number, is not considered to have entity sufficient to entail a violation of the principle of minimization, when the imputed entity has taken care not to publish together the first and last names and the ID of the persons interested, which is ultimately what would prevent the invoked DA 7a of the LOPDGDD.

It is for the reasons stated, that in relation to the 1st proven fact, the initial imputation that was carried out in the initiation agreement.

2.2. On the imputation regarding the violation of the principle of limitation of the conservation period.

Following its statement of objections, the DGAFCE of the Department of Education admitted that the EOI of Terrassa made a mistake by keeping the aforementioned list published on its website *"longer than necessary"*. He pointed out, among others, that *"this list must be kept until the deadline that the participants have to submit claims and appeals against the pre-registration and enrollment process. Therefore, once the deadline for submitting a claim or resources has passed, this list should disappear."*

Given that the DGAFCE has recognized these facts attributed to the initiation agreement, and has not made any allegation before the resolution proposal, it is unnecessary to carry out any further consideration to justify its imputation as an infringement.

3. With regard to the fact described in point 2 of the proven facts section, it is necessary to go to article 5.1.e) RGPD, which provides that personal data must be:

"Kept in such a way as to allow the identification of the interested parties for a period no longer than is necessary for the purposes of processing personal data. Personal data may be kept for longer periods, provided that they are treated exclusively for archival purposes in the public interest, for scientific or historical research purposes or for statistical purposes, in accordance with article 89, paragraph 1, without prejudice of the application of the appropriate technical and organizational measures imposed by this Regulation in order to protect the rights and freedoms of the interested party ("retention period limitation")."

Given that the publication on the school's website of the aforementioned lists had as its main purpose that the people who had requested to take the level test of the chosen language and had succeeded

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

admitted, they know the day, time and classroom assigned to take this test during the days 9 to 13 September 2019, once these days have passed -or even if the corresponding claim deadlines have been extended-, the purpose of publishing the lists had been fulfilled, and therefore, the EOI of Terrassa should have kept the personal data of these people in such a way that they did not allow their identification, which is not fulfilled with the publication on the school website of the referred lists.

As indicated by the instructing person, during the processing of this procedure this fact has been duly accredited, through several inspection actions carried out by the Authority on 09/19/2019 and 06/04/2020 during the phase of previous previous information, in which it is verified that the referred lists with the indicated personal data, continued to be published on the Terrassa EOI website.

This proven 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"*.

The conduct addressed here has been included as a very serious offense in article 72.1.a) LOPDGDD, in the following form: *"The processing of personal data violating the principles and guarantees established in 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 the present case, it is considered unnecessary to require the adoption of corrective measures, since the Authority has noted - the last time on 12/11/2020 - that the listings subject to complaint are no longer published on the website of the 'EOI of Terrassa, in line with the demonstrations in the same sense made by the DGAFCE before the initiation agreement.

For all this, I resolve:

1. Admonish the Department of Education as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.e), 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.

2. Notify this resolution to the Department of Education.

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 the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

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

The director,