

File identification

Resolution of sanctioning procedure no. PS 53/2020, referring to the Sant Boi de Llobregat Town Council.

Background

1. On 16/10/2019, the Catalan Data Protection Authority received a letter of complaint against the Tax Management Organization of the Provincial Council of Barcelona (hereinafter, ORGT), on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the complainant stated the following:

That on 08/10/2019, the ORGT notified him of a payment request with a surcharge of 5%, referring to the settlement of the Tax on the increase in the value of urban land (hereinafter IIVTNU), issued on 09/27/2019 for "*not having satisfied the debts detailed in the attached document in the voluntary payment period*". That this request was notified to a certain address in the municipality of Badalona, which was the correct address for notification purposes.

That, since he had not previously received the request for payment of the tax in the voluntary period, he contacted the ORGT and a person employed by the organization informed him that the notifications in the voluntary period had been addressed to another Sant Boi de Llobregat address, which the complainant claimed was incorrect for notification purposes.

The complainant complained that the ORGT had used an incorrect address to notify it of the liquidation of the IIVTNU during the voluntary period. In addition, it added that the organization had the correct address for the purposes of notifications, as evidenced by the notification of the surcharge payment requirement.

2. The Authority opened a preliminary information phase (no. IP 276/2019), 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 12/11/2019, the ORGT was required to report the reasons that would explain that the organization had tried to notify the reporting person, the IIVTNU in a voluntary period of payment to the address of (...) Sant Boi de Llobregat and, instead, in the collection period he had done so at the address (...) of Badalona.

4. On 11/26/2019, the ORGT responded to the request in writing in which it stated the following:

- That *"the ORGT of the Diputació de Barcelona is competent for the collection of tax debts settled by the Sant Boi de Llobregat Council, corresponding to settlements of the Tax on the increase in the value of urban land, in by virtue of the delegation agreement in favor of the Provincial Council of Barcelona (...)"*.
- That *"the person responsible for the data provided was the Sant Boi de Llobregat City Council and this was indicated in the notification of the liquidation"*.
- That *"Despite the fact that the ORGT has a different tax address, the data indicated by the City Council are not initially modified, given that they may correspond to a specific address indicated by the interested party in the notifications corresponding to that procedure or in a declaration of the tax. When the ORGT started the collection procedure, the correct address was used"*.
- That *"having obtained the data used in the notification of the liquidation of the City Council, as responsible, (...) it is considered that there has been no infringement by the ORGT"*.

The ORGT attached various documentation to the letter.

5. On 03/03/2020, also within the framework of this prior information phase, the Sant Boi de Llobregat Town Council (henceforth, the Town Council) was requested because:

- Indicate what was the address of the reporting person that in 2019 was in the City Council's files for notification purposes.
- Information on the reasons why the City Council provided the ORGT with the address of the reporting person corresponding to the municipality of Sant Boi for purposes of dispatch and notification of the payment document in the voluntary period of the IIVTNU.
- Indicate what was the delegation agreement between the City Council and the County Council in force on the date corresponding to the events reported, specifically applicable to the issuance of the tax collection document and its notification, both during the voluntary period (collection document issued by the ORGT on 05/24/2019), as in the collection period (document issued by the ORGT on 09/27/2019).

Given the lack of response from the City Council, on 06/25/2020 this request for information was reiterated.

6. On 07/13/2020, the City Council responded to the request dated 03/03/2020 through a letter in which it stated the following:

- That *"on December 27, 2018 and with the number of the General Entry Register of the Sant Boi de Llobregat City Council (...), the complainant, (...), presents documentation to practice the settlement of the Municipal Tax on the increase in the value of urban land (IIVTNU). In the presentation document, indicate as address of*

notification the street (...) of Badalona. However, in the attached documentation, specifically in the authorization document for notification of the liquidation of the IIVTNU, it indicates how it addresses the notification effects (...) of Barcelona. Therefore, (...) for the purposes of notification (...), it can lead to confusion as it indicated two different addresses.

- That "when the IIVTNU was liquidated, the default application gives as notification address the registered address of the taxable person, which corresponded to (...), of Sant Boi de Llobregat (08830). That the person who processed the notification did not realize that the situation in the register of inhabitants was "low", with effects 2014, and consequently did not look for any other notification address. Therefore, "in this case it is a material error, which was motivated by the fact that the address provided to the Tax Management Organization of the Barcelona Provincial Council (ORGT) was wrong, as it had not been updated with the one that the citizen subsequently provided".

The City Council attached to its letter the Delegation Agreement of the Municipal Plenum of the Sant Boi de Llobregat City Council dated October 23, 2000 from the City Council to the Diputació de Barcelona, regarding the powers of management, liquidation, inspection and collection of taxes and other revenues under public law, the ownership of which corresponds to the City Council, including the IIVTNU.

7. On 09/07/2020, the City Council was again required to provide the documentation that, according to him, could have caused confusion when collecting the address for the purposes of notifications, to which he referred in his letter of response dated 7/13/2020.

8. On 07/13/2020 the City Council responded to the information request of 7/9/2020, providing the required documentation.

9. On 06/11/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Sant Boi de Llobregat City Council for an alleged violation 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 11/17/2020.

10. In the initiation agreement, the accused entity was granted a term of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend their interests.

11. On 30/11/2020, the City Council made objections to the initiation agreement, which are addressed in section 2 of the legal foundations.

The accused entity provided various documentation with its letter.

12. On 15/12/2020, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish the City Council as responsible, for an infringement related to the principle of accuracy of personal data provided for in article 83.5.a) in relation to article 5.d) of the RGPD.

This resolution proposal was notified on 08/01/2021 and a period of 10 days was granted to formulate allegations. The deadline has been exceeded and no objections have been submitted.

proven facts

On 27/09/2019, for the purposes of notifying the settlement of the tax on the increase in the value of land of an urban nature, the Sant Boi de Llobregat City Council, through the ORGT - body to which he had delegated the settlement of taxes - he did not use the address that the complainant had communicated for the purposes of notifications, but used the address that appeared in the municipal register of inhabitants, which was the one that appeared by default to the tax management program.

On 27/12/2018, the complainant had provided the City Council with an address so that he could be notified of the tax settlement. At that time, when a person communicated a notification address to the City Council, this had to be entered manually. Well, the person who created the tax settlement did not verify whether the citizen had given a notification address and this led the system to take as the notification address the one listed in the municipal register. What's more, the person who did the settlement also didn't realize that the address appeared in a situation of leave in the Municipal Register of Inhabitants.

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. On the absence of a substantial breach of data protection

In its statement of objections to the initiation agreement, the accused entity stated that despite the violation of the principle of data accuracy, there had not been a substantial violation of the protection of the personal data of the reporting person. Basava their reasoning in the fact that there had been no communication of data to third parties. He claimed that the notification followed the established regulatory procedure and, given the impossibility of delivering it, it was returned. Finally, it concluded that the data of the reporting person were not communicated to third parties.

However, this claim cannot succeed, as the breach of the data accuracy principle does not require that the data have been communicated to third parties. Indeed, in accordance with the aforementioned principle, compliance with this principle requires the controller to adopt all reasonable measures in order to delete or rectify without delay the inaccurate data in relation to the purposes of the treatment. In this case, the reporting person provided the City Council with the correct address for notification purposes, but this information was not entered into the computer system. In addition, when there was no notification address, the system provided the address that appeared in the municipal register. Even more, the address on it appeared in "low" situation in the population register, but the person who managed it did not notice it. Well, it is clear that the City Council had not established the appropriate measures to ensure that the address for the purposes of notifications was effectively entered into the system and thus avoided notifications to an inaccurate address. In fact, the accused entity recognized that currently the violation of the principle of accuracy had not occurred, since a series of technical and organizational measures were implemented at a later date than the alleged facts that allow the data to be updated automatically and centralized

It must be recognized that the measures implemented by the City Council represent a substantial improvement in the data update procedure.

2.2. About guilt

The City Council alleged that in the municipal action that led to the violation of the principle of accuracy of data there was no malice or intention, but a lack of diligence.

Regarding this, in the field of personal data protection, the jurisprudence maintains that the intention of the infringing subject is irrelevant. Certainly, the majority doctrine holds that malicious conduct is not required, but that *"simple negligence or failure to fulfill the duties imposed by law on the persons responsible for files or data processing is sufficient to exercise extreme diligence..."* (SAN of 12/11/2010, Rec 761/2009). Along the same lines, the Supreme Court pronounces itself, among others, in the judgment of 01/25/2006, also issued in the field of data protection, which establishes that intentionality is not a necessary requirement for a conduct is considered culpable.

In short, the jurisprudence establishes that it is not necessary for the conduct to have occurred with intent or intention, but it is sufficient that negligence or lack of diligence has intervened, as would be the case analyzed here. This has been declared by the Judgment of the National Court of 02/05/2014 (RC 366/2012) issued in the matter of data protection, which maintains that the status of person responsible for processing personal data *"imposes a special duty of diligence at the time of carrying out the use or treatment of personal data or its transfer to third parties, as regards the fulfillment of the duties that the legislation on data protection establishes to guarantee the fundamental rights and public liberties of people physical, and especially his honor and personal and family privacy, whose intensity is enhanced by the relevance of the legal assets protected by those rules."*

Based on the jurisprudence presented, the allegation of the imputed entity regarding the absence of intent or intent cannot succeed, since it has been proven that in this case it did not act with the required diligence, nor the duties that the data protection regulations establish in order to guarantee the right to the protection of personal data were not fulfilled, such as the obligation to keep the data updated. That is to say, at the time when the facts occurred, there were no adequate measures in place to rectify inaccurate data and prevent the use of an address that was listed as deregistered in the population register.

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

2.3 On corrective measures.

Next, the accused entity added that after the alleged events, specifically in 2019, the City Council adopted a centralized procedure to keep the data relating to the notifications constantly updated. It also explained that it adopted an integrated management model that ensures the integrity and traceability of data throughout its life cycle.

On the other hand, it has currently requested from the software supplier a corrective measure consisting of making it impossible to use the notification data that have been deregistered, such as the address on the municipal register that appears as deregistered. In this sense, the addresses of the register that appear as unregistered cannot be used for the purposes of notifications.

In this regard, it is necessary to emphasize that the adoption of measures to correct the effects of the infringement do not distort the imputed facts, nor do they modify their legal classification. However, it is recognized that the City Council has acted diligently by adopting appropriate technical and organizational measures in order to minimize the risk of inaccurate data being used for notification purposes. For this reason, it is not considered necessary to require the reported entity to implement additional corrective measures.

In accordance with what has been explained, it is estimated that the allegations made by the City Council regarding the initiation agreement must be rejected.

3. In relation to the facts described in the proven facts section, relating to the principle of accuracy of personal data, it is necessary to refer to article 5.1.d) of the RGPD, which provides that *""Personal data: d) They must be accurate and, if necessary, updated. Reasonable measures must be taken so that inaccurate personal data, in relation to the purposes for which they are processed, are deleted or rectified without delay (accuracy).*

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 *"a) 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 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 represent a substantial violation of the articles mentioned in that article and, in particular, the following, are considered very serious and prescribed in three years: a) The treatment 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".

However, in this case 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 2.3.

resolution

For all this, I resolve:

1. Admonish Sant Boi de Llobregat City 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 legal basis 2.3.

2. Notify this resolution to Sant Boi de Llobregat 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 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,