

File identification

Resolution of sanctioning procedure no. PS 54/2020, referring to Salt City Council.

Background

1. On 18/10/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the company (...), on the grounds of an alleged breach of the regulations on personal data protection. According to the complainant, this entity was the one that, at the time of the events reported (14/10/2019), managed the payment of the fee and the removal of vehicles from the municipal vehicle depot on behalf of Salt City Council.

1.1. Specifically, the complainant stated that the management entity of the aforementioned service used for the payment of the municipal tax a form that contained an incorrect data protection notice. In the form, the City Council of (...) was designated as responsible for the treatment - instead of the City Council of Salt -, and for the exercise of ARCO rights it was necessary to contact the City Council of (...) - instead of the City Council of Salt. - Next, he stated that he had contacted the City Council of (...), from where they would have informed him that they did not have his personal data. In order to certify the content of the aforementioned form, he provided a copy that the service management entity would have delivered to him on 10/14/2019 - when he collected his vehicle from the municipal depot -, which contained the following informative clause:

"In accordance with the provisions of the Organic Law on the Protection of Personal Data (LOPD), we inform you that the data recorded in this document will be incorporated into the RETIRED VEHICLE MANAGEMENT file, created by the City Council of (...) del Vallès in order to manage your request, as well as keep you informed about municipal services that may be of interest. By signing this document you give your consent to the processing of the data. To exercise the rights of access, rectification, cancellation and opposition provided for in the Law, you can contact the City Council of (...) del Vallès, in person, by ordinary mail indicating "Reg. Data Protection" or by email at lopdsantcugat.cat." On the right-hand side of the heading of this form was the address and number, telephone and fax number of the City Council of (...) del Vallès".

1.2 That in the control drawer of the municipal vehicle depot there was an e-mail address for complaints (incidencies@(...)) which, according to the complainant, belongs to the company (...), SL.

2. The Authority opened a preliminary information phase (no. IP 283/2019), 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 were likely to motivate the initiation of one

sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 06/19/2020 the reported entity was required to report on:

- Which entity managed at the time of the events (14/10/2019), on behalf of Salt City Council, the crane service and that of paying the fee and removing the vehicle from the municipal depot, and that provided the contract or legal act that regulated the processing order between the City Council and the entity managing the service.
- If the City Council of Salt drew up the data protection notice contained in the form for payment of the fee and withdrawal of vehicles, which was given to the person making the complaint; or if you commissioned its preparation to the entity managing the service.
- In the case that the City Council had not drawn up the form, which reported on the specific instructions it gave to the managing entity in relation to the data protection information clause and, if prior to the collection of personal data, verified its content.
- The period of time in which the form format with the protection notice had been used of data as it appears on the form subject to complaint.

4. On 07/24/2020, the City Council of Salt responded to the aforementioned request in writing in which it set out the following:

- That on 14/10/2019, the company (...) SLU was the contractor company that provided the crane service, the payment of the fee and the removal of vehicles from the municipal depot. He added that the same company also provided the integral service management software mentioned That the contract for the provision of services was formalized on 01/16/2019.
- He provided a document dated 15/01/2019, through which the data processing assignment between the City Council and the company (...) SLU was regulated.
- That the form containing the disputed information clause was generated by the computer application of the company providing the crane service.
- That following the notification of IP 283/2019 by the Catalan Data Protection Authority, the City Council required the contractor to report on the texts and forms used, in order to verify whether they were correct.
- That according to the contracting company, the erroneous forms were used on a timely basis.

The reported entity attached various documentation to the letter.

5. On 06/11/2020, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the City Council of Salt for an alleged infringement provided for in article 83.5.b) in relation to the Article 13, both 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 movement thereof (hereinafter, RGPD).

This initiation agreement was notified to the imputed entity on 11/13/2020.

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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 its interests.

The deadline has been exceeded and no objections have been submitted. The accused entity has also not requested an extension of the 10-day period granted to send the allegations as established in article 32 of the LPAC.

proven facts

On 14/10/2019, the City Council of Salt, through the company with which it had contracted the crane service, fee payment and the removal of vehicles from the municipal depot, collected the data of the reporting person, via a form that contained an incorrect data protection clause. In particular, the informative clause designated as responsible for the processing of the data the City Council of (...) del Vallés, instead of the City Council of Salt. In addition, it designated as addresses (postal and electronic) to exercise data protection rights,

the addresses of the City Council of (...) del Vallés instead of the addresses of the City Council of Salt.

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. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the accused entity has not made allegations in the initiation agreement.

This agreement contained a precise statement of the imputed liability.

3. In relation to the facts described in the proven facts section, relating to the obligation of the data controller to inform the interested person about the processing of their personal data, it is necessary to refer to article 13 of RGPD, which provides for the information that the data controller must provide to the interested party when collecting data from the interested party, such as the case

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.b) of the RGPD, has been duly proven, which typifies the violation of *"b) the rights of the interested parties, in accordance with articles 12 to 22."*

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

"h) The omission of the duty to inform the affected person about the processing of their personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 016/679 and 12 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."

And section 3 of art. 77 LOPDGDD, establishes that:

"3. Without prejudice to what is established in the previous section, the data protection authority must also propose the initiation of disciplinary actions when there are sufficient indications to do so. In this case, the procedure and the sanctions that must be applied are those established by the legislation on the disciplinary or sanctioning regime that is applicable.

Also, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment that have not been properly attended to is proven, in the resolution in which the penalty is imposed, to include a warning with the name of the responsible position and it must be ordered to be published in the "Official Gazette of the State" or the corresponding regional newspaper.

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 actions disciplinary in accordance with what is established by current legislation on the disciplinary regime for staff 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, the adoption of corrective measures should not be required, given that on 24/07/2020 the City Council informed the Authority that it had rectified the model form, and provided a copy of the new model.

For all this, I resolve:

1. Admonish the City Council of Salt as responsible for an infringement provided for in article 83.5.b) in relation to article 13, both of the RGPD.

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

2. Notify this resolution to Salt 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,