

File identification

Resolution of sanctioning procedure no. PS 56/2020, referring to the Town Council of Mont-Roig del Camp

Background

1. On 12/11/2019, the Catalan Data Protection Authority received a letter from a person who lodged a complaint against the Mont-Roig del Camp City Council (hereinafter, the City Council), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant stated that on 12/11/2019 he accessed his electronic folder through the City Council's electronic office. Along with his files, he saw that there was a file that corresponded to a third person, whom he identified with first and last names (hereinafter, affected person). The file corresponding to the affected person contained two documents with personal data of this person.

On 9/03/2020, the reporting person provided the Authority with a document with screenshots showing his electronic folder, in which three files can be distinguished, two of which corresponded to the reporting person and the third party to the affected person. Regarding the file of the affected person, two documents with personal data could be seen. The personal data affected were the following: first and last names, NIF, address for notification purposes, email address, mobile phone number, profession, handwritten signature and the specific request made by the person concerned.

2. The Authority opened a preliminary information phase (no. IP 303/2019), 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 06/30/2020, the DPD of the City Council was requested to report on:

- If the file that the person making the complaint identified in their letter of complaint, and that they could view in their electronic folder, corresponded to the affected person and, if so, that they set out the reasons why the person making the complaint had access to it .
- To specify the period of time during which the reported person would have had access to the file mentioned, and on what date this incident would have been resolved.

4. On 07/13/2020, the DPD of the City Council responded to the previous request in writing in which it stated the following:

- That on the occasion of the 2017 Catalan Parliament Elections, the file (.../2017) was opened, which contained several folders relating to procedures related to the elections.
- That the file mentioned was related to the person making the complaint and to the person affected, given that in both cases procedures related to the elections were processed.
- However, the City Council did not know the reasons why the complainant could access the affected person's folder. However, it points to a possible error in the file manager or a very specific human error as the cause of the incident.
- That when the City Council became aware of the facts reported, it contacted the affected person to inform him of the incident and ask him to check if he could see the data of the reporting person from his electronic folder. After the previous checks, the affected person stated that he could only see his folder.
- That he did not know the period in which the personal data would have been exposed to the reporting person, given that at no time did he bring the incident to the attention of the City Council. However, it could be purchased between 11/12/2017 and 7/2/2020. Finally, he added that the City Council was not aware of it until 2/7/2020, which it found out following the Authority's request.
- That at the time it found out about the incident, the City Council created individual files for each of the folders in the controversial file, with the aim of eliminating the risk of access to personal information by of third parties. Likewise, on 7/7/2020 the City Council notified the Authority of the security breach.

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 disciplinary proceedings against the Mont-Roig del Camp City Council for a alleged infringement provided for in article 83.5.a) in relation to article 5.1.f); 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 of such data (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 11/12/2020.

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 the occasion of the 2017 Catalan Parliament Elections, Mont-Roig del Camp City Council opened an electronic file (.../2017), which contained different folders relating to various procedures related to the elections. Due to what the City Council qualifies as an error when creating the file, in an undetermined period of time, but in any case between 12/11/2017 and 12/11/19, it was propitiated that the reporting person could access another person's personal data. Specifically, on 12/11/19, the complainant was able to view three files, one of which corresponded to a third person, from his electronic folder, located in the electronic headquarters of the City Council. The personal data exposed were the following: first and last names, VAT number, address for notification purposes, email address, mobile phone number, profession, handwritten signature and the specific request made by the affected person.

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 principle of confidentiality of personal data, it is necessary to refer to article 5.1 f) of the RGPD, which provides that *"Personal data f) S must treat in such a way as to ensure adequate security, including protection against unauthorized or unlawful processing and against loss, destruction or accidental damage to data, through appropriate technical or organizational measures (integrity and confidentiality)"*.

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) 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.i) of the LOPDGDD, in the following form:

"
1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, infringements that involve a substantial violation of the articles mentioned in that article and, in particular, the following, are considered very serious and prescribed for three years: 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."

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 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 is not considered appropriate to require the adoption of corrective measures, given that the City Council informed the Authority that it had taken the technical and organizational actions

necessary in order to resolve the incident, as well as in order to eliminate the risk that new incidents like the one that has led to the initiation of this procedure could occur.

For all this, I resolve:

1. Admonish the City Council of Mont-Roig del Camp 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 4th legal basis.

2. Notify this resolution to Mont-Roig del Camp 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,