

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

#### File identification

Resolution of sanctioning procedure no. PS 57/2020, referring to the City Council of (...).

#### Background

1. On 19/12/2019, the Catalan Data Protection Authority received a letter from a person (an agent of the Urban Guard of (...)) in which he filed a complaint against the City Council of (...), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that the chief inspector of the Urban Guard of (...) had accessed the vehicle database of the General Directorate of Traffic (hereinafter, DGT) to consult the data of a certain vehicle and its owner (his wife) in the framework of a sanctioning procedure for a traffic violation, as would be inferred from the report drawn up by the chief inspector on 06/05/2019 in relation to the discharge sheet presented by the complainant on 03/30/2019. The reporting person provided various documentation relating to the events reported.
2. The Authority opened a preliminary information phase (No. IP 342/2019), 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 14/01/2020 the reported entity was required to report, among others, on whether the chief inspector of the Urban Guard of (...) had access to the administrative file that is the subject of the complaint or only to the discharge form drawn up by the person making the complaint on 03/30/2019; the reasons that would justify said access; as well as if, to prepare the report of 06/05/2019, the data of the vehicle owned by the wife of the person making the complaint was consulted through the DGT database.
4. On 04/02/2020, the City Council of (...) responded to the aforementioned request through a letter in which it stated, among others, the following:

- That there was no evidence that the chief inspector had had access to the administrative file, so it was inferred that he had only accessed the discharge form presented by the complainant on 03/30/2019.
- That the reasons for said access are unknown, and in their case, the legal basis would be found in article 27.a) of Law 16/1991, of July 10, on the local police (hereinafter, Law 16/1991).
- That the person instructing the sanctioning procedure did not request any report from the chief inspector of the Urban Guard.
- That it was unknown whether the database of the DGT

The reported entity provided a copy of the letter of 03/30/2019 presented by the person reporting to the City Council.

5. On 02/06/2020, also during this preliminary information phase, the City Council of (...) was once again requested to provide the chief inspector's testimony of the Urban Guard of (...), among others, in relation to whether he had consulted through the DGT database the data of the vehicle owned by the wife of the person making the complaint.

6. On 18/02/2020, the City Council of (...) provided the testimony of 11/02/2020 of the required chief inspector of the Urban Guard, in which he set out (between others) the following:

- That he had not had access to the administrative file. He had only had access to the leaflet of discharge
- That as chief inspector of the Urban Guard, he is the most responsible for the organization and operation of the police force, including the human resources assigned to the body
- That its function is to monitor the correct operation of the service, which is why any request, complaint, suggestion, etc., related to the Urban Guard is referred to it for its knowledge and corresponding legal effects.
- That the discharge document presented by the reporting agent reached him through the regulatory process, given that it referred to an officer of the force and an internal problem arising with another officer of the force who allegedly took his private keys .
- That following the internal audit in relation to access to the police information system (SIP), it was found that the reporting agent had consulted on several occasions (between 2017 and 2018) the vehicle owned by his wife
- That the reporting person designated as a contact person in the event of an accident professional to his wife.
- That at the end of February 2019 he received a complaint from the staff attached to the controlled parking service, given that the reporting agent had reprimanded them for having reported the vehicle owned by his wife.

- That he also had knowledge of the ownership of the vehicle, given that the reporting officer himself explained it to him on 01/01/2018, the date on which they patrolled together due to lack of personnel.
- That the DGT database was not accessed through the SIP.
- That he does not have access to the SIP, given that on 07/12/2018 he requested the cancellation of the your personal SIP access code.

7. On 08/07/2020, the director of the Catalan Data Protection Authority issued a resolution by which she archived the actions of prior information number IP 342/2019, considering that access to the written of 30/03/2019 that the person reporting here presented to the City Council to request the withdrawal of a blue zone complaint, by the chief inspector of the Urban Guard of (...), he was motivated in the performance of his duties; as well as to consider that the eventual access to the DGT database (through the SIP) to consult the information linked to the vehicle subject to the complaint by the chief inspector (who reported that he had not accessed the said database and that he did not have a SIP user code since 07/12/2018) would also be justified in the exercise of his duties. In turn, in the file resolution it was also indicated that the chief inspector of the Urban Guard had given, through his testimony, a plausible explanation on how he would have known that the reported vehicle was owned by the wife of the reporting person.

8. On 08/02/2020, the complainant filed an appeal for reinstatement against the file resolution.

9. On 08/04/2020, the appeal was transferred to the City Council of (...), which did not present any allegations.

10. On 02/09/2020, the director of the Authority decided to appreciate the appeal brought by the complainant against the file resolution of 08/07/2020, and consequently, to cancel the resolution challenged only with regard to the facts referred to in the 6th and 7th grounds of the resolution of the appeal for reinstatement and to proceed with the previous information or, where appropriate, initiate disciplinary proceedings.

In said legal foundations, the fact was addressed that in the report drawn up by the chief inspector of the Urban Guard of (...) the relationship of kinship with the owner of the vehicle was included, given that the complainant had not expressly included in his complaint.

Specifically, the resolution indicated that the chief inspector had not provided evidence regarding the private conversation he claimed to have had with the complainant during a service in January 2018, during which he claimed that the person complainant would have told him the identity of his wife.

Regarding the rest of the circumstances invoked by the chief inspector that would have allowed him to be aware of this data (the human resources document of the local police force through which the official appoints a contact person in case he suffers an accident professional; and an internal audit for the alleged illegitimate use of the SIP in which it was found that the person making the complaint had accessed the information of the disputed vehicle), in the resolution of the reinstatement appeal it was considered that the purpose of the subsequent treatment ( the preparation of the report of 06/05/2019) of this information (the relationship of kinship) was not compatible with the purpose for which the personal data had been collected.

On the other hand, in the aforementioned resolution it was also pointed out that the information regarding the kinship relationship with the owner of the vehicle was clearly unnecessary for the purposes of the report drawn up by the chief inspector and for the processing of the procedure punisher

11. On 06/11/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of (...) for an alleged infringement provided for in article 83.5.a) in relation to article 5.1.b); 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 accused entity on 12/11/2020 and a period of 10 days was granted to formulate allegations.

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

proven facts

The chief inspector of the Urban Guard of (...) drew up, as part of a disciplinary procedure for a traffic violation (file no. (...),) a report on 06/05/ 2019 in relation to the discharge sheet that had been presented on 03/30/2019 by the person making the complaint (also an agent of the Urban Guard of (...)).

In that report, the chief inspector of the Urban Guard stated that the owner of the reported vehicle was the appellant's wife.

The use of this data, of which the chief inspector of the Urban Guard was aware because the complainant had designated his wife as a contact person in the event of a professional accident and for an internal audit by the alleged illegitimate use of the SIP in which the reporting person would have accessed the information of the vehicle that had been reported, was not compatible with the purpose for which the personal data had been collected.

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 was indicated in the agreement to initiate 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. The conduct described in the proven facts section violates the principles of purpose limitation (art. 5.1.b of the RGPD) and data minimization (art. 5.1.c RGPD).

Firstly, Article 5.1.b) of the RGPD regulates the principle of purpose limitation by establishing that personal data will be "collected for specific, explicit and legitimate purposes, and will not be subsequently processed in a manner incompatible with said purposes; in accordance with article 89, paragraph 1, the subsequent processing of personal data for archiving purposes in the public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes".

And, secondly, article 5.1.c) of the RGPD regulates the principle of minimization determining that personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

The proven facts are constitutive of an infringement provided for in article 83.5.a) in relation to articles 5.1.b); and also, of an infringement provided for in the same article 83.5.a) in relation to article 5.1.c); all of them from the RGPD.

Article 83.5.a) of the RGPD typifies, as an infringement, the violation of the "basic principles of the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which they contemplate both the principle of purpose limitation (art. 5.1.b RGPD), and the principle of data minimization (art. 5.1.c RGPD).

For their part, these behaviors have also been included as a very serious infringement in articles 72.1.a) and 72.1.d) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of rights digital (hereinafter, LOPDGDD), in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679. (...)

d) The use of the data for a purpose that is not compatible with the purpose for which they were collected, without having the consent of the affected person or a legal basis for this."

In the present case, as indicated in the initiation agreement, it is considered that both infractions are linked in the sense that one of the infractions (the violation of the principle of limitation of purpose) has entailed the commission of the other (the violation of the principle of data minimization).

In this sense, article 29.5 of Law 40/2015, of October 1, of the Legal Regime of the Public Sector (hereafter, LRJSP) provides that "When the commission of an infraction necessarily results in the commission of "another or others, the penalty corresponding to the most serious offense committed must be imposed."

In the present case, in which the two offenses committed are provided for in article 83.5.a) of the RGPD (which refers both to the violation of the principle of limitation of the purpose and of the principle of data minimization) , the conduct described in the imputed facts, due to their connection, must only be sanctioned for the violation of the principle of limitation of purpose, given that the violation of the principle of minimization would be subsumed by the first violation.

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 is unnecessary to require any measure to correct the effects of the infringement, given that it is an isolated event that has already been completed.

resolution

For all this, I resolve:

1. Admonish the City Council of (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.b), 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 the City Council of (...).

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,