

File identification

Resolution of sanctioning procedure no. PS 59/2020, referring to the Prat de Llobregat Town Council.

Background

1. On 03/04/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Ajuntament del Prat de Llobregat due to an alleged breach of the regulations on personal data protection. The complainant complained that on the social networks Facebook and Twitter, in accounts linked to the mayor of El Prat de Llobregat (in particular, on the Facebook profile "(...)" and on the Twitter account "(...)"-headed with the phrase "Talk to the Mayor"-, respectively), an image was published on 04/03/2020 showing the letter that his minor son had addressed to the health personnel thanking him for his work on the occasion of the COVID-19 pandemic, a letter in which this minor is identified with his name, surname and age.

The complainant, in order to prove the facts, provided a copy of the images that would have been published on the aforementioned social networks.

2. The Authority opened a preliminary information phase (no. IP 108/2020), 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 investigation phase, on 04/06/2020, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported. Thus, the following was established:

3.1.- In relation to the Facebook social network.

- That the user accesses the Facebook social network
- That the Facebook profile of "(...)" is accessed. It is found that it is only possible to access this profile having previously logged in to Facebook.
- That on 04/03/2020 an "entry" - made by the person holding the profile - is published with the following text: *"Look at the message of encouragement to the health personnel left by two women who donated diving masks. At the @ajelprat, we are collecting them to give them to Bellvitge (...)"*. Along with the message is the image of the letter that a minor would have written accompanying his donation of material, and which is identified as (...) [name, surname and age of the child of the person reporting]".

3.2 In relation to the Twitter social network.

- That you access the twitter account of "(...)" -heading with the phrase "Talk to the Mayor"-.
- That on 04/03/2020 a "tweet" from the account holder is published with the following text: *"Look at the message of encouragement to the health personnel left by two women who donated diving masks. At the @ajelprat, we are collecting them to give them to Bellvitge (...)"*. Along with the message is the image of the letter that a minor would have written accompanying his donation of material, and which is identified as (...) [name, surname and age of the child of the person reporting]".

4. On 06/10/2020, also in this information phase, the reported entity was required to report on the following:

- Details of the circumstances under which the City Council (the mayor or other persons serving the City Council) acceded to the letter that the minor child of the person making the complaint addressed to the health personnel.
- Indicate the legal basis that would legitimize the publication on the aforementioned social networks, of the data relating to the minor child of the reporting person.

5. On 06/25/2020, the Prat de Llobregat City Council responded to the aforementioned request in writing in which it stated the following:

- That *"the Mayor received this letter along with others of the same style and content, through (...), head of (...) of the Prat de Llobregat City Council, in turn, to him had sent (...), responsible for (...) del Prat de Llobregat"*.
- That *"notes like the one referred to were delivered directly to the services of (...) of the City Council, together with the material donated to make respirators directly to this service, all within the framework of the municipal campaign of collection of material, so that they could be used in the campaign to fight against COVID-19. In this sense, the council has made explicit calls to donate material during this health crisis, and has accompanied them with numerous images of the donated materials, with and without notes from the people who made the donations"*.

6. On 06/11/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Prat de Llobregat City Council for an alleged violation provided for in article 83..5.a), in relation to article 5.1.f) 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 circulation of these (hereafter, RGPD). This initiation agreement was notified to the imputed entity on 11/12/2020.

7. 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 their interests.

8. On 25/11/2020, the City Council of Prat de Llobregat presented a letter in which it explains that *"in the production of the facts now described there was only the desire to spread and share the good will of the citizens in complicated moments such as those experienced. We insist that the emotion of the moment made the municipal staff let down their guard, who, without wanting to publicly externalize any image, sent the message to the Mayor's Office, thus creating a false presumption that the publication of the image could be carried out without any legal impediment. In any case, deeply regretting what happened, this Administration will do everything in its power to prevent this situation from occurring again."*

In this same letter, the City Council expressly acknowledges its responsibility for the alleged facts and expressly requests that, based on article 85 of the LAPC, *"a resolution be issued declaring this case closed, since it is in the interest of the Consistory itself to ensure the preservation of the minor's data and, therefore, to avoid delaying a procedure in which the minor is the indirect and involuntary protagonist"*.

proven facts

As part of the municipal campaign launched by the Prat de Llobregat City Council for the collection of material for the fight against COVID-19, the mayor of the Prat de Llobregat published on 04/03/2020 on the networks social networks Facebook and Twitter, specifically, on the Facebook profile "(...)" and on the Twitter account "(...)" - headed by the phrase *"Talk to the Mayor"* -, the following text: *"Look what a message of encouragement to the healthcare staff left by two women who donated diving masks. At the @ajelprat, we are collecting them to give them to Bellvitge (...)"*. This message was illustrated with the image of the letter sent by a minor (son of the complainant) accompanying his donation of material, and in which his name, surname and age appear. This dissemination of the minor's data was carried out without obtaining the specific consent of their legal representatives.

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 85.1 of the LPAC and in accordance with what is indicated in the agreement to initiate this procedure, this resolution should be issued without a previous resolution proposal,

given that the accused entity has acknowledged its responsibility (precedents 8th) and this implies the termination of the procedure.

3. In relation to the facts described in the proven facts section, relating to the principle of confidentiality, it is necessary to refer to article 5.1.f) of the RGPD, which provides for the following:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee an adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality»).

On the other hand, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter, LOPDGDD), establishes the following in its article 5, relating to the duty of confidentiality:

"1. Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with its applicable regulations (...)"

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies as such the violation of *"the basic principles for the treatment"*, among which the principle of confidentiality is at the top.

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

i) The violation of the duty of confidentiality established in article 5 thereof law organic"

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 . (...) 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" .

By virtue of this power, the Prat de Llobregat City Council must be required to, as soon as possible, and in any case within a maximum period of 5 days from the day after the notification of this resolution, delete in the entry and tweet made on 04/03/2020 on social networks Facebook and Twitter, respectively, any element that allows the identification of the child of the reporting person.

Once the corrective measure described has been adopted, within the period indicated, the Prat de Llobregat Town Council must inform the Authority within the following 10 days, without prejudice to the Authority's inspection powers for make the corresponding checks.

resolution

For all this, I resolve:

1. Admonish the Prat de Llobregat City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), both of the RGPD.
2. Request the City Council of Prat de Llobregat to adopt the indicated corrective measure to the basis of law 4th and accredit before this Authority the actions carried out by fulfill them
3. Notify this resolution to Prat de Llobregat Town Council.
4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. 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,