

## File identification

Resolution of sanctioning procedure no. PS 63/2020, referring to the Vall de Boí Town Council.

## Background

1. On 11/03/2020, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Vall de Boí Town Council, (henceforth, the 'City Council'), due to an alleged breach of the regulations on personal data protection.

1.1. Specifically, the person complained that the City Council had published their income statement for the year 2017 on the City Council website. And he added: *"where do all my personal data come from, ref. cadastral records of my properties, etc. etc."*

In order to prove the facts, the complainant provided: a copy of a photo from the Council's website, ([www.ajuntament \(...\).cat](http://www.ajuntament(...).cat)) corresponding to the first page of an income statement, in which the "First declarant" section contained the data of the reporting person's spouse and the "Spouse" section displayed data identifying the reporting person. He also provided an email sent on 05/03/2020 at 8:45 from his email address to the email address of the Mayor of the City Council, in which he requested the withdrawal of the document controversial from the City Council's website. It also provided a response email from the mayoress, dated 03/05/2020, received at 8:50 a.m., in which she confirmed the withdrawal of the publication.

1.2. On 09/17/2020, the complainant submitted to the Authority a written extension of the complaint stating that many of the published data were particularly sensitive data and that it included data from his minor daughter ( first and last name, ID and date of birth). Likewise, he stated that the box relating to the tax allocation to the Catholic church was marked, which reflected a fact relating to religious beliefs. In his writing he did not provide any evidence to corroborate his statements.

2. The Authority opened a preliminary information phase (no. IP 94/2020), 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 information phase, on 06/15/2020, the Data Protection Officer of the City Council was requested to:

- Report on whether the income statement corresponding to the year 2017 that is the subject of the complaint had been publicly published on the City Council's website. And if so, about the period of time in which the document remained published on the City Council's website.
- Specify whether it was published in full or in part.
- Information on the legal basis that would legitimize the publication of the income statement on the City Council's website.

4. On 01/07/2020, the Data Protection Officer of the City Council responded to the request through a letter in which she set out the following:

- That the declaration of the income of natural persons for the year 2017 corresponded to a councilor of the council.
- That the aforementioned statement had been published publicly on the City Council's website, but the personal data had previously been deleted. That *"Due to an error in the anonymization process, in which many of the identities and locations related to the declarant and his assets were taken into account, but the existence of these other data was not warned"* (in reference to the spouse's data).
- That *"the document was posted on the website from March 4, 2020, at two o'clock in the afternoon until the following day, the 5th, at nine o'clock in the morning, which was when the town hall was informed that there were some personal details that had not been hidden."*
- That *"The councilor in question, instead of presenting a statement made expressly, provided his income statement. For this reason, it was thought of to make it public, but without personal data being recorded"*.
- That *"The publication of the declarations of assets and interests was made in compliance with Article 8.1.h) of Spanish Law 19/2013, of December 9, in relation to Article 75.7 of the Law of the bases of the local regime. I don't think that the publication of personal data that was not anonymized has legal cover."*

A copy of the document that was posted on the City Council's website was attached to the letter of response.

5. On 11/19/2020, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Vall de Boí City Council for an alleged violation provided for in article 83.5.a), in relation to article 5.1.f); 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 11/27/2020.

6. 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.

7. On 12/15/2020, the Vall de Boí City Council made objections to the initiation agreement, which are addressed in section 2 of the legal foundations.

8. On 18/02/2021, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the City Council as responsible for a violation provided for in article 83.5.a) in relation to article 5.1.f) both of the RGPD.

This resolution proposal was notified on 02/19/2021 and a period of 10 days was granted to formulate allegations.

9. The deadline has been exceeded and no objections have been submitted.

proven facts

On 5/3/2020, the 2017 income tax return (IRPF) of a councilor of the same Council was published on the website of the Vall de Boí City Council. Although much of the personal data had been deleted, there was still some personal data relating to the "Tax Filer", as well as data relating to members of the family unit.

The form of income declaration marked in the document was that corresponding to "individual taxation", that is to say, that the tax data recorded in the document corresponded to the tax declarant, who was a councilor of this City Council. It should be added that, prior to its publication, the document had been anonymized. However, some personal data had not been deleted. In relation to the councillor, they contained the cadastral reference of the habitual residence and the "contribution to the Catholic Church" box, which appeared marked. In relation to the members of the family unit, the following personal data of the spouse appeared without anonymization: name and surname, ID, sex, date of birth and the mention "spouse", and in the section "Children and descendants under 25 years" a date of birth without any further identification.

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. About the error in the anonymization process

The accused entity attributes to an error in the anonymization process as the cause of the publication of the document with personal data. In the preliminary investigation phase, the City Council stated that the councilor *"instead of presenting a statement made expressly, provided his income statement"*, this forced the document to be anonymized before publishing it. But, *"although during the process of anonymizing the income declaration many of the identities and locations related to the declarant and his assets were taken into account, the existence of these other data was not warned"*.

First of all, with respect to the obligation of councilors to file a declaration of patrimonial assets and self-assessments of taxes on income and patrimony, it is necessary to refer to article 75.7 of the Basic Law of Local Government, which establishes the following:

*"The local representatives, as well as the non-elected members of the Local Government Board must formulate a declaration of their patrimonial assets and participation in companies of all types with information on the companies in which they participate and on the self-assessments of the taxes on income, patrimony and, where applicable, companies"*.

*These declarations, made in the models approved by the respective plenums, are carried out before taking office, on the occasion of termination and at the end of the mandate, as well as when the factual circumstances change.*

*b) The statement on assets and patrimonial rights is registered in the Register of patrimonial assets of each local entity, in the terms established by its respective statute".*

In accordance with the previous article, declarations on assets and patrimonial rights must be made using the models approved by the municipal assemblies. It should be clarified that the personal income tax and property tax self-assessment model presented by the local representatives is intended to certify the declared property situation and should not be the subject of publication. These models contain more data than is necessary to fulfill the intended purpose of their dissemination, they also contain personal data of the other members of the family unit (spouse, minor children, dependents, etc.).

Secondly, with respect to the publication of the declarations of the patrimonial assets and interests of the local representatives, it is necessary to go to article 8.1 h) of Law 19/2013, of December 9, on transparency, access to information public and good government, which provides: *"1. The subjects included in the scope of application of this title must make public, at least, the information relating to the acts of administrative management with economic or budgetary repercussions that are indicated below: h) The annual declarations of assets and activities of local representatives, in the terms provided by Law 7/1985, of April 2, regulating the bases of the local regime. When the regulations do not set the terms in which these declarations must be made public, the provisions of the regulations on conflicts of interest in the field of the Administration must be applied General of the State. In any case, data relating to the specific location of real estate must be omitted and the privacy and security of their owners must be guaranteed."*

Article 56.2 of Law 19/2014, of December 29, on transparency, access to public information and good governance, states in the same sense, which provides: *"The Register of declarations of activities is public. Access to the registers of declarations of patrimonial assets and interests is governed by their specific regulations, without prejudice to which a declaration indicating the patrimonial situation of senior officials must be made public, which must not "include location data or those that are necessary to safeguard the privacy and security of the holders".*

In accordance with the transcribed regulations, it would not be justified to publish data on the location of the goods. In addition, the published data should be strictly necessary to safeguard the privacy and security of its holders. However, in this case the cadastral reference of the councilor's private address was published, which contravenes the last paragraph of the transcribed articles. Certainly, from the cadastral reference that appears in the published income statement, by means of a search in the cadastre's electronic headquarters, the descriptive information of the property is obtained.

On the other hand, it should be borne in mind that the aforementioned regulations refer only to the data of local representatives and non-elected members of the Local Government Board. Therefore, in this case, it only protects the publication of the councilor's data. In no case is the publication of the personal data of the other natural persons that may be included (spouse, descendants or other cohabitants) justified and, therefore, they should have been omitted.

In short, the violation of the principle of confidentiality of the personal data of the Councilor of the City Council has been proven, as excessive data not covered by the regulations applicable to the case has been published, as well as the confidentiality of the data of the natural persons listed in the published document.

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

2.2. On the lack of intentionality of the infringement.

Subsequently, the accused entity claims the rapid withdrawal of the improperly published data and the immediate offering of explanations and requests for excuses to the person who had been affected.

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 cannot succeed. In addition, it has been proven that it did not act with due diligence, because when it was decided to publish a document that is sufficiently known to contain personal data, such as the personal income tax return, the City Council should have of having taken extreme precautions when anonymizing the document, avoiding publishing excessive personal data in relation to the purpose of the treatment.

In accordance with what has been set out, it is estimated that this allegation cannot succeed.

3. In relation to the facts described in the proved 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) They must be treated 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)."*

During the processing of this procedure, the fact described in the section on proven facts, which is constitutive of the infringement provided for in article 83.5.a) of the RGPD, which typifies the violation of the *"basic principles for the 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, infractions that represent a substantial violation of the articles mentioned in that article are considered very serious and are prescribed for three years and, in particular, the following: 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."*

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, however, given that it was a one-time error and that the accused entity proceeded to delete the disputed document at the time it became aware of the error, the adoption of corrective measures.

For all this, I resolve:

1. Admonish the Vall de Boí 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.

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 3r.

2. Notify this resolution to the Vall de Boí Town 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 Agency for the Protection of

Data, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, d 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,