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File identification

Dismissal resolution of sanctioning procedure no. PS 64/2020, referring to the Residencia Tercera Edat l'Onada, SL

Background

1. On 08/05/2020, the Catalan Data Protection Authority received a letter from a person/entity in which they filed a complaint against the Residence and Day Center (...) - center managed by the entity Residencia Tercera Edat l'Onada SL, due to an alleged breach of the regulations on personal data protection.

In particular, the person making the complaint stated that the entity complained about had left the employees' payslips at the centre's reception without any envelopes. He also stated that when "the receptionist" was absent, the payrolls were left unattended in the view of anyone. Finally, he believed that the person at the reception desk should not have access to the workers' payslips. In order to substantiate his complaint, the complainant provided two photographs dated 7/5/2020 and 5/6/2020.

2. The Authority opened a preliminary information phase (no. IP 133/2020), 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 18/06/2020 the reported entity was required to report on the usual procedure used to manage the payrolls of the workers of the work center mentioned above, as well as that specified the functions attributed to the reception staff that would justify them having access to the payrolls of the center's workers.

4. On 07/02/2020, the reported entity responded to the request in writing in which it stated the following:

- That the preparation of the payrolls for the workers of all the entity's centers is centralized in the entity's central departments, specifically they are drawn up in the entity's HR Department, from where they are sent by email to the Management of each of the entity's centers. Subsequently, the Management of each center is responsible for delivering the payroll in paper format to the workers assigned to their center.
- That during the health crisis caused by Covid-19, the management of the center subject to the complaint had to reorganize the workforce on a temporary basis, given

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that the center was affected by different medical leaves, specifically the auxiliary person who usually filled the payrolls and the deputy director of the center who was the one who handed the payrolls to the workers were on leave. He also stated that *"this one-off situation could have contributed to not having the same agility to do tasks that were not his own"*.

- That the reception area is a closed area, and that access to the residence is through a door protected with an access code, and that "on 3/13/2020 the center closed the doors of the residence to all people who were not staff of the center, even to the relatives of the residents".
- Finally, he stated that according to the job catalog, the reception staff *"can carry out the control and output of documentation, archives and other administrative tasks, and has signed the security policy document and confidentiality agreement"*.

The reported entity attached various documentation to the letter.

5. Still in this information phase, on 07/09/2020 the reported entity was required to provide the risk analysis document applicable to the center subject to the report.

6. On 07/13/2020, the reported entity responded to the aforementioned request by providing the required document.

7. On 19/11/2021, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Residencia Tercera Edat l'Onada, SL 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.

8. 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.

9. On 16/12/2020, the Residencia Tercera Edat l'Onada, SL made allegations to the initiation agreement, which are addressed in section 3 of the legal foundations.

The accused entity provided various documentation with its letter.

Fundamentals of law

1. The scope of action of the Catalan Data Protection Authority in accordance with article 3.f) of Law 32/2010, of October 1, on the Catalan Data Protection Authority of Data, includes the

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treatments carried out by: *"f) other private law entities that provide public services through any form of direct or indirect management, if it is files and treatments linked to the provision of these services"*. 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 Catalan Data Protection Authority. In accordance with articles 5 k) and 8.2 j) of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. As stated in the antecedents (antecedent 7th), this Authority agreed to initiate disciplinary proceedings against the Residencia Tercera Edat l'Onada SL, for an alleged very serious infringement provided for in article 83.5.a) RGD, which typifies the violation of *"a) The basic principles for the treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9."*, considering as proven facts that the payrolls of the assigned workers in the center "...", who are employees of the entity Residencia Tercera Edat l'Onada SL, were at the reception desk without clutter.

3. The accused entity has made objections to the initiation agreement. It is necessary, first of all, to address the allegations of the imputed entity.

3.1. About the context and exceptional situation in which the events took place.

In the 1st section of its pleadings, the accused entity alleges the exceptional situation in which the alleged facts are framed. Specifically, it states that the events took place during the health crisis caused by the pandemic situation caused by Covid-19. As he relates, in this period the residence suffered several layoffs, which is why the center's Management had to make changes to working hours, schedules and functional versatility in the workforce, in order to organize resources and personnel and to be able to maintain the necessary attention to the residents of the center. Indeed, the events took place on 7/5/2020 and 5/6/2020, coinciding with the first state of alarm that was decreed on 13/03/2020, and which lasted until 21/ 06/2020. As the accused entity states, during this period the residences for the elderly suffered a strong impact which, among others, meant that some of their workers were in a situation of unemployment, and that in the face of this situation

they were forced to restructure the workforce and organize care and administrative tasks in order to make up for the losses that were occurring in the workforce. As we will see below, this situation of exceptionality can explain specific and also exceptional changes in the process of handing over payroll to workers.

First of all, it should be mentioned that the imputed entity has a standardized procedure for the preparation and management of payrolls. In order to prove it, he provided a document consistent with the payroll preparation protocol. According to this document, the preparation of the payrolls corresponds to the The entity's central HR department, from where they are sent by email to the Management of each of the entity's centers. Subsequently, the Management of each center is responsible for delivering the payroll in paper format to the workers assigned to their center. It is worth saying that in the

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period in which the facts occurred, the auxiliary person who usually filled the payrolls and the Assistant Director of the center, who was the one who delivered the payrolls to the workers, were on leave, which is why the Management assigned these tasks to the person reception worker

Secondly, the entity certified that the receptionist was authorized to carry out the tasks referred to. In effect, his statement of objections cites article 17 of the VII State Framework Agreement for care services for dependent persons, in accordance with which the duties of the staff relative to each category are established professional With regard to the Porter/Telephone Operator/ Receptionist functions contemplated in the aforementioned article and reflected in the document relating to the job catalog that it also provides, the receptionist staff is authorized, among others, to carry out the following functions: the control and output of documentation, the archive and other administrative tasks, the management of documents of the central departments, the preparation of employee files, the management of correspondence, as well as to collaborate with the staff with support tasks to other professionals. It should be added that, according to the job description, it reports directly to the Centre's Management/Sub-management.

Thirdly, the entity certified that the receptionist had been informed about the aspects relating to the protection of personal data that had to be applied to the data treatments entrusted to him. To prove this, he provided the confidentiality agreement, the center's code of conduct and ethics, as well as the document relating to the security policy for the processing of personal data, all of which had been signed by the employee.

On the other hand, the entity made it clear that since 13/3/2020, the date on which the first state of alarm was declared, the center remained closed, so that people were not allowed to enter strangers to the center, including family members of residents.

In short, the accused entity has proven that it has a standardized procedure for the preparation and delivery of payrolls to its workers. That due to exceptional reasons and force majeure, the Management of the center had to assign the receptionist the task of filling the payrolls. The attribution of this task could be done on the basis of the job description provided and, in addition, taking into account that the receptionist job depends directly on the Centre's Management/Sub-management. Likewise, the company has certified that the receptionist has been informed about the aspects related to the confidentiality and security of the personal data it handles. This is why, in accordance with the previous reasoning and given the exceptional circumstances caused by the pandemic, the receptionist was, at that time, a person authorized to carry out the task of enrobing and delivering the payrolls to the center's workers.

3.2. On the lack of breach of the principle of confidentiality.

The accused entity claims that the confidentiality of the data of its workers has not been violated, because it claims that the images do not prove by themselves that the payrolls have

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remained exposed to everyone's view and neither that the reception was without supervision of the person in charge of filling the payroll.

To be able to determine whether the payslips were exposed to everyone's view, it is necessary to take into account the configuration of the reception and the specific place where the payslips were located. Through the photographs provided by the complainant, it can be seen that the counter is a semi-circular piece of furniture, with a front panel that goes from the top to the floor. It consists of two levels: the upper part, consisting of a wooden envelope that takes up the entire counter; and the lower part, which constitutes the receptionist's work surface. The depth of the work surface has dimensions greater than those of the upper envelope, so that part of the work surface is hidden under the upper wooden envelope. On the other hand, the counter is located in front of the entrance door to the residence and behind it there is a wall. According to the photographs provided, the payslips were located on the work surface, specifically, below the upper envelope. Bearing this in mind, to be able to see the payslips you would have to stand behind the counter, since from the front they are hidden by the upper envelope and behind it is the wall. In fact, the two photographs contributed to the performances were taken from inside the counter.

Once the distribution of the reception area and the specific place where the payrolls were located, it remains to determine whether these have been exposed to the view of any unauthorized person. Well, in the image of 05/07/2020 you can see that the photograph was taken when the receptionist was not there, as you can see the empty chair. Otherwise, in the image of 5/6/2020 you can see that there is a person sitting at the reception, presumably the receptionist. Therefore, on at least one occasion it is seen that the person at the reception is not sitting in the chair. However, it should not be forgotten that the photograph dated 05/07/2020 shows a specific moment in which it can be assumed that the person in charge of filling the payroll is not there at the reception, but it is also not possible to know for sure if whether the receptionist is in the reception area or if he has been absent and, in the latter case, for how long. In any case, it cannot be claimed that the payrolls have been exposed to any person

that passes through the reception area taking into account, in accordance with the photographs provided, that: the payslips were located at the bottom of the receptionist's workspace, hidden by the upper envelope; that the counter is located in front of the entrance door to the residence and behind it there is a wall; that in order to access the payroll, you would have to stand behind the counter, that is to say, between the counter and the wall, which is not a passage area. Therefore, in view of the circumstances set forth, it cannot be concluded that the payrolls were exposed to the public, as alleged in the complaint, or even that they were in a place that was easily accessible.

On the other hand, the accused entity also claims that the access door to the residence (located in front of the reception desk) is protected by an access code that prevents unauthorized persons from entering and, in addition, since 13/3/2020 the center remained closed to the public by agreement of the competent administrative authority, so that only those workers, a circumstance that, despite considering that the payrolls could have been left without

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supervision at some point in time, greatly minimized the risk of being subject to improper access.

In short, the analysis of the specific circumstances that occur in the present case necessarily oblige us to consider the exceptionality of the moment in which the events reported occurred. Therefore, while it is true that the imputed entity had implemented a standardized procedure for the preparation and management of payrolls, it must be taken into account that this procedure was necessarily altered by an exceptional situation that occurred, specifically the peak of the pandemic, in the period known as the "first wave", which prevented us from being able to follow the usual protocols for filling and delivering payroll. On the other hand, and as has already been made clear, the payroll management and delivery system that was adopted at that time was of a one-off nature, and due to the circumstances described in this same section, it did not lead to that the payrolls were in view of everyone, not even one is inferred significant risk of improper access to its content, and in any case, it has not been proven that this access had materialized.

However, it is necessary to emphasize the fact that the exceptionality of the moment in which the events occurred is taken into account, and that once this exceptional situation has disappeared, the fact of not following the standardized procedure implemented by the 'entity for the preparation and management of the payrolls of its employees, may lead the Authority to consider that it does not guarantee adequate security of the personal data of its employees.

4. In accordance with everything that has been stated, it is considered appropriate not to maintain the imputation on which the initiation of the present procedure was based, after carefully assessing that the proven facts, in the circumstances analyzed in the previous basis of 3rd right, do not constitute, manifestly, a violation of data protection regulations. Consequently, the present procedure should be postponed in accordance with article 89.1.c) LPAC, and article 20.1.a) of Decree 278/1993, of November 9, on the sanctioning procedure applicable to the areas of competence of the Generalitat of Catalonia.

5. Notwithstanding the above, article 58.2 a) of the RGPD empowers the control authorities, in the exercise of their corrective powers, in order to issue a warning to the person in charge of the treatment, if the planned treatment operations can violate the provisions of the RGPD. By virtue of this power, it is considered appropriate to warn the accused entity that the procedure for managing the payroll of its workers used during the pandemic could pose a risk for the security of its workers' data and recommends restoring as soon as possible the standardized procedure for the management and delivery of the payrolls of its workers contained in the document "A213-PO1 *Administración-Nóminas*", provided to the Authority.

resolution

For all this, I resolve:

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1. Declare the dismissal of sanctioning procedure no. PS 64/2020, referring to the Residencia Tercera Edat l'Onada, SL
2. Warn the Residencia Tercera Edat l'Onada, SL, that not following the payroll management procedure for its employees (standardized or approved) may pose a risk to the security of its employees' data .
3. Notify this resolution to Residencia Tercera Edat l'Onada, SL and the complainant.
4. Order the publication of the resolution 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 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can, on an optional basis, appeal to the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly 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, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,