

File identification

Resolution of sanctioning procedure no. PS 65/2020, referring to the Town Council of Castellbell and Vilar.

Background

1. On 05/26/2020, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Castellbell and Vilar Council (henceforth, the 'City Council'), due to an alleged breach of the regulations on personal data protection.

Specifically, the complainant stated in his written complaint that on 05/17/2020 the City Council published a message/complaint on his Facebook profile that was accompanied by three images. In one of these images, which had been taken from Google Maps, the name of the street and the exact location on the map of two houses were clearly visible. In addition, he stated that the image had been retouched to mark the two homes with a blue circle. The complainant considered that the data published by the City Council allowed the identification of the residents of the two homes, since the cartographic, physical and location characteristics of the homes were shown through the images.

The reporting person provided various documentation in relation to the reported events.

2. Prior to the filing of the complaint, specifically on 19/05/2020, the person making the complaint had made a query to the Authority about the same facts, which is why on that same date, the Inspection Area of the Authority made a series of checks via the Internet on the facts that had been the subject of the query. From the actions carried out, it was found that the Facebook profile of the City Council contained a publication dated 17/05/2020 in relation to a discharge of waste water, which was accompanied by three photographs. Two of the images corresponded to two photographs of the spill and the third was an image captured from Google Maps showing two homes that had been circled in blue. The houses were located on the street (...) and through Google Street View it was verified that they corresponded to the numbers (...) of this street. The published text was as follows:

"DISCHARGE OF WASTEWATER. Yesterday a large #discharge of waste water was detected on the public road. We have detected that there are owners who empty the #septic tanks or #micro-purifiers on the public road or stream. That is why we have initiated sanctioning proceedings. For #publichealth we have to empty these tanks using specialized companies. Otherwise, when it is poured directly into the public road or stream, a #crime against the environment is being committed. From the #Town Hall we do not allow it and

we will act However, if the owners have problems with the operation of the pits or micro-treatment plants, they can ask for advice from the town hall, as well as ask for financial support to empty them if they do not have the financial resources. We call for responsibility to keep our town clean (...) among all. We can do it! (...) Thanks (...)"

3. The Authority opened a preliminary information phase (no. IP 146/2020), 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.

4. In this information phase, on 06/29/2020, the reported entity was required to report on the legal basis that would protect the publication on Facebook of the information about the spill together with the three images described above up

5. On 07/08/2020, the City Council responded to the aforementioned request in writing in which it set out the following:

- That although he acknowledged that he had published the controversial text and images on Facebook, he affirmed that *"at no time is there any reference to the fact that the people who live in those houses are guilty of the infringement"*.
- That for reasons of safety and health of people passing through the area affected by the discharge, the street where the wastewater was detected was identified, *"being the truthful information and of general interest for the matter in question "*.
- That on 04/06/2020 a file was opened to determine, among others: the list of detected discharges with indication of the farms where they came from and the identification of the people allegedly responsible, as well as the initiation of the corresponding sanctioning procedures against the persons allegedly responsible.

6. On 19/11/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against Castellbell and El Vilar Council for an alleged infringement provided for in article 83.5.a), in relation in article 5.1.a); 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.

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 11/12/2020, the City Council made objections to the initiation agreement, which are addressed in section 2 of the legal foundations.

The accused entity provided various documentation with its letter.

9. On 01/21/2021, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Town Council of Castellbell and El Vilar as to responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a); both of the RGPD.

This resolution proposal was notified on 28/01/2021 and a period of 10 days was granted to formulate allegations. The deadline has been exceeded and no objections have been submitted.

proven facts

On 05/17/2020, the City Council published a publication through its official Facebook profile in which it denounced the illegal dumping of waste water on the public road. The published text stated that there were homeowners who emptied their septic tanks into the public road or stream. He also assured that they had instituted disciplinary proceedings against the people allegedly responsible. The text was illustrated with three images: two photographs showing the dumping of sewage on the public road and a third aerial image taken from Google Maps in which the name of the street where it had occurred was clearly visible the dump and two houses on which a blue circle had been drawn to indicate them.

In relation to the image on Google Maps, the Authority, through Google Street View, was able to directly identify the specific address of the two homes (street name and number).

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 concept of personal data.

In its pleadings, the accused entity acknowledged the facts described in the "Proved facts" section. However, he considered that at no time was reference made to the specific people who live in the marked houses. It also claimed that the address of the homes had not been published, nor had the names of the people who reside there or own them. In short, it ensured that no physical persons had been linked to the marked homes.

In relation to the concept of personal data, it is necessary to go to article 4.1) of the RGPD which establishes that a personal data is *"any information about an identified or identifiable natural person (the interested party). An identifiable natural person is any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier or a or various elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of this person"* (emphasis added).

With regard to the City Council's statement that the publication did not refer to specific people, it must be said that by means of the location data that appears in the image it is possible to determine the identity of the physical persons who reside there. For example, from the Google Maps image that the City Council published on its Facebook account, using the computer application Google Street View, the Authority verified that it was possible to identify the exact address of the controversial homes. It should be added that this computer application is free and available to everyone. Well, in accordance with the concept of personal data transcribed above, it is not necessary that the information refers to an identified person, it will be enough that his identity can be determined. In this specific case, through the location data it is possible to identify the people who live in the marked homes. Regarding the claim of the denounced entity that *"the image captured from Google Maps was an aerial image, which made identification difficult on the street"*, it should be borne in mind that it is possible to identify the specific addresses of the homes without mass efforts

Even more, given that it is a municipality of only 3,647 inhabitants (Source IDESCAT, 2019), it is likely that the residents of the municipality know the identity of the people who live in the controversial homes and, upon reading the publication on Facebook, identify directly the people who live there.

On the other hand, the City Council claimed that it identified the street where the spill occurred for security reasons. However, this does not justify the publication of the image of the two houses, let alone marked with a blue circle, which uniquely identifies them (image capture from Google Maps). It is clear that the singularity of the two homes had in order to indicate the origin of the discharge. Even more, the images were connected to the text that stated that disciplinary proceedings had been initiated against *"owners who empty #septic tanks or #micro-purification tanks on the public road or stream. That's why we have initiated sanctioning proceedings"*. Therefore, from the publication of text together with the images it is inferred that the discharge of waste water had taken place from the dwellings marked with the blue circle, and that the responsibility for the discharge was attributed to their residents .

That is why it is considered that these allegations cannot succeed.

2.2. On the legal basis of the processing of personal data on Facebook.

First of all, it is necessary to refer to the concept of personal data processing contained in article 4.2) of the RGPD: *"any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling "access, access or interconnection, limitation, deletion or destruction"*. In accordance with this, the publication on the Facebook profile of the City Council of the image of the controversial housing is processing of personal data. Certainly, through a social network, the City Council disseminated personal data of identifiable physical persons, specifically of the residents of the controversial homes. It should be taken into account that the information is published in the open, consequently, any Facebook user could access it. But even if we only consider the users of the City Council's Facebook profile, this profile has 1,947 followers (consultation date: 16/11/2020). Considering that in 2019 the municipality had 3,647 inhabitants, which means that more than 57% of the inhabitants of the municipality were able

have access to the publication. In accordance with this, it is very likely that most of the residents of the town were aware of the spill, identified the street where it occurred and, in addition, were able to identify those allegedly responsible for the spill.

Given that the publication of the image relating to the homes is a processing of personal data, it is necessary to analyze whether the City Council had a legal basis justifying this processing. The accused entity alleged Law 7/1985, of April 2, regulating the bases of the local regime (hereinafter, LBRL), specifically citing articles 25.2 b), c); g) ij) of the LBRL and determined as the legal basis of the treatment the powers that this Law grants to the municipalities. Therefore, the City Council considered that the processing of data consisting of the publication of personal data on Facebook was covered by article 6.1 e), that is, the processing was necessary to fulfill a mission carried out in the public interest or the exercise of public powers conferred on the data controller.

According to article 25.2 of the LBRL *"the municipality exercises, in any case, as its own competences, the following matters: b) Urban environment: in particular, parks and public gardens, management of urban solid waste and protection against noise, light and atmospheric pollution in urban areas; c) Supply of potable water at home and evacuation and treatment of waste water; g) Traffic, vehicle parking and mobility. Urban collective transport; j) Protection of public health"*. It should be added that article 4.1) of the LBRL attributes to the municipalities, as public administrations of a territorial nature, and within the sphere of their competences, *"f) The powers of enforcement and sanctions"*.

On the other hand, the Constitution in article 103 establishes the principles that must govern the action of public administrations, among which stand out those of effectiveness and legality, when imposing

the full submission of administrative activity to the law and the law. In accordance with the Preamble of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) *"the materialization of these principles occurs in the procedure, constituted by a series of formal courses that must guarantee the appropriate balance between the effectiveness of administrative action and the essential safeguarding of citizens' rights"*. The LPAC regulates the minimum rights and guarantees that correspond to all citizens with respect to administrative activity, both in its aspect of the exercise of the power of self-protection and in that of the regulatory power. With regard to the administrative procedure, understood as the ordered set of procedures and actions carried out formally, according to the course provided by law, to dictate an administrative act or express the will of the Administration, it is applicable to all public administrations and with respect to all their performances.

In accordance with the normative framework transcribed, the City Council can process personal data of citizens in fulfillment of a mission in the public interest or in the exercise of public powers, provided that it has been assigned a certain competence. However, the processing of data that it carries out must be necessary to exercise the specific competence attributed to it by law and, in addition, it must be done in accordance with the provisions of the laws and, in any case, respecting the citizens' rights, among which is the protection of their personal data. Indeed, article 13.h) of the LPAC provides that citizens in their relations with public administrations have the right to the protection of personal data and, in particular, to the security and confidentiality of the data that appear to the files, systems and applications of public administrations. In the case at hand, it is undeniable that in the face of a discharge of waste water, the City Council has powers to act in defense of legality, as well as the duty to ensure the health of citizens. In addition, in defense of the general interest, it may decide to publish the events that occurred on social networks to avoid potential harm to people walking in the area. However, the City Council will have to comply with data protection regulations. In this case, contrary to what the City Council alleged, the dissemination of data on identifiable natural persons does not fit legally within the powers attributed to it by the LBRL. Certainly, the City Council could inform citizens of the potential risk to their health, without pointing out the alleged offenders. Furthermore, at the time the information was published (17/05/2020), the City Council had not yet agreed to initiate a disciplinary procedure for these facts, which is dated 4/06/2020. On the other hand, the information about the alleged offenders was not a necessary piece of data so that people walking around the area could avoid the dumping site. Because according to the City Council, *"the location of the dump could be observed without further ado, by anyone passing by on the affected street"*.

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

2.3. On the public relevance of the published information and the impact on the general interest.

Finally, the accused entity alleged the relevance of the published information and the impact on the general interest, which would justify the publication on Facebook. According to the City Council, the purpose of the publication was to guarantee the safety of people traveling through the area

affected Well, even if the publication had been justified by the existence of a public interest in knowing the facts relating to the dumping, the question lies in determining whether the specific publication of the image of the marked homes can be considered lawful and, in particular, if it was necessary in relation to the purpose pursued. Well, as has been said above, in order to publicize the facts relating to the dumping and preserve people's safety, it was not necessary to publish the image of the marked homes. Because the fact of identifying the homes is equivalent to flagging the people who are allegedly infringers. In fact, the aerial image of the location of the spill could have been published without marking the two houses, which would indicate the street, and the publication would also fulfill the objectives of informing the public of a possible risk for health

3. In relation to the facts described in the proved facts section, relating to the principle of lawfulness of the processing of personal data, it is necessary to refer to article 5.1.a) of the RGPD, which provides that personal data "a) *They must be treated lawfully, loyally and transparently in relation to the interested party (lawfulness, loyalty and transparency)*". Indeed, the accused entity has published on its Facebook profile data of identifiable natural persons without having a legal basis to justify the treatment.

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) *The 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.b)) of the LOPDGDD, in the following form:

"According to what is established in article 83.5 of Regulation (EU) 2016/679, infractions 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: b) The processing of personal data without any of the conditions for legality of the processing established by Article 6 of Regulation (EU) 2016/679 being met."

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".

During the preliminary information phase, the Authority was able to verify that the controversial information was no longer published in the "Publications" section of the City Council's Facebook profile. On the other hand, if you accessed the "Photos" section, you could still access the aerial image of the homes. And although the image was no longer connected to any text, thus making it difficult to contextualize the image in relation to the discharge of waste water, this Authority recommended that it be removed to avoid risks of re-identification of the affected people. Currently, the image is no longer published there. Accordingly, it is not considered necessary to require corrective measures.

For all this, I resolve:

1. Admonish the Town Council of Castellbell and the Vilar as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), 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 Town Council of Castellbell i el Vilar.

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

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,