

File identification

Resolution of sanctioning procedure no. PS 66/2020, referring to the Bisbal del Penedès Town Council.

Background

1. On 12/06/2020, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Bisbal del Penedès Town Council (henceforth, the City Council), due to an alleged breach of the regulations on personal data protection. The complainant stated that the City Council's transparency portal contained published mayoral decrees that contained personal data. He attached to his letter examples of the documents that he claimed could be downloaded without any limitations. Specifically, it provided:

- Register registrations, which contained the name and surname and the four digits of the DNI of the applicant.
- Property liability claim, with name and surname, vehicle registration number and insurance policy number of the claimant; as well as the name and surname of two workers from a social collaboration program related to the claim.
- Resolution denying the request for a weapons card. It contained the DNI of the applicant and the specific reason for the denial of the weapons permit, specifying that there was a police record for an administrative violation in matters of public safety, specifically for *"Not keeping the weapons of your property, date (00-00-0000), in the town of (...)"*.

2. The Authority opened a preliminary information phase (no. 162/2020), 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 1 October, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were capable of motivating the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances that occurred.

3. In this information phase, on 07/20/2020 the reported entity was requested, through the Data Protection Officer, because:

- Confirm whether the resolutions of the mayor's office that are the subject of the complaint had been published without anonymisation and, if so, specify the place where they had been published and whether they remained published.
- Indicate the legal basis that would legitimize its publication.

4. On 07/24/2020, the Data Protection Officer responded to the aforementioned request in writing in which he stated the following:

- That *"the mayor's resolutions were published in compliance with Law 19/2014, of 29 of December, of transparency, access to public information and good governance"*.
- That *"the resolutions are published on the City Council's transparency portal (<https://...>) where it can be verified that the requirements of the transparency regulations are being complied with, and that in any case, also the application of data protection regulations is taken into consideration"*
- That *"full names with completed IDs are not published, nor any other identifying data that may be considered excessive, and that violates the principle of data minimization"*.
- That *"it has been possible to detect a single case in which the full name has been published together with the registration number of a vehicle. This particular case is due to a material error (...). the erroneous post has been removed and replaced with the correct version."*

5. On 07/24/2020, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet. Thus, it was found that the resolutions provided by the complainant were indeed published on the City Council's transparency portal, specifically in the folders corresponding to the years 2018, 2019 and 2020. In addition, as stated by the Data Protection Officer, it was verified that the document containing the name and surname and vehicle registration number had been replaced by a new version in which the registration number had been deleted. However, it still contained first and last names.

6. On 07/27/2020 and still within the framework of this prior information phase, the Data Protection Delegate of the City Council was again required to specify the specific precept of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) which would legitimize the publication on the transparency portal of the mayor's decrees with personal data.

7. On 08/05/2020, the Data Protection Officer responded to the previous request in writing in which he set out the following:

- *"That the City Council has not always complied with what is established by the current regulations, and this is due to a material error, and a misinterpretation of the regulations, which we have been able to ascertain as a result of this procedure."*
- *"That the procedures have been initiated to modify the published documents and eliminate the personal data that appear in them, to comply with current legislation"*.

8. On 03/11/2020, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. He noted that in the section of the transparency portal where the resolutions of the mayor's office were published there were the folders

corresponding to the years 2017, 2018, 2019 and 2020. That all published decrees had been withdrawn and that the folders were empty.

9. On 19/11/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Bisbal del Penedès Council for an alleged infringement provided for in article 83.5.a), in relation to 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.

10. 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.

11. On 10/12/2020, the City Council submitted a letter in which it acknowledged its responsibility for the alleged events, and also made allegations in the initiation agreement.

12. On 01/21/2021, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the Bisbal del Penedès Town Council as 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 to the imputed entity on 28/01/2021 and a period of 10 days was granted to formulate allegations.

13. On 01/02/2021, the accused entity submitted a letter in which it affirmed its willingness to comply with data protection regulations and reported on the actions it had taken to prevent the recurrence of facts subject to the infringement.

proven facts

During the years 2018, 2019 and 2020, the City Council published several mayoral decrees that contained personal data. The publications were located on the City Council's transparency portal and anyone could access and download the documents. All documents contained the full resolution, without anonymization.

Among the published documents were several registrations, which contained first and last names, and the four digits of the applicant's ID. There was also a resolution relating to a property liability claim, which contained the first and last names, vehicle registration number and insurance policy number of the person making the claim, as well as the first and last names of two employees of a col · social collaboration Besides, there was issued a resolution denying an application for a weapons permit, which contained the ID of

the applicant also mentioned the existence of a police record for an administrative offense in matters of public safety, and indicated the specific infringing conduct.

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.

In its statement of objections, the accused entity acknowledged its responsibility in the publication of the mayor's decrees that contained personal data. But he alleged that this publication was due to a material error and the misinterpretation of the transparency regulations in relation to the data protection regulations.

2.1 About the material error.

With regard to the material error that the imputed entity alleged in its defense, as indicated by the instructing person in the resolution proposal, it has been proven that the City Council, in a systematic way, published on the transparency portal the decrees of the mayor's office without anonymization. Certainly, on 24/07/2020, the Authority carried out a series of checks via the Internet and found that on the City Council's transparency portal there were a series of folders corresponding to the years 2018, 2019 and 2020 where mayor's decrees were published with personal data. Therefore, it is not possible to attribute the publication of the resolutions without anonymization to a one-off error, since this "one-off error" was repeated in the publication of several resolutions corresponding to different years (2018, 2019 and 2020). As the instructing person pointed out in the proposed resolution, everything indicates that this was the general system used by the City Council to publish the mayor's resolutions. In fact, in the preliminary investigation phase, on 07/24/2020, the investigated entity stated that the publication of the decrees with personal data complied with both transparency and data protection regulations. And he argued that the published data did not violate the minimization principle, admitting, however, that only on one occasion had excessive data been published. Ultimately, the City Council

he was aware that he published the decrees with personal data, which prevents it from being attributed to a one-off error. Accordingly, this contention cannot succeed.

2.2 On the misinterpretation of the regulations.

Next, the accused entity pointed to a misinterpretation of the regulations as the cause of the publication of the mayor's decrees with personal data. Regarding this, the article

10.1.f) of Law 19/2014 of December 29, on transparency, access to public information and good governance (hereinafter, LTAIPBG) in the aspect of active advertising, obliges public sector entities to disclose certain information in its transparency portal. Specifically:

"1. The information relating to decisions and actions with legal relevance that the Administration must make public in application of the principle of transparency must include: f) Administrative acts, responsible statements and previous communications that may have incidence on the public domain or the management of public services, and those others in which reasons of special public interest advise it".

In accordance with the precept transcribed, the LTAIPBG protects the publication of administrative acts that may have an impact on the public domain or the management of public services, and those others in which reasons of special public interest advise it. However, as indicated by the instructing person in the resolution proposal, the precept does not legitimize the publication of the personal data contained in the administrative acts, on the contrary. Indeed, section 3 of the same precept expressly states that *"In the case of letters f, g, h, ii of section 1, the information must not include personal data or references"*. This is why, prior to their publication, the administrative acts must have been conveniently anonymized.

In short, in accordance with article 10.1.f) and 10.3 of the LTAIPBG, when decisions and actions of legal relevance must be published, the published information must not include personal data or references. As the instructing person pointed out in the resolution proposal, the wording of the rule does not allow for interpretive doubts as to whether the resolutions that are published must not include personal data. It is for this reason that this plea is held to fail.

2.3 On corrective measures.

Finally, the accused entity alleged that, following the request made by the Authority, the decrees that contained personal data and that were currently being reviewing all documents. In this regard, it is necessary to emphasize that the adoption of measures to correct the effects of the infringement do not distort the imputed facts, nor do they modify their legal classification. Accordingly, it is held that this plea cannot succeed.

However, as the instructing person pointed out in the proposed resolution, it must be recognized that the City Council has acted diligently by removing all the mayor's decrees from the transparency portal in order to proceed with their review and anonymization. For this reason, it is not necessary to require the reported entity to implement additional corrective measures.

2. In relation to the facts described in the proven facts section, relating to the principle of legality, it is necessary to refer to article 5.1.a) of the RGPD, which provides that personal data *"a) Must deal lawfully, loyally and transparently in relation to the interested party (lawfulness, loyalty and transparency)"*.

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) 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 violation are considered very serious and are prescribed in three years substantial of the articles that he mentions and, in particular, the following: 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".

3. 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."

And section 3 of art. 77 LOPDGDD, establishes that:

"3. Without prejudice to what is established in the previous section, the data protection authority must also propose the initiation of disciplinary actions when there are sufficient indications to do so. In this case, the procedure and the sanctions that must be applied are those established by the legislation on the disciplinary or sanctioning regime that is applicable.

Also, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment that have not been properly attended to is proven, in the resolution in which the penalty is imposed, to include a warning with the name of the responsible position and it must be ordered to be published in the "Official Gazette of the State" or the corresponding regional newspaper.

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of infringements committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the infringement and establishing the measures to be adopted for

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".

The accused entity stated in its letter dated 01/02/2021 that it had established a procedure for reviewing the information prior to its publication on the transparency portal and that it had hired a person in charge of anonymizing all documents before publish them In the present case, given that the documents with personal data are no longer published on the transparency portal and that the accused entity has established a procedure to ensure that the aforementioned documents with personal data are not published, the adoption of corrective measures.

For all this, I resolve:

1. Admonish the Bisbal del Penedès City Council 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 legal basis 3r.

2. Notify this resolution to the Bisbal del Penedès 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 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,

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