

In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 68/2020, referring to the Institute (...) dependent on the Department of Education of the Generalitat de Catalunya.

Background

1. On 18/11/2019, the Authority became aware through different means of communication that the University of Lleida (hereinafter, UdL) was carrying out a research project called "Acculturation and linguistic acculturation of the descendants of migrated Challenges and potential for language learning and linguistic and socio-educational inclusion" (hereafter, the project). According to the media, as part of this project, a survey was carried out among students of compulsory secondary education (ESO), among whom were the students of the Institute (...) of Tarragona. In this survey, students would be asked about their ideology, among other issues.
2. The Authority opened a preliminary information phase (no. IP 309/2019), 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 26/11/2019, the UdL was required to inform, among others, which ESO courses the survey was aimed at; the reasons why it was necessary to identify the person answering the survey, taking into account that according to the media, the answers were subsequently made anonymous; how the anonymization of the data of the surveyed students was carried out; what would be the legal basis that would legitimize this data processing and in the event that special categories of data were collected, that it be specified which of the circumstances provided for in article 9.2 of Regulation (EU) 2016/679 of the European Parliament and 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) would allow their processing; as well as whether the students were required to answer the survey. In turn, the UdL was also required to provide copies of 3 surveys answered by students from the Institute (...) of Tarragona.
4. On 10/12/2019, the Authority received, by referral from the Spanish Data Protection Agency, a letter from the Asociación Hablamos Español in which it formulated a

complaint against the UdL and the Department of Education of the Generalitat of Catalonia, on the grounds of an alleged breach of the regulations on the protection of personal data. Specifically, the reporting entity stated that a survey had been carried out to the 3rd and 4th year ESO students of the Institut (...) of Tarragona in which data were collected on ethnic or racial origin, political opinions, religious or philosophical convictions of the students and their families, without the consent of the minors affected or their legal representatives. The reporting entity added that the survey was carried out in schools at the behest of the Department of Education, which sent the questionnaire drawn up by a UdL research group to several schools, the recipient of the data collected being UdL. The reporting entity provided various documentation.

This complaint was assigned the number IP 331/2019.

5. On 11/12/2019, the UdL responded to the request made on 26/11/2019, through a letter in which it set out, among others, the following:

- Que l'objectiu del projecte d'investigació era afavorir la incorporació, en condicions d'igualtat, en la societat espanyola en general, i en la catalana en particular, dels descendents de persones immigrades.
- That the participation in the project of both students and teachers was voluntary, and this was expressly stated in the "informed consent" contained in the first page of the survey form.
- That the Department of Education was not only informed by the research group about the scope of the project, and not only did it authorize its activities in the educational centers, but that there are signs of co-responsibility as an active collaborator and essential in this process of collecting and processing personal data.
As stated in the project report, the coordinator, in the Territorial Services in Lleida, of the Plan for Language and Cohesion is an active part of the working group Social Department of Education.
- That the Department provided the group with the dissociated data of all the students of the ESO degrees of all secondary schools in Catalonia, classified according to their nationality and the centers in which they were enrolled, with the aim that the group could identify suitable centers for the purpose of the research.
- That once the centers were chosen, the research group asked the Department to address an email to the chosen centers requesting their collaboration in the project based on an informative text that the research group wrote at the request of the Department.
- That the members of the research group contacted, by telephone and/or e-mail, the different institutes chosen to verify the receipt of the information sent by the Department; and to offer them the possibility of expanding the information in writing and, even if the centers considered it appropriate, to provide them with an informative letter addressed specifically to the parents of the students in the centers. Of the ten centers where the surveys were carried out, only three agreed to make use of the additional information provided by the group.

- That they participated in the project, among other educational centers, the Institute (...), where the survey of 3rd and 4th ESO students was carried out on 06/11/2019 and 07/ 11/2019.
- That the IP (the main researcher) also communicated that, following an urgent meeting with representatives of the Department of Education, it was decided to provisionally suspend the survey campaign in the educational centers.

The UdL attached various documentation to the letter.

6. On 20/01/2020 the Authority received 15 letters by which several parents of students from the Institut (...) of Tarragona and the Assembly for a Bilingual School in Catalonia (entity who also represented the rest of the complainants), filed a complaint against the UdL and the Department of Education.

The complainants stated that since the beginning of 2019, the UdL had been carrying out the controversial project, in which the Department of Education collaborated. The complainants added that 2nd, 3rd and 4th grade ESO students from 10 schools had already participated in the said project. In turn, they stated that the surveys answered by the students asked about identity, ideology and religious beliefs. They also indicated that in certain cases the survey had not been voluntary, that the parents had not been informed beforehand and that consent had not been properly obtained to treat special categories of data. The complainants provided various documentation.

IP numbers 15 to 29/2020 were assigned to these complaints.

7. On 02/13/2020 and still within the framework of this preliminary information phase, the Department of Education was required to inform, among others, whether it was co-responsible (together with the UdL) in relation to the treatments linked to the aforementioned project; what was the legal basis that would legitimize the communication of students' personal data to researchers; as if among the students who answered the controversial survey at the Institute (...) of Tarragona, there were several who expressed their refusal to answer it. In turn, the Department was required to provide a copy of the "relationship of secondary schools, with the distribution of 3rd and 4th ESO students by nationality" that was provided to the researchers and of the lists that they would have sent the addresses of the educational centers; and the "additional" information that the research group offered to certain educational centers.

This requirement will be repeated on 03/12/2020.

8. On 03/13/2020, the Department of Education complied with this request by means of a letter stating, among others, the following:

- That the Department of Education is not co-responsible, in relation to the treatments linked to the study carried out by the UdL, since it does not participate, nor has it participated in the definition of the objectives or purposes of the research projects.
- That the Department of Education considers that the UdL is solely responsible for reviewing and approving the objectives and purposes of the project proposals it develops, and which includes the aspects derived from the analysis of the procedures and means involved and the legal foundations that enable its development, including the legal, technical and organizational analysis that must guarantee compliance with the set of principles and guarantees that apply in matters of data protection, among others.
- That given the sociolinguistic study proposed by the UdL, personal data of the students was provided, in accordance with the legal basis provided for in article 9.2.j) of the RGPD, to consider the processing of the data necessary for statistical purposes, based on Law 1/2003, of 19 February, on Universities of Catalonia and Law 14/2011.

The Department of Education provided various documentation. From the documentation provided it appears that, prior to the survey, the Institute (...) provided the research group with the personal data of its students which is listed below: first and last name of 3rd and 4th ESO students. As indicated by the Institute, the management of the center authorized on 22/10/2019 the submission of the lists of students to the research group of the UdL.

On the other hand, in relation to the Institute (...), the Department of Education reported that some students complained about the length of the survey, others about the content of the questions (the student's tutor explained to the student the content of the questions and convinced him of the usefulness of the survey); some students who had doubts when answering some questions (the interviewer told them that they could not leave answers blank) and 3 students who were upset with the content of some question (in this regard the interviewer told them that they had to answer and invited them to do so).

The Department of Education pointed out that some tutors did not remember exactly the number of students who had expressed a complaint, given that the survey had been carried out more than 3 months ago.

9. In this information phase, on 04/06/2020, the Department of Education was again required in order that in relation to all the educational centers that provided personal data of their students to the research team , prior to the survey, certify how the right to information was made effective for the people affected.

10. On 06/20/2020, the Department of Education responded to the aforementioned request through a letter in which it stated that the Institute (...) stated that, considering that the information provided by the UdL agreed with the receipt from the Territorial Services of the Department of Education, regarding the guarantee of anonymity and confidentiality of our students' data, there was no doubt about sending the lists of groups to the UdL , so that the research group could carry out the survey and the subsequent one

study The Institute transcribed the email sent by the UdL research group on 11/10/2019 in which, among others, the lists of the different groups were requested.

11. On 02/12/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the institute (...) (hereafter, the institute) for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.c); all of them from the RGPD. This initiation agreement was notified to the Department of Education on 07/12/2020.

12. Also on 02/12/2020, the director of the Authority issued an archive resolution, on the one hand, regarding the communication of student data by the institute (and other institutes) to the research group, prior to the completion of the survey. And this, to consider that the subsequent treatment (communication to the UdL) of the students' data by the institute for the purposes of scientific research, was compatible with the purpose for which the institute initially collected the data in accordance with article 5.1.b) of the RGPD.

On the other hand, in the same resolution was also archived the matter relating to the obligation to give effect to the right of information to the affected persons regarding the subsequent processing of their data for another purpose, given that it corresponded to the UdL exercise the right to information.

13. On 12/21/2020, the institute made objections to the initiation agreement.

14. On 01/21/2021, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority admonish the institute as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c) ; all of them from 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

The Institute (...) participated in the research project called "Acculturation and linguistic acculturation of the descendants of migrants. Challenges and potential for language learning and linguistic and socio-educational inclusion" carried out by a UdL research group.

As part of this project, and before the UdL research group carried out the surveys of the students in the institute's premises, the center provided the aforementioned research group with the data of all its students from 3rd and 4th grade of ESO, referring to first and last names.

This communication of data took place between 22/10/2019 (date on which the Institute's management authorized the submission of student lists to the UdL research group) and 06/11/2019 (date in which surveys were initiated by the research group in the Institute's offices as part of the aforementioned project).

To achieve the intended purpose (scientific research) it was not necessary to provide the students' data prior to the completion of the survey.

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 to the initiation agreement, the institute explained that the Department of Education asked them to participate in the research project carried out by a research group of the UdL, indicating that this would treat the students' data anonymously and for the sole purpose of carrying out the study. He added that, subsequently, a person from the UdL research group contacted the institute to request the lists of the different groups of 3rd and 4th ESO, indicating that the data would be treated anonymously. In turn, the institute stated that the person from the UdL research group indicated that they needed this information to know exactly the number of questionnaires they had to take on the day the survey was to be carried out (there were two type of questionnaire depending on whether the student was native or of immigrant origin) and to be able to monitor the student's profile in a second phase of the research (interviews). In the last one, the institute argued that only the first and last names of the students were provided (as already stated in the imputed facts section of the initiation agreement), that the Department of Education had not still prepared the protocol which explains what data can be transferred (he pointed out in the statement of objections before the initiation agreement that the educational centers already had it at their disposal), and that they did not know that they were violating the regulations on data protection.

As explained by the instructor in the resolution proposal, it is the institute that is considered responsible for the treatment of its students' data and, therefore, who must guarantee that its treatment (which includes the communication or transfer of data) conforms to the principles established in Article 5 of the RGPD.

Among these principles, the one of data minimization (art. 5.1.c RGPD) is particularly relevant, which means that the data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In other words, only those personal data that are necessary to achieve the intended purpose can be processed.

For its part, recital 39 of the RGPD determines that personal data must only be processed if the purpose of the processing cannot reasonably be achieved by other means. Therefore, if the purpose pursued can reasonably be achieved without processing personal data, this route will have to be chosen.

That being the case, it is up to the person in charge of the treatment (the institute) to assess, prior to the communication of data, whether or not the request for personal data complies with the principle of minimization, taking into account the terms in which is formulated. And, if necessary, request additional information from the assignee (in this case, the UdL) in order to carry out this assessment.

At this point, it must be emphasized that the legality of the treatment (principle that is not considered violated) does not exempt the person in charge of the treatment from complying with the rest of the principles provided for by the RGPD, among which, that of data minimization.

As it has been explained in the background, the motivation given by the research group to the institutes in order to communicate certain data of the students was to be able to organize to carry out the survey (specifically, to know the number of questionnaires of each type - there were two depending on whether the students were indigenous or of immigrant origin - which had to be taken on the day the survey was carried out), a purpose that could have been achieved by reporting only the number of students who had to participate in the study and how many of these were of native or immigrant origin.

To all this, it must be added that according to the UdL research group, the data would be treated anonymously, so that this circumstance allowed us to infer that it was not necessary to provide any personal data of the students who could potentially participate in the study.

On the other hand, it was also not necessary to provide the students' data for the second phase of the project (interviews with certain students) prior to the survey, since the students could express their refusal (the day on which the the survey) to participate in the aforementioned project.

In short, as stated by the instructor in the resolution proposal, the communication of data to the UdL research group before the face-to-face survey was carried out in the institute's premises was not necessary to achieve the purpose of purported research and was therefore contrary to the principle of data minimization.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.c) of the RGPD, which regulates the principle of data minimization determining that the personal data will be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated".

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 infringement provided for in article 83.5.a) of the RGPD, has been duly proven. which typifies the violation of the "basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which the principle of minimization is contemplated.

The conduct addressed here has been included as a very serious infringement in article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter , LOPDGDD), in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

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".

However, as the instructing person explained in the resolution proposal, the adoption of any corrective measures should not be required to correct the effects of the infringement, since it is an isolated and already consummated event.

For all this, I resolve:

1. Admonish the institute (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), 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 the institute of this resolution.

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 what they provide

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,