

## File identification

Resolution of sanctioning procedure no. PS 75/2020, referring to the Housing Agency of Catalonia.

## Background

1. On 07/05/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint on the grounds of an alleged breach of the regulations on personal data protection. In particular, the complainant explained that he accessed his folder of the Virtual Office of Procedures of the Generalitat de Catalunya (hereafter, OVT) by means of an electronic certificate, in which he detected that there was a "Request of habitability certificates for second occupancy due to renovations" drawn up by a third party (file no. (...), referring to the property located at "Carrer (...), 7 2 2, Barcelona (08017), Barcelona, Spain"), but which contained his ID.
2. The Authority opened a preliminary information phase (no. IP 143/2019), 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 06/29/2020, the General Directorate of Citizen Service of the Department of the Vice-Presidency and of the Economy and Finance (hereinafter, DGAC) was requested to issue a report on the responsible entity in charge of managing the OVT procedure with ID number "(...)" and on whether the procedures that are viewed through the OVT are linked to a certain person based on the ID number that the entity responsible for the procedure has indicated.

This report request was reiterated on 07/27/2020.

4. On 09/15/2020, the DGAC provided the requested report in which it set out, among others, the following:
  - That once the consultation of the procedure with identification "(...)" has been completed, the responsible entity competent to process the habitability certificates is the Catalan Housing Agency (henceforth, AHC).
  - That from the internal management platform of the responsible entity, the data of the procedure and the different management of the processing are recorded in the GSIT platform. The relevant documentation is also attached so that citizens can follow up on all their actions. When the person concerned, once identified, accesses

the citizen folder, the system searches for all the procedures that have information about the identification document that the person used to identify himself.

- For the specific case in respect of which information was requested, from the AHC's internal management tool, the corresponding notes were made of the processing of the certificate and the issued application slip was attached by the AHC. The file followed its course until the certificate was granted, which was also deposited in the citizen folder.
- That according to the receipt, the request was submitted by a person with NIF "36xxxxxx".
- That at GSIT the note was made against the folder of a person with NIF "46xxxxxx".
- That at the time of making the note in the folder, in all probability an incorrect NIF was indicated from the AHC, and for this reason at GSIT the file was associated with the wrong person.

The DGAC specified that the information had been drawn up in collaboration with the Directorate General of Digital Administration of the Department of Digital Policies and Administration public

5. On 09/29/2020, also during this preliminary information phase, the AHC was required to report on the reasons why the DNI of the reporting person was linked to a single request made by a third person; as well as in order to specify whether any action had been taken to ensure that the personal data referred to the disputed request were correct.

The AHC did not respond to the previous request within the time limit granted for the purpose (10 working days).

6. By official letter of 02/11/2020, notified on the same date, the previous requirement was reiterated to the AHC. In this office, the AHC was warned that if it did not comply with the same, it could incur an infringement of the regulations on the protection of personal data.

The deadline granted in this last office (5 working days) was exceeded, without the AHC responding to the information requested by the Authority.

7. On 11/12/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the AHC for an alleged violation provided for in article 83.5.a), in relation to article 5.1.d); all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, 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 AHC on 11/12/2020.

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 its interests.

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

proven facts

The AHC treated inaccurately the data relating to the DNI of the person who had made a request for habitability certificates (file no. (...), associating the request (and it is inferred that also the file) to the DNI of the person making the complaint.

This led to the person reporting here, who was unrelated to said request, being able to access information linked to that request, such as the name and surname and postal address of the applicant.

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. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the accused entity has not made allegations in the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. The conduct described in the apparatus of proven facts violates the principles of accuracy (art. 5.1.d RGPD) and data confidentiality (art. 5.1.f RGPD).

Firstly, article 5.1.d) of the RGPD regulates the principle of accuracy establishing that personal data will be "exact and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed".

And, secondly, article 5.1.f) of the RGPD regulates the principle of confidentiality determining that personal data will be "treated in such a way as to guarantee an adequate security of personal data, including protection against treatment unauthorized or illegal and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures".

For its part, article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) has regulated the duty of confidentiality in the following terms:

"1. Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or person in charge of the treatment has ended."

During the processing of this procedure, the fact described in the proven facts section, which is constitutive of an infringement provided for in article 83.5.a) in relation to articles 5.1.d), has been duly proven. and also, of an infringement provided for in the same article 83.5.a) in relation to article 5.1.f); all of them from the RGPD.

Article 83.5.a) of the RGPD, typifies as an infringement, the violation of the "basic principles of the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which they contemplate both the principle of accuracy (art. 5.1.d RGPD), and the principle of confidentiality (art. 5.1.f RGPD).

For their part, these behaviors have also been included as a very serious infringement in articles 72.1.a) and 72.1.i) of the 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. (...)
- i) The violation of the duty of confidentiality established in article 5 of this Organic Law."

In the present case, it is considered that both offenses are linked in the sense that one of the offenses (the violation of the principle of accuracy) has led to the commission of the other (the violation of the principle of confidentiality).

In this sense, article 29.5 of the LRJSP provides that "When the commission of one offense necessarily leads to the commission of another or others, only the penalty corresponding to the most serious offense committed must be imposed ."

In the present case, in which the two offenses committed are provided for in article 83.5.a) of the RGPD (which refers to both the violation of the principle of accuracy and the principle of confidentiality), the conduct described in proven facts, due to their connection, only the violation of the principle of accuracy should be sanctioned, given that the violation of the confidentiality principle would be a consequence of the first violation.

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".

By virtue of this power, it is necessary to require the AHC to carry out the actions as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of this resolution necessary to detach the DNI of the reporting person from file no. (...), so that information linked to said file can no longer be accessed through the citizen folder of the OVT of the reporting person.

Once the corrective measure described has been adopted, within the period indicated, the AHC must inform the Authority within the following 10 days, without prejudice to the Authority's inspection powers to carry out the corresponding checks .

For all this, I resolve:

1. Admonish the Catalan Housing Agency as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.d), both of the RGPD.
2. Require the AHC to adopt the corrective measures indicated in the 4th legal basis and certify to this Authority the actions taken to comply with them.
3. Notify this resolution to the AHC.

4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

5. 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,