

File identification

Resolution of sanctioning procedure no. PS 77/2020, referring to the Department of the Vice-Presidency and of Economy and Finance

Background

1. On 17/10/2019, they had access to the Catalan Data Protection Authority three letters by which three public workers of the Department of Work, Social Affairs and Families, formulated the same complaint regarding the operation of the Grants and Subsidies Processor (hereinafter, TAIS), on the grounds of an alleged breach of the regulations on the protection of personal data. Specifically, the object of the complaint of the three complaints, which were not addressed to any specific department of the Government of the Generalitat, was the inclusion in the TAIS of the relative data of the DNI, together with the name and surnames, of the public workers who use the application, so that "any person who is registered with TAIS can see the IDs of everyone else."

2. The Authority opened a preliminary information phase corresponding to each complaint (no. IP 279/2019, no. IP 280/2019 and no. IP 289/2019), in accordance with the provisions of the article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applicable 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 the public administrations (henceforth, LPAC), to determine if the facts 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 11/11/2019 a request was sent to the Department of Digital Policies and Public Administration (hereinafter, PDAP Department), to confirm whether, indeed, the TAIS corporate application, allows all public workers who work with this application to view the first and last names and ID of the other public workers who are registered in this corporate application. In the event of an affirmative answer, it was required to state the reasons that would justify the need for all public workers who work with the TAIS to have access, in addition to the first and last names, to the DNI of the other public workers who are users of TAIS.

4. On 11/25/2019, the Department of PDAD responded to the aforementioned request, and although, in its response, it indicated that the Department promoting and responsible for the TAIS was, in this case, the Department of the Vice Presidency and of Economy and Finance (henceforth, VEH Department), this fact did not prevent him from being able to answer the required questions, through a written statement in which he set out the following:

- That "This application does not allow all the public workers who work with it to view the first and last names and ID of the other public workers who are registered in this application".
- That "on the date of presentation of the complaint, what did allow is that all public workers who worked in a specific call for aid or subsidies managed through the application view the first and last names and ID of the rest of workers who worked in that specific call. That is to say, it only allowed to see that information among the workers participating in the same call".
- That "following the realization of this situation, at the behest of the promoter of the application, it was decided to make the necessary changes in the application to prevent it. In this way, (...), on November 19, the mentioned personal information stopped being displayed".
- That "the functionality that allows assigning users to manage calls from a department must simply provide the knowledge of the person, it was considered that the name is sufficient, and for this reason it has been corrected (...), with which the DNI is no longer displayed, subject to approval by the promoter".

5. On 11/09/2020, also during this preliminary information phase, the Authority's Inspection Area addressed a request to the VEH Department, in which it was required, among others, to confirm if, as the PDAD Department had indicated, from 19/11/2019, the workers' ID number was no longer displayed in the TAIS.

6. On 12/14/2020, the VEH Department responded to the aforementioned request, through a letter in which it stated the following:

- That "The operation of the platform as of 10/17/2019 effectively allowed the persons registered with the administration functions of a certain grant call to know the identity of other administrators of the same call or even different calls. Among the identity data accessible at that time was the DNI."
- That "it is concluded that there is no need for the public workers who administer a certain call to have access to the entire ID number of the rest of the system's users".
- That "as of 19/11/2019, an evolution has been implemented in the platform that prevents the ID of managing users and other people with certain roles within the call from being seen. On this screen, the only personal data visible to other users are the first and last name. However, it should be noted that people who have been assigned administrator roles still have access to the entire number of

ID of the users of the tool based on a specific search that is used, for example, when you want to assign new permissions to users”.

7. On 15/12/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Department of VEH for an alleged violation provided for in article 83.5.a) in relation to article 5.1.c), all of them of 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 of these (hereinafter, RGPD). Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file.

This initiation agreement was notified to the imputed entity on 12/21/2020.

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 passed and no objections have been submitted.

proven facts

The Department of VEH, for an indeterminate period, but which in any case included 17/10/2019 (the date on which the complaints are submitted), incorporated the data relating to the ID number, together with the name and surname, into the TAIS , to identify the public workers in charge of the electronic processing of grant management files, this data being accessible to any other person who worked on the same call for aid and/or subsidies, or even for a call different

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. In relation to the facts described in the proven facts section, it is necessary to refer to article 5 of the RGPD, which refers to the principles relating to treatment, and section 1, letter c), provides the following: "1. The personal data will be: adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (minimization of data)”.

In accordance with this principle of minimization, the data of public workers included in the TAIS must be the minimum necessary to fulfill the intended purpose. In this way, given that the purpose for which the personal data of public workers is included in the TAIS, identifying them as managing users in the electronic processing of a certain call for aid or subsidies, can be achieved without need to carry out the processing of the data relating to the DNI, and without this purpose being altered or harmed, it would not be necessary to incorporate this personal data, as it seems to have been chosen since 19/11/2019. Thus, access to the data relating to the ID of TAIS users has been limited to those people who perform the "role of administrators" within the application, due to the exercise of the functions they perform within the application.

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies as such the violation of "the basic principles for treatment (...)".

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: "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, if necessary, the initiation of disciplinary actions in accordance with what is established by the current legislation on the disciplinary regime of personnel in the service of the administrations

public 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".

In the present case, it becomes unnecessary to require corrective measures for the effects of the infringement, given that the entity has already implemented a corrective measure that is considered sufficient and appropriate to prevent any person who works as a user in a call for subsidies or aid through the TAIS, can have access to the DNI data of the other users, limiting this access to users who develop the "role of administrators" within the application due to the exercise of their functions.

For all this, I resolve:

1. Admonish the Department of the Vice-Presidency and of Economy and Finance, 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 legal basis 4rt.

2. Notify this resolution to the Department of the Vice Presidency and of Economy and Finance

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,

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