

File identification

Resolution of sanctioning procedure no. PS 14/2021, referring to the Department of Work, Social Affairs and Families of the Generalitat of Catalonia.

Background

1. On 12/05/2020, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Department of Work, Social Affairs and Families of the Generalitat of Catalonia (hereinafter, the TSF Department), due to an alleged breach of the regulations on personal data protection. Specifically, the complainant explained that he requested the extraordinary benefit for basic supplies "to be able to survive". He added that "I am totally grateful to the department but what I did not expect was that my personal data would be published with thousands of applicants like me". The complainant provided various documentation.

In accordance with Decree-Law 14/2020, of April 28 (hereinafter, DL 14/2020), the benefit requested by the complainant was intended to facilitate the acquisition of food products, pharmacy and other basic supplies (article 3) and was granted through the non-competitive competition procedure (article 5.1).

2. The Authority opened a preliminary information phase (no. IP 138/2020), 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.

3. In this information phase, on 05/14/2020 the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, the following was established, among others:

- That through the website of the TSF Department it was possible to access the content of the resolutions granting emergency provision for basic supplies for people affected by the crisis situation caused by COVID-19 ((...)), issued between 05/04/2020 and 05/13/2020.
- That the "RESOLUTION GRANTING THE EXTRAORDINARY BENEFIT FOR BASIC SUPPLIES, CALL TSF/916/2020, OF APRIL 28 (DOGC no. 8123) was published on the notice board of the Generalitat de Catalunya. REQUESTS WITH DIGITAL CERTIFICATE", which incorporated the data of the person reporting ((...)). In that resolution the following information about the beneficiaries was published: file code, NIF of the applicant (the numbers

4 to 7 of the NIF), the name and surname of the applicant and the amount of the benefit. The exhibition period of said advertisement was "From 04/05/2020 to 12/06/2020 (both included)".

4. On 06/04/2020, also during this preliminary information phase, the reported entity was required to inform, among others, whether the purpose of publishing the resolutions of granting of said benefit on the notice board of the Generalitat de Catalunya was the notification of the resolution to the interested persons or if it also had as its purpose the general knowledge on the part of the entire population; the specific legal basis that would legitimize the publication of the applicant's data through the notice board of the Generalitat de Catalunya; the reasons why the provisions of article 46 of the LPAC were not considered applicable; and if for transparency purposes the benefits granted had been published.

5. On 06/13/2020, the TSF Department responded to the aforementioned request in writing in which it stated the following:

- That through DL 14/2020 (art. 3) the extraordinary provision for basic supplies was created, in the form of extraordinary aid for the economic sustainability of families in Catalonia, for an amount of 200 euros, paid unique, with the aim of facilitating the acquisition of food products, pharmacy and other basic supplies.
- That the purpose of the provision was to alleviate the situation of material need and of vulnerability of people living in Catalonia.
- That in point 13 of Resolution TSF/916/2020, of April 28, which approved the call for the extraordinary provision for basic supplies (hereinafter, Resolution TSF/916/2020) it was indicated that once the applications have been reviewed, and after the verification of the access requirements, within seven working days from the entry of the application, a decision granting or denial of extraordinary benefits for basic supplies.
- That the resolutions approving this provision were not published once completed the exposure period.
- That, of the 100,000 requests resolved favorably, 16,189 corresponded to people who had requested the benefit with the specific form for people who did not have any electronic signature mechanism.
- That in the different approving resolutions of these 16,189 requests, the interested person was informed that he had 3 working days to provide the documentation indicated in point 8 of Resolution TSF/916/2020, in order to accredit your identity and bank ownership, prior to the payment of the benefit.
- That in point 13 of Resolution TSF/916/2020, it was indicated that the resolution granting the benefit had to be notified through its publication on the Electronic Board of the Administration of the Generalitat of Catalonia (<http://tauler.gencat.cat>), notwithstanding that other electronic means are additionally used; that this publication replaced the individual notification and had the same effects, which was accepted by submitting the application for the benefit.

- That the approval resolutions published on the Notice Board state, for each beneficiary, the file number, 4 digits of the identity document, the first and last name, the amount of the benefit and whether the payment was conditional or not on the provision of the documentation indicated in point 8 of the call.
- That the purpose of the publication of the resolutions granting said benefit on the Notice Board, which contained the data of the people who had requested it, was only the notification of the resolution to the interested persons, in order for them to be aware that an administrative act had been issued that affected them and given the exceptional situation of a state of alarm, with the impossibility of making the notification on paper.
- That the legal basis that would legitimize the publication of applicant data through the Notice Board was in the LPAC and Royal Decree 463/2020, of March 14, which declared the state of alarm for the management of the health crisis caused by COVID-19.
- That the Department considered that the identification carried out through the first and last name followed by 4 digits of the identity document achieved a more facilitating identification for the person, than limiting to publishing on the Notice Board a succinct indication of the content of the act and the place where the interested parties could appear, within the period that was established, to know the full content of the mentioned act and to record this knowledge, precisely because of the state of alarm. Many of these people only had 3 working days to prove their identity and bank ownership, prior to the payment of the benefit, and if they did not do so, the person was considered to have given up their request.
- That despite the publication on the Notice Board of the resolutions, the 012 and telephone numbers enabled for inquiries were overwhelmed by the huge number of calls from people who did not know how to find or download the Resolution and therefore did not know if they had granted the aid or if they had to prove their identity and bank ownership, with the anxiety that this meant for them.
- That for this reason a search engine was enabled on the Department's website where people, by entering the initials of their first and last names and 4 digits of the supporting document, could find out if the benefit had been granted and, in this case, if it was necessary or not present the documentation proving the identity and ownership of the bank account.
- That the publication of the search engine on the Department's website (...) responded, first of all, to providing aid applicants with a new place to search and find out the status of their processing, but preserving the identity of these people, and at the same time it served to achieve the purpose of publicity and transparency established in the Transparency Law.
- That the following information about the beneficiaries of the benefit was published on the aforementioned website: file code, 4 digits of the person's identifier, initials of the applicant, amount of the benefit, whether it was necessary or not the provision of documentation prior to the payment of the benefit. In this publication, the identity of the beneficiaries had been preserved.

6. On 01/02/2021, also during this preliminary information phase, the Authority's Inspection Area accessed the website "(...)" (transparency portal) which indicated the Department

TSF in its written response to the request for information, where it was found that the list of the 100,374 beneficiaries of the emergency provision for basic supplies in the context of the crisis caused by Covid-19 was published. The following information was published for each person: file code, NIF of the applicant (only positions 4 to 7 of the NIF), initials of the applicant, amount and comments (if the provision of documentation was necessary).

On the other hand, the website of the TSF Department was also accessed where the resolutions awarding said benefit (...) could be consulted. It was found that the content of said resolutions could no longer be accessed since the respective announcements on the Generalitat de Catalunya notice board had been removed.

7. On 04/03/2021, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the TSF Department for an alleged infringement provided for in article 83.5.a), in relation to articles 5.1 .a) and 6.1; 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 03/09/2021.

8. On 03/24/2021, the TSF Department made objections to the initiation agreement.

9. On 04/16/2021, 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 TSF Department as responsible for an infringement provided for in article 83.5.a) in relation to articles 5.1.a) and 6.1, all of them of the RGPD.

This resolution proposal was notified on 04/16/2021 and a period of 10 days was granted to formulate allegations.

The deadline has passed and no objections have been submitted.

proven facts

The TSF Department published, through the edict board of the Generalitat de Catalunya (which was accessible through the Department's website), the resolutions granting the extraordinary provision for basic supplies in the context of the crisis caused by the COVID19 (call TSF/916/2020, of April 28), granted for reasons of social vulnerability. In these resolutions, the beneficiary persons were identified through their first and last names and 4 digits of the DNI or equivalent.

In turn, the Department published on the Transparency Portal (...) the list of the 100,374 beneficiaries of the emergency provision for basic supplies,

identified through the initials of their first and last names and positions 4 to 7 of their DNI or equivalent.

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 exceptional circumstances.

In its statement of objections to the initiation agreement, the TSF Department explained that in a few days the extraordinary provision for basic supplies was granted to 100,000 people out of the 100,845 applications submitted, of which 16,189 they corresponded to people who had requested the benefit with the specific form for people who did not have any electronic signature mechanism. He added that in relation to these 16,189 requests, it was communicated both in the resolution itself, and in other information published on the Tràmits Gencat website, that the interested person had 3 working days to prove his identity and bank ownership and that if you do not do so within the established period, you will be considered to have given up your request. However, it indicated that the Department contacted this group that was pending the provision of documentation in order to remind them of this fact and explain in a close manner how they had to present this required documentation.

The TSF Department also added that the staff in charge of solving requests for the extraordinary benefit, "we have also been affected by the extraordinary situation resulting from the health crisis situation generated by the COVID-19 and the state of alarm by RD 463/2020". Likewise, he pointed out that "despite being very aware of the regulations in force in matter of data protection, we have prioritized making it as easy as possible for citizens, in an exceptional situation, to be able to locate themselves within the resolutions as soon as possible, given that they only had 3 days to prove their identity and bank ownership, a necessary condition to be able to collect the benefit."

In relation to these allegations, as explained by the investigating person in the resolution proposal, it should be noted that neither the exceptional or extraordinary circumstances invoked by the TSF Department, nor the declaration of the state of alarm, led to the suspension of the fundamental right to the protection of personal data.

So things are, the publication of the data relating to the beneficiaries of the extraordinary provision for basic supplies in the context of the crisis caused by the COVID19, granted for reasons of social vulnerability, required the concurrence of a legal basis that legitimizes this treatment. In the present case, none of the cases that provide for the publication of administrative acts in accordance with article 45 of the LPAC were met.

And in the specific case of subsidies and public aid granted for reasons of social vulnerability, the transparency regulations expressly provide that the identity of the beneficiaries must be preserved (art. 15.1.c of Law 19/2014, of December 29, of transparency, access to public information and good governance - henceforth, LTC-). In similar terms, the sectoral regulations on subsidies are also pronounced (art. 20.8.b of Law 38/2003, of 17 November, general subsidies - henceforth, LGS-).

2.2. About the measures taken.

Subsequently, the accused entity alleged in its statement of objections to the initiation agreement that the search engine had unpublished on its website; that the period of public display of the resolutions on the e-Board (electronic bulletin board) has already ended; that it was no longer possible to access the content of the resolutions on the Department's website (which linked to the notice board); and that in the Register of Subsidies and Aids (RAISC) the field "Identification of the identity of the beneficiaries in accordance with LO 1/1982" was listed as "NOT PUBLISHABLE", and therefore, that the data of the natural persons in the RAISC.

Well, it is necessary to point out that the adoption of measures to correct the effects of infringements on one's own initiative, does not distort the facts imputed as an infringement, nor does it change its legal classification.

Having said that, the circumstances and actions set out by the Department in its statement of objections to the initiation agreement (which are certified), do mean that it becomes unnecessary to propose that measures be adopted to correct the effects of the infringement.

3. In relation to the facts described in the proven facts section, it is necessary to go to the principle of legality. Article 5.1.a) of the RGPD regulates the principle of legality determining that the data will be "treated in a lawful manner (...)".

For its part, article 6.1 of the RGPD provides for the following:

"1. The treatment will only be lawful if at least one of the following conditions is met:

a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;

b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;

c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;

d) the treatment is necessary to protect the vital interests of the interested party or another natural person;

e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;

f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."

In relation to the publication of administrative acts, article 45.1 of the LPAC establishes the following:

"1. The administrative acts must be published when the regulatory rules of each procedure establish it or when it is recommended by reasons of public interest appreciated by the competent body.

In any case, administrative acts must be published, and this has the effects of notification in the following cases:

a) When the act is addressed to an indeterminate plurality of people or when the Administration considers that the notification made to a single interested party is insufficient to guarantee the notification to all, and in the latter case it is additional to the one made individually.

b) When it comes to acts that are part of a selective procedure or competitive competition of any kind. In this case, the call for the procedure must indicate the medium in which the successive publications will be carried out, and those carried out in different places are not valid."

As has been advanced, none of the assumptions that provide for the publication of administrative acts are met, given that the addressees of the resolution in question were determined and the procedure was not competitive. And, in any case, the provisions of article 46 of the LPAC were also not followed regarding the notifications and publications of acts that may injure rights or legitimate interests, and which determines that:

"If the competent body deems that the notification through announcements or the publication of an act infringes rights or legitimate interests, it must be limited to

publish in the corresponding official newspaper a succinct indication of the content of the act and the place where the interested parties can appear, within the period established, to learn the full content of the aforementioned act and to record this knowledge.

Additionally, and on an optional basis, the administrations can establish other complementary forms of notification through the rest of the media, which do not exclude the obligation to publish in the corresponding official newspaper."

In turn, additional provision 7a of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD) establishes that "When it comes to notification by means of advertisements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, the affected party must be identified exclusively through the number full copy of your national identity document, alien identity number, passport or an equivalent document. (...)"

Apart from the above, article 15.1.c) of the LTC determines that, in the subsidized activity, the following information must be published:

"1. The information relating to subsidies and public aid that the obliged entities must make public in application of the principle of transparency must include:

(...)

c) Subsidies and public aid granted, with an indication of the amount, the purpose and the beneficiaries. This information must include grants and aid, must be up-to-date and must refer to the last five years.

It must also include subsidies and grants awarded without advertising and competition if these requirements have been exempted, in the cases established by law. In the case of subsidies and public aid granted for reasons of social vulnerability, the identity of the beneficiaries must be preserved."

Likewise, article 20.2 of the LGS, regarding the National Subsidy Database (BDNS), establishes that:

"2. The database must collect information from the grants; the inclusion of other aid can be established by regulation when its registration contributes to the purposes of the database, to compliance with the requirements of the European Union or to the coordination of international cooperation policies and other public promotion policies.

The content of the database must include, at least, reference to the regulatory bases of the grant, call, program and budget credit to which they are attributed, the object or purpose of the grant, the identification of the beneficiaries, the amount of grants awarded i

effectively received, the reinstatement resolutions and the sanctions imposed. (...)"

And section 8.b) of the same article 20 of the LGS, states that:

"8. In application of the principles contained in Law 19/2013, of December 9, on transparency, access to public information and good governance, the BDNS must operate as a national system for advertising subsidies. For these purposes, and to guarantee the right of citizens to know all the subsidies called at any time and to contribute to the principles of publicity and transparency, the General Intervention of the State Administration must publish on its website the following contents:

(...)

b) the grants granted; for its publication, the granting administrations must send the grants granted to the national database of grants, with indication, according to each case, of the call, the program and budget credit to which they are imputed, the beneficiary, (...). Grants awarded must not be published when the publication of the beneficiary's data due to the purpose of the grant may be contrary to the respect and safeguarding of the honor, personal or family privacy of the natural persons in by virtue of what is established in Organic Law 1/1982, of May 5, on civil protection of the right to honor, personal and family privacy and one's image, and has been provided for in its regulatory regulations. The processing of personal data can only be carried out if it is necessary to satisfy the legitimate interest pursued by the data controller or by the third party or third parties to whom the data is communicated, provided that the interest or rights and fundamental freedoms of the interested party that require protection in accordance with the article

1.1 of Directive 95/46/EC."

During the processing of this procedure, the facts described in the proven facts section have been duly proven, which are constitutive of the violation provided for in article 83.5.a) of the RGPD, 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 is the principle of legality.

The conduct addressed here has been included as a very serious infraction in article 72.1.b) of the LOPDGDD, in the following form:

"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."

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".

As indicated by the instructing person in the resolution proposal, in the present case no corrective measures should be required, given that it is proven that the TSF Department no longer keeps published any data on the beneficiaries of the extraordinary benefit for basic supplies.

For all this, I resolve:

1. Admonish the Department of Work, Social Affairs and Families of the Generalitat of Catalonia as responsible for an infringement provided for in article 83.5.a) in relation to articles 5.1.a) and 6.1, all of them 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 TSF Department.

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,