

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 17/2021, referring to the School (...) of the Department of Education

Background

1. On 02/02/2020, the Catalan Data Protection Authority received a letter from a person filing a complaint against the School (...) of the Department of Education (hereinafter, the School), located in the municipality of (...), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant stated that on the school's website, two documents, issued on 28/01/2020, entitled "Certificate of the agreements that have been taken in the School Council", relating to the meetings held on 14/10/2019 and 27/01/2020, in which the person making the complaint was identified by first and last name as a representative of the parents of the students of the school. In this regard, the complainant provided, among other attached documentation, a copy of both certificates, which would have been published on the School's website on 01/29/2020, and which included the Next:

- "I certify:
That at the school council meeting, dated 14.10.2019, the following agreements were taken:

Agreements:
(...)
4. The annual plan is approved by absolute majority with the vote against Mr(...)(...)
who has requested that his name and the meaning of his vote be recorded in the minutes.
5. The modifications of the NOFC presented by the President are approved by an absolute majority with
the vote against Mr. (...)(...) who has requested that his name and the meaning of his vote be recorded in
the minutes ."
- "I certify:
That at the school council meeting, dated 27.01.2020, it was reported that:
(...)
Agreements made:
(...)

2. The Management proposal for the 2020 budget is approved. The result of the vote is positive by majority with the vote against Mr(...)(...), representative of the parent sector and mothers who requested that their name and the meaning of their vote be recorded in the minutes. The budget is published on the school's website."

2. The Authority opened a preliminary information phase (no. IP 46/2020), 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 02/10/2020, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported.

In this regard, diligence was done to record that it was indeed possible access the two documents called "Certificate of the agreements that have been taken in the school council" (14/10/2019 and 27/01/2020), publicly published on the school's website. These documents included the name and first surname of the person making the complaint as representative of the parents of the school, as well as the meaning of their vote. In the "Certificate of the agreements that have been taken in the school council", relating to the meeting of 01/27/2020, there was also the participation of another person other than the complainant here, to whom they refer to it in more generic terms like "a member of the School Board".

4. On 10/02/2020, the reported entity was required to report on the legal basis that would legitimize the processing of personal data carried out with the publication on the internet of the two controversial "Certificates of the agreements that have been taken in the school council".

Likewise, he was required to report on the reasons why, in the publication of the certificate relating to the school council meeting of 01/27/2020, there is a different treatment of the personal data of the person reporting here, which it is identified through its first and last name, and the identification of another member of the collegiate body, referred to in general terms as "a member of the School Council".

5. On 02/20/2020, the School responded to the aforementioned request in writing in which it stated the following:

according to the publication of the agreements of the School Council of the Center on the Àgora portal,

- That "the agreements referred to in the letter from the Catalan Protection Authority of Data (October 14, 2019 and January 27, 2020) appear published on the portal

Agora and, in the reference made to its content, the name of Mr. (...) appears at his request, since he asked for it to be made clear, as well as the meaning of his vote, as is also included in the agreements themselves ."

The reported entity attached the following documentation to the letter:

- The two "Certificates of the agreements that have been taken in the school council", issued on 28/01/2020, relating to the meetings held on 14/10/2019 and 27/01/2020.
- The two minutes of the meetings of 14/10/2019 and 27/01/2020:

a) In the minutes of 14/10/2019, there is an account of how the session took place, and it is recorded the disagreement of the complainant here in relation to a series of decisions adopted, and the discussion between this and the representatives of the School's management in different matters dealt with. On this, it is recorded that, in concretely, in the debate on the "Amendment of the NOFC", "Mr(...) wants these feelings of the majority of the members of the faculty to be recorded in the minutes", and, in reference to the words of the president of the Council School about the possibility that the whistleblower will leave the meeting, that "Mr (...) expresses his wish that these words also be recorded in the minutes".

In the "Agreements" section, it is stated that: "4. The annual plan is approved by an absolute majority with the vote against Mr. (...)(...) who requested that it be recorded in the minutes his name and the meaning of his vote. 5. The modifications of the NOFC presented by the President are approved by an absolute majority with the vote against Mr. (...)(...) who has requested that his name and the meaning of his vote be recorded in the minutes ."

b) In the minutes of 01/27/2020, there is the account of how the session unfolds, and the only direct reference to Mr. (...)(...), apart from citing him as attending the meeting, it is in the "Agreements taken" section where it is indicated that: "The budget for the year 2020 is approved. The result of the vote is positive by majority with the vote against Mr. (...)(...), representative of the fathers and mothers sector who requested that his name and the meaning of his vote be recorded in the minutes. The budget is published on the school's website."

- Two letters dated 02/19/2020, in which it is stated that all the undersigned members of the school council (9 people) and present at the meetings of the days 14/10/2019 and 27/01/2020, testify that the complainant here "explicitly requested that his name be included in the minutes of the School Council, with the meaning of his vote".
- Copy of a letter entitled "Amendments to the minutes of the meeting of October 14, 2019", presented by a "member of the School Board for the families sector", in which a whole series of requests for amendments on the account of the facts contained in a

the minutes of the meeting of 14/10/2019. From the content of the letter, it is inferred that the complainant here is the person who presents it. Among the various amendments, there is one referring to the "unanimous approval of the Annual Plan", in which it is indicated that "I dispute the unanimity: it must, in any case, be by an absolute majority with my vote particular against" and "the management of the center refuses to publicize the price of the exits, and for the approval of these I vote no for this and other reasons. I request that this fact be recorded in the minutes, and that it was voted separately, and with the collection of votes in favor, abstentions and against."

- Copy of the letter, dated 01/21/2020, submitted by the complainant here in which he requests that, in relation to the School Council meeting scheduled for 01/27/2020, a series of questions relating to the operation of the centre, in the "Prayers and questions" section.

6. On 05/03/2020 and still within the framework of this preliminary information phase, the complainant submits a letter that complements his first letter of complaint. In said letter he explains that, following a meeting of the school council of the center, held on 03/04/2020, there was a debate about the difference between the personal data that can be collected in a record and those that could be published in a certificate of agreement.

In this regard, the complainant complained that according to the School "because I go to request that my opposition to vote "no" to different agreements taken by the minutes be recorded CEIP, it necessarily means that they have full rights to publish my name and surname on the web with certificates of agreement", and in this sense, he invoked the provisions of the "Documents for the organization and management of the centers, Transparency and access to the information", published by Department of Education, in which the following is indicated:

"It should be borne in mind that it is only necessary to specify the agreements taken at the meeting briefly and that they must be made public taking into account the protection of personal data. Therefore, no person's name and surname (or initials or ID number) should be specified in the agreements, nor in general any data that could lead to their personal identification directly."

The complainant attached a copy of the "Documents for the organization and management of the centers, Transparency and access to information", as well as the transcript of the conversation that day, in which, according to him, from the management from the center stated that "the certificate is a retraction of the minutes, and it was logical that it should be the same. But we understand that the difference can be made, that it is recorded in the minutes and not in the certificate, because it is a summary."

7. On 09/03/2021, the Authority carried out a series of checks on the internet, and found that in the two disputed certificates of school board agreements, relating to the agreements adopted at the meetings of 10/14/ 2019 and 27/01/2020, and published on the School's website, the name and surname of the person making the complaint have been deleted, and there is no information that could identify him.

(...)

8. On 11/03/2021, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the School (...) of the Department of Education for an alleged violation provided for in the 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 03/17/2021.

9. 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 their interests.

10. On 03/25/2021, the School made objections to the initiation agreement. The accused entity provided various documentation with its letter, including:

- copy of the certificate of the agreements adopted at the school council meeting of date 01/27/2020;
- copy of the letter dated 11/11/2019, presented by the complainant, requesting the issuance of the certificates of the meetings of 01/30/2019 and 10/14/2019, with the meaning of his vote ;
- copy of the School's letter of response to the person making the complaint, with departure registration date 27/11/2019, by means of which they send him the certificates of the school council's agreements of 30/01/2019 and 14/01/2019 /10/2019, where no personal data is contained. - copy of the letter dated 12/13/2019 from the complainant requesting the rectification of the certificates issued by the School and quantifying the votes in favor, against and abstentions of each agreement, and the meaning of their private vote on the certificate of the meeting of 01/30/2019.

11. On 06/05/2021, 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 School (...) of the Department of Education as being 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 on 11/05/2021 and a period of 10 days was granted to formulate allegations.

12. The deadline has passed and no objections have been submitted.

proven facts

The School (...) published on its website two documents, issued on 28/01/2020, entitled "Certificate of the agreements reached by the School Council", concerning at the meetings held in the school council on 14/10/2019 and 27/01/2020, in which the person making the complaint was identified by first and last name as a representative of the parents of the students of the 'school, together with the meaning of their vote, without having their consent or any other legal basis to match it.

These certificates of school board agreements, with the personal data of the complainant contained therein, were available on the School's website for an indeterminate time, but at least until 02/10/2020, date in which this Authority issued a document of record on this publication.

Currently, the personal data of the complainant have been deleted from the two controversial "Certificate of the agreements made by the School Council" documents.

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.

It is appropriate, first of all, to address the allegations made against the initiation agreement, which focused on defending that the publication on the School's website of the certificates of the agreements adopted by the school council, in which identified the person here denouncing through the first and last name, together with the meaning of his vote, was justified by the erroneous perception that the affected person would have given his consent, a perception generated by his own manifestations in the days before the publication

In this regard, the School explained that the complainant requested, by letter dated 11/11/2019, that the certificates of two of the school council meetings be issued as a matter of urgency, one of them the of 10/14/2019, and that in the same letter he also requested the "certificate of my private vote". Also, that when the School sent him by e-mail the said certificates of the school council meetings, which did not contain any personal data, the complainant expressed dissatisfaction with the content of the certificates, requesting, through an email, dated 12/13/2019, which contained the "quantification of votes in favor, against and abstentions for each agreement" and the "Sentence of my particular vote". This, along with the fact that at the meeting

of the school council dated 01/27/2020, the complainant expressed his desire that "his vote" be recorded in the minutes of the meeting and that "certificates of agreements be shared on the web", he brought to the School to interpret that the complainant wanted the certificates to include his name and surname and the meaning of his vote, and so they were published on the school's website on 01/29/2020.

The first thing to say is that the fact that the person making the complaint here expressed his desire to have his name and the meaning of his vote recorded in the minutes of the school council meetings - as can be inferred from the documentation provided by the complainant - does not constitute an authorization for the publication of these personal data in the certificates of the agreements that are then published publicly on the school's website.

In this regard, it should be remembered that a member of a collegiate body may have a special interest in having the meaning of his vote recorded in the minutes, bearing in mind that eventual responsibilities may arise from this, such as establishes article 17.6 of Law 40/2015, of October 1, on the legal regime of the public sector (hereinafter, LRJSP): "When the members of the body vote against or abstain, they are exempt of the responsibility that, if applicable, may derive from the agreements".

In relation to the School's allegations stating that from the writings presented by the person making the complaint the perception was derived that he also consented to the publication of the controversial certificates of the school council's agreements with his first and last name and meaning of his vote, it must be made clear that, as already indicated in the initiation agreement, with the terms in which these documents were drawn up, it could not be derived that such consent had been granted.

The definition of what must be understood as "consent of the interested party", is found in article 6.1. of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), as in article 4.11 of the RGPD, with the following terms: "any manifestation of free, specific, informed and unequivocal will by which he accepts, either through a declaration or a clear affirmative action, the processing of the personal data concerning him".

Well, in relation to the above, the complainant, in the letter dated 11/11/2019, literally requests: (a) the certificate of agreements of two meetings of the school council, one of them that of 14/10/2019, "with quantification of votes in favor, abstentions and against each agreement"; (b) "certificate of the meaning of my private vote"; (c) "urgency with the issuance of the certificate". Likewise, in the letter he sent by email on 13/12/2019, as a response to the certificates of the meetings that the School had sent him, he requests: (a) "quantification of votes in favor, against and abstentions from each agreement"; (b) "meaning of my particular vote, especially when the school council revalidates and increases the single quota, where I voted no (in the corresponding minutes it is written "absolute majority with one vote against), on January 30, 2019 ". Regarding this last request (b), it should be mentioned that it refers to the certificate of the school council meeting dated 01/30/2019, which would not form

part of the certificates that make up the proven facts, but, in any case, what he is demanding here is that the corresponding certificate, where it is said that the matter "single quota" has been approved by an absolute majority, be corrected and say that it was approved by an "absolute majority with one vote against".

This is the way things are, although it cannot be ruled out that the number of petitions and writings presented by the complainant on this subject may have generated some confusion at the School, the truth is that of the manifestations contained in the writings presented for the reporting person, it cannot be assumed that they are giving their consent, with the terms required by the LOPDGDD and the RGPD, for the publication of the certificates on the school website including their first and last names and the meaning of their vote, rather, that in the required certificates, the voting results of the agreements adopted at the school council meetings, with the calculation of abstentions, votes in favor and votes against.

In this regard, it should be noted that article 16.7 of the LRJSP foresees the possibility that the members of a collegiate body can request that a certification of their agreements be issued to them, and therefore, it is a right held by the interested party, without this implying consent for the publication of the certificate with their personal data.

Finally, add that in the guide published by the Department of Education of the "Documents for the organization and management of the centers, Transparency and access to information", with reference to the "certificates of the agreements that have been taken in the council escolar", it is already indicated that it is only necessary to specify the agreements made at the meeting briefly and that they must be made public taking into account the protection of personal data. Therefore, no person's name and surname (or initials or ID) should be specified in the agreements or in general any data that may lead to personal identification directly or indirectly.

In accordance with what has been set out, it is estimated that this allegation cannot succeed.

3. In relation to the facts described in the proven facts section, it is necessary to go to the article in article 5 of the RGPD, relating to the principles of treatment, which in its section 1 letter a), provides that personal data they must be treated "in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency").

In this sense, the RGPD provides that all processing of personal data must be lawful (article 5.1.a) and, in relation to this, establishes a system for legitimizing the processing of data which is based on the need for some of the legal bases established in its article 6.1.

In this respect, it should be noted that the publication on the School's website of the two documents entitled "Certificate of the agreements that have been taken in the Council School", relating to the meetings held in the school council on 14/10/2019 and 27/01/2020, in which the person making the complaint was identified through the

first and last name as a representative of the parents of the students of the school, together with the meaning of their vote, was carried out without the consent of the affected person, and that this data processing would not be covered by any of the other authorizations provided for in article 6 of the RGPD, which, in turn, have not been invoked by the reported entity either.

During the processing of this procedure, the fact described in the proven facts section, which is considered 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 infraction in article 72.1.a) of the LOPDGDD, in the following form: "The treatment of personal data in violation of principles and guarantees established in article 5 of Regulation (EU) 2016/679", in relation to the principle of legality established in article 5.1.a) of the same RGPD.

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 appropriate measures to adopt because cease the conduct or correct the effects of the offense that has been committed.

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".

In the present case, it becomes unnecessary to require corrective measures for the effects of the infringement, given that the fact reported is a one-off event that, as was collected in the evidence diligence dated 02/10/2020, the personal data of the person

complainant have already been removed from the publication of the certificates on the School's website.

For all this, I resolve:

1. Admonish the School (...) of the Department of Education 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 4rt.

2. Notify this resolution to the School (...) of the Department of Education.

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,