

In this resolution, the mentions of the affected population 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 22/2021, referring to (...)

Background

1. On 06/29/2020, the Catalan Data Protection Authority received a letter in which a person (hereinafter, complainant) filed a complaint against (...) (hereinafter, (. ...)), due to an alleged breach of the regulations on personal data protection.

Specifically, the complainant stated that on (...) the Human Resources and Organization Area of (...) (...) sent an email to 57 people who, like her, were in a situation of unemployment, without using the hidden copy option, and therefore, the electronic address of all of them being legible. The subject of the mail was "Muface June 2020 confirmation notices", and the following was indicated in the body of the mail: "(...) We remind you that as of today we have not received the confirmation notices from your Muface's medical leave corresponding to the month of June 2020 (...)".

On 02/08/2021, the complainant provided, at the Authority's request, a copy of this email, as well as the email he sent to (...) on the same day as a result of this fact, and of the answer given by (...). In his email, the complainant stated that, contrary to what the (...) stated in his email, he had sent the corresponding cancellation notice before receiving the controversial email. At the same time, he also stated that, due to the fact that he had sent the mail without the blind copy option, he was receiving mail from these 57 people, which contained the respective termination notices attached. And in the last one, he complained that the (...) had revealed personal data of all of them, bearing in mind that health data is considered sensitive data. In the reply email, dated 06/26/2020, the (...) stated, among others, that: "at no time in the email was any sensitive information about you or the other teachers indicated, disease process".

2. The Authority opened a preliminary information phase (no. IP 176/2020), 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 were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 11/02/2021 the (...) was required to report, among other issues, on the reasons why in the aforementioned electronic submission it was not used the hidden copy option, as well as the legal basis that in his opinion legitimized this treatment. Also to point out if this procedure was a common practice, if they had any protocol or instruction on the use of e-mail, if the e-mail staff of the Human Resources and Organization Area

of (...) had participated in some formative activity on this matter, and if the (...) had received the termination notice from the person making the complaint before sending him the controversial email. This requirement was reiterated on 03/15/2021.

4. On 06/04/2021, the (...) responded to the aforementioned request in writing in which he set out the following:

- That "There is no legal justification on the basis of which the e-mail was sent with 57 e-mail addresses visible to everyone, instead of using the blind copy option. This is purely due to human error when pasting the email addresses, as this is a common submission that is always done via blind copy."
- That "There were actually 57 people and they were teaching staff. What we can affirm is that in (...) they did not have the corresponding medical reports recorded, it does not mean that they remained on sick leave at that time, since they could have been discharged but it had not reached us. Mails like this are sent when we are not aware of the corresponding notice, as they must be sent to MUFACE in order for the workers to cover the part that MUFACE pays them from the fourth month of medical leave. In all cases, except this one, the same message is sent, with the blind copy option."
- Regarding whether the (...) received the termination notice from the person making the complaint before sending him the email where he claimed it, that: "We cannot affirm that the communication had arrived earlier since, if it did arrive, it was not in the possession of the person dealing with the processing."
- That in the rest of the electronic dispatches issued by the Human Resources and Organization Area of (...) and of a nature similar to that which is the subject of the complaint, the hidden copy option is used.
- Regarding whether the (...) has any protocol or instruction on the use of email, which: "At the moment we do not have one, since following the pandemic, which meant a sudden confinement and the beginning of the massive use of the telework formula, to implement resolution: we are in the process <https://apdcat.gencat.cat/web/.content/012757166/normativa/documentos/>

- With regard to the implementation by the processing staff of the notices of termination of training activities on the use of email, that: "With the implementation of the previous resolution we plan to hold training sessions for the staff on the use of all the digital tools, but it hasn't given us time to complete it yet."

5. On 16/04/2021, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against (...) for an alleged infringement provided for in article 83.5.a), in relation in article 5.1.f), both 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 free circulation of these (hereafter, RGPD). This initiation agreement was notified to (...) on 04/20/2021.

6. In the initiation agreement, the (...) was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of tests that it considered convenient for defend their interests.

7. On 04/29/2021, the (...) made objections to the initiation agreement.

8. On 06/04/2021, the person instructing this procedure formulated a proposed resolution, by which it proposed that the director of the Catalan Data Protection Authority admonish (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1 .f), both of the RGPD.

This resolution proposal was notified on 07/06/2021 and a period of 10 days was granted to formulate allegations.

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

proven facts

The (...), through the email of the Human Resources and Organization Area ((...)), sent an email on 06/25/2020 to 57 recipients, all of them teaching staff of the Department of Education (or in any case also of public centers in (...), and that on that date they were or had been on medical leave). The subject of the mail was "Muface June 2020 confirmation notices", and the following was indicated in the body of the mail: "(...) We remind you that as of today we have not received the confirmation notices of your cancellation medical of Muface corresponding to the month of June 2020 (...)"

The email in question was sent without using the BCC tool or option, which allowed all recipients of the email to access the email address of the rest of the people to whom it was sent. the message was addressed to, and they knew the information relating to their work medical leave situation. At the same time, the fact that in this email these people were required to provide the statement of

confirmation of the medical leave to send it to MUFACE, indirectly revealed their status as career employees, who were mutual members of MUFACE, and that the occupational medical leave of all of them was for a duration of more than 3 months (over 90 days), for this to be the period from which MUFACE pays the allowance for temporary disability.

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 (...) has not formulated allegations in the resolution proposal, but he 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 the statement of objections, the (...) stated, in essence, that the sending of the mail without the blind copy option was due to "a specific human error, resulting from the conjunctural circumstances of the moment", and in particular, pointed out that the email was sent at the end of a school year, in which "there is a high incidence of communications" with the teaching staff, along with the fact that the people who managed "the incidents" they provided the service semi-presently, due to the covid-19 pandemic.

The allegations made by (...) do not have sufficient substance to discredit the offense that is being charged, and this is because, once the facts and statements made by (...) have been analyzed following the request for information from this Authority, it is considered that although the imputed facts, as stated, could be due to human error, the truth is that this error is not exclusively attributable to the singular circumstances derived from the covid-19 pandemic, as it is also intended to maintain, but to a treatment of personal data without the necessary diligence in the application of the technical and organizational measures necessary to guarantee the security of this data which, of course, should have been implemented before the dictation of Royal Decree 463/2020, of March 14, by which the state of alarm was decreed for the first time that will alter the working conditions of its staff.

This assessment is carried out taking into account that in the previous information phase the (...) recognized both the fact that it did not have specific protocols or instructions on the use of e-mail in the aboral field that it was respectful of the data protection regulations, such as the fact that it had not trained the people from (...) who process termination notices on this issue.

In this sense, the (...) pointed out that he was in the process of implementing Recommendation 1/2013 of the Authority, on the use of email in the workplace, as well as subsequently carrying out training courses to your staff. But such a manifestation is not sufficient to refute the considerations that are made here, since this Recommendation 1/2013 dates much earlier than the events committed (20/06/2020) and the labor situation resulting from the covid pandemic 19 (with effects on working conditions from March 2020), so that the (...) should have adopted the necessary measures beforehand.

This would explain that the person from the Human Resources and Organization Area of (...) who on 06/25/2020 sent the email without the blind copy option to 57 people, sent the following day an email from response to the complainant - who had complained about having disclosed his health data -, in which he stated that: "(...) at no time in the mail was any sensitive data of yours indicated, or of the other teachers, disease process", showing that he was unaware that he had disclosed health data.

In this regard, it should be remembered that Article 4, Section 15) of the RGPD defines health data as personal data relating to the physical or mental health of a natural person, including the provision of health care services, that reveal information about their state of health. Health data are part of the special categories of data (Art. 9 GDPR) and, as such, require special protection.

Based on the previous legal definition, it is indisputable that the controversial email sent without a blind copy to 57 people, including the complainant, referred to the health data of these people. Specifically, it contained information regarding the fact that the 57 people had been or continued to be on sick leave due to temporary disability. In addition, the fact that they were required to submit the medical leave notice to MUFACE automatically revealed that these people had been on leave from work for at least 90 days (3 months), so from this period MUFACE pays the allowance for temporary disability. And with this information, it was also indirectly revealed that these people had or had had a significant impact on their health, which required a long-term discharge process.

With regard to the qualification of the imputed facts, and especially in the assessment of the subjective element of the imputed offence, i.e. the concurrence of guilt, it must be taken into account that the email sent is part of a regular procedure, as the (...) has recognized ("this shipment is made every month of the year") and that, therefore, it was not a new procedure that began when the state of 'alarm' that affected the provision of the service, as well as the usual increase in the volume of cancellation notices in the same period of each school year. Equally, the statements of (...) are taken into account regarding the fact that the Area from which the mail without hidden copy was sent "manages a collective of approximately twelve thousand people", with the high risk what such a volume of data and treatments means for people's rights.

In accordance with all the above, it is considered that the set of allegations made by (...) do not distort the imputed facts or their legal qualification.

3. In relation to the conduct described in the proven facts section, regarding the sending of an email without using the blind copy option, it is necessary to refer to article 5.1.f) of the RGPD, which provides for the following:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee adequate security for personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures ("integrity and confidentiality").

This principle of confidentiality provided for by the RGPD must be supplemented with the duty of secrecy contained in Article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), which establishes the following:

"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."

Likewise, article 13 of the LPAC enumerates a catalog of rights of people in their relations with public administrations, in which the right "To the protection of personal data" is expressly included in letter h) , and in particular to the security and confidentiality of the data contained in the files, systems and applications of public administrations".

During the processing of this procedure, the imputed facts have been duly proven, taking into account the mails provided by the person reporting to the Authority, as well as the recognition by the (...) of sending the mail without hidden copy and the set of manifestations he has made.

These proven facts are constitutive of an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as such the violation of the "principios básicos para el tratamiento, including the conditions for the consent to the tenor of the articles 5, 6, 7 and 9". With the particularity that the information relating to the situation of leave due to temporary incapacity is health data, and therefore forms part of the special categories of personal data (art. 9 RGPD), which deserve special protection. And the allegations made by (...) cannot detract from his imputation, for the reasons indicated in the second legal basis.

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form: "i) The violation of the duty of confidentiality established by article 5 of this Organic Law". From the perspective of the processing of health data, it has also been collected as a very serious infringement in article 72.1.e) LOPDGDD, as follows: e) The processing of personal data of the categories referred to in "article 9 of Regulation (EU) 2016/679, without any of the circumstances provided for in said provision and in article 9 of this organic law."

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 sanctioning them with a warning.

The resolution must also establish the appropriate measures to be adopted so that the conduct ceases or the effects of the offense that has been committed are corrected (...)"

In similar terms to the LOPDGDD, article 21.2 of Law 32/2010, determines that: "In the case of infractions committed in relation to publicly owned files, the director of the Catalan Authority for the Protection of Data must issue a resolution declaring the infringement and establishing the measures to be adopted to correct its effects (...)"

In the present case, in the statement of objections to the initiation agreement, the (...) referred to the adoption of training and technical measures, specifically, he noted the following :

"As a result of the communication by the ACPD, on March 18, 2021, a training session was held on "The protection of personal data and the right of access to public documents" in order to remind the entire team of people from the Human Resources and Organization Area, the regulations, as well as the obligations and duties of all staff in relation to personal data.

As soon as this error became known, the following measures were taken:

- A meeting was held with all the staff in the area to clarify and reinforce the procedure
- The aforementioned training session was held for all the staff in the area, with the aim of raising awareness and updating the knowledge of everyone's obligations regarding the protection of personal data.
- The development of a robotic system was started to make these shipments more secure and to make the shipment via a secure channel viable.

Given the set of actions carried out, it is considered unnecessary to require the adoption of corrective measures. However, in order to reduce the risks inherent in this type of mass mailing, and, among others, that health data may end up being disclosed (which can happen if a person receiving a mass mail, responds using the "reply to everyone" option and send attached the medical leave notice, which all recipients of the mail would access), it is recommended that in this type of mail, in which

the sending of the medical leave notice or other documents or the provision of personal information is required, the (...) avoids the sending of mass mails (with a plurality of recipients), and instead send individual emails (addressed to a single person).

For all this, I resolve:

1. Admonish the (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), 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, without prejudice to the recommendation made in the same legal basis.

2. Notify this resolution to (...)

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,