

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 population, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 30/2021, referring to the AAA City Council.

Background

1. On 01/12/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against AAA City Council, on the grounds of an alleged breach of the regulations on protection of personal data. In particular, the complainant stated that the City Council had sent him several notifications to his parents' home (street (...) de AAA), although his home address was another (street (...) de Barcelona).

In this regard, the complainant provided various documentation generated by the AAA City Council in which his address in Barcelona was stated (a payroll dated 07/03/2019, a certificate of provision of previous services dated 24/10/2018 and a declaration of 04/07/2017 - model A - regarding the possible exercise of other tasks). Likewise, he also provided several administrative acts issued in the framework of disciplinary file no.

2/2019/REDIS (Mayoral Decrees no. 401 of 26/02/2019, 1799 of 18/10/2019 and 752 of 16/04/2019), and a burofax of 05/03/2019 (which infers that it would also be linked to said file), in which the address that the City Council recorded for the purposes of notifications was that of his parents' home in (...).

The person making the complaint pointed out that in 2007 he was removed from the AAA population register and that he started working at the AAA Town Hall in 2016.

The complainant also provided a copy of the requests presented to the City Council on 12/03/2020, 30/09/2020 and 06/11/2020, through which he requested access to certain information linked to his home address. These requests for access gave rise to the corresponding rights protection procedure (PT 62/2020).

2. The Authority opened a preliminary information phase (no. IP 369/2020), 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 11/01/2021 the reported entity was required to report on the reasons why the acts forming part of the previously identified disciplinary file and the burofax of 03/05/2019, attempts were made to notify the reporting individual at the aforementioned AAA address; about how this address was obtained from AAA; as well as in order to specify which address of the reporting person was included in its information systems linked to personnel management.

4. On 10/02/2021, the AAA City Council responded to the above-mentioned request in writing in which it stated the following:

- That the current head of Personnel and Organization of the City Council did not know the reasons why they tried to notify the constituent acts of the disciplinary file 2/2019/REDIS to the complainant at the street address (...) of AAA.
- That after consulting the third-party database, it is verified that the AAA address previously indicated had been the registered address of the person making the complaint.
- That according to the information available from the City Council's Personnel and Organization Department, in the appointment of the complainant as a career civil servant of the City Council, his address was listed as street (...) in Barcelona .
- That this address in Barcelona "has not been subject to rectification at personnel management level, even though the City Council's third-party database contains other addresses of the complainant."

5. On 20/05/2021, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against AAA City Council for an alleged violation provided for in article 83.5.a) in relation to the Article 5.1.d); 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 05/25/2021.

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 AAA City Council notified the complainant, its employee, of several administrative acts issued in the context of disciplinary file no. 2/2019/REDIS, to an address different from his current address, in the municipality of Barcelona. The current address in Barcelona is the one that this person stated when she was appointed as a career official of this City Council, and it is also the one that, according to statements from the City Council itself, is registered at "personnel management level".

The notifications were carried out at the street address (...) of (...), address where the complainant had been registered until the year 2007, as indicated by the latter.

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 go to article 5.1.d) of the RGPD, which provides that the personal data will be "accurate 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".

For its part, article 4.1 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter LOPDGDD) regulates the accuracy of the data in the following terms:

"1. In accordance with article 5.1.d) of Regulation (EU) 2016/679 the data must be accurate and, if necessary, updated."

In the present case, with the purpose of notifying the whistleblower of the constituent acts of a disciplinary file, the AAA Council used an AAA address where the whistleblower had previously been registered. In other words, the City Council of (...) consulted the data of the person reporting that appeared in the historical register of inhabitants of the municipality.

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 the violation of the "basic principles of the treatment, including the conditions for consent in accordance with articles 5, 6, 7 and 9", which include both the principle of accuracy.

The conduct addressed here has been included as a very serious infraction in article 72.1.a) 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."

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".

Regardless of the fact that the AAA address where the claimant was registered until the year 2007 (street (...) of AAA) can be kept for purposes of the register's history, the AAA Council must be required to as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of this resolution, remove the AAA address that may appear in its information systems (except for the history of the register); as well as those "other addresses" that the City Council has stated appear in its third-party database (unless the City Council certifies that they are accurate for some other purpose) that refer to the address of the reporting person, and the replace it with the one that corresponds to your current address in the municipality of Barcelona (carrer del (...)).

Once the corrective measure described has been adopted, within the specified period, the AAA City Council 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 AAA City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.d), both of the RGPD.
2. To require the AAA City Council to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out by fulfill them
3. Notify the AAA City Council of this resolution.
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,