

File identification

Resolution of sanctioning procedure no. PS 47/2021, referring to Alcanar Town Council.

Background

1. On 05/10/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant complained that in the Plenary session of the Alcanar City Council on (...), his personal data had been disseminated without his consent, as it had been the subject of a debate public the requests for access to public information that he had addressed to the City Council on different occasions.

2. The Authority opened a preliminary information phase (no. IP 302/2020), 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 date (...)/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 the minutes of the session had been published on the Alcanar Council's electronic website Plenary of the Alcanar City Council of (...) (<https://www.seu-e.cat/>(...)).
- That in the requests and questions section of the minutes previously identified, the person making the claim was identified by their first and last name. The minutes contained the following information about the person making the complaint:

"The spokesperson for (...), (...) asks to speak, to say that as a result of the statements made today on Facebook, dedicated to Mr. (...), representative of the Movement (...) - which he does not have the pleasure of meeting personally, although he knows that he is doing a good job -, mention is made of the ways of doing certain people and political groups with the aim of saturating the administrative apparatus of the town hall.

(...) The councilor (...) (ERC-AM) intervenes, regarding the publication on Facebook and the previous intervention of the spokesperson of (...), because he considers that he must not have understood anything from his statement or is not read the post
First of all, it is a statement from a political party that it shares from its personal profile (...).

(...) And he adds that if Mr. (...) asked for the planned cut of the national road, you can tell Mr. (...) that he could come to consult the documentation, because he thinks this is important. The complaint he made in that post is that - despite having demanded a lot of documentation that the Secretary has had to do in tasks within his working hours - when one thing is done, another cannot be done. And he does not know the amount of hours during which they were collecting all this documentation, but he remembers that Mr. (...) he did not come to the arranged appointment to see the documentation, and this is what he was complaining about. (...) Nevertheless, if documentation is requested, at least come and see it. In addition, Mr. (...) he can come personally, although he also said that he represented a certain entity; (...).

Remember that in the meeting room there are seven boxes of documentation that the Secretary, in management tasks, had to prepare, so that this gentleman does not come to consult them later; which seems to him, has seemed to him and will seem to him a bad use of public services, because this gentleman makes bad use of them.

And the councilor continues to say that he thinks it's perfect that this person asks for the documentation he wants and comes to consult it, because it's very easy to ask but then it's more difficult to come, and his post goes in this direction. (...)

The mayor intervened, (...) (ERC-AM), to say that (...) the person referred to, in addition, asked for administrative files since 2011 digitized and anonymized (...) adds that this gentleman was not told not to come and consult the information, but was told that he could come and consult it, (...) but not to have them digitize it and anonymize the because there are not enough resources to do all this work. For this reason, this publication was made on social networks asking for precisely this, as explained by Mr. (...).

(...) he remembers that a series of requests for information and documentation were made to this gentleman, where he was asked to prove that he was indeed the legal representative of that neighborhood association; and at what point in the agenda of the assembly of that neighborhood association had it been agreed to request this information from Alcanar City Council in the interest of transparency. And this documentation has not been sent yet.

(...) The councilor of the CUP, (...) then asks to speak, to state that, if she is not mistaken, there are GAIP resolutions on access to public information, where the "town hall to deliver to this gentleman the documentation he is requesting (...)."

4. On 10/26/2020, the person reporting sent a letter to the Authority in which pointed out that, in the section of the Alcanar City Council's electronic headquarters where the plenary proceedings are published (<https://www.seu-e.cat/ca/web/alcanar/govern-obert-and-transparency/action-of-government-and-normative/action-of-government-and-political-parties/actes-de-plenum>), the minutes of the Plenum of (...) had been published with their data, although the City Council itself reported on the website that "(...) Here are all the documents that record the decision-making that takes place within the framework of these meetings, of course, without character data staff."

5. On 28/10/2020 Alcanar Town Council was required to report on the reasons why the minutes of the Alcanar Town Council Plenary session of (...), published at its headquarters City Council's electronic file, contained the data of the person making the complaint (identified by their first and last name).

6. On 19/11/2020, Alcanar City Council complied with this requirement by means of a letter stating the following:

- That the City Council has proceeded to remove the data relating to the person concerned from the minutes, which has been communicated to the person making the complaint.
- That the reasons why these data were not anonymized, which consisted solely of the dissemination of the name (basic data), were that the person was acting on behalf of a legal entity, and because it was data that the person himself had made public and notorious through various public domain platforms, such as publications on social networks and media.
- That no harm has occurred to the person making the complaint.
- That the dissemination of the data, now deleted, was carried out as a result of compliance with the legal obligations in matters of transparency, which include the obligation to publish the content of the minutes of the governing bodies of local corporations.
- That in view of the complaint, it has been considered necessary to remove your data from the Portal transparency

7. On (...)/2021, the Authority's Inspection Area accessed the City Council's transparency section (<https://alcanar.eadministracio.cat/transparencia-electronica>) of Alcanar

Specifically, the minutes of the Alcanar Town Council meeting held on (...) were downloaded ([https://alcanar.eadministracio.cat\(...\)](https://alcanar.eadministracio.cat(...))), noting that the reporting person was still identified in the report.

Given that the link that allowed downloading said minutes was different from the link that, in the verification carried out on (...)/2020, also allowed this action ([https://www.seu-e.cat/\(. .\)](https://www.seu-e.cat/(. .))), it was verified that this last link was still active and that it also made it possible to download the minutes of the Plenum of (...), where the complainant was identified.

8. On 13/09/2021, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Alcanar City Council for an alleged violation provided for in article 83.5.a), in relation in article 6; 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 the free movement thereof (hereinafter, RGPD), regarding the publication on the City Council's website of the minutes of the Plenum of (...). This initiation agreement was notified to the imputed entity on 09/16/2021.

9. The initiation agreement also explained the reasons why no charge was made with respect to the fact reported regarding the dissemination in the session of the Municipal Plenum of the personal data of the person making the complaint. Regarding this, the following was set out in the section of reported events not imputed in the initiation agreement:

"The complainant was complaining about the fact that, in the aforementioned Plenary Session, it was discussed that he had submitted several requests for access to public information to the City Council.

In the present case, the disclosure of the data relating to the person making the complaint did not take place within the framework of the debate generated in one of the items that constituted the agenda of the Plenary, but took place in the turn of prayers and questions

Article 105 of Legislative Decree 2/2003, of April 28, which approves the revised text of the The Local Government Municipal Law of Catalonia (hereinafter, TRLMRLC), in relation to the requests and questions that can be formulated during the Plenary, provides the following:

"105.1 The members of the corporation may formulate requests and questions in the plenary session relating to the action or the purposes of action of the governing bodies of the corporation."

(...) it is considered that in the plenary session on date (...), Alcanar City Council did not disclose the identifying information of the person making the complaint as the author of the requests for access to various information, given that this information had already been made public in a notorious way previously, both by the complainant himself and by various digital media. On the other hand, it is considered that the allusions made in the Plenum by several municipal councilors to the first and last names of the complainant were made in response to a question posed by an opposition councilor about this statement, which, insofar as it referred to requests for access to public information made by the complainant, it was inevitable to respond by mentioning said requests. And although, as has been pointed out, it would have been more respectful of the principle of data minimization, if in the answer to the question the identity of the complainant had been omitted, that is, his first and last name, the fact that the complainant had made the requests as the legal representative of two entities, together with the prior public dissemination of this fact, could justify the treatment of this data by the councilors during the question and answer session

of the Plenary In any case, these facts would not be sufficient to impute a new infringement to the City Council. That is why, with regard to this part of the facts reported, it is necessary to agree on its file".

10. In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests.

11. On 09/30/2021, the Alcanar City Council wrote to this Authority in which it did not question the alleged facts, nor their legal qualification. On the contrary, he admitted that the publication on the City Council's website of the minutes of the Plenum of (...) had been the result of an "administrative error", at the same time that he reported on the measures he had adopted in order to correct the effects of the imputed infraction, and also those tending to prevent the occurrence of events such as those that had led to the initiation of the present sanctioning procedure, among others, the immediate withdrawal of the minutes of the Plenary which contained personal data of the person making the complaint published on the Platform of the City Council's electronic headquarters, the revision of the protocols for publication of documents and the provision of training sessions to all staff in relation to compliance with the regulations for the protection of data

12. On 12/21/2021 this Authority made a series of checks via the Internet and found that the minutes of the General Meeting of (...) published on the City Council's electronic headquarters, no longer contained the data relating to the reporting person.

13. On 11/01/2021, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority admonish Alcanar Town Council as responsible for an infringement provided for in article 83.5.a) in relation to article 6 , both of the RGPD.

This resolution proposal was notified on 11/01/2021 and a period of 10 days was granted to formulate allegations.

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

proven facts

During an indeterminate period of time, but which in any case would include between (...)/2020 and (...)/2021, Alcanar City Council published the minutes of the Plenary meeting held on (...), without anonymizing the data of the person reporting here.

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. As has been advanced in the antecedents, on 30/09/2021 and before the initiation agreement, the Alcanar City Council addressed a letter to this Authority in which it did not question the facts imputed, nor its legal qualification. On the contrary, he admitted that the publication of the minutes of the Plenum of (...) had been an "administrative error" and reported on the measures he had adopted in order to correct the effects of the imputed infringement. On the other hand, before the proposed resolution the City Council has not formulated any allegation, and it should be noted that the proposal contained a precise statement on the imputed responsibility.

3. In relation to the facts described in the proven facts section, relating to the principle of legality, it is necessary to go to article 6 of the RGPD, which 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 the minutes of the plenary sessions, article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia, states the following:

"2. Local entities must publish the minutes of plenary sessions in their electronic headquarters. In their publication, the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy must be taken into account. For these purposes, personal data may be included without the consent of the person concerned, if it is data referring to acts debated in the plenary session of the corporation or provisions subject to publication in the corresponding official bulletin. In all other cases, without prejudice to the provisions of other laws, publication is only possible if the consent of the interested person is obtained or the data cannot, under any circumstances, be linked to the interested person himself."

During the processing of this procedure, the fact described in the proven facts section has been duly proven.

It should be emphasized that the fact that is imputed is not the dissemination in the plenary session of the complainant's personal data - which, as noted in the preceding 9th, has been archived - but the publication in the headquarters electronic form of the City Council of the minutes of the session with said personal data, specifically the first and last name in the section of requests and questions.

Regarding the publication of the Plenary proceedings on the municipal website, article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector, establishes that: "Local entities they must publish the minutes of the plenary sessions on their electronic website. In their publication, the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy must be taken into account. For these purposes, personal data may be included without the consent of the person concerned, if it is data referring to acts debated in the plenary session of the corporation or provisions subject to publication in the corresponding official bulletin. In the rest of the cases, without prejudice to the provisions of other laws, publication is only possible if the consent of the interested person is obtained or the data cannot, in any case, be linked to the interested person himself".

In accordance with the above, as already pointed out by this Authority in opinion CNS 10/2016, in the cases of questions, motions and interpellations that may have occurred in the Plenary, but that are not linked to a act or provision adopted in the plenary - as is the present case, in which the question had as its object an issue unrelated to the acts debated in the plenary - publication is only possible if the consent of the interested person is obtained or the data is not they can, under no circumstances, be linked to the same interested person.

Given that in the present case the City Council did not have the consent of the person making the complaint and that person was identifiable, the publication on the City Council's electronic headquarters of the minutes of the meeting with the name and surname of the person making the complaint 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 of the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which there is the principle of legality.

The conduct addressed here has been included as a very serious infringement in article 72.1.b) 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:

"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 (...)"

As progress has been made in the precedents (precedent 11th), the Alcanar City Council has informed this Authority of having carried out certain measures in order to correct the effects of the imputed infringement, and also of those tending to avoid that if events like those that had led to the initiation of the present sanctioning procedure were to occur again, among others, the immediate withdrawal of the minutes of the Plenary which contained personal data of the reporting person published on the Platform of the electronic headquarters of the City Council, the revision of the protocols for the publication of documents and the imparting of training sessions for all staff in relation to compliance with data protection regulations.

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In relation to this, on 21/12/2021, this Authority has been able to verify that the minutes of the Plenum of (...) published on the website of Alcanar City Council no longer contain the personal data of the person reporting (previous 12th). This is why measures should not be required correctors

For all this, I resolve:

1. Admonish Alcanar City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 6, 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.

2. Notify this resolution to Alcanar City Council.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that the 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,