

File identification

Resolution of sanctioning procedure no. PS 57/2021, referring to the Public Employment Service of Catalonia (Innovation and Vocational Training Center of Hospitalet de Llobregat).

Background

1. On 21/07/2020, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Center for Innovation and Occupational Training of l'Hospitalet de Llobregat (hereinafter , CIFO Hospitalet), organically dependent on the Public Employment Service of Catalonia (SOC), due to an alleged breach of the regulations on personal data protection.

Specifically, the person making the complaint stated that in 2016 he requested, by sending an email, information from the CIFO Hospitalet about one of the courses in its program, and complained that from that moment on began to periodically receive "commercial mail" from CIFO Hospitalet to his email address without having authorized it. In relation to this, he also complained that these electronic communications did not include any information on how to stop receiving them, and to that effect he invoked articles 21 and 22 of Law 34/2002, of July 11 , of Services of the information society and electronic commerce.

In the last one, he explained that on several occasions he had sent emails to the entity requesting to stop receiving these communications (29/08/2017 and 12/10/2018), but he continued to receive them, until finally , on 20/11/2018, sent an email to the responsible a "the address that facilitates body" for this one (protecciodades.soc@gencat.cat), and for a while he stopped receiving them. In this respect, the complainant complained that on 07/21/2020 he had received a last electronic communication sent by CIFO Hospitalet, with the subject "CIFO HOSPITAL PROGRAM 2020", and about this he complained that the entity denied him the "possibility of revoking consent to receive commercial communications".

The complainant provided the following documentation:

- Copy of the e-mail, dated 08/29/2017, sent by the person here reporting to CIFO Hospitalet (preinscripcions_cifo_hospitalet.spc@gencat.cat), with the title "Unsubscribe", where he requested that they "unsubscribe this e-mail address of its databases" as a response to an e-mail from the entity about the course schedule.

- Copy of the email, dated 12/10/2018, sent by the person here reporting to CIFO Hospitalet (cifo_hospitalet.soc@gencat.cat), where he requested that they "take note of my desire to cancel the consent to receive e-mails" in response to an email from the entity with the title "2018 Continuing Education Course Schedule".
- Copy of the email, dated 11/20/2018, sent by the person here reporting to the SOC (protecciodades.soc@gencat.cat), in which he relates the different emails sent to the referenced CIFO Hospitalet, and reiterates the same request.
- Copy of the email, dated 07/21/2020, sent from a CIFO Hospitalet corporate address (preinscripciones_cifo_hospitalet.soc@gencat.cat) to the person reporting here regarding the course schedule for the year 2020.

2. The Authority opened a preliminary information phase (no. IP 213/2020), 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 09/29/2020 the reported entity was required to inform, among others, about the legal basis that would protect the sending of the mentioned emails, and the procedure to give -unsubscribe from the sending of electronic communications, and specifically, if the body of the electronic communications message sent by CIFO Hospitalet informs about the possibility of unsubscribing from the receipt of said communications. On the other hand, he was also required to report on the reasons why neither of the first two requests not to receive further electronic communications was implemented, and if following the last request addressed to the protection delegate of SOC data (11/20/2018), the requested deregistration was effective, and in such a case, that he set out the reason that would explain that the complainant here had received a new electronic communication on 07/21/ 2020

4. On 14/10/2020, the SOC (CIFO Hospitalet) responded to the aforementioned request in writing in which it stated the following:

- That "CIFO Hospitalet is an administrative body dependent on the Public Employment Service of Catalonia, and in order to give effect to the right of people registered to look for work, it complies with its obligation to communicate the services and

resources that the administration makes available to them in order to improve their opportunities to find work in accordance with articles 10 and ss of Decree 71/2015, of 12 May, restructuring the Catalan Employment Service. "

- That "article 7 of Royal Legislative Decree 3/2015, of October 23, which approves the revised text of the Employment Law, which specifically provides:
 1. The National Employment System must guarantee compliance with the following purposes:
 - c) Facilitate the necessary information that allows job seekers to find a job or improve their employment opportunities, and for employers to hire the right workers appropriate to their needs, ensuring the principle of equality in the access of workers and employers to the Services provided by the Public Employment Service."
 - That "the user consents to the use of their data at the time of registering with the Public Employment Service of Catalonia, as a job seeker. (...)"
 - That "Regarding the CIFO information request database, your email to Hospitalet, those interested provide us <https://serveiocupacio.gencat.cat/ca/soc/centres-dinnovacio-i-formacio-ocupacional-cifo/CIFO-de-LHospitalet-de-Llobregat/subscripcio-a-les-listes-de-distribucio/>."
 - That "To unsubscribe from the sending of electronic communications, the procedure is simple, find the link <https://serveiocupacio.gencat.cat/ca/soc/centres-dinnovacio-i-formacio-ocupacional-cifo/CIFO-de-LHospitalet-de-Llobregat/subscripcio-a-les-listes-de-distribucio/>."
 - That "The requests received in July 2017 and October 2018 were properly attended to and the applicant's data was removed."
 - That "The applicant's data were deleted. However, if it has been sent to you, it is because this person is registered as a job seeker in the SICAS Information system (system in charge of managing active employment policies). The CIFO Hospitalet cannot fail to communicate its services to job seekers registered in the database of the Public Employment Service of Catalonia."
5. On 27/10/2021, this Authority again required the entity to report, among other things, on whether the legal basis that would legitimize the CIFO

Hospitalet can send informative e-mails to people registered as "job seekers" in the SOC, is the same in all cases, or varies depending on the situation in which the person registered as a job seeker is (people receiving benefits for unemployment, people in a situation of unemployment, people who work...etc.).

You are also asked to confirm whether on the dates on which the complainant received the various electronic communications about training courses scheduled by CIFO l'Hospitalet (29/08/2017; 10/10/2018 and 21/07/2020) , and when he requested by email to stop receiving said electronic communications (29/08/2017; 12/10/2018; 20/11/2018), he was registered as a "job seeker" in the SOC, and in such a case, to specify the group in which you were (people receiving unemployment benefits, people in a situation of unemployment, people who work...etc.) on each of these dates.

6. On 11/11/2021, the entity responded to the aforementioned request in writing in which it stated the following:

- That "the Public Employment Service of Catalonia incorporates in its databases of registered persons the necessary information to effectively manage their demand for employment. In this sense, each registered person is associated with the personal, curricular, administrative and occupational services information received that allows the intermediation with job offers and the offer of occupational actions in line with their demand for employment.
- That "Among the information that is managed is, indeed, that relating to your employment situation and your status as a recipient of aid or public benefits."
- That "on the legal basis that would legitimize CIFO Hospitalet being able to send them informative emails about courses, we point out that, as stated in the response dated 14/10/2021 to the 1st request made by the APDCAT, the obligation is given by what is established in article 7 of Royal Legislative Decree 3/2015, of October 23, which approves the revised text of the Employment Law."
- That "after consulting the databases of the Public Employment Service of Catalonia, Mr. (...), on the dates indicated is in the following situation, referring only to the information relating to the status of registered claimant, employment status and recipient of benefits:

29/08/2017: Claimant registered / Employment status: unemployed / Recipient of benefits

10/10/2018: Registered claimant/Employment status: unemployed/Not receiving benefits

21/07/2020: Claimant registered/Employment status: unemployed/Not receiving benefits"

7. On 30/11/2021, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Public Employment Service of Catalonia (CIFO de l'Hospitalet de Llobregat) for an alleged violation in article 83.5.b), in relation to article 12; 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 11/30/2021.

8. The initiation agreement explained the reasons why no imputation was made with respect to other facts reported.

Firstly, regarding whether the SOC (CIFO de l'Hospitalet) had sufficient legal basis to send e-mails about the course schedule, in the section of reported facts not imputed in the initiation agreement, it is concluded that the 'entity would be empowered by a standard with legal rank to carry out said treatment, specifically, by Law 13/2015, of July 9, on the organization of the employment system and the Public Employment Service of Catalonia (articles 12, 13 and 16) and Royal Legislative Decree 3/2015, of 23 October, which approves the revised text of the Employment Law (art. 7). In this sense, it is considered that the sending of the referenced e-mails would be a treatment carried out by the entity to make effective the purpose of providing the service of support and advice to obtain a job for citizens, and in this sense, it is considered necessary for the fulfillment of a mission in the public interest in accordance with article 6.1.e) of the RGPD.

Secondly, regarding whether in said electronic communications it was necessary to offer the recipient the possibility of opposing the processing of their data for that purpose, as provided for in Law 34/2002, of July 11, on Services of the society of information and electronic commerce (LSSICE), its archive is also agreed upon, since, taking into account that the reported entity is considered a public administration and its action is understood to be carried out in compliance with 'a mission in the public interest, the LSSICE would not apply, given that it would not have the character of an information society service provider in accordance with the definitions given by the same Law.

9. 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.

10. On 17/12/2021, the SOC (CIFO Hospitalet) made objections to the initiation agreement, which are addressed in section 2 of the legal foundations.

Carrer Rosselló, 214, esc. A, 1r 1a
08008 Barcelona

11. Likewise, and on the same date, an email was received from (...) of CIFO Hospitalet, in which was attached a thread of emails exchanged with the SOC, making special reference to the one of the previous day (16/12/2021), in which the (...) of the CIFO Hospitalet, in relation to the communication of 20/11/2018, indicates to the SOC that "the CIFO could not respond since it was intended for [protected mail. soc@gencat.cat](mailto:soc@gencat.cat)."

In this regard, he considers that this fact is an "error in the reasons for initiating the file", and invokes the nullity of the file. This Authority responded to this email indicating that the agreement to initiate the sanctioning procedure has been initiated against the SOC, entity that has presented the allegations it has deemed pertinent "through the EACAT, which is the planned and recognized channel to carry out this procedure", and it is added that, their considerations, if applicable, will be evaluated together with the allegations presented by the SOC in the proposed resolution.

12. On 03/25/2022, the person instructing this procedure formulated a resolution proposal, by which it proposed that the director of the Catalan Data Protection Authority admonish the Public Employment Service of Catalonia (Centre of Innovation and Occupational Training of Hospitalet de Llobregat) as responsible of an infringement provided for in article 83.5.b) in relation to article 12, all of them of the RGPD.

This resolution proposal was notified on 03/28/2022 and a period of 10 days was granted to formulate allegations.

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

proven facts

The CIFO de l'Hospitalet del SOC did not respond to any of the different requests of the person reporting here (dated 29/08/2017, 12/10/2018 and 20/11/2018), through which exercised their right of opposition to the processing of their personal data for the sending of informative communications about the programming of the courses offered by the entity.

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.

In this regard, it must be said that the allegations made in the initiation agreement are not allegations in themselves tending to question or distort the reality of the facts that motivated the initiation of the procedure or the legal qualification established in initiation agreement, but focused mainly on setting out the corrective measure implemented by the entity in order to guarantee the exercise of the right of opposition of the users or beneficiaries of the services provided by the SOC. In this regard, the entity stated that in order to prevent similar events from being repeated, it had agreed to include in the "Instructions on the execution of the Training Employment Professional (FPO) in the field of Innovation and Training Centers Occupational (CIFO) and the Automotive Vocational Training Center (CFPA)" a specific section related to the use of e-mail in which the recommendations of the APDCAT in this matter would be included, and also "will be included the obligation to remember the exercise of ARCO rights as well as instructions to respond and respect the opposition, in the event that this is expressed by the interested parties."

This Authority positively values the measure adopted by the entity, as it enables the entity responsible for data processing to respond to requests to exercise the rights provided for in articles 12 to 22 of the RGPD, and specifically, the right of opposition, but it should be noted that the adoption of this measure does not distort the reality of the imputed facts or the correction of their legal qualification.

On the other hand, in relation to the email dated 12/17/2021 that the (...) of the CIFO Hospitalet sent to this Authority, in which it stated that the CIFO could not respond to the communication of 11/20 /2018 "since it was destined for the mail

protecciodades.soc@gencat.cat", and considered that this fact was an "error in the reasons for initiating the file", reason for which he invoked the nullity of the file,

emphasize that, as indicated in the proposed resolution, although CIFO Hospitalet is the entity that sent the communications with training information to the reporting person, it is part of the professional training and qualification system of the SOC (art. 14 of Law 13/2015), as it is an innovation and occupational training center integrated into the SOC's own network of centers, which is why this center is identified throughout this procedure linked to the SOC. Having said that, it should be noted that the initiation agreement is initiated against the SOC, given that it is the person responsible for the treatment subject to complaint (art.82 RGPD), and that, as such, it presented the allegations that considered pertinent in defense of his interests, which have been assessed in the previous paragraphs. In this regard, it should be noted that in its allegations the SOC did not consider it pertinent to collect the considerations that the CIFO Hospitalet sent it

the day before by e-mail, which he then forwarded to this Authority. However, for informational purposes only, a brief reference will be made here. On the one hand, it should be noted that, both in the antecedents of the initiation agreement, of the resolution proposal, and of this resolution, it is recorded that the referenced email dated 11/20/2018 was sent to the electronic address "protecciodades.soc@gencat.cat", which in turn is the address listed on the website of the SOC as a contact mailbox in relation to matters relating to the processing of personal data. At this point, it must be said that the facts that motivate the initiation of this procedure are that the entity did not get to give any response to the various requests to exercise the right of opposition that the affected person formulated, being indifferent whether these requests were sent via the website of the CIFO Hospitalet or through the contact mailbox that the SOC had enabled for the purpose, taking into account that the final person responsible, in accordance with the protection regulations of data, is the SOC, an entity that includes within its organization the CIFO Hospitalet. So things, the considerations made by (...)

of the CIFO Hospitalet before this Authority cannot succeed.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 21 of the RGPD, which provides that:

"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to data that concern him being the object of treatment based on the provisions of article 6, section 1, letters e) or), including the elaboration of profiles based on these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims."

Also, article 12 of the RGPD, sections 3 and 4, provides for the following:

"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the data controller does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the

reasons for his non-action and the possibility of filing a claim before a control authority and of exercising judicial actions."

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.b) of the RGPD, which typifies as such the violation of "the rights of the interested parties pursuant to articles 12 to 22."

The conduct addressed here has been included as a very serious infringement in article 72.1.k) of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter , LOPDGDD), and specifically, of the three cases provided for therein, it would refer to: "repeated failure to exercise the rights established by articles 15 to 22 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 infringements committed in relation to publicly owned files, the (...) or (...) of the Catalan Data Protection Authority must issue a resolution declaring the infringement and establishing the measures to adopt 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 measures adopted by the SOC are considered sufficient and appropriate in order to guarantee that the entity responds to the requests to exercise rights that the

are formulated by the interested parties, and thus prevent similar incidents from happening here in the future.

For all this, I resolve:

1. To warn the Public Employment Service of Catalonia (Centre of Innovation and Training Occupational of Hospitalet de Llobregat) as responsible for an infringement provided for in article 83.5.b) in relation to article 12, 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 Public Employment Service of Catalonia (Innovation and Occupational Training Center of Hospitalet de Llobregat).

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 the provisions of article 123 et seq. of the LPAC. You can also interpose

directly 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 13 July, regulator of 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 considers convenient to defend their interests.

The director,