

File identification

Resolution of sanctioning procedure no. PS 59/2021, referring to the City Council of Cubelles.

Background

1. On 30/09/2021, 05/10/2021, 06/10/2021, 07/10/2021, 10/11/2021, and 16/11/2021 they had access to the Catalan Protection Authority of Data, up to twelve complaints (two of them by referral from the Spanish Data Protection Agency) from different citizens, against the City Council of Cubelles, due to an alleged breach of the regulations on data protection personal

Specifically, the complainants complained that on 15/06/2021 the City Council of Cubelles published on the Notice Board of its electronic headquarters and specifically on the URL "https://www.cubelles.cat/pag627/pl245/ajuntamenttaulerdanuncios/id33/estabelllesservizo_nablava", in an open manner, and therefore accessible to everyone, a pdf document ("0008-pre-consultation-proposals.pdf") that contained all their personal data recorded in the forms enabled by the council on the municipal website, in order to present proposals in the procedure of "public consultation prior to the preparation of the service regulations public regulated parking (blue zone) in the maritime strip of the municipality", dissemination that would have been maintained until 30/09/2021.

In the document published, under the title: "Registered forms in relation to the public consultation procedure prior to the drafting of the regulated parking ordinance in the maritime strip", there were, according to complaints, identified the 230 citizens who they had taken part in the aforementioned procedure initiated by the City Council, with their first and last name, ID number, telephone, postal address and email address, as well as the content of their contributions on the proposal for the establishment of a blue zone.

The complainants also complained that the published information had been indexed by the Google internet search engine, and that it was therefore also accessible through said search engine, by stating their identifying data, such as their name and surname.

On the other hand, three of the complainants complained, moreover, that the City Council, "once aware of the security breach", would have acted inappropriately.

In order to justify the facts reported, the reporting persons provided the following documentation:

- screenshots of the City Council's website, relating to the "Establishment service blue zone" section of the Notice Board, where it was published and could be downloaded

the controversial archive "URL: <https://www.cubelles.cat/pag627/pl245/ajuntament-tabulerdanunci/id33/estabellerveizonablava>".

- copy of the controversial file "0008-propstes-de-consulta-previa.pdf", with the title "Forms registered in relation to the public consultation procedure prior to the drafting of the regulated parking ordinance in the maritime strip".

- statement published by the City Council on 30/09/2021 on the municipal website and on the social network "Twitter" in which it reported "the detection this morning on September 30 of the publication on the municipal website of a document which contained personal data relating to the citizens who participated in the consultative process on the future regulated parking system on the sea front", as well as the measures adopted in order to correct said error, and specifically that "from the same when this error was noticed, the document in question was immediately removed from the municipal website", and likewise, "the company Google was asked to remove it of the indexed information."

- email sent by the City Council on 09/30/2019 (at 1:35 p.m.) to the people affected by the incident (owners of the data contained in the controversial document) in order to inform them about the security breach of your data suffered.

- screenshot of a tweet published by a citizen on 30/09/2021, in which he complained that the type of personal data affected by the incident was not specified in the mail sent by the City Council to those affected "Hello, could you tell me what kind of data it is?".

- new e-mail sent by the City Council to the affected people on 01/10/2021 in which the information provided in the previous e-mail was "supplemented".

- screenshots of search results on "Google".

- email sent by a resident of the municipality affected by the incident, on the same day 30/09/2021 (at 10.00 a.m.) to the rest of the affected people (229) in order to warn them of the disclosure of his data, and in which he attached the controversial document with all his published data.

2. The Authority opened a preliminary information phase (no. IP 378/2021), 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 disciplinary procedure, which brings together the twelve complaints received, given the identity of the facts and the entity reported.

3. The City Council of Cubelles, in compliance with the provisions of article 33 of the RGPD, notified this Authority on 01/10/2021 of the data security breach suffered (NVS 83/2021), consisting of the erroneous exposure of the controversial document with personal data referred to in the complaints received. On 11/03/2021, the Authority notified the Cubelles City Council that it was finalizing the instructions for the actions linked to the notification of this security incident, and this regardless of the actions taken in term within the framework of the open preliminary information phase, following the various complaints presented to the Authority for the same facts.

4. The actions carried out in the framework of the notification of said security violation (NVS 83/2021) were incorporated into the preliminary information phase open on the basis of the complaints presented.

On 11/30/2021, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Cubelles City Council for an alleged violation provided for in article 83.5.a), in relation to article 5.1.a); 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). This initiation agreement was notified to the imputed entity on 03/12/2021.

5. The initiation agreement also explained the reasons why no charge was made regarding the complaint made by three of the complainants, who considered that the City Council, once it became aware of the violation of data security (dissemination of data), did not act appropriately. Specifically, they stated that the City Council did not act quickly or professionally to resolve the security incident, nor did it correctly communicate the security breach to the affected people (data holders).

The analysis of the facts reported and the actions carried out by the Authority led to the conclusion that it could not be considered that the action of the City Council, once the security violation was detected, could be incardinated in any of the types offenders that the data protection regulations collect in relation to the management of security violations by the data controller (specifically articles 73.r) is) and 74. m) where), taking into account that the City Council will detect that the security incident had occurred on 09/30/2021 and that:

- adopted measures to contain and correct the violation, and minimize the risks for the affected persons on the same day 09/30/2021.

- notified the data security breach to the Catalan Data Protection Authority on 10/01/2021, and therefore within the legal deadline provided for in article 33 of the RGPD.

- carried out the communication of the data security breach to the affected persons referred to in article 34 of the RGPD on 09/30/2021, in order to alert them of the breach suffered (improper communication or dissemination of your data), although it did so in two different phases, given that the first was not complete. Regarding this issue, it was taken into account that although, certainly, in the first communication made the exposed personal data were not specified, although the affected people were alerted that there had been a breach of confidentiality of their data, and contact with the council was facilitated to resolve any doubts related to the incident, and also that, those affected, when they received the initial communication from the council, already knew what their personal data had been exposed, as one of the affected people had sent an email to the rest (229 remaining) a few hours before, on the same day 30/09/2021 at 10:00 a.m., reporting the dissemination of your data by the council, and attaching the controversial file.

6. 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.

7. On 21/12/2021, the City Council of Cubelles addressed a letter to this Authority in which it did not question the imputed facts nor their legal qualification; on the contrary, he admitted that the publication of personal data on the City Council's website had been the result of an error ("This publication was carried out without meeting any of the conditions for legality of the treatment established in the "article 6 of the RGPD, and it was maintained until September 30, 2021"), while reiterating the measures it had taken once said data security violation was detected, tending to solve the incident, limit ne risks and to avoid, as far as possible, that they occur again.

8. On 10/02/2022, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Cubelles City Council as responsible for 'an infringement provided for in article 83.5.a) in relation to article 5.1.a) and 6, all of them of the RGPD.

This resolution proposal was notified on 02/10/2022 and a period of 10 days was granted to formulate allegations.

9. The deadline for submitting objections has passed and no objections have been submitted.

proven facts

On 06/15/2021 the Cubelles City Council published on the notice board of its electronic headquarters a specific URL "<https://www.cubelles.cat/pag627/pl245/ajuntamenttaulesanuncis/id33/estabellserveizo>

nabl ava", in an open manner, and therefore accessible to everyone, a document (0008-propotes-

de-consulta-previa.pdf) in which, under the title "Forms registered in relation to the public consultation procedure prior to the drafting of the regulated parking ordinance in the maritime strip", all the data that the people who participated in the consultative process initiated by the council (230 citizens, including the people reporting here), provided the forms enabled on the municipal website for that purpose. This publication was carried out without meeting any of the conditions for legality of the treatment established in article 6 of the RGPD, and it was maintained until 09/30/2021.

Specifically, the personal data released were: first and last name, ID number, telephone, postal address and email address of each of the people who had submitted allegations, as well as their content and the consequent personal information that n derived, as now, and among others, their status as owners of a property in the municipality, if they used it as a first or second residence, if they had a vehicle and/or private parking, if , in his case, road tax was paid to the municipality, of his professional occupation, and, in all cases, of his opinion on the opportunity of establishing a blue zone on the seafront (parking of payment) proposed by the council and the alternatives presented in this respect.

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 progressed in the antecedents, on 21/12/2021 and before the initiation agreement, the City Council of Cubelles addressed a letter to this Authority in which it did not question the alleged facts, nor the its legal qualification. on the contrary, he admitted that the publication of personal data on the City Council's website had been the result of an error ("This publication was carried out without meeting any of the conditions for legality of the treatment established in the 'article 6 of the RGPD, and was maintained until September 30, 2021"), while reiterating the measures it 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 lawfulness of the processing of personal data, it is necessary to refer to article 5.1.a), which provides that "1. The personal data will be: a) treated in a lawful, fair and transparent manner in relation to the interested party ("legality, loyalty and transparency")".

According to the definition established by article 4.2 of the RGPD, it constitutes a processing of personal data "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, as the collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, attachment or interconnection, limitation, deletion or destruction."

In relation to the principle of legality, article 6 of the RGPD 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."

Law 19/2014, of December 29, on transparency, access to information and good governance (hereinafter, LTC), obliges the data controller, for the purposes of transparency, to publish an assessment of the contributions made by individuals citizens in the citizen participation procedure (such as the public consultation procedure provided for in article 133 of the LPAC). And so, article 10 of the LTC, includes among the list of decisions and actions of legal relevance that must be published for the purposes of transparency, the following: (article 10.1.d):

"The memoranda and supporting documents of the processing of the regulatory projects or drafts, the various texts of the provisions and the relationship and

evaluation of the documents originating from the public information and citizen participation procedures and from the intervention of interest groups, if applicable."

However, in application of the limit provided for in article 7.1 of the LTC and the principle of data minimization contained in article 5.1.c) of the RGPD, the publication of information on natural persons who have intervened in this phase of public information or citizen participation is not enabled. Therefore, in the document that values the contributions they have made, they must not be identified with their first and last name or with any other data that could allow their direct or indirect identification.

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 of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9", among which 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 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, if necessary, the initiation of disciplinary actions in accordance with what is established by the current legislation on the disciplinary regime of personnel in the service of the administrations

public 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".

As progress has been made in the precedents (precedent 7th), the City Council of Cubelles has informed this Authority that it has carried out certain measures in order to correct the effects of the imputed infringement, and also of those tending to avoid that again produce facts like those that are the subject of the present sanctioning procedure, among others, the immediate withdrawal of the document published on the website, as well as the "review of the procedures for active publication of information in order to minimize the risks related to data protection".

In this case, there is no need to require corrective measures, since the controversial document with personal data has not been published on the municipal website since 09/30/2021 (administrative file 1400/2021-2513 for the establishment of the public service of regulated parking with time limitation in the public space "blue zone).

For all this, I resolve:

1. Admonish the City Council of Cubelles as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a) and 6, all of them 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 Cubelles City Council.

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,

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