

File identification

Resolution of sanctioning procedure no. PS 60/2021, referring to Vallirana City Council.

Background

1. On 14/01/2021, the Catalan Data Protection Authority received a letter from an agent of the Urban Guard (...)(...)(hereinafter, (...)(...)(...)) for which he filed a complaint against the City Council (...)(...), on the grounds of an alleged breach of the regulations on the protection of personal data.

Specifically, the person making the complaint stated that, on 06/26/2018, the Generalitat Police-Mossos d'Esquadra (hereinafter, PG-ME) refused the request made by the City Council (...)(...) in order for the agent (...) to be registered as a user of the Police Information Systems (hereafter, SIP), due to his police background (extremity that documentary). However, the reporting person pointed out that this person accessed the SIP from the City Council's computers, with the user code and password he had as an officer of the Local Police of Vallirana (hereafter, Vallirana PL).

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 17/2021), 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 were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 05/02/2021 the reported entity was required to report on whether the previously identified agent, in the exercise of his functions as an agent of the (...)(...)(...), he had accessed the SIP using the user code and password he had as an agent of the PL of Vallirana.

4. Also on 05/02/2021, the Vallirana City Council was required to report on whether the aforementioned agent was deregistered as a SIP user, when he stopped providing services as an agent the PL of Vallirana.

5. On 15/02/2021, the City Council (...)(...) responded to the aforementioned request through a report issued by a certain GU sergeant in which he set out the following:

- That, on (...) /2018, given that he was one of the SIP interlocutors of the GU, he requested the Directorate General of Police of the Department of the Interior (hereinafter, DGP) to register in the SIP to the person previously identified as an agent of the GU of (...).
- That the DGP replied that the head of the GU had already been informed about the procedure a continue to formalize the registration of that user.
- That given that the head of the GU did not inform him of said procedure, nor did he require any other action to register that agent, he did not do any other management.
- That he did not know if that agent had accessed the SIP using the user code i password that he had as an agent of the PL of Vallirana.

6. On 19/02/2021, Vallirana City Council responded to the aforementioned request through a letter in which it set out, among others, the following:

- That, on 06/20/2018, the identified person resigned as an agent of the PL of Vallirana, due to appointment as an interim official in the GU of (...), without having made any prior communication in the Prefecture of the PL of Vallirana.
- That during the month of October 2018, Vallirana City Council processed the withdrawal from the SIP of this agent.
- That downlink communications are encrypted communications. Due to the limited storage capacity of the mailbox they are not saved.

7. On 02/22/2021, also during this preliminary information phase, the DGP was required to report on whether the indicated agent accessed the SIP between the date on which this person was appointed as to interim official of the GU of (...) and the date on which the deregistration as a SIP user of the PL of Vallirana takes effect.

This requirement was reiterated on 04/12/2021.

8. On 04/19/2021, the Department of the Interior responded to the aforementioned request through a letter in which it set out the following:

- That the SIP user of that agent, linked to the PL of Vallirana, was active until (...) /2018.
- That between (...) /2018 and (...) /2020 there is no record of that user accessing the SIP.

9. On 30/08/2021, the DGP was required to report on whether the indicated agent accessed the SIP with the profile of the PL of Vallirana between the days (...) /2018 (date on which this agent was appointed interim official of the GU of (...)) and on (...) /2018 (date until which the SIP user of the Local Police of Vallirana corresponding to the indicated agent was active) . If so, indicate the dates of access. This requirement was reiterated on 10/27/2021.

10. On 11/26/2021, the DGP complied with this requirement by means of a letter stating the following:

- That between (...) /2018 and 10/06/2018 the user assigned to the PL of Vallirana (the agent identified with (...)) accessed the SIP as assigned to the PL of Vallirana . Specifically, the following accesses took place: on the 14th, 15th, 19th, 23rd, 25th and 30th of July; 1, 4, 5, 6, 9, 13, 14, 16, 17, 21, 22, 26, 30 and 31 of the month of August; 3, 5, 10, 11, 12, 15, 21, 25, 26 and 30 of the month of September; 1, 7 and 11 of the month of October; 22, 26, 29 and 30 of November; 4, 5 and 9 of December.
- The indicated agent was registered as a SIP user linked to the PL of Vallirana on 07/10/2011 and was active until (...) /2018.
- That the procedure for registering new users of the local police in the SIP of the DGP is done through a form. Specifically, the PI09 form "Authorization document for access to the applications and files of the Information Systems of the General Directorate of the Police of the Department of the Interior". That this form contains the information related to the obligations and responsibilities assumed by the person who is given the user code and the uses he can make of it to register local police users to the DGP's SIPs . Among this information is the following: "The user who stops providing services to the administration to which he was registered has the obligation to communicate his cancellation to deactivate the corresponding user code, validated by the IT interlocutor with the DGP of this administration".
- That in December 2018, the Division of Police Information Systems (DSIP) of the PG-ME became aware, through orders from the GU of (...), that the PL of Vallirana had not communicated the termination of the agent indicated in the SIP, when he had stopped providing services due to voluntary leave in that Police Force in June and went to work as an interim in the GU of (...). That in that same communication it was said that they had become aware that the aforementioned agent was connecting to the SIP through Vallirana's profile, a situation which he brought to the attention of the DSIP for the appropriate purposes.
- That upon becoming aware of this situation, the DSIP proceeded to deregister this user on (...) /2018.
- That neither the indicated agent nor the PL of Vallirana informed the DSIP that the aforementioned agent had caused the termination of that Police Force, in order to proceed to terminate his access user.

11. On 03/12/2021, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Vallirana City Council for an alleged violation provided for in article 83.5.a), in relation to 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 the free movement thereof (hereinafter, RGPD).

This initiation agreement was notified to the imputed entity on 03/12/2021.

12. 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.

13. On 21/12/2021, Vallirana City Council made objections to the initiation agreement, which are addressed in section 2 of the legal foundations.

14. On 02/02/2022, the person instructing this procedure formulated a proposed resolution, by which it was proposed that the director of the Catalan Data Protection Authority admonish the Vallirana City Council 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 03/02/2022 and a period of 10 days was granted to formulate allegations.

15. The deadline has been exceeded and no allegations have been submitted.

proven facts

Vallirana City Council did not fulfill the obligation to request the Police Information Systems Division (DSIP) to remove the SIPCAT of the PL agent, Mr. (...), after it caused a drop in its staff.

Between 14/07/2018 and until 09/12/2018, the aforementioned agent made several accesses to the SIPCAT of the Police of the Generalitat-Mossos d'Esquadra, using the credentials and the authorization granted as member of the local police of the Vallirana City Council, when he had already been dismissed from the PL staff of this City Council.

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.

2.1. About the request to deregister from the SIP as an agent of the PL of Vallirana.

First of all, the City Council in its allegations to the initiation agreement sanctioning procedure gave as reproduced the justifications formulated in the phase of prior information (antecedent 6 of this resolution). Well, the City Council informed the Authority that on (...)/2018, the agent in question was terminated from the PL of Vallirana,

by appointment as an interim official in the GU of (...), without having made any kind of prior communication to the Prefecture of the PL of Vallirana so that they could manage his withdrawal from the SIP. Despite this, he assured that during the month of October 2018, the City Council processed the cancellation of this agent's SIP, but that he could not prove it because the cancellation communications are encrypted communications and, due to the limited mailbox storage capacity, these communications are not saved.

However, in the allegations made in the initiation agreement, the City Council differs from its initial statement, since it stated that it did not request the termination of the SIP agent, because it ensured that he did not he made the previous communication to the Prefecture of the PL of this municipality to which he was obliged.

In turn, in the preliminary information phase, the DGP (precedent 10) stated to the Authority that neither the indicated agent nor the PL of Vallirana had notified the DSIP of the termination of the agent that police force.

In summary, the City Council did not prove that it requested the cancellation of the SIPCAT of the agent in question when he stopped providing his services in this city council. That is why this contention cannot succeed.

2.2. On the absence of prior communication from the agent when he was fired from the PL of Vallirana.

Next, the City Council claims that it did not request the removal of the agent from the DSIP because he had not previously notified the Prefecture of this PL of Vallirana. In point 6 of his allegations he says verbatim: "Mr. (...) did not perform the previous communication, to which he was obliged as a user of the SIP in the prefecture of PL de Vallirana so that they could deregister him from the SIP. Likewise, it seems nor did he make the previous communication, which he was obliged to as a SIP user to the GU of (...) in order to change the TIP and the profile".

Regardless of whether the agent made the said prior communication to the Prefecture of the PL or if he did not, the City Council knew that the agent was no longer a member of the PL of Vallirana, having been appointed as an interim official in the City Council of (...) on date (...)/2018, as recognized by the accused entity.

Having said that, in accordance with the Agreement for the transfer of use of the management and support software for the Local Police processes between the Department of the Interior and the City Council of Vallirana called SIPCAT, specifically, the fifth clause relating to the treatment data and security measures:

"The City Council will have to comply with the provisions regarding the protection of data, (...) implement physical security measures, of premises and equipment, in function

of the installation profile adopted according to the modalities reflected in the second part of ANNEX I. The City Council will guarantee that the municipal staff authorized in accordance with the security system implemented to access the SIPCAT adopt in the terms of the ' ANNEX I the following commitments:

d) The access and treatment of the data of the SIP (Police Information Systems) does not suffer any variation, that is to say, they will be governed by the clauses established in the signed agreement for connections to the police information systems and by the safety measures established in the safety manual”.

Well, you need to go to the Security Manual of the Local Police connection agreement in the Police Information Systems (SIP) of the DGP, section 2, Block II Scope of application to the Local Police, section 2.1, which establishes the functions and obligations of the IT interlocutor in the scope of the Local Police. Well, the point "Additions, deletions and modifications of users" establishes the following:

"The computer interlocutor must request the security manager of the SIP for the registrations, deregistrations and modifications of users, so that they can access data and resources. For this purpose, the list of users who must access the SIPs with their data must be compiled and sent to the security manager. Must communicate immediately any changes that occur in the situation of members of the police force or other authorized users, from terminations in which it is presumed that the agent or user will be out of service for a period exceeding one month already whether definitive or temporary, other situations that cause your user person not to need access to the SIPs for a period exceeding one month and for the sanctions that involve the suspension of service for any period of time”.

Therefore, what is relevant is that the City Council knew that the agent in question had caused a deregistration in the PL of Vallirana and was also aware of its obligation to communicate this immediately, through the IT interlocutor that had appointed, to the SIPCAT security manager, as explained in the aforementioned Security Manual.

As I also knew, because this was explained in the Thirteenth Clause, Audits and Liability of said Agreement, which if you fail to comply with the instructions derived from the agreement or its annexes, could be considered, for the purposes of possible violations, as responsible for a treatment different from the purpose for which the transfer was made of using the SIPCAT software.

"The City Council is responsible for any damages caused or that may occur, whatever their nature, that derive from the use or use of the information contained in the application subject to assignment. It is also responsible for the integrity, veracity and legality of the content reported by the users of the application.

In this regard, the City Council or the local police, if they use the data for different purposes, communicate it or use it in breach of the instructions derived from this document and its annexes, may be considered for the purpose of possible infringements, as responsible for a treatment other than the purpose for which the use of the software is granted.

The City Council must apply the procedure and penalties established in current regulations on the disciplinary regime applicable to the local police, when they are aware that one of their members has committed any of the offenses specified in article 44 of Organic Law 15/1999, of 13 December, on the protection of personal data, without prejudice to the responsibilities, civil or criminal, that may arise".

Precisely the City Council's non-compliance with the request to terminate the SIPCAT agent made it possible for him to carry out improper access, which could not have occurred if the City Council had carried out its obligation

In short, it has been proven that the City Council, through the IT interlocutor of the PL of Vallirana, had the obligation to inform the security manager of the SIP of the agent's termination, an obligation that the entity the accused does not deny, and it has also been proven that he did not comply with it and that this fact enabled improper access to the information contained in the SIPCAT. In accordance with what has been set out, it is estimated that this allegation cannot succeed.

2.3 About the City Council of (...) allowing the agent to connect to the SIP through its computer equipment.

The accused entity also alleged in its statement of objections that the City Council of (...) allowed the agent access to the SIP from its computer equipment, even though he had been denied the registered with this City Council (26/06/2018). But, as the instructing person indicated in the proposed resolution, this demonstration does not detract from the responsibility of the Vallirana City Council in the facts reported, at most when all the signs point to what the City Council of (...) immediately notify the DSIP of the PG ME of improper access when it becomes aware of it. Well, according to the DGP, the withdrawal of the SIP agent took effect on (...) /2018 precisely following the communication, in December 2018, that the GU of (...) carried out on said accesses to the DSIP of the PG-ME.

Finally, the accused entity complained that the DGP did not manage the withdrawal of the SIP user when the Police of the Generalitat-Mossos d'Esquadra refused the request made by the City Council of (...) to process the agent's registration (nor did he alert Vallirana City Council). This allegation also does not exempt him from responsibility because, as stated in point 2.2 of these Legal Principles, the obligation to request the termination of the agent in question corresponded to the City Council de Vallirana, as specified in the agreement signed between the parties.

3. In relation to the facts described in the proven facts section, relating to the principle of confidentiality, it is necessary to refer to article 5.1.f) of the RGD, which provides that personal data will be treated "f) as such in such a way that adequate security of personal data is guaranteed, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")."

During the processing of this procedure, the fact described in the proven facts section, which constitutes the offense provided for in article 83.5.a) of the RGD, which typifies the violation of "a) basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9."

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 in article 5 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 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".

It is not necessary to require corrective measures to correct the effects of the infringement, since in date (...) /2018 the DSIP of the PG-ME deregistered the agent in question from the SIPCAT.

For all this, I resolve:

1. Admonish Vallirana City Council 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 legal basis 4rt.

2. Notify this resolution to Vallirana 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,