

File identification

Resolution of sanctioning procedure no. PS 61/2021, referring to the Urban Conservation Entity Vall Repòs.

Background

1. On 08/28/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Vall Repòs Urban Conservation Entity (hereinafter, EUC Vall Repòs), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant stated that the EUC Vall Repòs Board had accessed a database that contained information on property owners in the Vall Repòs Urbanization, in order to send them, without their consent, several emails electronic - one of them without using the hidden copy option - for commercial advertising purposes (sales or advertising of products). The complainant accompanied his complaint with a copy of the following eight e-mails, allegedly sent by a member of the EUC Vall Repòs Board from the same e-mail address (juntavallrepos@gmail.com):

1. Mail sent on 22/03/2020 with the subject "infor22marz20", signed by Mrs. (...), from the Community Management Area of the Vall Repòs Board, with the following content:

"Dear Co-owner, we have attached 2 files of your interest:
* "Self-responsible certificate of displacement", if you move for any reason, the Police and Mossos may require it. Please have it printed and take it with you when you move for any reason.

* "The Christian Youth Association", at the service of the community, may require help."
2. Mail sent on 09/05/2020 with the subject "Ayuda solidaria y telefonios municipales de interes. Santa Cristina d'Aro. (09/May/2020)", signed by the EUC Vall Repòs Board, which contains two images with contact details of the Association Juvenil Cristinenca (image 1) and Sant Cristina d'Aro City Council phones, such as the covid19 helpline (image 2).
3. Mail sent on 11/05/2020 with the subject "solidarity aid, programming of medical visits and municipal telephones of interest", signed by the president of the Board, Mr. (...), which contains the two images from the previous mail (number 3), plus a third image with contact details for the Primary Care Center (CAP).

4. Mail sent on 05/15/2020 with the subject "15mayo-info", signed by Ms. (...), information from the restaurant Le Bistró, in Palamós, with the following content:

"(...) Dear co-owners,
week by week, we have seen how Le Bistró's product offering has been growing, in an effort to reinsert its activity according to current conditions, a consequence of the pandemic.
Companies in general are working to design their continuity in this scenario of changes as profound as those we are experiencing, not only here, but in the world.

Today I am sending this Friday's letter (see attachments) (...)."

5. Mail sent, without using the blind copy option, on 19/05/2020 at 11:13 a.m., with the subject "Documento de la Junta sobre la oruga de las encinas", signed by the president of the Board, in which the e-mail of numerous recipients is displayed, together with their other data (name and surname, a number associated with each, and in some cases a related entity):

Dear owners:

In response to the consultation of some neighbors regarding the affectation of the oak caterpillar, I am attaching a summary of the document -which was kindly prepared and made by our neighbor and member of this board, (...)-, which we already sent in last March, as a synthesis of knowledge and action before this situation in the vegetation of our urbanization and its forest environment (...)."

6. Mail sent on 05/19/2020 at 2:27 p.m. by the president of the EUC Vall Repòs Board, with the subject "bulk sending error", with the following content:

"Dear owners,

Due to an involuntary error, in my e-mail, it has been sent openly to all available addresses, instead of having sent them in a private or hidden copy.

Please do not respond to "ALL", we will use the CCO delivery to safeguard everyone's confidentiality.

I'm sorry for the inconvenience, and I apologize (...)"

7. Mail sent on 27/05/2020 with the subject "Fruits and vegetables", signed by Ms. (...), information on the home sale of fruit and vegetables by the gentlemen (...):

"(...) Dear co-owners,
enjoying your stay in Vall Repòs For those who are at home, many in other countries, we hope they can come to their homes soon.

The most important thing is that we are all in good health and taking care of ourselves. Among the changes that we can take advantage of, are the services of providers willing to bring orders to their homes.

We have received the offer of home delivery of FRUITS AND VEGETABLES. (...), they have their own vegetable garden, one in the Palamós market (every day next to the market) and another in Sant Antoni de Calonge.

Orders can be uploaded on Friday evenings and product details, prices, payment methods... can be requested via WhatsApp or mobile at:
(...) (xxx).(....).."

8. Mail sent on 10/07/2020, with the subject "Food": reiterating the information on two suppliers of home sales of fruits and vegetables. Sign the mail Ms. (...):

"Dear co-owner,

We hope that you are in good health and that you are enjoying Vall Repós or will soon be able to do so.

I would like to remind you that Vall Repós has had the services of 2 food suppliers since the coronavirus lockdown began.

The 2 providers are:

*Le Bistró, with bread sales, bar and restaurant in Palamós and whose owners are a family that has lived in Vall Repós for many years. Le Bistró offers bakery products, pastas and prepared meals, all of excellent quality.

Orders to (...): (xxxxxxxxx)

*(...) and (...), offer top quality fruits and vegetables. They have their own vegetable garden and a year-round stall next to the Mercado de Palamós and on Wednesdays in Sant Antoni. Orders to (...), by whatsapp (xxxxxxxxx). Check the form of payment when ordering. They go up to Vall Repós on Fridays.

living outside the urban centers. During the confinement it was a great help to minimize the risk and, given the current situation of the pandemic, we must continue with the greatest possible precautions (...). These services, it would be interesting if they continue since it is a great convenience."

2. The Authority opened a preliminary information phase (no. IP 250/2020), 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 02/07/2021 the EUC Vall Repòs was required to confirm the story of the events or present its version of them; to point out what was the relationship of the recipients of the emails with the EUC Vall Repòs and whether it had their consent to send them this type of emails, or

his defect, what other legal basis he considered to protect the treatments carried out. And with regard to the mail sent on 05/19/2020 without using the blind copy option (number 5), he was required to indicate the number of recipients, and to report whether prior to sending the mail had implemented measures aimed at avoiding the mistake made.

4. On 07/14/2021, a letter was received from the entity Finques Vilanova, SL, which claimed to be the managing entity of the EUC Vall Repòs, accompanied by a letter from the president of the EUC, dated 07/12/2021, in which the following was noted:

- Regarding the account of events, he stated that:

"In no case has the Board of the EUC Vall Repòs, nor any of its members in a personal capacity, sent emails to the owners who make up the EUC Vall Repòs, for commercial advertising purposes (selling or advertising products). The person who has denounced these emails as commercial emails has taken both their content and the circumstances in which they were sent out of context.

Vall Repòs is located in an area far from the urban core, without shops that can provide basic services to the people who live there.

Since March 2020, the inhabitants of the urbanization, like the rest of the inhabitants of this country, have had to suffer confinement in their homes and restrictions on mobility due to government order, as a result of the Covid-19 pandemic. In addition, among the residents of Vall Repòs there are elderly people who find it more difficult to travel to Santa Cristina d'Aro to buy the products they need.

It is in this context that the emails subject to the complaint were sent.

Among the purposes of the EUC Vall Repòs is to manage everything necessary for the defense of the social interests of the EUC (Art. 4 of the Statutes), and although this entity, like all EUCs are created to preserve the urbanizations at an urban planning level, the EUC Vall Repòs is also applicable analogously to Law 5/2006, of 10 May, of Book Five of the Civil Code of Catalonia on real rights, Title V of the situations of Community, Chapter III Legal Regime of Horizontal Property, as it appears in the minutes of the Extraordinary General Assembly dated November 5, 2011, so that in accordance with article 553-16 CCC, corresponds to the President to ensure the proper functioning of the community.

As you can see by reading the emails that have been the subject of a complaint, their intention was to provide services to the owners who live in the development. The emails contained information of general interest to the owners, lacking advertising and any commercial relationship with third parties. This is even the case in the mail dated 05/15/2020 with the subject "15mayo-info" in which information was provided about the products that the restaurant Le Bistró, which is owned by neighbors of the urbanization i

that they offered to bring food products to the homes of those who asked for them (as it was said in the pdf attached to the mail), and they would do this when they returned after finishing the day at their store, with the aim of to help whoever needed it, as we have tried to do from the EUC Board, because as I explained, all these emails are included in the period of the pandemic and confinement and their aim was to convey encouragement and service options for the residents at greater risk of lack of protection and isolation, given that none of the supermarkets in the area delivered products to homes in the Vall Repòs urbanization, unlike what was happening in the urban centers of neighboring towns.

That this was the purpose of the emails is confirmed by their content."

- Regarding the recipients of the mails, the EUC indicated the following:

"The relationship of the recipients of the emails with the EUC Vall Repòs is that they are owners of properties that are within the scope of action of the EUC Vall Repòs in accordance with article 8 of its Statutes and therefore they have the status of associates of the EUC Vall Repòs.

The e-mails of the associates are held by the Board because they have been communicating them to the EUC Vall Repòs, in compliance with the agreements agreed at the EUC Assembly of the years 2013 (page 15 of the minutes) 2014 (page 13 of the minutes).

The legal basis for sending these emails, which did not have a commercial purpose but a service to the owners, as explained in the previous answer, was the fulfillment of a legal obligation in accordance with Chapter III Legal Regime of Horizontal Property, from Book Five of the Civil Code of Catalonia on real rights, Title V of Community situations, given that they were sent to provide services to associates. Likewise, as can be seen from the acts mentioned in the previous paragraph, it was the associates who communicated their email to the Board. Therefore, by doing so they were giving their consent so that information related to matters affecting the residents of the development could be sent to these e-mails, as was the case with the e-mails that were sent.

Therefore, we understand that the sending of these emails would be covered by article 6.1.c) of REGULATION (EU) 2016/679 OF THE EUROPEAN PARLIAMENT OF THE COUNCIL, of April 27, 2016, (RGPD) and in the 6.1.a)."

- Regarding the mail sent without using the blind copy option, it pointed out that:

"Regarding this point, we must state that the number of recipients were those listed in the mail, 158. Not all the addresses are of individuals, but they do correspond to associates of the EUC, plus yours administrator

As stated in mail 6 of the list of mails in the letter we received from the APDCAT, on the same day, just 3 hours later, another mail was sent apologizing for the involuntary error that 'had committed by not having sent that mail with a hidden copy, as was always done.

In relation to this mail we must state again, that we are very sorry for the mistake we made of putting the addresses in the CC line instead of in the CCO.

The mail was not sent to people outside the EUC Vall Repòs, therefore, the names of the interested parties were already known to the rest, given that they appear in the minutes of the EUC Vall Repòs, but not their email, which is what we know shouldn't have been shared. There was no other personal information in the mail, given that it was sent solely with the purpose of informing the residents about how to act in the face of the plague of caterpillars that is affecting the oaks of the urbanization, and we do not know that the recipients of the mail have suffered no harm, beyond the exposure of their mails to other recipients.

Regarding the security measures applied by the EUC Vall Repòs, they are documented in its Technical and Organizational Measures Document dated 04/08/2019, for GDPR compliance. This document establishes the obligation of confidentiality for users who process personal data, in its Annex J.

However, as a result of the incident of May 19, 2020, we have strengthened and updated these obligations for Board users who process member data, specifically adding the point to bear in mind that emails must be always send with blind copy.”

The entity Finques Vilanova, SL did not accompany its letter with the documentation that the president of the EUC mentioned in his letter.

5. On 07/14/2021, the entity Finques Vilanova, SL was required to provide the documentation certifying the representation of the EUC, as well as the documents mentioned in the letter signed by the president of the EUC.

6. On 06/08/2021, he received a letter from the entity Finques Vilanova, SL, for which he provided the required documentation. Regarding its content, in view of the statements made by the EUC in response to the request for information, it is considered appropriate to highlight the following:

- With regard to the action of the entity Finques Vilanova, SL before the Authority: a copy of the minutes of the meeting of the General Assembly held in 2021, which in point 3, referred to the renewal of positions of the Board of Governors, contains the extension agreement for the appointment of the position of secretary-administrator in the entity Finques Vilanova, SL.

In relation to this entity, in the security document provided it is pointed out that Finques Vilanova SL is also the Privacy and Security Officer while he is the administrator-secretary of the Community. Likewise, it is pointed out that said entity has the status of data controller.

- Regarding the rules that, according to the president of the EUC, would justify the sending of the controversial emails to the associates: a copy of the Statutes of the EUC Vall Repòs was provided, of which the following articles should be highlighted:
- Article 2 provides that: "All the current or future owners of the farms and buildings that make up said Urbanization are part of the Association, with the provisional exception of the owners of the plots...".
 - Article 4, titled "objective and fines", states that: "The entity will aim to preserve the VALL-REPOS Urbanization, with the delimitation contained in art. 8º, and with this purpose will carry out the necessary operations to distribute among the Associates the burdens of said conservation, and consequently, will be able to execute works, contract them, build commercial societies with this purpose, and in general, will manage whatever is necessary for the defense of social interests, within the framework of the legislation in force in urban planning matters."
 - Article 7, titled "administrative supervision", establishes that: "the entity will act under the influence of Ilmo. Santa Cristina d'Aro City Council, which will control its management (...)".
 - Article 17, referring to the Board of Delegates, establishes that this body is made up of the president, five members and a representative of the Administration, and performs the following functions:
 - "a) Administer the Association and its assets in accordance with the Laws and these Statutes.
 - b) Carry out management acts without exception, contracting with companies and industries to carry out the works and repairs that must be carried out for the conservation and maintenance of the urbanization (...).
 - e) Execute the agreements of the General Assembly.
 - d) Develop economic management, in accordance with the forecasts agreed by the Assembly and account for management results.
 - e) to report on contracts, projects and transactions related to the execution of conservation works, inspect them and maintain the appropriate relationship with the optional management thereof.
 - f) Formalize, before the ordinary session of the General Assembly, the Annual Performance Report and the Accounts of the previous exercise, as well as the Action Plan and the Budget for the following exercise.
 - g) Exercise all the other powers of government and administration of the Entity, not expressly reserved to the General Assembly."
 - Article 18.2 establishes that the President will have the following powers:

"a) Convene, preside over, suspend and lift the sessions of the collegiate bodies, direct the deliberations and resolve ties with quality vote; b) Represent the Entity before third parties (...); c) Interpret these Statutes and resolve the doubts raised or raised by its application (...); d) Ensure the execution of the agreements of the General Assembly and the Board of Delegates; e) File legal actions on behalf of the Entity (...); f) Enlist the collaboration of any members of the Entity for specific operations that, due to their idiosyncrasies, require it".

- Article 19 establishes that the Secretary will perform, among others, the following functions: "take minutes of each session of the collegiate bodies (...), organize the services of the internal regime of the Entity; will assist the President in convening the sessions of the collegiate bodies; will carry out by order of the President the agreements of the General Assembly entrusted; (...)."
- Regarding the analogous application of article 553-16 CCC, alleged by the EUC as justification for the sending of the controversial mails: the minutes of the extraordinary General Assembly held on 05/11/ 2011, which establishes the following in point 4 of the agenda, referring to the approval of the liquidations of the debts of delinquent owners: "The Board informs that by analogy with what is provided for in article 553-24 of the Civil Code of Catalonia, the owners who are not up to date with payments, who present overdue debts due to Urbanization quotas, will not have the right to vote, but they will vote from the next assembly."
- Regarding the fact that the Board of Delegates has the email addresses of all the recipients of the controversial emails: two minutes of the annual meetings of the General Assembly held in 2013 and 2014 were provided, which identically collect the following agreement:

"By unanimity it is agreed that all the owners who have electronic mail must communicate their address to the administration of the Entity, in order to speed up the same communication with each one of the owners."
- Regarding the answer to the question of whether the EUC had implemented security measures in order to avoid the mistake made: the EUC only referred to the security document in force at the time of sending the mentioned emails , of which he provided a copy. In the written response to the request for information, the EUC mentioned Annex J, relating to the "functions and obligations of staff and/or users", which does not contain a specific mention of security measures that must be adopted when sending e-mails (as is the case of using the option of sending with a blind copy, or CCo). The rest of the safety document also does not contain a specific mention on this matter.

- The EUC also provided a copy of the part of the security document that it would have modified when it became aware of the complaint presented to the Authority and the opening of the IP, following the Authority's request for information. This is a section entitled "Functions and obligations of users of information systems", in which the following is indicated, among others:

"Communication systems and support management

^y As a general rule, when an e-mail is to be sent to different recipients it will be sent with bcc, so that one recipient cannot see the mail of another recipient."

7. On 17/12/2021, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the EUC for an infringement 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 of such (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 12/21/2021.

8. The initiation agreement explained the reasons why no charge was made with respect to the facts reported relating to the sending of some emails that, according to the reporting person, the EUC sent to the recipients without your consent and for commercial advertising purposes (selling or advertising products or services). Reference is made below to what is considered most relevant and which may have a doctrinal interest. Regarding this, the following was set out in the section of reported events not imputed in the initiation agreement:

"(...) The complainant submitted to the Authority a copy of eight emails (record 1) that several members of the EUC Board of Delegates (hereinafter, the Board) sent to members of said association, that is to say, to people who are neighbors of the Vall Repòs development or in any case property owners of said development, between 22/03/2020 and 27/05/2020.

After analyzing the information and documentation contained in the proceedings, this Authority considers that the sending of these emails does not contravene data protection regulations based on the following considerations:

- 1) Regarding the sending of the e-mail dated 05/19/2020, regarding the plague of caterpillars that affected the oaks of the urbanization.

Article 187.4 of Decree 305/2006, of July 18, which approves the Regulations of the Planning Law (hereafter, RLU), establishes that urban planning entities

of conservation "are governed by the Urban Planning Law, by this Regulation, and by its statutes or rules of operation, as well as by the provisions relating to the operation of collegiate administrative bodies contained in the legislation governing the legal regime of public administrations and of the common administrative procedure".

For its part, article 187.1 RLU establishes that collaborating urban planning entities are constituted "in order to participate in urban management". And in particular with regard to the conservation boards -where the EUC Vall Repòs should be framed-, article 189.4 RLU states that they have "the functions relating to the conservation of urbanization works and the maintenance of endowments and public service facilities, under the terms established by urban planning or the agreement they sign with the city council and the other acting administration, if applicable". In line with this, article 4 of the Statutes of the EUC Vall Repòs indicates that its object is: "the conservation of the VALL REPOS Urbanization".

The sending of the controversial mail can be framed in the purpose of conservation of elements of the urbanization, since with the mail a document drawn up by a member of the Board was forwarded, which provided information related to the control of the pest caterpillars in the oaks of the estates of the urbanization. The sending of this email dated 05/19/2020 would be considered a necessary treatment for the fulfillment of a mission carried out in the public interest (of all the residents of the urbanization); and therefore, the legal basis provided for in article 6.1.e) of the RGPD would apply.

2) Regarding the sending of the seven emails related to COVID.

The first thing that should be highlighted in relation to the sending of these emails is that they all contain various information related to the covid 19 pandemic, specifically, they refer to: the self-responsible travel certificate; contact information of the Christian Youth Association, sent for the purpose of receiving help aimed at young people in the municipality of Santa Cristina d'Aro; contact information for scheduling visits to the CAP; municipal telephone numbers of interest, including the one for assistance due to covid-19, and contact information of various residents (and their premises or businesses) to serve home orders to residents of the urbanization mainly during the period of confinement. And, secondly, it is also necessary to show that all the emails - except the last one - were sent during the confinement period.

As has been said, the controversial emails contained information aimed at helping the residents of the urbanization in matters related to their primary needs (food, health care, etc.). With regard to the purpose pursued, in the written response to the request for information the EUC stated that: "its objective

was to convey encouragement and service options for residents at greater risk of lack of protection and isolation, given that none of the supermarkets in the area delivered products to homes in the Vall Repòs urbanization, unlike what was happening in the urban centers of towns confronting", adding that: "among the residents of Vall Repòs there are elderly people who find it more difficult to travel to Santa Cristina d'Aro to buy the products they need". Likewise, the EUC stated that: "The emails contained information of general interest to the owners, lacking advertising and any commercial relationship with third parties." And there is certainly no indication that the EUC acted for commercial purposes.

These demonstrations carried out by the EUC show that the people who sent the mails had the main purpose of helping those residents of the urbanization who are elderly or in poor health, for whom the isolation resulting from confinement could pose a high risk for your health. From this point of view, the processing of data from residents of the urbanization (in any case of those indicated) could fit into the legal basis provided for in article 6.1.d) RGPD, which provision legitimizes the processing of personal data when "the treatment is necessary to protect the vital interests of the interested party or another natural person".

On the other hand, from all the statements made by the EUC during the preliminary information phase, it can also be inferred that the president and another member of the Board sent the emails with the conviction - even if mistaken - that its obligation was to provide an information service to the residents of the associated urbanization on issues that could certainly be useful in the period of confinement, especially for the elderly or those with reduced mobility.

Bearing in mind that the intended purpose of sending these emails was to help the residents of the urbanization at a time of uncertainty and difficulty in accessing basic services, it is considered that, with regard to the set of recipients of the emails, the element of culpability does not meet with the intensity necessary to impute to the EUC an infringement of the data protection regulations for the sending of these emails (...).

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. On 12/22/2021, the EUC submitted a letter in which it acknowledges its responsibility for the alleged events.

proven facts

EUC Vall Repòs sent on 05/19/2020 at 11:13 a.m., from the email address juntavallrepos@gmail.com, an email to 158 people with the subject "Board document on the oruga de las encinas", without using the hidden copy option. This allowed all the recipients of said mail to access the email address of the rest of the people to whom the message was addressed, who were mostly natural persons, who identified themselves with their first and last names and a number

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.

The control of the sanctioned treatment falls within the competence of the Authority, by virtue of what is foreseen in article 156.b) of the Statute of Autonomy of Catalonia (EAC) and article 3.d) of the Law 32/2010, of October 1, of the Catalan Data Protection Authority, the last of which provides that the Authority's scope of action includes the files and the treatments they carry out: "... public law entities linked... to local bodies, or that depend on them". With regard to the legal nature of the reported entity, it should be noted that urban conservation entities - such as the EUC Vall Repòs, as a conservation board - have an administrative nature (art. 188 of Decree 305 /2006, of July 18, which approves the Regulations of the Planning Law -RLU-), which the acting administration -in this case, the Santa Cristina d'Aro City Council-, approves its constitution (art. 190.4 RLU), and that an administrative appeal can be filed against agreements subject to administrative law adopted by the entity (art. 123 of Legislative Decree 1/2010, of August 3, by which approves the revised Text of the Urban Planning Law). So that the EUC Vall Repòs is an administrative entity linked to the Santa Cristina d'Aro City Council, so the reported treatments fall within the Authority's scope of action.

2. In accordance with article 85.1 of the LPAC, and in accordance with what is indicated in the agreement to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the imputed entity has acknowledged its responsibility for the facts that were imputed in the initiation agreement.

3. In relation to the conduct described in the proven facts section, regarding the sending of an email without using the blind copy option, it is necessary to refer to article 5.1.f) of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD), which provides for the following:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee adequate security for personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures ("integrity and confidentiality").

This principle of integrity and confidentiality provided for by the RGPD must be complemented with the duty of secrecy contained in Article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), which establishes the following:

"Article 5. Duty of confidentiality

1. Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.
2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with the applicable regulations.
3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or in charge of the treatment has ended.

Likewise, it is appropriate to mention article 13 of the LPAC, which lists a catalog of rights of people in their relations with public administrations, in which the right "To the protection of personal data, and in particular the security and confidentiality of the data contained in the files, systems and applications of public administrations".

This fact is considered proven to the extent that, by means of a letter dated 02/22/2021, the EUC has recognized its responsibility in the fact imputed in the initiation agreement.

This imputed fact constitutes an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as such the violation of the "basic principles for the treatment (...)", in relation to the article 5.1.f) of the same GDPR.

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 by 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 (...)."

5. Given the findings of the violations provided for in art. 83 of the RGPD in relation to privately owned files or treatments, article 21.3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, empowers the director of the Authority for the resolution declaring the infringement to establish the appropriate measures so that its effects cease or are corrected.

In the present case, it becomes unnecessary to require corrective measures for the effects of the infringement given that the infringing behavior refers to a single and already accomplished event, the sending of an email, which due to its instantaneous nature cannot be corrected with the application of corrective measures.

Having said that, it is considered appropriate to refer briefly to the EUC security document. In date 08/06/2021 and as part of the prior information phase, the EUC provided this document to the Authority, stating that, following the facts alleged in the present procedure, on 05/19/2021 it had updated the section corresponding to the "functions and obligations of the users of the information systems", adding, among other things, the following information:

"As a general rule, when an e-mail is to be sent to different recipients it will be sent with bcc, so that one recipient cannot see the mail of another recipient."

In this regard, it is considered that the initial phrase "as a general rule" may lead to confusion, since, unless the prior consent of the recipients of the mail or another legal basis is present, it would not conform to the right to disclose the e-mail address of the recipients of the mail. The wording used is imprecise, since it could lead to consider that in specific cases, beyond those indicated (concurrence of a legal basis, essentially the consent of the persons affected), it would be correct to send

a mail without the bcc option, when it is not. That is why it would be advisable to modify its wording, taking into account the considerations presented.

For all this, I resolve:

1. Admonish the Urban Conservation Entity Vall Repòs 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 5th legal basis, without prejudice to the recommendation made there.

2. Notify this resolution to the Urban Conservation Entity Vall Repòs.

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,