

File identification

Resolution of sanctioning procedure no. PS 3/2022, referring to the Prat de Llobregat Town Council.

Background

1. On 14/10/2020, the Catalan Data Protection Authority received a letter in which a person (hereafter, complainant) made a complaint against the Prat de Llobregat City Council, on the grounds of a alleged breach of the regulations on personal data protection.

Specifically, the person making the complaint stated that on 10/09/2020 the City Council sent him an email without using the blind copy option, so that all recipients of the email could access their first and last names and email address of all of them, in addition to linking this data to the fact that in the mail it was reported that none of these people had taken the course or online informative session on prevention of occupational risks of the return plan due to COVID -19.

The complainant accompanied the complaint with a document containing a screen printout of the aforementioned email, with the subject "PRL TRAINING Covid ", which was sent on 09/10/2020 to Prevenció de Riscos Laboras as the main recipient, and in the CC section the name and surnames of other recipients of the mail were displayed. The body of the email stated the following:

"(...) We have verified that your participation in the PRL online training session on the return plan due to COVID is not recorded.

This training is mandatory for all municipal staff.

You can find it at (...) When you take the test, we automatically receive the info that you have already completed the course and exit the delinquent database.

Observations:

(...) if you are active (...) you have no excuse; we have left you enough time not to delay it any longer (...)"

2. The Authority opened a preliminary information phase (no. IP 311/2020), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 07/10/2021 the Prat de Llobregat Town Council was required to report, among other issues, if at the time the mail was sent the recipients were municipal employees, if the addresses to which the mail was sent are corporate (not private) addresses, and if, prior to sending the mail, the recipients already had access to the names and surnames and the electronic addresses of all of them. Likewise, they were required to report on the reasons why the hidden copy option had not been used when sending the mail, also to point out if this procedure was a common practice, and if they had any protocol or

instruction regarding the use of e-mail.

4. On 10/19/2021, the City Council responded to the above-mentioned request in a letter in which it stated the following:

- That *"This email dated September 10, 2020 is sent by the City Council's occupational risk prevention officer as part of his obligations to inform and comply with his occupational safety obligations."*

- That *"This email is sent to 49 recipients, all of whom are active public employees as it is aimed at training workers; and being all staff or workers assigned to the Police Force and therefore they are staff with a work relationship between them. This submission was not considered a disclosure of data in that no information not previously known to each other has been provided as it is staff of the same body, except for the non-completion of the mandatory training session for all staff."*

- That *"(...) all the addresses were corporate in that the Human Resources department and Occupational Risk Prevention have personal/particular data of City Hall employees."*

- That *"As detailed in the internal ICT use regulation, which is attached to this answer, the sending of emails to multiple recipients must be done with the blind copy system (point 18.4) but in not being external staff or outside the same department/area was not forwarded with a blind copy; fact that it is carried out when they are recipients without a link between them."*

The City Council provided the Regulations for the use of information and communication technologies of the Prat de Llobregat City Council, which established the following in section 14, on the use of email:

"14.8. For emails sent to a large number of recipients, it is advisable to use a distribution list or, failing that, place the distribution list in the BCC field (CCO or BCC), avoiding its visibility to all recipients of the message, especially if this mail has a destination outside the City Council."

5. - On 01/20/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Prat de Llobregat 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 circulation of these (hereafter, RGPD). This initiation agreement was notified to the imputed entity on 01/21/2022.

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 02/03/2022, the Prat de Llobregat City Council made objections to the initiation agreement.

8.- On 04/04/2022, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Prat de Llobregat Town 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 04/05/2022 and a period of 10 days was granted to formulate allegations.

9.- The deadline has been far exceeded and no allegations have been submitted.

proven facts

Prat de Llobregat City Council, through the email of the Occupational Risk Prevention (PRL) manager of the Human Resources Department, sent an email on 09/10/2020 with the subject "PRL Covid TRAINING " to, among others, 49 municipal employees of the Local Police force, in which it was reported that it was not recorded that these people had participated in the PRL training session on the covid return plan , despite it being mandatory, and that for this reason they appeared in a database of defaulters. Since the mail was sent without using the bcc option, the first and last names of all recipients were visible (in addition to the e-mail address of each of them), so each of them was able to identify all the employees of the police force who were in this situation.

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 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.

The Prat de Llobregat City Council reiterated the statements it made through the letter dated 10/19/2019 that it presented in the prior information phase.

2.1. In essence, the City Council considered that the sending of the controversial e-mail did not result in any disclosure of data, since the information that was disseminated was already known among the recipients of the e-mail "since it is addresses corporate".

In this regard, it was already pointed out in the initiation agreement that the infraction attributed to the City Council (violation of the principle of confidentiality) does not comply with the fact that their addresses have been disseminated among the 49 recipients of the mail electronic, and this due to the fact that in all cases they were dealing with corporate data, so that they would be addresses to which any employee of the City Council would have access. The fact that all the recipients of the mail are employees attached to the Local Police body would reinforce the consideration that, prior to sending the mail, each of them could access the corporate mail addresses of the rest.

But as noted in the initiation agreement, the ability to access these email addresses would not by itself justify any further use. In the present case, the open use of these corporate email addresses together with the first and last names of the people holding the email accounts, would have revealed to the recipients of the controversial email the identity of the people from the police force who they had not yet completed the training course, despite having passed the time initially granted ("you have no excuse; we have left you enough time not to delay it any longer"), and that they had been included in a database of people "delinquent". Therefore, with the sending of the mail there was a disclosure of data, without consent and without any legal basis of those provided for in article 6 of the RGPD, which would protect it.

2.2. On the other hand, the City Council stated in its defense that the purpose of sending the mail was to "ensure the safety of all employees" in the face of the covid-19 pandemic, that the training session was mandatory, and that the its non-performance entailed a serious breach of the City Council's obligations provided for in the Occupational Risk Prevention regulations.

In this regard, it was noted that the appropriateness of sending a reminder email to employees is not in question, but rather the fact that the email was sent without using the blind copy option. It should be emphasized that the use of this option would not have prevented or hindered the City Council from achieving its objective, which was to remind employees who had not yet completed the training session of the obligation to -the.

2.3. Next, the City Council referred to its Regulations for the use of information and communication technologies, and pointed to the fact that the mail was not sent to external personnel. But the truth is that section 14 of this municipal regulation, transcribed in the antecedents (point 4), although it is true that it affects those mails that have "a destination external to the City Council", it is also recommended that in all in cases where the City Council sends mail "to a large number of recipients", a distribution list is used or, failing that, the blind copy option is used. So that by sending the mail without a blind copy to 49 workers, when the body of the mail contained the information of these workers that has been mentioned in point 2.1, the City Council, in addition to neglecting the recommendation contained in point 14 of this Municipal Regulation, contravened the principle of confidentiality of your data.

2.4. In the last one, the City Council questioned the imposition of a penalty for the facts that are imputed, in reference to the principle of proportionality.

In this regard, it was pointed out that, to the extent that the imputed facts were considered proven and constituting an infringement, that the sending of mails such as the one in question was part of a regular procedure, and that the sanction that was proposed to be imposed was a mere warning, this penalty was not considered disproportionate.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 5.1.f) of the 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 confidentiality provided for by the RGPD must be supplemented with the duty of secrecy contained in Article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), which establishes the following:

"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."

Likewise, article 13 of the LPAC enumerates a catalog of rights of people in their relations with public administrations, in which the right *"To the protection of personal data"* is expressly included in letter h) , and in particular to the security and confidentiality of the data contained in the files, systems and applications of public administrations".

During the processing of this procedure, the alleged facts have been duly substantiated, taking into account the mail provided by the person reporting to the Authority, as well as the recognition by the City Council of the sending of the mail without a hidden copy and the set of demonstrations that he has carried out.

These proven facts are constitutive of an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as such the violation of the *"principios básicos para el tratamiento, including the conditions for the consent to the tenor of the articles 5, 6, 7 and 9"*.

The conduct addressed here has been collected as an infringement 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 Law organic"*.

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 sanctioning them with a warning. The resolution must also establish the appropriate measures to be adopted so that the conduct ceases or the effects of the offense that has been committed are corrected (...)"*

In similar terms to the LOPDGDD, article 21.2 of Law 32/2010 , determines that: *"In the case of infractions committed in relation to publicly owned files, the director of the Catalan Authority for the Protection of Data must issue a resolution declaring the infringement and establishing the measures to be adopted to correct its effects (...)"*.

In the statement of objections to the initiation agreement, the City Council referred to the adoption of a formative measure, specifically, it noted the following:

"(...) in order to guarantee awareness and the correct application of the regulations, a training session - awareness of the regulations was held by the Human Resources department on February 1, 2022, where a special incidence in these situations of submission of documentation and sharing thereof".

Given these manifestations, and that the imputed infringement obeys to a specific event that exhausted its effects when the controversial mail was sent, it is considered unnecessary to require the adoption of corrective measures.

For all this, I resolve:

1. Warn the Prat de Llobregat Town 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 4th legal basis.

2. Notify this resolution to Prat de Llobregat Town 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 the provisions of 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,