

File identification

Resolution of sanctioning procedure no. PS 10/2022, referring to the Maresme Regional Council.

Background

1. On 03/16/2021, the Catalan Data Protection Authority received a letter in which a person (hereinafter, complainant) filed a complaint against the Maresme Regional Council (hereinafter, CCM), on the grounds of an alleged breach of the regulations on personal data protection.

In particular, the complainant highlighted that on 10/03/2021, the management of the CCM sent an email to all employees of the entity, without using the blind copy option, of so that all recipients of the mail could view their respective email addresses. Since the message attached three termination notices from third parties, these documents were also accessible by email recipients. The content of the reference notifications included, among others, the proposed settlements to be received by the affected workers, their ID, their address, as well as the date of termination of the employment relationship.

The reporting person provides a copy of this email.

2. The Authority opened a preliminary information phase (no. IP 112/2021), 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 05/26/2021 the reported entity was required to report, among others, on the reasons why the copy option was not used in the aforementioned electronic submission hidden

4. On 31/05/2021, the CCM responded to the aforementioned request through a letter, through which it communicates, among other issues, the following :

"1. The electronic submission had to be for two people who work together, the management secretary and the human resources administrator, both of them had to be aware of the same thing and know each other. The problem was caused by a property of the computer application (GMAIL), which suggests and autocompletes the address of a contact. In this case, the name of the human resources administration began with "TR" as did an internal communication email to all workers "CCM EMPLOYEES". Due to an error on the part of the sender of the mail, this second address was put in and he communicated the message to all the workers.

The use of the hidden copy option would not have solved the problem, moreover, in this specific case, it would have made it more difficult to detect.

To solve this, the address of the "CCM WORKERS" group has been changed, so that it cannot be auto complete with any initial letter. The other planned measure is not to send documentation from different recipients by email. The human resources service will

deposit the documentation to be signed in a folder on the server with restricted access and people must log in to sign the documents.”

5. On 10/03/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the CCM for an alleged infringement provided for in article 83.5.a), in relation to the 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 these (hereinafter, RGPD). This initiation agreement was notified to the CCM on 03/15/2022.

6. In the initiation agreement, the CCM was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend its interests .

7. On 03/29/2022, the CCM formulated the allegations in the initiation agreement which are transcribed below and which are addressed in section 2 of the legal foundations:

“With reference to said procedure, inform that the entity confirms the explanations given in its letter “Resposta_IP_112-2021” submitted on 05/21/2021 with entry registration to the Catalan Data Protection Authority E 9000 /00094138/2021. At the same time, we also want to incorporate the following allegations into the previous explanations:

- *Everyone who starts working at the Maresme County Council must attend a welcome meeting where they are informed about the County Council. Specifically, you are given two documents: - “3. LOPD CCM Reception Plan 2020.docx” – “4. LOPD authorization and CCM 2021 signatures to be returned to HR.docx”. In these documents, which are attached to this letter, new employees are informed of the Personal Data Protection regulations and their more general aspects, the use of computer tools and the confidentiality of the information processed “. In addition, a small test on the regulations for the protection of personal data is requested, which must be signed and returned to the Human Resources service.*

The letter from the CCM is accompanied by the documents that, according to him, are provided to the workers when they join, for the purposes that they know the most general aspects of the data protection regulations.

8. On 20/04/2022, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish the Maresme County Council as responsible, of an infringement provided for in article 83.5.a) in relation to article 5.1.f), all of them of the RGPD.

This resolution proposal was notified on 04/22/2022 and a period of 10 days was granted to formulate allegations.

9. The deadline has been exceeded and no objections have been submitted.

proven facts

On 03/10/2021, the Maresme County Council sent an email to all the organization's workers, attaching personal information relating to the termination of the contractual relationship of three workers. The recipients of the e-mail were able to access the personal information of a labor nature of third parties which included, among others, the proposed settlements to be received by the affected workers, their ID, their address, as well as the termination date of the employment relationship.

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 allegations presented in the agreement to initiate this procedure refer to those already made in the letter that the imputed entity presented to this Authority on 05/31/2021.

In essence, the allegations presented by CCM in the preliminary information phase showed that the sending of the controversial e-mail to all CCM workers was the result of a specific error by the person sending the e-mail, which confused the name of the human resources administrator to whom the message was to be addressed, which began with "TR", with an internal email address used to communicate to all employees. The reference letter also reported that the accused entity had proceeded to change the address of the "CCM EMPLOYEES" group so that it could not be autocompleted with any initial letter, and it was reported that, from the human resources service, the documentation addressed to the workers would be deposited in a folder on the server with restricted access.

In this regard, it should be noted that even if the reported event occurred as a result of an error, the lack of intention (human error) cannot exonerate the CCM from responsibility. In this regard, it is necessary to take into account the doctrine of the principle of culpability, which highlights that the sanctioning power of the Administration, as a manifestation of the "*ius puniendi*" of the State, is governed by the principles of criminal law, and one of its principles is that of culpability, incompatible with a regime of objective responsibility without fault, and establishes that for the element of fault to occur, conduct is not required intentional but it is sufficient that the infringement occurred due to the negligence of its author. In this sense, the Supreme Court in several judgments, including those of 15/04/2016 and 24/11/2011, refers to the doctrine of the Constitutional Court when it quotes verbatim "*objective responsibility does not fit in the scope of administrative sanctions or without fault, doctrine that is reaffirmed in sentence 164/2005, of June 20, 2005, under which the possibility of imposing sanctions for the mere result is excluded, without proving a minimum of culpability, even for mere negligence*".

Also the National Court, in the Judgment of 10/30/2017, in matters of personal data protection indicated, citing what it had already declared in previous judgments (for all, the judgment of 11/12/2010) the following: "But , as we have repeatedly affirmed in this matter, the sanctions do not require intentional intent but mere carelessness or lack of diligence is

sufficient; in the words of this Court " *the simple negligence or non-fulfilment of the duties that the Law imposes on the persons responsible for data processing files is enough to exercise extreme diligence...*" and even if no economic gain was obtained".

In short, negligence does not require a clear intent to infringe, but rather lies precisely in carelessness, and in this specific case, in the lack of attention required by the entity in fulfilling the duty of confidentiality referred to article 5.1.f) of the RGPD. At this point it should be emphasized that the duty of care is maximum when activities are carried out that affect fundamental rights, such as the right to the protection of personal data. Certainly, in the present case, the sending of the controversial e-mail to all the workers involved data processing by the CCM that violated the principle of confidentiality of the personal data of those affected, as it allowed all recipients of the reference email could know the content of the attached documents, which contained personal information of a work nature of third parties.

For all that has been said, it is considered that the statement of allegations, which highlights the lack of intentionality in the commission of the facts, cannot succeed in exonerating the accused entity from responsibility.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5. f) of the RGPD, which provides that personal data will be "*treated in such a way as to guarantee adequate security to personal data, including the protection against unauthorized or illegal treatment and against its loss, destruction or accidental damage, through the application of appropriate technical and organizational measures ("integrity and confidentiality")*".

As indicated by the instructing person, during the processing of this procedure the facts described in the proved facts section, which are constitutive of the offense provided for in article 83.5 a) of the RGPD, have been duly proven, which typifies the violation of " *the basic principles for treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9" which include the principle of confidentiality (art. 5.1.f RGPD)*.

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. In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

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

For all this, I resolve:

1. Warn the Maresme Regional 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 the Maresme Regional 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,

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