

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 12/2022, referring to the City Council of (...)

Background

1. 02/19/2021 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the City Council of (...), on the grounds of an alleged non-compliance of the regulations on personal data protection .

The complainant complained about the practice of notifying various administrative acts issued by the City Council in the framework of disciplinary procedure no. (...) that the City Council had imposed on him, and he also complained about the lack of access to the documents that were the subject of those notifications. Specifically, he stated the following:

1.1. That on 04/18/2019 the City Council addressed the notification of Mayor's decrees numbers (...)/2019 and (...)/2019 *"to a postal address that is not mine"*. And that subsequently on 05/22/2019, he published in the Official State Gazette (hereinafter, BOE) the notice of notification of said decrees, in which the following was noted:

"Announcement of notifications of April 2, 8 and 17, 2019 in disciplinary procedure.

In accordance with the provisions of articles 44 and 46 of law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, on notification effects, through this announcement the notification to the interested party is made public (...) (name and surname of person reporting) of the decrees of the delegated councilor for Human Resources, numbers (...)/219, of April 5, 2019, (...)/2019 of April 16 of 2019. Respectively, for those who agree on the adoption of precautionary measures in the framework of a disciplinary proceeding and the response to the filing of an appeal for reinstatement against the mayoral decree (...)/2019, of February 26 . Also the notification of the provision of the instructor of the same discipline relative to the provision of copies of the reports that motivate the initiation of said discipline (...)"

1.2. That on 08/05/2019 and 08/06/2019, the City Council tried to notify other acts, among them, mayoral decrees no. (...)/2019 and no. (...)/2019, this time to the correct address of the complainant, but which were also unsuccessful; and that subsequently, specifically, on 12/08/2019, he found in his mailbox the notice of the notification attempts made on those dates, which stated the following:

"For the purposes of personally notifying you of a document, I ask you to appear in person at the Town Hall of (...), in the Plaza de (...), from 8 a.m. to 8 p.m., from Monday to Friday, at from 3pm the day after receiving this notice, in order to collect

this documentation, with the prior presentation of the identity document and, where appropriate, authorization of representation.

The deadline for collecting this documentation will be ten working days, after which it will proceed, if applicable, to its notification by means of an edict in the Official State Gazette."

That, in accordance with the ten-day period indicated in the notice of attempted notification, the complainant considered that he could collect the documentation until 08/22/2019. But that, on 08/14/2019, before the aforementioned deadline passed, the City Council published the notice of notification of these acts in the BOE. This announcement stated the following:

"(...) In accordance with the provisions of articles 44 and 46 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, on notification effects, through this announcement the following notifications:

To the interested Mr. (...) (name and surname of the complainant) of the order of the instructor of July 31, regarding the summons to appear in the Town Hall of (...) on Monday, August 26, 2019 at 11 o'clock and of the decrees of the mayor's office (...) /2019, of July 31 and (...) /2019, of August 2, corresponding to the file (...) (...)

1.3. That on 24/10/2019 and 25/10/2019, the City Council tried to notify other acts, among them, mayoral decree no. (...) /2019, also to the correct address of the complainant; that these two notification attempts were also unsuccessful; and that on 10/25/2019, he found in his letterbox the notice of the notification attempts, in which it was also indicated that he was granted a period of ten working days from the day after receive the notice, to collect the documentation at the Town Hall, *"after which, if applicable, notification will be made by means of an edict in the Official State Gazette."*

That, in accordance with the ten-day deadline indicated in the notice of attempted notification, the complainant considered that he could collect the documentation until 08/11/2019. But, surprisingly, on 11/13/2019 the notification notice dated 11/6/2019 was published in the BOE. This announcement stated the following:

"(...) In accordance with the provisions of articles 44 and 46 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, on notification effects, through this announcement the notificaciones al interesado señor (...) (name and surname of the person reporting) of the instructor's order dated September 20, 2019 corresponding to the disciplinary procedure (...) and Mayor's Decree number (...) /2019, of October 18, 2019 (...)"

The complainant also provided a fourth notice of attempted certified notification that Correus left in his mailbox on 11/11/2019.

1.4. That, through instances presented on 05/22/2019 , 05/27/2019, 11/11/2019, 11/19/2019 and 11/28/2019 before the City Council, the complainant had requested access in essence, the documentation to which these announcements published in the BOE referred, as well as the proofs of the previous notification attempts made at his address, without obtaining any response from the council.

2. The Authority opened a preliminary information phase (no. IP 75/2021), 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 18/03/2021 the City Council of (...) was required to report on several issues and provide certain documentation related to the events reported.

On 03/29/2021 the City Council requested an extension of the deadline granted to respond to the request for information, and the Authority granted it by agreement of the same date. Subsequently, and in the face of the silence of the City Council, on 29/04/2021 the Authority reiterated the information requirement.

4. On 06/05/2021, the City Council of (...) responded to the aforementioned request in writing, accompanied by various documentation. In summary, he stated the following:

- Regarding the notification on 04/18/2019 of the decrees no. (...) /2019 and (...) /2019, to an incorrect address, the City Council acknowledges the inaccuracy of the address ("*there is indeed an error in the house number : where says 4 should say 46*"), points out that "*The City Council is not aware that there was another attempt to notify*", and also that on 05/28/2019 (after to have published the announcement in the BOE on 05/22/2019) gave him the documentation in hand when the complainant appeared at the council headquarters .

The City Council provided a burofax - admitted to the Post Office on 18/04/2019 - addressed to the complainant, which contained an incorrect address (no. 4, instead of no. 46), specifically: in a certificate ("*certification of delivery*") , the date 04/24/2019 appeared and the information "*Not delivered , dejado aviso*"; and a second certificate contained the date 05/25/2019 and the information "*No entregado por Sobrante (Not withdrawn in office)*".

- Regarding the publication on 08/14/2019 in the BOE of an announcement notifying decrees no. (...) /2019 and no. (...) /2019, before the expiry of the ten-day period that the City Council had granted him to collect this notification at the council headquarters, stated that: "*As far as the City Council has been able to ascertain, if the notification is of August 8 and the publication is of the 14th, the period of 10 working days would not have passed*". On the other hand, the City Council provided a notice of notification, which included the two attempts (dated 1/08/2019 and 02/08/2019) that did not coincide with the notice of attempted notifications provided by the person reporting (dated 08/05/2019 and 08/06/2019 - section 1.2 of precedent 1).
- With regard to the City Council's action in response to the requests presented by the complainant on 05/22/2019, 05/27/2019, 11/11/2019, 11/19/2019 and 11/28/2019, the council provided a proof of receipt signed by the complainant on 05/28/2019, in order to certify that it would have provided him with the two decrees he requested through the instances of 05/22/2019 and 05/27 /2019. With regard to the rest of the requests made by the complainant (among them, part of the instance dated 27/05/2019), the City Council

made several considerations, without proving that it had provided the complainant with the information or documentation requested in each case.

5. On 17/03/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the City Council of (...) for three alleged violations, all three in article 83.5. a) in relation to article 5.1, subsections d), a) ic), respectively, all of them 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 (hereafter, RGPD).

6. The initiation agreement explained the reasons why no charge was made with respect to the reported facts relating to the rest of the publications in the BOE that the complainant considered premature, as well as the alleged repeated neglect of the right of access that would have exercised 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:

"1. About the rest of the premature BOE publications.

Among the grounds for complaint formulated by the person making the complaint that refer to the publication of announcements in the BOE prematurely, there is an announcement published in the Notifications Supplement of the BOE on 11/13/2019, referring to a provision of the instructor of the disciplinary procedure (...), and mayoral decree no. (...)/2019. It is appropriate to make a point to clarify that the alleged fact 3 refers to the publication of this announcement in the BOE, but the reason for the imputation is due to the fact that the first and last names of the complainant were included in the announcement instead of their ID , while what is analyzed below is the reason for the complaint referring to the eventual premature nature of the publication of the announcement in the BOE.

In this regard, from the analysis of the documentation provided by the City Council and the person making the complaint, it is not observed that the publication of the aforementioned announcement was carried out before the expiration of the 10-day period which, according to the notice of notification that was left in the mailbox of the complainant, he had to go to the City Hall to collect it and thus avoid publication in the BOE.

The complainant has provided two notices of unsuccessful notification, corresponding to two attempts to notify on paper, which the City Council would have carried out at its address on 10/24/2019 at 6:05 p.m., and on 10/25/2019 at 2:05 p.m. Whereas the announcement of the aforementioned notifications was published in the BOE on 13/11/2019, i.e. subsequent to the two unsuccessful attempts noted, as required by articles 42 and 44 LPAC.

On the other hand, unlike the alleged fact 2nd, section 2.1, in this case the City Council published the announcement in the BOE once the period of ten working days that appeared in the two notices of unsuccessful notification attempts that left in the mailbox of the complainant, and in which the City Council expressly indicated that it was a period granted before proceeding with the publication of the announcement in the BOE. Specifically, the ten-day period ended on 11/11/2019 , while the announcement was published in the BOE on 11/13/2019, i.e. once the ten-day period had expired. It must be recognized that the publication announcement was signed on 6/11/2019, that is to say, before the ten-day period

granted to the interested party expired. But in any case, the publication of the advertisement took place after the expiry of the ten-day period.

It does not affect what has been said so far, a third notice of attempted certified notification that Correus left in the mailbox of the complainant on 11/11/2019, since it would be a complementary notification, and as this did not exclude the City Council's obligation to publish the announcement in the BOE, in accordance with the provisions of article 44 LPAC, third paragraph (...).

2. On the repeated access requests made by the reporting person.

On the other hand, one of the main reasons for the complaint refers to the repeated disregard of the access requests made by the person making the complaint before the City Council, referring to acts related to disciplinary procedure no. (...). The complainant would point out that the City Council has not given him the documentation he had requested (...).

First of all, it is necessary to analyze whether these requests for access can be framed in the exercise of the right of access provided for in article 15 of the RGPD, and in such a case, whether the alleged disregard for said requests could be constitutive of the infringement provided for in article 83.5.b) of the RGPD, relating to the infringements of the rights of the interested parties provided for in articles 12 to 22; and in article 72.1.k) of the LOPDGDD, which considers a very serious infraction: "the impediment or the obstruction or the repeated failure to exercise the rights established in articles 15 to 22 of Regulation (EU) 2016/ 679". (...)

Leaving aside the evaluation that merits the action of the City Council, the issue is that in the access requests the complainant did not expressly refer to the right of access to data protection, nor did the content of the instances allow infer that your request was for such a right. On the contrary, the fact that he made the access requests in the framework of an open administrative procedure, such as the disciplinary procedure instituted against him, and that he requested access to the successive mayor's decrees and notices of notification, stating that the fact of not being able to access such documents violated his right of defense in the disciplinary procedure, lead to consider that the requests for access presented by the reporting person are better suited to the right of access provided for in article 53.1.a) LPAC. And in any case, to the extent that the indicated circumstances allow this interpretation to be made, and this is considered reasonable, it is considered that it would be disproportionate to sanction the City Council for having repeatedly obstructed the right of access to personal data."

7. This initiation agreement was notified to the imputed entity on 03/22/2022.

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.

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

Imputed facts

1. Regarding the use of an incorrect notification address that resulted in the publication in the BOE dated 05/22/2019 (section 1.1 preceding 1).

1.1. By means of burofax admitted on 04/18/2019, the City Council of (...) made a single attempt to notify several acts of disciplinary procedure no. (...) imposed on the person here denouncing - among them, mayoral decrees no. (...) /2019 and no. (...) /2019- to an incorrect address.

1.2. The use of an incorrect address led the City Council, with a single unsuccessful notification attempt, to order the publication in the BOE Notifications Supplement dated 05/22/2019, of a notification announcement of the same acts

1.3. The announcement published in the BOE included the name and surname of the complainant (instead of his ID number), as a person interested in the administrative acts subject to publication.

1.4. The said announcement also included the information relating to the fact that it was a disciplinary procedure, and various information about the content of the acts (background 1.1), including the fact that it had been agreed to take precautionary measures in the framework of this disciplinary procedure, as well as that the City Council had responded to an appeal filed by the complainant against the mayor's decree (...) /2019, of February 26, and that the instructor had dictated a provision relative to *"the facilitation of copying of the reports that motivate the initiation of said discipline"*.

2. With regard to the second publication in the BOE dated 08/14/2019 (section 1.2 antecedent 1).

2.1. On 08/05/2019 and 08/06/2019, the City Council of (...) tried to notify the complainant of other acts of the same disciplinary procedure, among them, mayoral decrees no. (...) /2019 and no. (...) /2019, this time at the correct address. Since these notification attempts were unsuccessful, a notice was left in the complainant's mailbox, informing him of said notification attempts, and at the same time granting him a period of ten working days, counting from from the day after receiving the notice, to collect the documentation in person at the Town Hall, indicating that after this deadline -without collecting it-, it would be notified by means of an edict published in the BOE. This ten-day period ended on 08/22/2019.

However, on 08/14/2019, before the indicated deadline expired, the City Council published the notice of notification of these acts in the BOE's Notification Supplement.

2.2. In this announcement published in the BOE on 08/14/2019, the name and surname of the person reporting appeared, instead of their number. of DNI, as a person interested in the administrative acts subject of the publication.

3. Regarding the third publication in the BOE dated 13/11/2019 (section 1.3 preceding 1).

3.1. On 11/13/2019, the City Council of (...) published an announcement in the BOE Notification Supplement, referring to two other acts of the same disciplinary procedure: a provision of the instructor of 09/20/2019 , and mayoral decree no. (...)/2019, of 18/10/2019. In this announcement, the name and surname of the person reporting appeared - instead of his ID card - as a person interested in the administrative acts that are the subject of the publication.

3.2. This announcement also stated that the notification referred to a disciplinary procedure.

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. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the accused entity has not made allegations in the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. The facts described in the proven facts section are constitutive of several offenses relating to the violation of the principles of accuracy, legality and minimization, provided for in article 5 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 (hereafter, RGPD). Next, the proven facts will be grouped according to the principle that is considered violated in each case.

3.1. On the violation of the principle of accuracy

Regarding the principle of accuracy, article 5.1.d) of the RGPD establishes the following:

"1. The personal data will be:

(...)

d) accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed (accuracy)".

Imputed fact 1.1 violated the principle of accuracy:

With regard to the first publication in the BOE dated 05/22/2019, in the prior information phase the City Council has acknowledged that it made an attempt to notify decrees no. (...)/2019 and no. (...)/2019 to an incorrect address (*"where it says 4 it should say 46"*), as well as that *"the City Council is not aware that another attempt was made to notify"*, alluding to the fact that, in the face of the first unsuccessful notification attempt, he would not have made a second one. On the other hand, the Authority is not aware that the City Council took any action to verify the accuracy of the domicile of the person making the complaint.

This fact is considered proven based on the content of the complaint together with the indicated manifestations of the City Council, which attest to the use of an incorrect notification address.

This behavior constitutes an infringement falling within article 83.5.a) RGPD, which refers to the violation of the basic principles of treatment, among which the principle of accuracy is included.

This conduct has also been included as a very serious infraction in article 72.1.a) of the LOPDGDD, in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679. (...)

3.2. On the violation of the principle of legality

Regarding the principle of legality, article 5.1.a) of the RGPD establishes the following:

*"1. The personal data will be:
a) processed in a lawful, fair and transparent manner in relation to the interested party (lawfulness, loyalty and transparency)."*

In relation to this principle, it should be borne in mind that article 6.1 of the RGPD provides that the treatment is only lawful if at least one of the following conditions is met:

*"a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;
c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;
d) the treatment is necessary to protect the vital interests of the interested party or another natural person;
e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;
f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.
The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."*

Below are the alleged facts that violated the principle of legality:

- Imputed fact 1.2:

Regarding the first publication in the BOE dated 22/05/2019, after the City Council has acknowledged in the preliminary information phase that it made a first attempt to notify an incorrect address, it has also acknowledged that it went to the notification by means of an announcement published in the BOE, without having made a second notification attempt as provided for in article 42.2 LPCA, that is, after having made a single unsuccessful notification attempt, and, therefore, without basing said treatment on a legal basis in article 6.1 RGPD (specifically, that provided for in section e), which protects this publication.

With regard to the proof of this fact imputed in the initiation agreement, and the content of the complaint together with the indicated manifestations of the City Council, they prove that it published the announcement in the BOE without having previously carried out a second notification attempt.

- Imputed facts 1.3, 2.2 and 3.1:

The inclusion in the three announcements published in the BOE on 22/05/2019, 14/08/2019 and 13/11/2019 of the name and surname of the interested person - here complainant - also contravenes the principle of legality, given the provided for in the seventh additional provision of the LOPDGDD, relating to the identification of those interested in notifications through announcements and publications of administrative acts, which establishes the following in the second paragraph of point 1:

"When it comes to notification by means of announcements, particularly in the cases referred to in article 44 of Law 39/2015, of October 1, of the Common Administrative Procedure of Public Administrations, the affected person will be identified exclusively by means of the full number of your national identity document, alien identity number, passport or equivalent document."

In accordance with this additional provision, the City Council should have identified the person concerned (here the complainant) by means of their ID number, instead of their first and last names.

With regard to the proof of this fact imputed in the initiation agreement, the contribution in the previous phase and by the City Council of copies of these three announcements published in the BOE with the indicated content, allow to consider proven this imputed fact.

- Imputed fact 2.1:

The second publication in the BOE dated 08/14/2019, made before the end of the ten-day period that the City Council granted the complainant to collect the documentation in person at the council headquarters, also contravenes the principle of legality.

In this sense and as noted, with regard to the practice of paper notifications, article 42.2 LPAC provides in the second heading that, in the face of a first unsuccessful notification

attempt, a second one must be made, and *"if the second attempt is also unsuccessful, must proceed as provided for in article 44"*.

For its part, article 44 LPAC provides the following:

"When those interested in a procedure are unknown, the place of notification is ignored or, once this has been attempted, it has not been possible to practice, the notification must be made by means of a published announcement in the Official Gazette of the State.

Likewise, previously and on an optional basis, the administrations can publish an announcement in the official bulletin of the autonomous community or province, on the notice board of the City Council of the last address of the person concerned or of the consulate or section consult the corresponding embassy.

The public administrations can establish other complementary forms of notification through the rest of the media, which do not exclude the obligation to publish the corresponding announcement in the official State Gazette."

According to these two precepts, before proceeding with the notification by means of an announcement published in the BOE, two unsuccessful notification attempts must have been made.

The reporting person submitted to the Authority the notice of attempted notification left in the letterbox at his home, which states that on 08/05/2019 at 5:58 p.m., and on 08/06/2019 at 14:30 this notification had been attempted. In the present case, however, the peculiarity is that in this notice of notification it was indicated that a period of ten working days was granted - to be counted from the day after receiving the notices of notification - to collect the documentation at the headquarters council before the publication of the announcement in the BOE. Specifically, the notice expressly stated that: *"The deadline for collecting this documentation will be ten working days, after which it will be notified, if appropriate, by means of an edict in the Official State Gazette."*

In this regard, it must be considered that if the public administration uses a means of notification in which it expressly indicates to the addressee that it is granted a period of ten working days to collect the documentation that it wants to notify, after which it will proceed to the publication of an announcement in the BOE, the Acting Administration remains obliged to exhaust the period granted before proceeding with the publication of the announcement in the BOE.

However, before this deadline passed, and specifically on 08/08/2019, the City Council signed the announcement that was published in the BOE on 08/14/2019.

At this point it is not superfluous to point out that in the preliminary information phase the City Council has provided a document showing two notification attempts: a first attempt dated 08/1/2019 at 9:27 a.m., and a second attempt dated 02/08/2019 at 15:02 hours, which would have been unsuccessful. It is worth saying that it has not been proven that these notices correspond to the decrees referred to in the announcement published in the BOE on 08/14/2019, since the notices do not contain the reference to the disciplinary procedure, nor do they make any mention of the acts notified. In this regard, it is appropriate to remember that article 41 LPAC establishes that *"regardless of the means*

used, notifications are valid as long as they allow us to record their sending or making available...", which does not happen in this case.

In any case, even if the dates of the unsuccessful notification attempts of the document provided by the City Council were taken into consideration, we would reach the same conclusion of considering that the publication in the BOE took place before the deadline granted to complainant to collect the documentation, since in such a case, the ten-day period granted would end on 08/19/2019, while the announcement was published earlier, specifically on 08/14/2019.

The aforementioned documentation constitutes the proof of this imputed fact in the initiation agreement.

These imputed facts (1.2, 1.3, 2.2, 3.1 and 2.1) they are constitutive of single infractions compatible with article 83.5.b) of the RGPD, referring to the violation of the basic principles of treatment, among which the principle of legality is included.

This conduct has been included as a very serious infraction in article 72.1 a) ib) of the LOPDGDD:

*"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679. (...)
b) The processing of personal data without any of the conditions for legality of the processing established by article 6 of Regulation (EU) 2016/679 being met"*

3.3. On the violation of the minimization principle

Regarding the minimization principle, article 5.1.c) of the RGPD establishes the following:

*"1. The personal data will be:
(...)
c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimization).*

– Imputed facts 1.4 and 3.2:

With regard to the first and third publications in the BOE dated 22/05/2019 and 13/11/2019, respectively, the inclusion in the respective published announcement of the information on the disciplinary nature of the procedure, as well as - in the case of the first published announcement - of the rest of the information that is mentioned in section 1.4 of the 1st imputed event, it is considered excessive to fulfill the intended purpose, in accordance with what is indicated in article 46 LPAC, and article 58.5 of Law 26/2010.

With regard to the proof of this fact imputed in the initiation agreement, the contribution in the previous phase and by the City Council of copies of these two announcements published in the BOE with the indicated content , allow to consider proved this imputed fact.

These proven facts are constitutive of an infringement according to the provisions of article 83.5.a) of the RGPD, which refers to the violation of the basic principles of treatment, which includes the principle of minimization.

Similarly, article 72.1.a) of the LOPDGDD defines as a very serious infraction:

"The processing of personal data that violates the principles and guarantees established by Article 5 of Regulation (EU) 2016/679"

4. Article 77.2 LOPDGDD - and in similar terms article 21.2 of Law 32/2010 - provides that, in the case of infractions committed by those responsible 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."

With regard to the adoption of corrective measures, it should be borne in mind that the content of the digital edition of the BOE cannot be modified, since its publication is subject to the principles of integrity and immutability provided for in the articles 10.3 and 12.2.a) of Royal Decree 181/2008, of February 8, on the organization of the official newspaper " Boletín Oficial del Estado". In this way, the originals that have been drafted and authorized by the sending body (in this case, the City Council of (...)) for publication in the BOE, cannot be modified. That is why in those cases where a text is published with errors that alter or modify its content, the original is not rectified, but the correction is carried out through a correction announcement.

In the present case, the three announcements that the City Council published in the BOE Notification Supplement on 05/22/2019, 08/14/2019 and 11/13/2019 did not include erroneous data that needed to be corrected, but that, or they illegally included the name and surname of the person reporting here - instead of their number. of DNI-, or they contained excessive data - such as information about the disciplinary nature of the administrative procedure -, or they were advertisements published in the BOE illegally - after prior notification to an incorrect address, or published before 'exhaust the period granted to make the notification personally-. However, given the illegality that ultimately implies having published certain personal data, it is considered necessary to adopt measures that limit access to these advertisements.

For the purpose indicated, it is necessary to require the City Council of (...) to ask the Agencia Estal Boletín Oficial del Estado the adoption of the appropriate technical measures - and in any case the de- indexing of the corresponding files - in order to prevent access to these three announcements through the different types of electronic searches. And once _ have adopted the corrective measure described, in the period indicated, it is necessary that in the following 10 days the City Council of (...) informs the Authority , without prejudice to the power of inspection of this Authority to carry out the corresponding checks.

Likewise, when the Boletín Oficial del Estado State Agency has made the aforementioned de-indexation effective, within the maximum period of the following 5 days the City Council of (...) must notify the Authority.

For all this, I resolve:

1. Warn the City Council of (...) as responsible for 3 violations provided for in article 83.5.a) of the RGPD, in relation to article 5.1 of the RGPD, subsections d), a) ic), respectively.
2. To require the City Council of (...) to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions taken to comply with them.
3. Notify this resolution to the City Council of (...).
4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. 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,