

File identification

Resolution of sanctioning procedure no. PS 13/2022, referring to Vic City Council

Background

1. On 04/06/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Vic City Council, on the grounds of an alleged breach of the regulations on protection of personal data. In particular, the complainant highlighted the facts described below:

- That on 05/26/2020 the complainant's legal representative submitted a property liability claim to Vic City Council, with several attached medical documents.
- That on 06/05/2020 an email was sent from the generic mailbox of the human resources service of Vic City Council to the administrative service of the Police Station of Vic Squad (place where the complainant works) , sending a series of documents attached to the property liability claim presented to the City Council. Among the documentation sent to the Vic police station, the following information stands out: various medical reports, results of diagnostic tests, mutual visits, medical statement of temporary disability, among others.

In order to substantiate the facts, the complainant provides the property liability claim submitted to the City Council and the exchange of emails between the human resources service of the City Council of Vic and the Police Station of the Vic Squad . Likewise, he also attaches a request for the exercise of rights dated 27/08/2020, through which he asks the City Council of Vic to be informed of the legal coverage, the justification, the purpose and the relevance to send the aforementioned documentation to the Vic Squad Police Station, the complainant's workplace. In response to this letter, a communication from the City Council's data protection officer is attached, dated 09/21/2020, which, among others, makes the following observations:

"[...] That last May 27, 2020 at 13:44:10, Mr. [complainant] presented a letter of patrimonial responsibility in which he referred to eight (8) different annexes. However, only annexes 1 to 3 (entry record 11114) were attached to the submission. In accordance with the entity's internal protocols, the staff of the Citizen Service Office in charge of distributing the documentation received through the Electronic Registry, forwarded the patrimonial responsibility letter to the General Services department [..] On the same day 27 at 13:52:30, Mr. [complainant], presented the rest of the annexes (annexes 4 to 8) (entry record 11115) without any reference that it was of documentation to attach to the application with entry registration 11114. [...]"

Well, in relation to the documentation submitted by the complainant to the City Council with entry registration number 11115, linked to the property claim that he had previously submitted with entry registration number 11114, the letter from the representative of data protection of the City Council points out that when the City Council's human resources department received this documentation, as there was no reference that related it to a procedure that corresponded to processing at the City Council, they considered that they had sent in error, given that it was medical information of a person working in the Mossos d'Esquadra body. Consequently, the City Council's human resources service contacted by

phone the Human Resources Department of the Vic Police Station, who already had evidence of this worker's medical leave, and sent them the medical documentation, of the now complainant, which was attached to the entry registration instance number 1115. The data protection representative's letter acknowledges that the reference medical information should not have been sent to the Police Station, and points out:

" Given the facts, this shipment does not effectively have legal coverage, feeling that this information should not have been sent, which is why this entity wants to show its apology for the inconvenience caused, becoming aware of and committed to this incidence by in order to improve internal procedures".

2. The Authority opened a preliminary information phase (no. IP 237/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification and the person or persons who could be responsible and the relevant circumstances that were involved.

3. In this information phase, on 09/22/2021 the reported entity was required to report on the following:

- Confirm or deny the facts reported.
- Report on the circumstances that would be relevant in relation to the facts that are the subject of the complaint.

4. On 06/10/2021, the City Council of Vic responded to the aforementioned request in writing in which it set out the following:

- "1. That the facts have happened due to a material error caused by the lack of reference to annexes 4-8 during the presentation of the second letter by the [complainant]. 2. That this error has led and would lead anyone to interpret that the Dpt . Human Resources is responsible for managing entry letter 11115. 3. That as soon as the Dept. Human Resources is aware that it is not competent to manage the documentation that is the subject of this claim, it contacts the Mossos d'Esquadra Corps, who already had knowledge of the deregistration of the data subject by proceeding with its destruction".

5. On 03/17/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Vic City Council for an alleged violation provided for in article 83.5.a), in relation to article 5.1.f), 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 circulation of these (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 03/22/2022.

6. In the initiation agreement, the City Council of Vic was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of tests that it considered convenient for defend their interests.

7. On 04/04/2022, Vic City Council formulated the allegations in the initiation agreement which are transcribed below and which are addressed in the second section of the legal foundations:

" 1.- That the infringement allegedly committed by the City Council of Vic is contained in art. 83.05 a) of Regulation (EU) 2016/679, of April 27, relating to data protection and art. 72.1 b) of Organic Law 3/2018, of December 5, on data protection and guarantee of digital rights (LOPDGDD).

2.- That the data communication carried out took place due to a misunderstanding resulting from the inaccuracy of the entry record presented by the representation of the interested party of the data.

3.- That even so, being aware that other measures or actions could have been taken by the Department of Human Resources and OAC, the Department of Human Resources contacted the Police Station by telephone to verify their competence on the matter.

4.- That despite everything that happened, the documentation was destroyed by people not competent in the processing".

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 Vic City Council as responsible of 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 04/21/2022 and a period of 10 days was granted to formulate allegations.

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

proven facts

On 05/06/2020, from the human resources service of the Vic City Council, an email was mistakenly sent to the mailbox of the administration service of the Police Station of the Vic Squad (place where the complainant) attaching a series of documents that the complainant would have provided in the framework of a claim procedure for patrimonial responsibility, initiated before the City Council of Vic. Among the documents that were sent, the sending of several medical reports of the complainant, results of diagnostic tests, as well as a medical statement of temporary disability, among others, stands out.

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, apply to this procedure. of the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2 . The imputed entity has not formulated 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.

In essence, the allegations presented by the City Council showed that the facts complained of had occurred due to a "*misunderstanding arising from the inaccuracy of the entry registration submitted by the representative of the data subject*", and added that the City Council's Human Resources department proceeded to contact the Police Station by phone in order to verify their competence on the matter that had been sent to them. Likewise, it was explained that, after the error in the transmission of the documentation was confirmed, "*the documentation was destroyed by the people not competent in the processing*".

Well, even if the incident reported occurred as a result of a mistake, the lack of intention (human error), cannot exonerate Vic City Council 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 documentation that was sent to the Vic Police Station, where the complainant works, contained information relating to his health data, which in accordance with the article 9 GDPR have the nature of a special category of personal data. In this regard, it is worth noting that the submission of this documentation took place because at the time it was presented to the City Council it was not ensured that the purpose of its presentation was indicated, and at a later time, before addressing it to the Police Station, it was also not verified that it was not linked to a procedure or other type of request that this person had previously submitted to the City Council, and that it was from the its jurisdiction to process.

For all the above, it is considered that the set of allegations, highlighting the lack of intentionality in the commission of the facts, do not exonerate 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 protection against unauthorized or illegal processing and accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")*).

As indicated by the instructing person, during the processing of this procedure the facts described in the proven 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" among which, the principle of confidentiality is contemplated (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 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 given that the infringing behavior refers to a single fact already accomplished, the result of a specific human error, which, due to its instantaneous nature, cannot be corrected with the application of a corrective measure.

For all this, I resolve:

1. Warn the City Council of Vic 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 Vic City Council.

3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

4. Order that this resolution be published on the Authority's website (apdcat.gencat.cat) , in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003 , of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with 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,