

File identification

Resolution of sanctioning procedure no. PS 16/2022, referring to the School 30 Passos of the Department of Education

Background

1. 04/14/2021 , the Catalan Data Protection Authority received a letter in which a person files a complaint against the Escola 30 Passos of the Department of Education (hereinafter, the School), with reason for an alleged breach of the regulations on the protection of personal data. Specifically, the person making the complaint highlighted that on 04/14/2021, the School management sent an email, without using the blind copy option, to all the families registered in their database , and, therefore, the address of all recipients being legible. The person reporting added that the message made it possible to establish " *personal links between the different people who were copied in the email*".

The reporting person provides screenshots of the e-mail, which make it possible to read the addresses of the recipients of the e-mail.

2. The Authority opened a preliminary information phase (no. IP 161/2021), 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 08/03/2021 the reported entity was required to report, among others, on the following issues:

- Provide a copy of the email that is the subject of the complaint.
- State the reasons why the hidden copy option was not used in the aforementioned electronic submission.

4. On 03/17/2022, the School responded to the aforementioned request through a letter by means of which a copy of the reference email is provided, and the following is communicated, in literal terms:

"- The families of the school were called to a meeting. In the first mail that was sent (bcc) there was an error in the date of the call. Some families noticed this, which led to the sending of the second mail which, in the rush to correct the mistake, was sent without putting the addresses in BCC.

- *Usually all the mails sent from the school are made in CCO when include multiple addresses. [...]"*

Likewise, Escolta also informs that they follow the instructions of the Data Protection guide in educational centers published by the Department of Education.

4. On 03/25/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of Education 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 movement thereof (hereinafter, RGPD) and article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD) . This initiation agreement was notified to the imputed entity on 03/28/2022.

In the initiation agreement, the School was granted a period of 10 working days to formulate allegations and propose the practice of tests that it considered appropriate to defend its interests.

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

proven facts

On 04/14/2021, the School sent an email, informing of the date of the meeting, to a list of more than two hundred people, fathers and mothers of the students of the educational center, without use the bcc option, which allowed all recipients of the mail to access the email address of the rest of the recipients of the message.

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 to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the imputed entity has not formulated allegations in the initiation agreement, and the agreement contained a precise pronouncement on the imputed liability.

3. In relation to the facts described in the proven facts section, relating to the principle of confidentiality, 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 an adequate security of personal data, including protection against unauthorized or illegal processing and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality»).

On the other hand, the LOPDGDD establishes in its article 5, regarding the 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 its applicable regulations (...)"

As indicated by the instructor, during the processing of this procedure the fact described in the proven facts section, which is constitutive of the infringement provided for in article 83.5.a) of the RGPD, has been duly proven, which typifies as such the violation of " *the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9*", among which the principle of confidentiality is at the top.

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form:

"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."

And section 3 of art. 77 LOPDGDD, establishes that:

"3. Without prejudice to what is established in the previous section, the data protection authority must also propose the initiation of disciplinary actions when there are sufficient indications to do so. In this case, the procedure and the sanctions that must be applied are those established by the legislation on the disciplinary or sanctioning regime that is 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 the present case, it is not considered appropriate to propose the adoption of corrective measures, since these would be one-off events that have already been completed.

resolution

For all this, I resolve:

1. Admonish the School 30 Steps of the Department of Education as responsible for one violation provided for in article 83.5.a) in relation with 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 at the Department 's 30 Steps School of Education .

3. Communicate the resolution issued 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,