

## File identification

Resolution of sanctioning procedure no. PS 17/2022, referring to the Town Council of Tordera

## Background

1. En data 19/10/2021, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit pel qual una persona formulava denúncia contra l'Ajuntament de Tordera, amb reason for an alleged breach of the regulations on the protection of personal data. In particular, the complainant pointed out that the names and surnames, and the last four digits and letter of the DNI, of the applicants admitted and excluded from the selection process had been published on the municipal website of the Tordera City Council for the establishment of an Administrative Assistant Job Board, as well as the results obtained by applicants for the selection process for the establishment of the Administrative Assistant Job Board. He adds that these data are published despite having "absolutely outdated " content, given the completion of the aforementioned selective processes.

2. The Authority opened a preliminary information phase (no. IP 426/2021), 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. On 02/11/2021 the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that when doing a search with the name and surname of the person making the complaint, in the Internet search engine "Google", websites were accessed, where the list of people admitted and excluded from the process is accessible of selection to set up an Administrative Assistant Job Board, and the results obtained by applicants in the selection process for the establishment of the Administrative Assistant Job Board.

4. On 11/22/2021, the reported entity was required to pronounce, among others, on the following points:

- Indicate the specific legal basis that would support the treatment consistent with the publication of the list of those admitted and excluded from the selection process to set up an Administrative Job Exchange, as well as the publication of the qualification obtained by all applicants in the selection process for the establishment of the Exchange of work for Administrative Assistants. In the case of indicating as a legal basis the fulfillment of a mission in the public interest or the exercise of public powers, or the fulfillment of a legal obligation, this Authority required the Town Council of Tordera to indicate the specific legal norm which would endorse these publications with personal data.
- Report on any issue that you consider relevant in relation to the subject of this prior information.

5. On 01/12/2021, the City Council responded to the aforementioned request in writing in which it set out the following (the emphasis is ours):

- "1. The complaint made refers to two selective processes carried out by Tordera City Council:
  - a) Selective process for the establishment of an administrative job board. [...] On April 6, 2021, by mayoral decree no. 2021/678, the definitive list of people admitted and excluded from the selection process was approved and the qualifying court was appointed.
    - On May 13, 2021, once the exercises of the selection process were completed, the qualifying court proposed the creation of the administrative job board, made up of the participants who had obtained a score higher than 5 points, for the score order obtained. [...]
    - In the selective processes, the principle of transparency must govern, among others, and therefore the publication of the list of participating people, such as the list of admitted and excluded people, is justified, since it is 'a procedure with competitive competition, in which the requirements of transparency and publicity require that the participating people know who the opponents are and, for this reason, the list with names and surnames is published.
    - On June 1, 2021, by mayoral decree no. 2021/1082, the administrative job board was established.
  - b) Selective process for the establishment of a job board for administrative assistants. On May 27, 2021, once the exercises of the selection process had been completed, the qualifying board proposed the creation of the administrative job board, made up of the participants who had obtained a score of more than 5 points, by the score order obtained.
    - On June 1, 2021, by mayoral decree no. 2021/1081, the job exchange for administrative assistants was established.
    - The indicated link [...] corresponds to the publication of the edict relating to the final qualification of the people participating in the selective process of the job board for administrative assistants.

The letter from the City Council adds that the legal basis that would support the publication of the controversial lists would be the fulfillment of a legal obligation, based on article 6.1 c) RGPD in relation to articles 55.1 and 55.2 of the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (EBEP), article 91 of Law 7/1985, of 2 April, regulating the bases of local regime (LBRL), article 287.2 of Legislative Decree 2/2003, of April 28, which approves the revised text of the municipal and local regime law of Catalonia (LMC ) and article 9.1 e of Law 19/2014, of 29 December, on transparency, access to public information and good governance. He adds that the participants in the selective processes accept, with their participation in the process, the bases of the call and the terms in which it must be developed. And, in relation to the regulatory bases of the personnel selection process, to establish a Job Board for Administrative Officers and a Job Board for Administrative Assistants, with the condition of personal labor personnel, highlights the Next:

- a) "In the sixth base of the regulatory bases, it is pointed out that, once the selection tests have been completed, the provisional list of admitted and excluded applicants will be published on the Notice Board of the City Council's electronic headquarters [..]."
- b) In the eleventh base of the regulatory bases, it is reported that, with the formalization and presentation of applications, applicants give their consent to the processing of personal data that is necessary to take part and to manage the selection process [...].
- c) In the ninth base of the regulatory bases it is established that once the selection phases have been completed, the Qualifying Court must make public on the notice board of the electronic headquarters of the City Council, the list of the participating persons with the score obtained, resulting from the sum of the scores of the merit assessment phase and the interview phase. Participating people become part of the Job Exchange, according to the order of points obtained, to cover any temporary hires resulting from replacements or vacancies that may occur in the City Council's staff. The duration of this scholarship will be two years."

Finally, the letter from the City Council points out that it does not seem excessive to keep the information related to the selective processes for a period of one year, from the date of completion of the selection process and adds that, the data published in the links that have been pointed out are the first and last names of the applicants as well as the last four digits and the letter of their ID.

**6 .** On 03/16/2022, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported. Thus it was found that when doing a search with the name and surname of the person making the complaint, in the Internet search engine "Google", no link to the electronic headquarters of the City Council appeared as a result that allowed access to the City Hall Edict that contained the list of those admitted and excluded from the Administrative Assistant Job Exchange or the final grades obtained by applicants for the Administrative Assistant Job Exchange.

**7.** On 03/25/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Tordera City Council for three alleged violations provided for in article 83.5.a), in relation to article 5 sections a), c) and e); 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 ). This initiation agreement was notified to the imputed entity on 03/28/2022.

In the initiation agreement, the City Council 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.

**8.** On 06/04/2022, the data protection representative of the Tordera City Council informed the Authority that the City Council would have already adopted the necessary corrective measures for the removal of the publications and the personal data referred to, so that they are no longer published on the municipal website.

6. On 12/05/2022, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish Tordera City Council as responsible, firstly, of an infringement provided for in article 83.5.a) in relation to article 5.1 section a), relating to the principle of legality; secondly, of an infringement also provided for in article 83.5.a) in relation to article 5.1 section c), relating to the principle of data minimization and, lastly, of an infringement provided for in article 83.5.a) in relation to article 5.1 section e), relating to the principle of limitation of the data processing period, all of them of the RGPD.

This resolution proposal was notified on 05/13/2022 and a period of 10 days was granted to formulate allegations.

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

### **proven facts**

- In relation to the Administrative Assistants Job Exchange

The Town Council of Tordera published on its electronic headquarters a document that contained, among other information, the final grades obtained by the participants who did not pass the selection process for the establishment of a Job Board for Administrative Assistants /ves, identifying applicants with their first and last names, the last four digits and the letter of their ID.

- In relation to the Administrative Job Exchange

The Tordera City Council published on its electronic headquarters a document that contained, among other information, the identification with first and last names, the last four digits and the letter of the DNI, of the applicants who were not admitted in the selective process for the establishment of an Administrative Job Exchange.

Although the Administrative Job Exchange was established on 01/06/2021, by mayoral decree no. 2021/1082, the list of people not admitted to this selective process, was available on the municipal website on 11/22/2021, the day on which the Inspection Area of this Authority was able to access it, for the purposes of carry out the checks that have been indicated in the previous third party.

On 16/03/2022 it has been verified that it is no longer possible to access either the list of people excluded from the selection process for the establishment of an Administrative Job Exchange, or the final qualifications obtained by applicants who did not pass the selection process for the establishment of an Administrative Assistant Job Board.

### **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.

In essence, Tordera City Council has alleged, as part of this procedure, to have removed from its website both the list of people admitted and excluded from the selection process for the establishment of a Job Exchange of Administrative Assistants, such as the final qualifications obtained by applicants who did not pass the selection process for the establishment of an Administrative Assistant Job Board.

In this regard, it is worth saying that this Authority values very positively the fact that the City Council has unpublished the controversial lists, but it should be noted that this action does not distort either the facts imputed in this procedure, nor their legal qualification, in view of what follows is exposed; although, as will be seen later, it will have its impact when requiring eventual corrective measures.

Article 5 of the RGD, relating to the principles of treatment, provides, among others, that personal data must be treated in accordance with the principles of legality, minimization and limitation of their retention period. In literal terms:

*"1. The personal data will be:*

*a. Treated in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency").*

*c. Adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("data minimization").*

*e. Maintained in a way that allows the identification of the interested parties for no more time than is necessary for the purposes of the treatment of personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques imposed by this Regulation in order to protect the rights and freedoms of the interested party ("limitation of the conservation period").*

In accordance with this precept, below is the legal qualification that the imputed facts deserve, according to the offense committed, in line with what was established in the agreement to start the procedure and the proposed resolution thereof.

#### 2.1 in relation with the principle of legality

It has been proven that, as part of the selection process for the establishment of a Job Board for Administrative Assistants, the Tordera City Council published on its website, among other information, the qualifications obtained by the applicants who did not pass the tests of this selective process.

In this regard, it should be noted that, although the personnel selection procedures are governed by the principles of publicity and transparency, the legal provisions that regulate these selection processes, enable the publication of the lists of people who have been approved in each year of the personnel selective processes, excluding, therefore, the

information of people who have been declared unfit, which should only be published if there is an express legal provision that contemplates it.

Regarding this, article 21.2 of Decree 8/2021, of February 9, on transparency and right of access to public information, establishes:

*"2. The data to be published must refer, at least, to the announcement of the call, the rules, the official announcements and the first and last names and the four numbers of the national identity document or equivalent document of the admitted persons in each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection."*

Well, from the literalness of this precept, it follows that the dissemination of the qualifications obtained by those people who do not pass the selective processes is not required, but only reference is made to the publication of the list of people that are admitted in each test, as well as the person finally selected.

In the same vein, articles 80 et seq. of the Regulation of staff at the service of local entities, approved by Decree 214/1990, of July 30, provide for the publication of the lists of those approved, without making any reference to the dissemination of the qualifications of the suspended persons.

So things are, the publication on the municipal website of the qualifications obtained by the people who did not pass the selection process, identified with their first and last names, and four numbers and the letter of their ID, is not protected by any provision legal, and contravenes the principle of lawfulness of the processing of personal data, provided for in article 5.1 of the RGPD.

At this point, it is irrelevant the fact that the ninth base of the regulatory bases of the call established that the Qualifying Court had to make public on the bulletin board of the electronic headquarters " *the list of the participating people with the resulting score of the sum of the scores of the merit assessment phase and of the interview phase* ", for the purposes of their integration in the aforementioned job exchange, given that this provision does not conform to the aforementioned regulations.

Finally, it is necessary to focus on the non-existence of reasons of public interest that could justify the identity of the people who have failed any test of the said selective process being known, as well as on the damages that the disclosure of this information may cause to the affected people.

## 2.2 In relation to the principle of limiting the term of conservation

With regard to the publication of the initial list of applicants admitted and excluded from the selection process for the establishment of the Administrative Stock Exchange, the regulatory framework set out below must be kept in mind.

Article 78 of Decree 214/1990, of July 30, which approves the personnel regulations in the service of local entities, provides the following (the emphasis is ours):

*"Once the period for the presentation of instances has ended, the president of the corporation or the authority to which he has delegated, must issue a resolution within a maximum period of one month and must declare the list of admitted and 'Excluded. The said resolution must indicate the places where the complete certified lists of admitted and excluded applicants are exposed to the public . [...]"*

In turn, article 21.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information, reproduced previously, establishes the information that must be published in relation to personnel calls of Public Administrations and their results, which only includes the one relating to admitted applicants. So things are, although article 13.5 of the same Decree provides that the information must be kept published for a minimum period of five years, this provision does not apply with regard to the information referred to the excluded applicants of the corresponding call.

Therefore, the dissemination of information relating to applicants excluded from the selection process, months after the establishment of the Administrative Job Exchange, constitutes a violation of the principle of limiting the data retention period (article 5.1 e RGPD ). Well, in this case, it is not plausible to maintain that it was necessary to disseminate the identity of the applicants excluded from the selection process for such an extended period of time. The reference period includes, at least, 01/06/2021, date of establishment of the Administrative Job Exchange, until 02/11/2021, the day this Authority entered the website municipal for the purposes of checking whether the list of admitted and excluded remained published.

### 2.3 In relation to the principle of minimization of personal data

Both in the publication of the list of people admitted and excluded from the selection process for the establishment of an Administrative Job Exchange, and in the publication of the qualifications obtained by the participants in the selection process for the constitution of an Administrative Assistant Job Board, the participants are identified with their first and last names, the last four digits and the letter of their ID. In this regard, the seventh Additional Provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) provides for the following (the emphasis is ours):

*"When it is necessary to publish an administrative act that contains personal data of the person affected, it must be identified by means of his first and last name, with the addition of four random numerical figures from the national identity document, the foreigner's identity number, the passport or an equivalent document . When the publication refers to a plurality of those affected, these random numbers must be alternated."*

In turn, article 21 of Decree 8/2021, of February 9, provides that the data to be published, in relation to the selective processes of public administrations, must respect the criteria established in the field of data protection. And, as we have seen, neither the RGPD nor the LOPDGDD enable the publication of an administrative act including, in addition to the name and surname of the affected person and the four random numerical digits of the national identity document, the letter of its national identity document.

Consequently, given that the City Council published the aforementioned information including the letter of the DNI of the affected persons, it violated the principle of minimization of the processing of personal data, provided for in article 5.1 c RGPD.

**3.** In relation to the facts described in the proven facts section, relating to the publication of certain personal data of applicants for the selective processes for the establishment of an Administrative Assistant Job Board and a Administrative job board, it is necessary to refer to article 83.5 a) of the RGPD, which typifies the violation of " the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6 , 7 and 9 ", among which the principles of legality, limitation of the term of conservation and minimization are included.

During the processing of this procedure, it has been duly certified that the proven fact, relating to the publication of the qualifications obtained by the applicants of the selection process for the establishment of an Administrative Assistant Job Board, that did not pass the tests of this selective process, it contravenes the principle of legality, provided for in article 5.1 of the RGPD. Likewise, it has also been proven that the information was published identifying the applicants of the two job boards with their first and last names, and the last four digits and letter of the DNI, which contravenes the principle of minimization ( article 5.1 c RGPD), as well as the fact that the information relating to applicants excluded from the selection process remained disseminated months after the establishment of the Administrative Job Exchange, contravening the principle of limiting the retention period of data (article 5.1 e RGPD).

The conduct addressed here has 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"*

Similarly, article 72.1 a) LOPDGDD, has also included as a very serious infraction: "*The treatment of data personal violating the principles and guarantees established in article 3 of Regulation (EU) 2016/679*", in relation to the principles of legality, minimization of data and limitation of the retention period, provided for, as already seen, in sections a), c) ie), respectively, of article 5 RGPD.

**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 the present case, the adoption of corrective measures is not required given that these are specific and already consummated events, and the City Council has certified that it has removed the controversial documents from its website.

For all this, I resolve:

**1.** To warn the Town Council of Tordera as responsible for three infringements: an infringement provided for in article 83.5.a) in relation to article 5.1 a); another offense provided for in article 83.5.a) in relation to article 5.1 c); and a third violation provided for in article 83.5.a) in relation to article 5.1 e), all of them of the RGD.

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 legal basis 4th in fine .

**2.** Notify this resolution to Tordera 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,