

File identification

Resolution of sanctioning procedure no. PS 18/2022, referring to the Regional Council of Baix Camp

Background

1. 02/27/2021 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Consell Comarcal del Baix Camp, due to an alleged breach of the regulations on protection of personal data .

The complainant, mother of children attending school at the Ramón Sugrañes School in Almofter (hereafter, the School) and a member of Ampa , explained that in October 2020 she formulated a query in front of the Grievance Ombudsman and Baix Camp County Council, to find out " *the maximum price of the school's canteen* " . In this regard, the complainant complained that the Regional Council of Baix Camp sent, on 04/12/2020, an email to the School, and, on 11/12/2020, an email to the Ampa de l'Escola, in which she was identified as the person who had filed a complaint with the Grievance Ombudsman about the prices of school menus, a fact for which she was the subject of criticism.

The reporting person provided the various documentation related to the events reported, specifically, the following:

- copy of the email, sent on 10/20/2020, by the person here reporting to the Consell Comarcal del Baix Camp (...), with the subject " (...) ", in which he states that his children are beneficiaries of a dining grant and asks if they can still claim the payment for part of the dining service (*0.22 cents per day that mis hijos disfrutan del comedor*).

In the thread of this e-mail, there is also the reply sent the same day by the Regional Council (...) to the person making the complaint: " *The price of the cafeteria at the Ramon Sugrañes school is €6.55 and the individual dining allowances cover a maximum amount of €6.33. Therefore, the family must cover the difference of 0.22 cts.*"

- copy of the email sent, on 04/12/202, by the Consell Comarcal del Baix Camp (...) to the School (...), with the subject " *Menu price complaint to the Grievance Ombudsman* ", with the following text: " *We have received a complaint from the mother of (...) to the Grievances Ombudsman in reference to the price of the menu .*" Attached to this e-mail are two documents in pdf format entitled " *Síndic_greuges_RamonSugrañes.pdf* " and " *Escola Ramon Sugrañes.pdf* " .
- copy of the email sent, on 11/12/2020, by the Consell Comarcal del Baix Camp to the Ampa de l'Escola (...), with a copy to the School, which has as the title of the subject " *Ampa Preu menu* ". In the body of said message, the complainant is identified, by name and surname, as the person who would have filed a complaint with the Síndic de Greuges regarding the price of the school menu (*about the reasons why cents more were charged than the established maximum, of €6.33, for this course and the lunch service hours of the Escola Ramon Sugrañes d'Almofter*) and information is

required on school menu prices (*In order to prepare a report for the Ombudsman, we would need you to confirm the price of the menu and, if applicable, the justification for it*). The two pdf documents referenced above are also attached .

In the thread of this email, there is also the response from the School, sent on 11/12/2020 to the Regional Council, in which it is stated that " *the price of the dining room which was 6.50 was changed to 6.55 by the AMPA after sending this documentation signed by me. The dining room is open for 3 hours: from 12.30 to 3.30 pm.*"

2. The Authority opened a preliminary information phase (no. IP 88/2021), 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 10/06/2021 the reported entity was required to report, among others, on the legal basis that would justify the Baix Camp Regional Council sending an email to the School, in which the complainant was identified as the mother of two students from the School (identified by first and last name), and as the person who would have filed a complaint with the Grievance Ombudsman about the price of school menu Likewise, it was also required to be informed about the legal basis that would justify sending an email to the Ampa de l'Escola where the person making the complaint was also identified, through the name and surname, as the person who would have filed a complaint with the Ombudsman. Finally, information should be given on the content of the two documents in pdf format attached to the e-mails sent by the County Council to the School and the Ampa , and the legal basis that would justify sending these attached documents.
4. On 06/23/2021, the Baix Camp County Council responded to the above-mentioned request in a letter in which it stated the following:
 - That "*the County Council manages, by delegation of the Department of Education, the school canteen services in the public educational centers of the county, either mandatory or optional on the basis of Resolution ENS/1729/2014, of July 24 .*"
 - The existence of the "*Collaboration Agreement between the Regional Council of Baix Camp and the AMPA of the Escola Ramon Sugrañes d'Almóster for the management of the school canteen service during the 2020-2021 academic year*" , and in relation to which he invokes the second antecedent, the literal of which is as follows: " *The School Council of the center and the AMPA, agreed to request the Consell Comarcal del Baix Camp to be able to take over the management of the dining service school for the 2020/2021 academic year .*"
 - That "*this communication* - a reference that must be understood to be made in the email from the County Council to the School - *is considered justified, in accordance with this agreement, in which it refers to the School Council as one of the parties requesting the management of the dining service.*

We consider that there is a clear legal obligation under Article 6(1.c) also in view of the regulatory provisions applicable in the attached agreement and contained in the fourth antecedent of this agreement."

- That " *The object of this agreement, established in the first clause, is based on the authorization by the Consell Comarcal del Baix Camp, which has previously been legitimized by the Department of Education since 1996, in the AMPA of the Ramón Sugrañes School to manage the School's canteen service during the 2020/2021 school year.*

The second clause of the agreement refers to AMPA's obligations, which include:

- Provide the supply and distribution service of the Ramón Sugrañes School Canteen in Almoŕter in accordance with the schedule approved by the Department of Education for the 2020/2021 academic year.*
- Guarantee the provision of the canteen service to all enrolled students of the center who are accommodated, regularly or sporadically, taking into account the peculiarities of scholarship students.*
- Manage the service in accordance with the Regulations for the Organization and Operation of the school canteen, approved by the School Board, always guaranteeing the suitability of the objectives of the school's educational project, as well as following the instructions given by the Department of Education ."*
- That *"It must be understood that through this agreement and by virtue of the powers delegated to the Consell Comarcal del Baix Camp, there is a clear competence on the part of the AMPA of the School to receive this information, since they are within their competences, being the same in charge of managing the canteen service of the Ramón Sugrañes School Center in Almoŕter."*
- That *"We consider that there is a clear legal obligation by virtue of article 6(1.c) also in view of the regulatory provisions applicable in the attached agreement and contained in the fourth antecedent of this agreement ."*
- That the documents attached in both emails are:

1.- the complaint lodged by the complainant before the Grievance Ombudsman regarding the prices of the school canteen.

With respect to this document, the entity states that " Given that the object of the claim made is in this document, it must be understood that it must be sent to the AMPA and the School Board of the School for to be able to fulfill his obligations as responsible for the management of the dining room and, therefore, to be able to manage the claimant's inquiry."

2. - Operational record of public and private second-cycle preschool, primary and secondary education centers for the 2020/2021 academic year.

- That "The transmission of this documentation - a reference that must be understood to be made to the documents that were attached to the emails, that is to say, the complaint to the Grievance Ombudsman and the operative record of the public and private concerted centers - is legitimized on the basis of this collaboration agreement, to which the management of the entire contract is delegated. It is understood that there is a clear competence on the part of the Regional Council to send this documentation so that the resolution of this complaint can be guaranteed by the competent body, in this sense the School Council and the AMPA of the School."

5. On 04/01/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Consell Comarcal del Baix Camp for an alleged infringement provided for in article 83.5.a), in relation in article 5.1.f); all of them from 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 04/05/2022.

6. On 04/20/2022, the Baix Camp County Council made objections to the initiation agreement, which are addressed in section 2 of the legal foundations. The accused entity provided various documentation with its letter.

7. On 29/07/2022, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish the Baix Camp County Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a); all of them from the RGPD.

This resolution proposal was notified on 07/29/2022 and a period of 10 days was granted to formulate allegations.

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

proven facts

The Regional Council of Baix Camp sent, on 04/12/2020, an email to the Ramón Sugrañes School in Almostrer, in which it identified the person making the complaint as the mother of two students from the School (identified with first and last names) and as the person who would have filed a complaint with the Ombudsman about the price of the school menu. Likewise, on 11/12/2020, he sent an email to the School's AMPA, on the same matter and also identifying the person making the complaint, through the name and surname, as the person who would have presented the complaint Both e-mails attached as an attached document the complaint submitted by the complainant to the Ombudsman.

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.

Therefore, it is appropriate to address the allegations that the accused entity made before the initiation agreement, and specifically, about the legitimacy of the Baix Camp County Council to be able to communicate through emails addressed to the School and to the educational center's AMPA, the identification of the person making the complaint as the person who would have filed a complaint with the Grievance Ombudsman about the price of the school menu, and send them a copy of said written complaint.

In advance, it is necessary to indicate that in the proven facts section of this resolution, in the same way as in the proven facts section of the proposed resolution, the description of the facts that are considered to have been duly proven is included, and that the Regional Council of Baix Camp sent two emails, one to the School (04/12/2020) and the other to the AMPA of the School (11/12/2020), in which identified the complainant as the person who would have lodged a complaint with the Ombudsman about the price of the school menu.

In this regard, and as already indicated in the proposed resolution, it is also appropriate to specify that these same facts are what motivated the initiation of this sanctioning procedure, bearing in mind that at the time of issuing the agreement of initiation it was considered that the "*Collaboration Agreement between the Baix Camp County Council and the AMPA of the Ramón Sugrañes School in Almofter, for the management of the school canteen service at their school, during the 2020 academic year -2021*", invoked by the entity in the response to the request for information, did not constitute a sufficient legal basis to legitimize the sending of the controversial emails to the School, nor to the School's AMPA.

Having said that, it should be noted that, following the allegations made by the entity before the initiation agreement, which focused on listing the different obligations that the referenced Collective Agreement attributes to the AMPA of the School for the management of the school canteen service, in the resolution proposal a new assessment of the imputed facts was made, considering that the said Collective Agreement would, in effect, legitimize the communication of data that the entity made to the School's AMPA, but this would not be the case, in the case of the communication of data that the entity made to the School.

In this sense, as proposed in the proposed resolution, this resolution maintains, solely, as infringing conduct, the communication of data that the entity made to the School. This is so because the two signatories of the referenced Collective Agreement, the object of which is the management of the school canteen service, are, on the one hand, the Consell Comarcal del Baix Camp, and on the other, the AMPA of the school. Therefore, the School would not be part of said Agreement, which is sufficient to conclude that the legal basis invoked by the Regional Council to justify the sending of the email dated 04/12/2020 is not applicable to it, in which the School was informed that a complaint had been received from the Grievance Ombudsman from the person here denouncing "*with reference to the price of the menu*", and said complaint was attached.

On the other hand, as has been advanced, the referenced Collective Agreement would indeed constitute a sufficient legal basis to justify sending the email to the School's AMPA on 11/12/2020.

In this sense, to the extent that the AMPA of the School is the entity responsible for the provision of the school canteen service, and the one that applies the school menu rates, it must be able to access the information on the claims made by third parties in relation to the

provision of said service, and, in this way, once it has knowledge of all the necessary elements, it is when it can give a specific answer for the specific case that is the subject of the claim. Based on this, the County Council's justification for the need to send the controversial email to the AMPA, in which it identified the complainant as the person who had made a query about the price of the menu, is upheld school before the Grievance Ombudsman, and also annexed said claim. Likewise, it should also be borne in mind that, when the Regional Council sent the email to the AMPA of the School, it did not know whether the AMPA, in order to be able to give a complete answer, needed to know all the data included in the claim, or although, he could give an explanation without needing to access the content of the claim made.

In accordance with what has been stated, it is considered appropriate, solely, to maintain the responsibility of the Regional Council of Baix Camp with regard to the communication of data that it made to the School, through the email dated 04/ 12/2020, since the communication of data that he made to the AMPA of the School, through the email dated 11/12/2020, would be covered by the formalization of the referenced Collective Agreement, and does not constitute an infringing conduct.

3. In relation to the facts described in the proven facts section, and their typification and qualification, the following should be noted.

Although in the agreement to initiate this procedure it was considered that the facts reported could constitute a violation of the principle of confidentiality established in article 5.1.f) of the RGPD, a subsequent and more detailed assessment of these facts in view of the allegations in the initial agreement, leads to consider that they fit better within the framework of a violation of the principle of legality, established in article 5.1.a) of RGPD, which provides that personal data must be treated " *lawfully, loyally and transparently in relation to the interested party ("lawfulness, loyalty and transparency")*.

In this sense, the RGPD provides that all processing of personal data must be lawful (Article 5.1.a.) and, in relation to this, establishes a system for legitimizing the processing of data which is based on the need for it to any of the legal bases established in its article 6.1.

In this respect, it should be borne in mind that the sending of the controversial email to the School, dated 11/12/2020, identifying the person making the complaint here as the person who had filed a complaint with the Grievance Ombudsman, is carried out without the coverage of any of the authorizations provided for in article 6 of the RGPD, given that, as explained in the previous section, and contrary to what the entity defends, the " *Collection Agreement " collaboration between the Consell Comarcal del Baix Camp and the AMPA of the Ramón Sugrañes School in Almoster, for the management of the school canteen service at their school, during the 2020-2021 academic year"* is not considered a sufficient legal basis that enable the disclosure of personal data to the School.

At the same time, it should be noted that both the principle of confidentiality and the principle of legality are guiding principles for data processing, and both have been included in article 5 of the RGPD. Consequently, the change of consideration regarding the principle violated in the facts considered proven - from a violation of the principle of confidentiality (art.5.1.f RGPD) to a violation of the principle of legality (art.5.1.a RGPD)- no alters its classification in the sense that both are constitutive of the commission of the same offense provided for in article 83.5.a) of the RGPD, which typifies the violation of " *the basic principles for the*

treatment (...)", and only the identification of the principle relating to the treatment that has been violated varies.

The conduct addressed here has been included as a very serious infringement in article 72.1.a) of the LOPDGDD, in the following form: "*The treatment of personal data in violation of the principles and guarantees established in article 5 of Reglamento (UE) 2016/679*", in relation to the principle of legality established in article 5.1.a) of the same RGPD.

In this regard, it should be noted that the fact that initially it was pointed to a possible violation of the principle of confidentiality, also included as a very serious infringement in article 72.1, in this case in section i), has not affected either in the level of seriousness when classifying the infraction .

4. Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected. The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010 , determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

In the present case, however, it becomes unnecessary to require corrective measures for the effects of the infraction given that the infringing behavior refers to a single and already consummated event, the sending of an email to the School identifying the person making the complaint such as the person who would have formulated a query about the price of the school menu before the Síndic de Greuges, an action that would have entailed the violation of the principle of legality of personal data. So things are, it is a treatment, which due to its instantaneous nature cannot be corrected by the application of corrective measures.

For all this, I resolve:

1. Warn the Baix Camp County Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), 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 legal basis 4rt.

2. Notify this resolution to the Baix Camp County 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,