File identification

Resolution of sanctioning procedure no. PS 23/2022, referring to the Barcelona Municipal Parks and Gardens Institute.

Background

1. On 12/05/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Barcelona Municipal Institute of Parks and Gardens, on the grounds of a alleged breach of the regulations on personal data protection . The complainant stated the following:

1.1. That on 23/04/2021, in his capacity of (...), he filed an appeal challenging the resolution approving the " *Regulatory bases of the call for the selection of 12 places of the practical green or auxiliary services for the position of territorial manager, attached to the management of conservation services of Parks and Gardens of Barcelona, Municipal Institute"* .

1.2. That on 04/26/2021, the Head of Labor Relations and Prevention of the reported entity sent an email with the subject ' *Internal Selection of Territorial Manager'* to " *(...), to the committee's secretariat and to the prevention representatives"* in which a series of documents was attached, including the referenced appeal with the personal data of the person making the complaint (name, surname, ID and address).

1.3. That on 04/29/2021, the person reporting here presented a letter of complaint by email addressed to the Director of General Services and with a copy to the Head of Labor Relations and Prevention stating that the email sending attaching the resource d raised and addressed to the various recipients mentioned, it was a violation of the data protection regulations.

1.4. That on the same date, he was given a response indicating that he was being transferred to the legal service.

1.5. That from 04/29/2021 to the date of filing a complaint with this Authority (05/12/2021), he did not receive any further response or resolution.

And in order to prove it, he provided the following documentation:

- Height appeal with presentation stamp before Barcelona City Council on 04/23/2021.
- Email dated 04/26/2021, through which the Head of Labor Relations and Prevention sends the appeal to (...).
- Email dated 04/29/2021, through which the complainant, via email (...), submits a letter of complaint to the Director of General Services with a copy to the Head of Labor Relations.
- Document attached to the previous email, consisting of a letter of complaint, signed by the person making the complaint in the capacity of (...).

- Email of 29/04/2021 from the Director of General Services, in response to the previous email, informing of the transfer of the complaint to legal services.

2. The Authority opened a preliminary information phase (No. IP 206/2021), 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 were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 01/25/2021, the reported entity was required to report on whether the resource was attached, among other documents, to the email dated 04/26/2021 of height that the person making the complaint here and, in relation to this, what would be the legal basis that he considered legitimizing that action. It was also required to report on the recipients of the e-mail and on whether the City Council's legal services had responded to the complainant's complaint and, if so, provide the response.

4. On 01/31/2022, the reported entity responded to the aforementioned request in writing in which it stated the following:

- That on 23/04/2021, the appeal filed by the complainant (...) against the regulatory bases of *which* has mentioned in the precedent 1.1.

- That in the heading of the appeal, as identifying data of the person reporting ' *his name, ID and private address instead of the address of (...) to the one he represents* '.

- That in order to inform the workers' representatives about the suspension of the selection process, on 04/26/2021, the Head of Labor Relations and Prevention sent an email in which the resource of height with all its annexes in order to guarantee the maximum transparency of the selection process.

- That the mail was sent to the electronic addresses of the workers' representatives as well as to (...). And then he listed the recipients:

  - The company committee, (...)

  - The prevention delegates, (...)

  - csc union section , USOC union section and UGT union section (two members in the latter case).

- That all the electronic addresses to which the e-mail had been sent were those that had been provided for the purposes of communications.

And then he explained:

- That indeed on 04/29/2021 the letter of complaint sent by the person making the complaint was received by email and that on the same day a response was given, informing about its transfer to the legal services of the entity.

- That its legal services considered that the measures that needed to be taken were: resending the email attaching the appeal with the anonymized personal data and at the same time asking the recipients to delete the previous email (from 26/04/2021); and, on the other hand, that ' *IMI* ' be asked to delete the mentioned email.

- That on 05/13/2021 a new email was sent attaching the height resource with the anonymized personal data (email that you reproduce in your letter of response to the request for information). Thus, recipients were also expressly asked to delete the height resource sent on 04/26/2021 if it had been saved. It also highlights that, among the recipients of this email, there is that of the complainant herself.

5. On 26/04/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Municipal Institute of Parks and Gardens of Barcelona for an alleged infringement 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).

6. 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.

7. On 11/05/2022, the Municipal Institute of Parks and Gardens of Barcelona made objections to the initiation agreement.

8. On 19/07/2022, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Municipal Institute of Parks and Gardens of Barcelona as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f); both articles of the RGPD.

This resolution proposal was notified on 07/22/2022 and a period of 10 days was granted to formulate allegations.

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

proven facts

The Municipal Institute of Parks and Gardens of Barcelona, and specifically, the Head of Labor Relations and Prevention of the Directorate of General Services, sent an email on 26/04/2021 to the representatives of the workers and (...), in which there was a transfer of an appeal filed by the person here denouncing, as (...), against the legal basis of the selection process that has been mentioned in the antecedents, in which included your personal data (name, surname, ID and private address).

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 reasoned response of the instructing person to these allegations.

In its statement of objections to the initiation agreement, the reported entity acknowledged that it sent a copy of the appeal with the personal data of the person making the complaint, but it justified itself by saying 'both the name and *surname , such as the DNI are data that are known to the rest of (...), the only recipients of the message, due to their usual tasks'.* Likewise, he added that ' *as soon as the error became known, the necessary, possible and sufficient measures were taken to repair the violation* ' . On the other hand, regarding the transfer of the entirety of the appeal, he argued that, given the content of that one, he believed it necessary to transfer it to the rest of (...) given that a 'pact between the (*. ..) and the Institute'* . Finally, he alluded to the dissemination of the private address, and stated that although it was necessary to have checked the data, it was completely unusual for the representative's private address to be provided, so it is fully justifiable that the manager of *the document do not pay attention to the address provided'* .

As already advanced in the proposed resolution, the allegations of the reported entity cannot succeed since, as data controller, it was responsible for ensuring compliance with the regulations for the protection of personal data within the framework of their functions. Among the principles that govern the protection of personal data, the data controller has the obligation to guarantee the principle of confidentiality, provided for in article 5 of the RGPD, which in turn, implies the duty provided for in article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD); and which results in the obligation to avoid the dissemination of unauthorized information to third parties.

The fact alleged by the denounced entity, in the sense that it considered it necessary to transfer the appeal to the rest of (...)given that ' *a pact' had been broken,* is not sufficient reason to distort the imputation of the initiation agreement, in which it was already made clear that the transfer of the resource without the prior anonymization of the personal data included in its text, was an unnecessary and unjustified action to achieve the purpose of informing about the 'stop procedure.

What is different is that in the context of the administrative procedure that derives from the filing of the appeal, the people who consider it so, could appear and prove their status as interested parties. However, this option, existing in the context of the administrative procedure and which contemplates article 4 LPAC, in no way contradicts the imputation that is the subject of the present sanctioning procedure, since from the prism of the data protection regulations, it could not be available to third parties information that, at that time, should have been protected and protected by the duty of confidentiality, without it being superfluous to add that if the justification for moving the full text of the resource was to inform about the stoppage of the selection process , as alleged by the reported entity, this purpose is also achieved with the simple statement that an appeal had been submitted, without the need to attach it to the email.

In this regard, it is worth saying that the fact of having sent the full text of the appeal, in addition to revealing the personal data, name, surname, ID and private address of the person making the complaint, also revealed that it was this person who had filed the recourse, which entails the lack of observance of the principle of confidentiality, which is one of the guiding

principles of the data protection regulations. In this sense, highlight that the fact that it is a representative (in this case, (...)) acting in the exercise of his ' *usual tasks* ', cannot imply that his data will be lost, for this reason, the protection that the regulations grant them. Otherwise, the alleged knowledge of the representative's personal data by the other representatives (...), is an argument that does not exonerate the reported entity from complying with the provisions of the current data protection regulations.

Finally, it should also be noted that the circumstances of article 83.2 RGPD invoked by the accused entity in its defense could have been taken into account in the case of imposing a possible monetary fine, however, this is not the case present case, therefore, due to the nature of the infringing subject, the data protection regulations provide that the infringements will be sanctioned by means of a non-pecuniary sanction, as will be explained in the fourth legal basis. This same basis also includes the assessment of the corrective measure instituted by the imputed entity to prevent events such as those proven from being repeated in the future.

3. In relation to the fact described in the section on proven facts, relating to the principle of confidentiality, it is necessary to go to article 5.1.f.) of the RGPD, which provides that *" 1. Personal data will be: (…) f) processed in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures (integrity and confidentiality).”*

At the same time, article 5 of the LOPDGDD) regulates the duty of confidentiality in the following terms:

"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.
3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or person in charge of the treatment has ended."

During the processing of this procedure, the fact described in the proven facts section, which is considered constitutive of the violation provided for in 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; ”* and which include the principle of confidentiality.

The conduct that is addressed here has been collected as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form: *" The breach of the duty of confidentiality established in 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.*
> *Also, when the infractions are attributable to authorities and managers, and the existence of technical reports or recommendations for the treatment that have not been properly attended to is proven, in the resolution in which the penalty is imposed, to include a warning with the name of the responsible position and it must be ordered to be published in the "Official Gazette of the State" or the corresponding regional newspaper.*

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 case at hand, since this is a one-off event and given that the reported entity has demonstrated the adoption of measures in order to prevent an event of the same characteristics from happening again, it becomes unnecessary require additional corrective measures.

For all this, I resolve:

1. Admonish the Municipal Institute of Parks and Gardens of Barcelona 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 fourth legal basis.

2. Notify this resolution to the Municipal Institute of Parks and Gardens of Barcelona.

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,