

## File identification

Resolution of sanctioning procedure no. PS 27/2022, referring to the Official College of Nurses and Nurses of Barcelona

## Background

1. On 07/13/2021, the Catalan Data Protection Authority received a letter from a person (hereafter, complainant) in which he filed a complaint against the Official College of Nurses and Nurses of Barcelona (in hereinafter, COIB), due to an alleged breach of data protection regulations.

Specifically, the person making the complaint highlighted that the COIB published on its institutional website a statement of allegations that it had submitted on 12/07/2021, via burofax, to challenge the minutes of scrutiny of the elections partial to fill the vacancies of the positions of vice-president and secretary of the Board of Governors plus two alternates. In this regard, he pointed out that the document was published without anonymizing his personal data, so that anyone who accessed the said letter of allegations could view his first and last name, postal address, telephone number, email address, ID number and handwritten signature.

The letter of complaint is accompanied by the document of allegations that the person making the complaint presented to the COIB on 12/07/2021, and a screenshot that allows you to visualize that, on 13/07/2021, at 9:07 p.m., the document was published on the COIB website without anonymizing the name of the now complainant, her address for notification purposes, her email address, her telephone number, as well as her ID number complete. Likewise, the complainant provided the link through which, as indicated, the disputed document could be accessed.

2. The Authority opened a preliminary information phase (no. IP 282/2021), 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 03/29/2022, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported. Thus it was found that on the COIB Transparency Portal, in the "Partial elections 2021" section, you could access the section relating to the "Electoral Bureau" and view the document "Allegations (...) to the Bureau Electoral". In this document, accessible through the website <https://pbcoib.blob.core.windows.net/coib-publish/invar/5e0e5b76-43d6-4a4e-8170-2402be83c8fb>, it contained the name, surname and handwritten signature of the reporting person, the rest of the personal data having been anonymised. In the same investigation, it is also noted that the link specified by the complainant in his written complaint is no longer operational.

4. On 03/30/2022, the reported entity was required to pronounce, among others, on the following points:

- Indicate the specific legal basis that would support the treatment consisting in the publication on the institutional website of the COIB of the controversial document, with the name and surname of the person making the complaint, their address for notification purposes, their telephone number and email address, the your ID number and your handwritten signature.
- Report on any issue that you consider relevant in relation to the subject of this prior information.

5. On 04/12/2022, the COIB responded to the aforementioned request through a letter in which it stated the following:

- *"On July 12, the burofax was received that Mr. [now complainant] addressed the Electoral Board with a series of allegations contesting the minutes of scrutiny of the partial elections.*
- *On July 13, 2021, the [now complainant] 's letter addressed to the Electoral Board was published on the Corporation's Transparency Portal.*
- *The professional associations are authorized to process the personal data that is necessary to carry out their functions, respecting the limits and applying data protection principles (...) The legitimizing bases that the corporation has for processing the collective data registered are collected in the Register of Processing Activities, published on the Transparency Portal of the Corporation's website. (...)*
- *The following is established as a legitimate basis: "RGPD: 6.1.a) The interested party gave consent for the processing of his personal data for one or several specific purposes. RGPD: 6.1.b) The treatment is necessary to execute a contract to which the interested party is a party or to apply pre- contractual measures at their request. RGPD: 6.1.c) The treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment. 6.1.e) The treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment."*

The COIB's letter also made it clear that, when the allegation document presented by the now complainant was published on the web, his personal data was included by mistake. Then, they stated that, having verified the error in the publication, they proceeded, immediately, to delete the file published on the Portal, and to publish the said file again, hiding the personal data, *"except for the name of Mr. (...), which was included in the public electoral procedure as a candidate"*. The COIB added that the rectification was carried out on 07/13/2021, and that the personal data were public and visible for a total of 2 hours and 21 minutes.

Finally, in relation to the publication on the website of the controversial document with the handwritten signature of the complainant, the COIB stated the following: *" This Corporation has removed as a precautionary measure the file that was published on the corporate website, in which it contained the handwritten signature of Mr. [complainant ], and has uploaded a new one, which does not include the handwritten signature of the interested party "* and argued: *" The processing of the personal data in question was carried out in the framework of a procedure election of a professional association, which responds to the principles of transparency, objectivity, democracy and publicity according to the corporate statutes and applicable legislation, insofar as it affects the right to information and publicity of those affected, in these cases, to the collegiates and collegiates (...) With no intention of debating the issue, the legitimating basis that endorses the treatment consisting in the*

*publication on the corporate website of the COIB of the image of the signature of the reporting person corresponds to the compliance with a legal obligation, provided for in article 6.1.c) of the RGPD and in article 8 of the LOPD, which originates in Law 19/2014, of December 29, on transparency, access to public information and good governance. The Interpretative Criterion (CI/004/2015) cited above established that the handwritten signature is not considered specially protected data and therefore its treatment does not require special mechanisms (...)"*

**6.** On 03/05/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Official College of Nurses and Nurses of Barcelona for an alleged violation provided for in article 83.5 .a), in relation to article 5.1.a); 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 05/06/2022.

**7.** 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.

**8.** On 05/20/2022, the COIB made objections to the initiation agreement , which are addressed in section 2 of the legal foundations.

**9.** On 07/13/2022, the Authority's Inspection Area has carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it has been found that on the COIB Transparency Portal, in the "2021 Partial Elections" section, it was possible to access the section relating to the "Electoral Table" and view the document "Allegations (...) to the Electoral Board". In this document, accessible through the website <https://pbcoib.blob.core.windows.net/coib-publish/invar/4089ff57-beb4-4c26-bd10-c360de84cfc8>, it contains the name and surname of the reporting person , having anonymized the rest of the personal data contained in the initially published document (precedent 1). Likewise, it has been noted that the hyperlink that allows access to the document, from the COIB website, refers to "Allegations (...) to the Electoral Bureau".

**10.** On 28/07/2022, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Official College of Nurses and Infermers de Barcelona as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1 a), all of them of the RGPD.

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

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

**12.** On 08/24/2022, the Authority's Inspection Area has carried out a series of checks via the Internet on the facts subject to the complaint and has found that, on the COIB's Transparency Portal, in the section "Partial elections 2021", you can still access the document " *Allegations (...) to the Electoral Board* ", which contains the name and surname of the person making the complaint. The document is accessible through the website

<https://pbcoib.blob.core.windows.net/coib-publish/invar/4089ff57-beb4-4c26-bd10-c360de84cfc8>

## proven facts

On 07/13/2021 the COIB published on its institutional website a letter of allegations presented by the now complainant, through which he challenged the minutes of scrutiny of the elections to fill the vacancies vice-president and secretary of the Board of Governors plus two alternates. The letter published on the website contained the name and surname of the now complainant, his postal and electronic addresses, his ID number and his handwritten signature. On the same day 13/07/2021, following a complaint from the complainant, the COIB proceeded to rectify the published document, hiding all the personal data of the complainant, except for his first and last name, and his handwritten signature, given the latter which, according to the COIB, remained on the published document until 04/12/2022.

## 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.

Well, first of all, it should be noted that, as stated by the instructing person in the resolution proposal, the accused entity did not question either the facts alleged in the procedure, nor its legal qualification in the initial agreement . His statement of objections therefore focused on questioning the origin of the reprimand, invoking in this regard article 77.2 of Organic Law 3/2018, of December 5, on data protection personal data and guarantee of digital rights (hereinafter, LOPDGDD). The COIB argued that the nature of the penalty of warning is not punitive since it " *intends that the infringing entity adopts corrective measures in order to remedy and cease harmful conduct. As was made clear in the letter of allegations presented by the COIB on April 12, 2022, the College already adopted the optimal and appropriate corrective measures to rectify the publication of the handwritten signature of Mr. . (...)*". Along these lines, the pleadings cited the Judgment of the Chamber of the National Administrative Contentious Court, First Section, appeal number 455/2011, of November 29, 2013, which states:

*" However, given that it was proven that the complainant on her own initiative had already adopted a series of corrective measures, which she communicated to the Spanish Data Protection Agency, and that it had verified that the complainant's data were no longer traceable on the complainant's website, the Spanish Data Protection Agency did not consider it appropriate to impose on the complainant the obligation to carry out other corrective measures, so it did not agree to any requirement in this regard (...). Consequently, if the Spanish Data Protection Agency believed that the relevant corrective measures had been adopted in the case, as it happened, as expressed in the appealed resolution, the administrative action proceeding by law was the archive of the actions, without practice admonition or any requirement to the reported entity, because this follows*

*from the correct interpretation of article 45.6 LOPD given its systematic and theological interpretation".*

In relation to the above, the letter of allegations concluded that the actions should be archived given that the corrective measures have already been carried out " *to rectify the infringing actions* ", and adds " *we can cite resolution R /01839/2016 (procedure A/00078/2016) of the Spanish Data Protection Agency, where a professional Association in similar cases that are analyzed in the present file and with reference to the previous judgment of the Court National, concludes, in short, once the relevant corrective measures have been taken, the actions must be archived*".

Well, as it was advanced in the Resolution Proposal of this Authority, the sentence of the National Court that invoked the imputed entity, is dated 11/29/2013, prior to the entry into force of the RGPD and the LOPDGDD, and the normative precepts it interprets are those contained in Organic Law 15/1999, of December 13, on the protection of personal data. So, although the sentence affirms " *the LOPD does not contemplate the imposition of the sanction of apercibimiento, consisting of the warning given to the subject responsible for an administrative infraction* ", it does so in the light of the literalness of article 45.6 of Organic Law 15/1999, provision that, among others, was expressly repealed by Royal Decree-Law 5/2018, of July 27, on urgent measures for the adaptation of Spanish Law to Union regulations European data protection law, which will enter into force on July 31, 2018.

However, and for what is of interest here, it is clear that article 77.2 of the current LOPDGDD which is transcribed below, determines that the warning is the sanction that must be imposed on the entities listed in section 1 of the mentioned precept; sanction that can only be imposed if the corresponding sanctioning procedure has been processed, and the commission of the offense and the responsibility of the accused entity are proven.

*"2. When the managers or agents listed in section 1 commit any of the violations referred to in articles 72 to 74 of this Organic Law, the data protection authority that is competent 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."*

Ultimately, the accused entity asked for the proceedings to be archived under the pretext of having taken corrective measures, and cites a resolution of the Spanish Data Protection Agency (hereafter, AEPD). Well, in relation to this argumentation, it should be noted that, on the one hand, the Authority is not bound by the interpretative criteria adopted by the AEPD in the framework of the resolution of the procedures it is aware of, since there is no relationship of subordination between both control authorities. Therefore, the fact that, in a specific case, the AEPD archived the inspection actions carried out, does not mean that this Authority must resolve the archive of the present procedure when the commission of the alleged offense has been proven, which even the same imputed entity has recognized, and its responsibility in the facts, which is why the requested filing does not proceed.

3. In relation to the facts described in the proven facts section, you must go to the article



it is necessary to go to article 5.1 a) of the RGPD, which provides that personal data will be *"a. Treated in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency")"*.

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is 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"*, in relation to article 5.1 a) of the RGPD, which provides for the legality of personal data.

Likewise, it has also been established that the processing of personal data carried out by the reported entity did not comply with any of the legal authorizations provided for in article 6 RGPD, which provides that the processing is lawful if *" it is fulfilled at least one of the following conditions:*

- a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;*
  - b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;*
  - c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;*
  - d) the treatment is necessary to protect the vital interests of the interested party or another natural person;*
  - e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;*
  - f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.*
- The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."*

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".*

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".*

From the account of the antecedents, it follows that, on 24/08/2022, the document published on the COIB website still identifies the now complainant with his first and last name. Therefore, by virtue of the power granted by article 21.2 of Law 32/2010, it is necessary to require the reported entity to as soon as possible, and in any case within the maximum period of 10 days from the day after the notification of this resolution, proceed to the deletion of the name and surname of the reporting person from the reference document. Also, to the extent that the hyperlink that allows access to the document refers to "Allegations (...) to the Electoral Board", it will also be necessary to delete the name and surname of the person reporting from the title of this hyperlink.

Once the corrective measure described has been adopted, within the specified period, the COIB must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to carry out the corresponding checks.

For all this, I resolve:

1. Admonish the Official College of Nurses and Nurses of Barcelona as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), both of the RGPD.
2. To require the Official College of Nurses and Nurses of Barcelona to adopt the corrective measures indicated in the fourth legal basis and accredit before this Authority the actions taken to comply with them.
3. Notify this resolution to the Official College of Nurses and Nurses of Barcelona.
4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. 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,

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