

File identification

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

Background

1. On 03/24/2022, the Catalan Data Protection Authority received a letter submitted by a person who filed a complaint against the Escola Quermany (hereinafter, the School), on the grounds of an alleged breach of the regulations on the protection of personal data (this complaint was assigned no. IP 110/2022). On 03/25/2022, another person filed a complaint with the Authority, against the same School, for the same facts (this complaint was assigned no. 111/2022). Both complainants stated that the School would have posted on the notice board the first and last names, and the full ID number, of the members who are part of the "Commission for selection of merit contest to select the director or director of public educational centers dependent on the Department of Education". Also, the complaints were accompanied by photographs that made it possible to observe that the notice board is located on the public road.
2. The Authority opened a preliminary information phase in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (hereafter, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure .
3. In this information phase, on 04/04/2022 the reported entity was required to report on the legal basis that would justify the publication of the first and last names and the full ID number of the members of the selection committee of reference, as well as the exact location of the bulletin board.
4. On 04/26/2022, the School responded to the above-mentioned request in writing, indicating that the legal basis that would have legitimized the reference publication is "*Resolution EDU/3727/2021 , of 16 of December, by which a merit competition is called to select the director of several educational centers dependent on the Department of Education. Section 10.5 Annex 1: 10.5 The direction of the territorial services of the Department of Education and the competent body of the Barcelona Education Consortium appoint the selection committees provided for in base 6 and deliver a copy of the resolution to the presidents of the commissions, which make them public on the bulletin boards of the centers* . And he added that the school's notice board is located next to the school's entrance, on Paseo Aniceta Figueres i Soler, 14 de Pals. Likewise, it also stated that the date on which the identity of the members of the selection committee was published was 03/21/2022.
5. On 11/05/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Escola Quermany of the Department of Education for two alleged violations provided for in article 83.5.a) , in relation to article 5, sections c) if), respectively; 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 05/13/2022.

6. On 05/26/2022, the School made objections to the initiation agreement .

7. On 31/08/2022, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the Escola Quermany of the Department of Education as responsible, in the first place, for an infringement provided for in article 83.5.a) in relation to article 5.1 section c); and secondly, of an infringement also provided for in article 83.5.a) in relation to article 5.1 section f), of the RGPD.

This resolution proposal was notified on 08/09/2022 and a period of 10 days was granted to formulate allegations.

8. The deadline has been exceeded and no objections have been submitted to the proposed resolution.

proven facts

On 03/21/2022, an administrative act was published on the notice board of the Escola Quermany , located on the public road, which identifies with names and surnames and full ID number, the people who are part of a commission for the selection of the director of an educational center, so that anyone passing through the public road could access this information and view the full ID number of the members of the commission.

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. In this regard, it is considered appropriate to reiterate the most relevant part of the instructor's motivated response to these allegations.

In its statement of objections to the initiation agreement, the accused entity, on the one hand, pointed out that the legal basis that legitimized the publication of the names and surnames and ID number of the members of the reference committee on the School notice board, was Resolution EDU/3727/2021, of December 16, which, in section 10.5 of the first Annex, provides for the publication of the appointment of the committees of selection on the bulletin boards of educational centers. And, on the other hand, he pointed out that the aforementioned publication was made on the School's notice board, which is located next to the entrance door of the educational center, on Passeig Aniceta Figueres i Soler , 14 de Pals, on 03/21/2022.

On the other hand, the letter of allegations also pointed out that " *on the date that the complaints were presented, the school was in the access restrictions imposed by the pandemic period and that the publication of the data in inside the center they had not made public the data requested by the resolution*" and added " *from the education inspection the*

center was asked to make the documents public (...) when the inspection requested the withdrawal of the documents, it was done as soon as possible."

Finally, the School informed the Authority that, in order to correct the facts, from the center it was requested that the personal data contained in the documentation generated in the procedure of the said merit competition be maintained in full or partially encoded.

In this respect, the Authority positively assesses that the reported entity removed the controversial document from the notice board, but it must be warned that this action does not distort either the imputed facts or their legal qualification.

Indeed, article 5 of the RGPD, relating to the principles of treatment, provides, among others, that personal data must be treated in accordance with the principles of minimization and confidentiality. In literal terms, it states:

" 1. Personal data will be:

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

(...)

f) Treated in such a way as to guarantee an adequate security of personal data, including protection against unauthorized or illegal treatment and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures ("integrity and confidentiality").

In accordance with the stipulation, the legal qualification that the imputed facts deserve, according to the offense committed, in accordance with the initiation agreement and the proposed resolution of this procedure, is listed below.

- In relation to the principle of confidentiality

The accused entity published the information relating to the identification of the people who were part of a commission on a notice board, located on the public road.

In this regard, the Authority does not dispute that the information relating to the identification of the members of the aforementioned commission was published, but the fact that this documentation was made public outside the center, more specifically, on a notice board located on the street public, given that anyone outside the educational community could access it.

Having established the above, the normative framework of reference is then analysed, for the purpose of assessing whether the School's action contravened the principle of confidentiality.

First of all, it should be taken into account that article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGGDD) includes the duty of confidentiality which, in accordance with article 5.1 f) of the RGPD, contemplates the following:

"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 (...)*".

This duty of confidentiality has also been included in other rules, such as article 52 of Royal Legislative Decree 5/2005, which approves the revised text of the Law on the Basic Statute of the Public Employee (EBEP), in which under the heading "duties of public employees" provides for the duty to act in accordance, among others, with the principle of confidentiality.

In turn, article 13 of Law 39/2015, on common administrative procedure of public administrations, provides for the right to the protection of the data of people who are related to public administrations and, in particular, to the data security and confidentiality. Right that constitutes a duty for employees and public officials who process personal data.

Well, in relation to the allegations presented by the entity imputed to the agreement to initiate this procedure, it is worth saying that this Authority is aware of the restrictions applied to educational centers as a result of the Covid- 19, on the dates on which the alleged events took place; and understands that, certainly, the situation was very complicated and required additional extra effort to guarantee the operation of such centers; but such circumstances cannot exempt those responsible for the treatment from guaranteeing the right to data protection, which is why the pandemic situation cannot serve as a pretext to justify the excessive exposure of reference personal data. And this because the publication on the notice board located in Passeig Aniceta Figueres i Soler de Pals allowed people who were not part of the educational community to access personal information of the members who made up the said selection committee, thus contravening the principle of confidentiality provided for in articles 5.1 f) RGPD and 5 LOPDGDD.

- In relation to the minimization principle

The information published on the School's notice board identified the members of a selection committee, with their first and last names, and their full ID number.

For what is of interest here, in relation to the publication of administrative acts, the seventh Additional Provision of the 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 foreign identity number, the passport or an equivalent document. When the publication refers to a plurality of those affected, these figures must alternate."

The reported entity alleged that the publication of this information was protected by Resolution EDU/3727/2021, of December 16 and, specifically, in point 10, paragraph five of Annex 1, transcribed in preceding quarter of this resolution.

In this regard, this Authority does not question the legality of the publication, but rather the fact that the information was published with personal data which, as will be argued below, was excessive.

Therefore, one must take into account that, although the selective processes are governed, among others, by the principles of transparency and publicity, the information that is

published in the course of these procedures must respect the requirements by the data protection regulations. In this sense, the information that allows the identification of the people who make up a selection committee must be the minimum necessary to fulfill the intended purpose, and must not include personal data that may be excessive.

Consequently, the publication of the first and last names, and the full ID number of the people who were part of the selection committee, contravened the principle of minimization, provided for in article 5.1 c) of the RGPD, as well as the one established in the seventh Additional Provision of the LOPDGDD, to the extent that the School did not limit itself to identifying the members of the commission by means of their first and last names and four random numbers from their national identity document.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5 sections c) and f) of the RGPD which provide that personal data will be "c) adequate, relevant and limited to what is *necessary in relation to the purposes for which they are treated (data minimization)*. (...) 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 technical or organizational measures appropriate (integrity and confidentiality)*."

As indicated by the instructor, during the processing of this procedure, the facts described in the proven facts section, which are constitutive of individual violations provided for in article 83.5 a) of the RGPD, have been duly proven, which typifies as such the violation of " *the basic principles for the treatment, including the conditions for the consent pursuant to articles 5, 6, 7 and 9*" , among which the principles of minimization and confidentiality are included.

The conduct addressed here has been included as a very serious violation in article 72.1 LOPDGDD, sections a) ii), 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."

(...)

i) The violation 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."

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, it is not considered appropriate to urge the accused entity to adopt corrective measures, given that the School has proceeded with the withdrawal of the aforementioned announcement, and has announced the adoption of measures consisting of fully or partially encoding the personal data that they can be included in the documentation generated as part of the merit competition procedure for the selection of the management of educational centers.

For all this, I resolve:

1. Admonish the Escola Quermany of the Department of Education as responsible for two violations provided for in article 83.5.a) in relation to article 5.1, sections c) and f) all of them of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the Escola Quermany of the Department of Education.

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,