

File identification

Resolution of sanctioning procedure no. PS 31/2022, referring to the Official College of Veterinarians of Barcelona

Background

1. On 11/07/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Official College of Veterinarians of Barcelona (hereinafter, COVB), with reason for an alleged breach of the regulations on the protection of personal data. Specifically, the person making the complaint stated that, on 21/06/2021, he sent an email to the COVB formulating a query related to the care received in a veterinary center, and denounced the fact that the COVB had moved his email electronically to the referred veterinary center, without their consent.

The letter of complaint is accompanied by a copy of the emails exchanged between the COVB and the now complainant, the content of which, due to its relationship with the subject of this procedure, is transcribed below:

- Email that the now complainant sent to the email address < deontologia@covb.cat > on 06/21/2021 in which he stated the following (underlining is ours):
" About three months ago I went to the veterinary center (...) to ask for an antiparasitic and the receptionist sold me a pill called Bravecto without knowing who my dog was or without any kind of veterinary authorization. However, this morning I wanted to buy some at the store where I always buy the products for my pets and they told me that I needed a prescription. Seeing that I needed a prescription, I called the veterinary center (...) to ask for it and they flatly refused. I've been talking to the receptionist (...) and they haven't given me the chance either to give it to me directly or to visit my dog and then give me the prescription. (...) I ask to be informed about whether there is a possible violation of competition and good veterinary practices and, if so, I would like to make the corresponding complaint".
- Email dated 06/21/2021 sent from the email address < deontologia@covb.cat > to the now complainant through which the COVB communicates the following (underlining is ours):
"We inform you that the COVB has no competence in the control of veterinary medicines. We therefore inform you that we have transferred your email to the veterinary center you mention for the appropriate purposes. (...)"
- Email dated 06/21/2021 sent by the now complainant to the email address < deontologia@covb.cat > through which he states the following (underlining is ours):
"What do you mean you moved my mail to the center? I have not given my permission to forward my mail with my personal details. If you have done so, I hope you will inform me in a timely manner. In relation to the second part of your mail, I appreciate the information but it has nothing to do with what I told you. At no time did I talk about continuing a prescribed treatment. On the other hand, if you say that you do not have jurisdiction over this matter, I would appreciate knowing who does and, therefore, to whom I should address."
- Email dated 06/21/2021 sent from < deontologia@covb.cat > to the now complainant, through which he is informed of the following (underlining is ours):

"As a user of this Veterinary center, we understand that they have your personal data. In accordance with the above, your complaint has been transferred to the Veterinary Center so that you receive an answer as soon as possible. We are sorry that you are not satisfied. If you wish to cancel the processing of your personal data, please confirm and we will transfer your request to the company (...), as DPO of the COVB, so that they can take the appropriate actions. The competent authority in the control of veterinary medicines in Catalonia is DARPA".

- Email dated 07/09/2021 sent by the now complainant to deontologia@covb.cat through which, among other considerations, he states:

"Thanks to you letting the veterinary center know my identity (which was unknown to them since the conversation was over the phone) and considering the treatment I have received, I now cannot trust myself to bring my pets to this center in case urgently because I can't trust that the treatment is the right one (...)"

2. The Authority opened a preliminary information phase (no. 276/2021), 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 12/11/2021 the reported entity was required to report, among other issues, on the purpose and legal basis that would protect the communication of data from the reporting person to the reference veterinary center.

4. On 11/26/2021, the COVB responded to the above-mentioned request in writing through which, first of all, it made clear that " *the subject of the query/complaint was not about an issue related to the veterinary clinical exercise because there had been no professional action*" and added " *as it was a consumption relationship (acquisition of a veterinary medicine), the consultation was transferred to the claimed company in compliance with the provisions of Decree 121/2013, of February 26, which regulates the official complaint, claim and denunciation forms in consumer relations* ".

The letter from the COVB also made it clear that the purpose of sending the said e-mail was to " *address and manage the queries, complaints and claims presented to this Professional Corporation in relation to its powers*" and indicated that the legal basis that protected the communication " *is the fulfillment of a mission carried out in the public interest or exercise of public powers conferred on the person in charge of the treatment as well as the fulfillment of the legal obligations attributed to the person in charge* ". Likewise, in relation to the regulations that would have protected the communication of data, the COVB invoked the following precepts:

" Article 12 of Law 2/1974, of 13 February, on Professional Associations, which regulates the Service of attention to members, consumers and users, and which establishes the following:

1. *The Professional Associations must attend to the complaints or claims presented by the members.*
2. *Likewise, the Professional Colleges will have a consumer or user service, which will necessarily process and resolve any complaints and claims related to the collegiate or professional activity of the collegiates presented by any consumer or user who*

contracts the professional services, as well as by associations and organizations of consumers and users on their behalf or in defense of their interests.

3. *The Professional Associations, through this service of attention to consumers or users, will resolve the complaint or claim as appropriate: either informing about the extrajudicial dispute resolution system, or sending the file to the competent collegial bodies to instruct the appropriate informative or disciplinary files, either filing or adopting any other decision in accordance with law.*
4. *The regulation of this service must provide for the submission of complaints and claims electronically and remotely.*

The COVB also invoked Law 22/2010, of July 20, of the Consumer Code of Catalonia, and Decree 121/2013, of February 26, which regulates official complaint, claim and denunciation forms in relationships of consumption. And, he added that, in accordance with article 11 of Decree 121/2013, if it is inferred from the request of a consumer that the claim is the formulation of a complaint, it is necessary to inform the affected employer so that he is aware of it and can provide his version or assessment of the facts, to improve the quality of the service he offers to consumers.

Finally, the COVB informed the Authority of the protocols established to fulfill the public functions entrusted to them and explained that the inquiry " *on how to obtain a veterinary medicine*" was transferred to the reference veterinary center so that the Now the complainant could get the medicine and treat his animal.

The reported entity provided, among other documents, the email that, on 06/21/2021, it sent to the reference veterinary center, attaching the email that the now complainant sent to the COVB, in the same date, not anonymized.

5. On 17/05/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Official College of Veterinarians of Barcelona for an alleged infringement provided for in article 83.5 a), in relation to article 6; 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 05/18/2022.

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 10/06/2022, the COVB formulated allegations to the initiation agreement, which are addressed in the second legal basis of this resolution.

8. On 19/10/2022, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the COVB as responsible for an infringement provided for in article 83.5.a) in relation to article 6, all of them of the RGPD.

This resolution proposal was notified on 10/24/2022 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

On 21/06/2021 the Official College of Veterinarians of Barcelona forwarded to the veterinary center (...) the email that, on the same date, the person now reporting sent to the COVB, raising a query related to the attention received at the reference veterinary center, without the consent of the now complainant.

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, the allegations of the COVB in the agreement to initiate the procedure focused on arguing that the sending of the said e-mail to the veterinary center (...) obeyed the treatment of the e-mail as a complaint submitted by part of a consumer, so "*the legitimate basis for the transfer of personal data is the fulfillment of their public functions and legal obligations*".

In relation to the above, the COVB invoked article 11.2 of Decree 121/2013, of February 26, which regulates the official complaint, claim and denunciation sheets in consumer relations which, in literal terms, establishes :

" If it is derived from the consumer's request that it is a complaint, the competent competent body must inform the affected entrepreneur so that he or she is aware of it and can provide the version of the facts or assessment for, if where appropriate, improve the quality of the service offered to consumers".

The accused entity reproduced the definition of "complaint" included in article 2 of Decree 121/2013, and pointed out that, in accordance with article 12 of Law 2/1974, of February 13, on Col· Legis Professionals, colleges must have a consumer or user service that necessarily processes and resolves complaints and claims related to the collegiate or professional activity of the members.

Starting, therefore, from the consideration of the complaint of the controversial letter, the COVB maintained that the legal basis that legitimized the transfer of the said message to the veterinary center was, in literal terms, "the fulfillment of its public functions and *obligations legal*". Likewise, the COVB provided the link to its website, where the official form for complaints, claims and denunciations is available , through which the complainants are informed, among others, of the following:

"Transfers: Public administrations with competence in the matter and those entities in charge of the treatment for which communication is necessary in order to adequately fulfill

the aforementioned service. Your data may be transferred to the entity subject to the complaint or claim".

From the allegations transcribed it follows that, in accordance with the COVB, the controversial processing of personal data would be protected by article 6.1 sections c) and e) of the RGPD. Next, the content of article 6 of the RGPD that is of interest, for the case at hand, is transcribed:

"1. The treatment will only be permitted if at least one of the following conditions is met:

(...)

c) The treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment.

(...)

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; (...)

3. The basis of the treatment indicated in section 1, letters c) and e), must be established by:

a) the Law of the Union, or

b) the law of the Member States that applies to the person responsible for the treatment.

(...)

4. When the treatment for another purpose other than the one for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society to safeguard the objectives indicated in article 23, section 1, the person responsible for the treatment, in order to determine whether the treatment with another purpose is compatible with the purpose for which the personal data was initially collected, will take into account, among other things :

a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;

b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the person responsible for the treatment;

c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;

d) the possible consequences for those interested in the future treatment) the existence of adequate guarantees, which may include encryption or pseudonymization .

And in line with the above, article 8 of the LOPDGDD provides:

" 1. The processing of personal data can only be considered based on the fulfillment of a legal obligation required of the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when this is provided for by a rule of European Union law or a rule with the force of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the assignments that proceed as a consequence of the fulfillment of the legal obligation. Said rule may also impose special

conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/697.

2. The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016/679 , when it derives from a competence attributed by a rule with the rank of law.”

Article 5.1 a) of the RGPD provides that personal data must be treated lawfully, and conditions this lawfulness to the concurrence of the conditions provided for in article 6 RGPD. Well, following the analysis made in the Resolution Proposal, the reason why the concurrence of the legal bases invoked by the COVB should be discarded is argued below.

As a preliminary matter, a distinction must be made between whether the e-mail sent by the now complainant was intended to provide information from the COVB, or to file a complaint. The distinction is particularly relevant given that the allegations presented by the accused entity assumed that the now complainant, through the controversial email dated 06/21/2021, submitted a complaint to the COVB, and invoked different precepts of Law 2/1974, of February 13, on Professional Associations and of Decree 121/2013, of February 26, which regulates the official complaint, claim and denunciation sheets in consumer relations, which they refer to the treatment of complaints submitted by consumers or users.

Well, as the instructor explained in the resolution proposal, from the content of the reference email, it is clearly inferred that the intention of the now complainant was to obtain information about a possible violation "of the competition and *the good veterinary practices*" , conditioning the filing of a complaint, upon confirmation by the COVB of the alleged violation of veterinary practices.

In accordance with the above, given that the complainant did not present any complaint, the allegations of the accused entity according to which, the controversial email was sent to the veterinary center in compliance with a legal obligation, they cannot succeed to the extent that the cited precepts refer to the filing of complaints, and the complainant did not present any.

With regard to the eventual concurrence of the legal basis provided for in article 6.1 e) of the RGPD, invoked by the COVB, it should be noted that in the case of the previous information that preceded this sanctioning procedure, the same entity will recognize his lack of competence in relation to the control of medicines (1st and 4th precedents) - which was the reason for the inquiry (not a complaint) made by the complainant here before said entity -, reason for which he also did not it can be considered that the referred transmission of information to the veterinary center (...) was carried out in the exercise of the public powers conferred on the person responsible for the treatment.

In these circumstances, in accordance with article 6 RGPD, in accordance with article 8 LOPDGDD, it must be concluded that, if the accused entity did not have the competence to attend to the claim of the now complainant, what it had to do it was to indicate to the user where to go; but, under no circumstances could he communicate his personal data to a third party - such as the veterinary center (...) - without the concurrence of any legal basis that legitimizes the treatment.

3. In relation to the facts described in the proven facts section, relating to the sending of an e-mail by the complainant to a third person, it is necessary to refer to article 5.1 a) of the RGPD, which provides that personal data must be "*treated in a lawful, fair and transparent manner in relation to the interested party ("legality, loyalty and transparency")*".

In relation to the above, it has been established that the processing of personal data carried out by the COVB does not respond to any of the legal authorizations provided for in article 6 RGPD. According to the aforementioned precept, the treatment is lawful if " *at least one of the following conditions is met:*

- 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 of pre-contractual measures at the latter's request.*
- 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 a child is interested.*
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."

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 principles basic for the treatment, including the conditions for the consent according to articles 5, 6, 7 and 9*".

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."*

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 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, the COVB should not be required to adopt corrective measures, given that it is a one-time event that was completed with the sending of the controversial email .

For all this, I resolve:

1. To warn the Official College of Veterinarians of Barcelona as responsible for an infringement provided for in article 83.5.a) in relation to article 6, 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 4th legal basis.

2. Notify this resolution to the Official College of Veterinarians 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,

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