

File identification

Resolution of sanctioning procedure no. PS 36/2022, referring to the City Council of Canet de Mar

Background

1. 20/04/2022 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Canet de Mar City Council, on the grounds of an alleged breach of the regulations on personal data protection . The person making the complaint stated that, with the intention of contacting the city council's data protection officer (DPD), he noticed that the corporation's website contained a representative and contact details that did not match with what was recorded in the register of this Authority and that this caused you not to know to whom it should be addressed.

2. The Authority opened a preliminary information phase (no. IP 138/2022), 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 04/25/2022, the Authority's Inspection Area made a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that by accessing the website of the Canet de Mar Town Council (<https://www.canetdemar.cat/>) and following the route "Town Council" > "Legal notice" and then clicking on the link that it is provided in section 4 ("Privacy policy" > "Information on personal data protection"), access the section in which the contact details of the City Council's data protection representative were displayed of Canet de Mar, being the following:

*" Municipal assistance service and strategic support – DPD Ens Locals
canet.dpd@cantdemar.cat
Júlia Bacaria Gea – company Global Legal Data, SL
Gran Via de les Corts Catalanes 658 2n 2a, 08010 Barcelona
Tel. 933011286"*

However, the data contained in the data protection delegate register of this Authority since 01/12/2019 are:

*Council of Barcelona
DSTSC-SAMSE. Mundet-Migjorn site. Block B (2nd floor),
Passeig de la Vall d'Hebron no. 171, 08035, Barcelona
dpd.ajcanetdemar@diba.cat
[Tel. 934726500](tel:934726500)*

Likewise, according to information that the City Council itself communicated to the Register of Delegates of this Authority, the DPD had been appointed on 07/24/2018.

4. On 05/17/2022 and still within the framework of this preliminary information phase, the Authority's Inspection Area again carried out a second check via the Internet on the facts

subject to the complaint. Thus, it was found that by accessing the City Council's website, in the information section on personal data protection, the identity and contact details of the data protection delegate had been changed, thus coinciding with the details of the delegate registered in the register of this Authority since 01/12/2019.

5. On 26/05/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Canet de Mar Council for an alleged infringement provided for in article 83.5.b), in relation to article 12.1; 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. On 06/28/2022, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Canet de Mar City Council as responsible for an infringement provided for in article 83.5.b) in relation to article 12.1, both articles of the RGPD.

This resolution proposal was notified on 29/06/2022 and a period of 10 days was granted to formulate allegations.

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

proven facts

From an undetermined date and at least until 25/04/2022, the website of the Canet de Mar Town Council (<https://www.canetdemar.cat>) - specifically, in the section "*Privacy policy*" > "*Information on protection of personal data*" - it had published incorrect information from its data protection representative ("*Júlia Bacaria Gea - Global Legal Data company, SL Gran Via de les Corts Catalanes 658 2n 2a, 08010 Barcelona Tel. 933011286*"), given that neither his identity nor his contact details corresponded to that of the person who effectively performed these functions from 24/07/2018, and who in turn was registered in the register of delegates of data protection of this Authority ("*Diputació de Barcelona DSTSC-SAMSE. Recinte Mundet-Migjorn. Block B (2nd floor); Passeig de la Vall d'Hebron no. 171, 08035, Barcelona; dpd.ajcanetdemar@diba.cat ; Tel. 934726500*").

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 imputed entity has not made any objections to the resolution proposal, but it did present a letter before the initiation agreement in which it was limited to informing that '*at the end of April 2022, it carry out a review of the data protection section of the municipal website and ex officio, updated various information contained in this section of the municipal website*'; adding that the same Authority was able to verify on 05/17/2022 that '*the municipal website had been corrected by the City Council and that it already matched the information contained in the register of data protection delegates of the APDCAT*'. Regarding this, it is considered

appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

The fact of having published information that did not correspond to the contact details of the person who effectively exercised the functions of Data Protection Delegate - name and contact details -, in accordance with what is stated in the section of proven facts, implies a violation of the principle of transparency since it resulted in the person making the complaint, and the rest of the public, not having information that, in accordance with article 12 in relation to articles 13 and 14 of the RGPD, the City Council had to facilitate to guarantee the exercise of the rights contemplated in the data protection regulations.

Likewise, it should be indicated that, although this Authority positively values the fact that the City Council proceeded to modify its institutional website, incorporating the correct information, this action does not affect the declared facts proven in this procedure, nor in its legal qualification. If so, the correction of the infringing conduct will result in the adoption of corrective measures becoming unnecessary.

3. In relation to the fact described in the section on proven facts, relating to transparency in information, it is necessary to refer to article 12 of the RGPD, which provides:

"1. The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily access, with a clear and simple language, in particular any information aimed specifically at a child. The information will be provided in writing or by other means, including, if appropriate, by electronic means. When requested by the interested party, the information may be provided verbally as long as the identity of the interested party is proven by other means.

2. The person responsible for the treatment will facilitate the interested party to exercise their rights pursuant to articles 15 to 22 (...)"

As part of this sanctioning procedure, it has been duly certified that, at least until 25/04/2022, the information of the data protection delegate that was published on the website of the Canet City Council of Mar, specifically in the section dedicated to "Data protection" (name and contact details) was incorrect; given that it did not match the data of the data protection officer who performed these functions and who has been appointed in the register of this Authority since 2018. The duty of transparency obliges those responsible for the treatment to provide truthful information about the processing of personal data for the affected persons, and also to facilitate the exercise of the rights to informative self-determination (articles 15 to 22 of the RGPD), which the City Council did not comply with from the moment it provided information regarding to your DPD that was not correct.

In accordance with the above, 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.b) of the RGPD, which typifies as such the violation of *"b) the rights of the interested parties pursuant to articles 12 to 22"*.

The conduct addressed here has been included as a minor infraction in article 74.a) of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD), in the following form: *"Breach of the principle of*

transparency of information or the right to information of the affected person by not providing all the information required by articles 13 and 14 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 the present case, given that the City Council has made it clear that it has already corrected the identity and contact details of the data protection delegate on its website, and this has been verified by this Authority, it becomes unnecessary to require corrective measures.

For all this, I resolve:

1. Warn the Canet de Mar City Council as responsible for an infringement provided for in article 83.5.b) in relation to article 12.1, 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 City Council of Canet de Mar.

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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