

## File identification

Resolution of sanctioning procedure no. PS 42/2022, referring to the Department of Education

## Background

1. On 12/30/2020, the Catalan Data Protection Authority received a letter from a person filing a complaint against the Department of Education, on the grounds of an alleged breach of the regulations on data protection of personal data .

Specifically, the complainant, a teacher at the Institute (...) of (...), stated that he lodged a complaint with the Institute about the actions of the music teacher, who would have made offensive comments about his teaching work, and that the center did not respond to the claim. Faced with the lack of response, the complainant filed a complaint for this fact before the Ombudsman who, in turn, requested a report from the Education Inspectorate of the Territorial Services of (...) (expd. no. (...)). In relation to this, the complainant complained that in the report issued by the Education Inspectorate, dated 02/17/2020, their personal data was unlawfully processed since it reported on events unrelated to the information that had been requested by the Ombudsman to resolve the matter. The information contained in said report to which the person making the complaint refers is the following: " *1.-Inform that at the time the report was drawn up I was on leave. 2.- Please inform me that I have taken an exam at the Education Inspectorate. 3.- It informs that the opening of a disciplinary file is being evaluated .*"

Likewise, the complainant complained that the Education inspector, who had issued the report dated 02/17/2020, had illicit access to the lists of people participating in the examinations for the body of inspectors of Education, since at the time it issued the report, the said lists had not yet been publicly published .

The complainant provided various documents, including the following:

- Copy of the letter submitted by the complainant, on 07/01/2019, to the Institute where he worked, through which he complains about the performance of the music teacher who allegedly made offensive comments about his teaching task.
- Copy of the document "Report of the Education Inspectorate", dated 02/17/2020, issued by the Education Inspectorate of the Territorial Services in (...), at the request of the Grievance Ombudsman.

In the referenced report, the different actions that the Institute would have carried out in relation to the complaint presented by the complainant here and the way in which it had been answered are set out. It also states the following:

- " *Mr. (...) was presented to the management of the Institute. He was not selected, and in his place was the current director of the center, Mr. (...). Since then he maintains a relationship of permanent conflict with the management of the Institute. He questions everything. He maintains an attitude of contempt (also towards the families) against the current management of the Institute. He*

*publishes it on social networks (his derogatory comments towards the center are common on his Twitter account ).*

- *At the moment he is, again, on leave (always after a conflict this is the response he takes to problems at the center). He has appeared in the contest-opposition for access to the corps of education inspectors.*
  - *We are (also from the Directorate of Territorial Services) analyzing and studying the behavior and attitudes of the last few months to assess whether the opening of a disciplinary file is appropriate."*
- Copy of the letter from the Grievance Ombudsman, dated 05/07/2020, addressed to the Minister of the Department of Education, which contains the considerations on the procedure that the Institute should follow to respond to the letter of complaint presented by the complainant here to the management of the center.

In said communication, for the purposes that are of interest here, the Ombudsman also states the following:

*"The report you send me contains the subjective assessments of the Education Inspector in relation to the behavior of the promoter of the complaint which, in my opinion, are not relevant to adequately resolve the subject of his complaint to the Ombudsman, which is the lack of response to your complaint. Lack of response which, as I can appreciate, derives from the fact that the procedure provided for the treatment of these claims has not been followed.*

(...)

*For all that has been said, I ask you to comply as soon as possible with the forecasts contained in the aforementioned Resolution, so that the management of the center is the one that resolves the complaint of Mr. (...), (...). Likewise, in the event that the interested party decides to resort to it, and in view of the manifestations contained in the report sent, this institution is of the opinion that the inspector who issued the report should refrain from take part in the processing procedure to guarantee its impartiality ."*

- Copy of the document "Report of the Education Inspectorate", dated 05/08/2020, in response to the communication from the Grievance Ombudsman.

In this report, apart from the considerations of the Education Inspector on the response of the Ombudsman, the following is stated: " *Mr. (...) has a continuous attitude of complaining and always questioning everything in a systematic way that in no case results from subjective assessments of the Education Inspector in relation to the behavior of the promoter of the complaint, but that if they make the day-to-day life of the center difficult.*"

- Copy of the letter from the Ombudsman of Greuges, dated 22/10/2020, addressed to the Minister of the Department of Education, which indicates the reopening of the file relating to the lack of response to the complaint presented by the person here reporting because the organization has dispensed with following the procedure established to provide answers to teachers' complaints.

In said letter, the Grievance Ombudsman also states the following: *"On 25.2.2020 I received the report from the SSTT Education Inspectorate in (...) which included the subjective assessments of the "inspector in relation to the behavior promoting the complaint which, as I already stated, were not relevant to adequately resolve the object of the complaint ."*

2. The Authority opened a preliminary information phase (no. IP 412/2020), 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 08/03/2021 the reported entity was required to report on the legal basis that would legitimize the processing of the data carried out by the Education Inspector when issuing the report , dated 02/17/2020, specifically, with regard to the information of the person reporting here regarding: his/her unemployment status, being a candidate for a selective competition-opposition process, and the possibility of opening of a disciplinary file against the reporting person. Also, it was required to be informed about how the Education inspector had access, among others, to the information that the person making the complaint had appeared in a contest-opposition to be part of the body of inspectors of Education, and the legal basis that would legitimize access to all this information.
4. On 06/04/2021, the Department of Education responded to the aforementioned request through a letter issued by the Inspector of Education, also author of the report addressed to the Complaints Ombudsman, in which, among others, stated the following:
  - That *" As an official of the Corps of Education Inspectors art. 177.1 of Law 12/2009, of July 10, on education, indicates that the Department carries out the inspection of the education system with respect to all centers, of any ownership, services and other elements of the system, with the aim to ensure the application of the order and guarantee the exercise of the rights and the fulfillment of the duties that derive from it, and in turn, the art. 177.2. provides that this inspection of the educational system is carried out, as is my case, by officials of the Corps of Inspectors who have the status of public authority in the exercise of this function. With regard to the Inspection's own functions, art. 178 g) indicates that the Education Inspectors must issue the reports that, at the request of the Education Administration or ex officio, derive from the exercise of their functions. The report I prepared on February 17, 2020 was carried out at the request of the Ombudsman. It is not a public report, accessible to citizens, and responds to a request that was made to me based on a file opened by the Ombudsman himself. On the other hand, as Education Inspector art. 179.1 d) gives me the power to request and receive information from the different sectors of the educational community and from the other bodies and services of the Educational Administration. The same Education Law establishes, based on the wording of art.178."*
  - What *" by means of RESOLUTION EDU/(...), of December 11, by which the provisional list of admitted and excluded applicants for the competitive competition for access to the corps of education inspectors (...). The list is displayed to the public at the headquarters of*

*the Department of Education, in each of the territorial services, at the Consorci d'Educació de Barcelona and at the Citizens' Service Office of (...). "*

- That "*by means of the RESOLUTION EDU/(...), of January 9, by which the final list of admitted and excluded applicants to the competitive competition for access to the body of education inspectors (DOGC no. (...), of (...)). As was the case with the provisional list, this was also exposed to the public at the headquarters of the Department of Education, in each of the territorial services, at the Consorci d'Educació de Barcelona and at the Citizens' Service Office of (...). Section 4 of this same Resolution established that the act of presentation before the courts would take place on January 25, 2020, at 9:30 a.m. It is a public act through which the court summons the applicants. This public summons took place at the INS (...) in Barcelona. The complainant appeared there and through the e-board (...), Public Notice Board for access to citizenship, the court published on February 12, 2020 that the complainant had to appear for the realization of the first part of the opposition phase, which consisted of reading the practical exercise of this first test, and as provided in RESOLUTION EDU/(...), of (...), calling for an opposition competition for access to the body of education inspectors, applicants must read the exercise before the court, which must summon them for its public reading. The reading took place, with the appearance of the complainant, on Wednesday (...). The call on the e-board was accessible to the public until the day (...). I had access to information, not as an Education Inspector, but also as a citizen. In no case was there any irregularity on my part. I did not obtain the information, in relation to his participation in the contest-opposition, through any channel other than public access and knowledge. "*
- That "*Regarding the **possibility of opening a disciplinary file against the complainant**, the information collected in an internal report addressed to the Ombudsman, responded to the conflict situation that was being experienced at the center at that time. Responds to the functions and attributions that correspond to me as Inspector of Education, as guarantors of the rule, to ensure its compliance, with the aim of ensuring the application of the order and guaranteeing the exercise of the rights and the fulfillment of the duties that derive from it (art. 177.1. of the Education Law). Whether it was finally carried out or not, precisely does not contradict any legal protection rule regarding personal data. "*

5. On 03/22/2022, also during this preliminary information phase, the Authority's Inspection Area made a second information request to the Department of Education. In said request, the entity was asked to report, among other things, on the reasons why the Education Inspector considered it necessary to inform the Síndic de Greuges about the personal data of the complainant here relating to that he was on leave from work, that he was a candidate for a selective contest-opposition process, and the possibility of opening a disciplinary file. The copy of the request for a report from the Grievance Ombudsman that gave rise to the report dated 02/17/2020 was also required .

6. On 11/04/2022, the Department of Education complied with this requirement by means of the presentation of a report issued by the Inspector of Education, also author of the report addressed to the Ombudsman, which stated the following:

- What about "*if it becomes necessary to access the referenced data personal data of the complainant, in order to give an answer, I do not remember the reasons that led to leaving it in writing. "*

- That " in relation to the last issue, this fact was discussed with the staff negotiator and the Directorate of Territorial Services, because at that time it was being evaluated to pass the case to the Catalan Institute of Medical Assessments (ICAM) of the Department of Health. There was a lot of discomfort at the institute with this teacher and they probably wanted to record this fact (erroneously) before the Grievance Ombudsman despite not being the subject of the complaint that this institution was processing at the time."

The entity also provided a copy of the request for a report from the Ombudsman that resulted in the report dated 02/17/2020. In said request for a report, the following was indicated:

*"I received a complaint from Mr. XXX, **teacher at the Institute (...) of (...), in which he expresses his disagreement with the lack of response to the letter that he presented on July 1 .***  
(...)"

*The promoter of the complaint states that he has not received a response to his letter until date*

*The admission of the complaint does not prejudice the existence of any irregular action, but for study the matter and give an answer to the person concerned , I ask you to **inform me about the procedure that was given to the letter presented by the interested party on 1 of July 2019, the actions that were taken in your case, and the response that is expected to be issued. In the event that the response has been issued and notified, I would appreciate it send me a copy.***  
(...)"

7. On 21/06/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of Education for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.c); 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 06/23/2022.

8. The initiation agreement explained the reasons why no imputation was made with respect to other reported facts, in particular, that relating to the fact that the education inspector who issued the controversial report had had access to · legal in the lists of people admitted to the selection process of the body of Education inspectors.

In this respect, in accordance with what the reported entity presented, it was found that the information relating to the reporting person participating in the opposition contest was published in the open, in different formats, in the days prior to the issue of the controversial report (from (...), and therefore it was information that could be accessed freely. Given the above, it was considered that the facts analyzed in this section were not constitutive of any of the infractions provided for in the regulations on data protection, and therefore, it was decided to archive them.



9 . 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.

10. On 07/07/2022, the Department of Education made objections to the initiation agreement

11. 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 Department of Education as responsible for 'an infringement provided for in article 83.5.a) in relation to article 5.1.c), all of them of the RGPD.

This resolution proposal was notified on 19/10/2022 and a period of 10 days was granted to formulate allegations.

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

### **proven facts**

On 02/17/2020, the Education Inspection of the Territorial Services in (...) of the Department of Education, issued the document "*Report of the Education Inspection*", to respond to the request for a report that the Grievance Ombudsman had required him in order to be able to properly resolve the complaint that the person making the complaint here, a teacher at the Institute (...), had formulated for the lack of response to a complaint that he had submitted months earlier to the same Institute.

In said report, the complainant's personal data were collected, relating to his unemployment situation, his participation in a selective competition-opposition process, and the possibility that a disciplinary file would be opened against the complainant, all of them, personal data that, as the Ombudsman himself warns, in his writings dated 07/05/2020 and 22/10/2020, were unnecessary to resolve the subject matter of the complaint he was processing.

### **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.

As a premise, it should be indicated that the allegations that the accused entity presented against the initiation agreement, and that were the subject of analysis in the subsequent resolution proposal, consist of a report issued by the same inspector of Education that produced the controversial report dated 02/17/2020, which is referenced in the proven facts section. In said letter, the inspector defended that he was not the one who provided the Ombudsman with excessive information, given that his report dated 02/17/2020, which he carried out in the exercise of his inspectorial duties in educational matters , was addressed to

his " *hierarchical superiors* " within the Department of Education, and based on this, he transfers to them the responsibility for the communication of all the information contained in said report (" *could have been transferred or not* ") to the Ombudsman for Grievances.

Well, regarding this, the first thing that was pointed out in the proposed resolution is that the agreement to initiate this sanctioning procedure was initiated against the Department of Education, given that, in accordance with the regime of responsibility established in the data protection regulations, is the person responsible for the treatment object of complaint (art. 4.7 RGPD). Therefore, from the point of view of the regulations on data protection, the inspector who drew up the controversial report, which was then transferred to the Ombudsman, is not the person responsible for the treatment subject to the complaint, nor therefore the subject accused of the facts reported in the present sanctioning procedure.

Having said that, it should be indicated that the proven facts are constitutive of a violation of the principle of data minimization, according to which " *personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for that are treated*" (art. 5.1.c RGPD). This principle requires that any treatment is limited to the minimum data necessary to achieve the intended purpose.

In accordance with this, this principle was applicable both at the time of the preparation of the report by the mentioned Education inspector, as well as in the subsequent treatment carried out by the Department of Education, when they forwarded this information to the Grievance Ombudsman, without first deleting from the report the personal data that exceeded the minimum information necessary for the intended purpose.

So things are, although it is true that sending the report to the Ombudsman without deleting the excessive personal data was a treatment carried out by those responsible for the Department of Education contrary to the principle of data minimization, also it should be noted that the initial data processing that was carried out when preparing the report was also not adjusted to the principle of data minimization, given that information was collected there that was neither relevant nor necessary to be able to comply with the intended purpose, as the same institution later warned the Department ( letters dated 05/07/2020 and 10/22/2020). Therefore, there are two types of data processing that were carried out, the responsibility of which falls, however, on a single person responsible for the processing, the Department of Education.

In accordance with what has been stated, it is estimated that this allegation cannot be taken into account, given that, as indicated in the agreement to initiate the present sanctioning procedure, the responsibility for the facts here tested does not fall on the inspector, but on the Department of Education, against which this Authority has initiated the present sanctioning procedure.

**3.** In relation to the facts described in the proven facts section, it is necessary to refer to article 5 of the RGPD. This article refers to the principles relating to treatment, and section 1, letter c), provides the following: "*1. The data personal will be : adequate , relevant and limited to what is necessary in relation to the purposes for which they are treated ( minimization of data )*".

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 as such the violation of " *the basic principles for treatment (...)*".

The conduct addressed here has been included as a very serious infraction in article 72.1.a) of the LOPDGDD , in the following form: "*The processing of personal data that violates the principles and guarantees established by the "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".*

In the present case, however, it becomes unnecessary to require corrective measures for the effects of the infringement since the infringing conduct refers to an isolated and already consummated event, which due to its nature cannot be corrected with the implementation of corrective measures.

For all this, I resolve:

1. Admonish the Department of Education as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), 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 legal basis 4rt.

2. Notify this resolution to 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,

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