

## File identification

Resolution of sanctioning procedure no. PS 45/2022, referring to the Department of the Interior of the Generalitat of Catalonia.

## Background

1. On 23/04/2022, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Department of the Interior of the Generalitat of Catalonia, on the grounds of an alleged non-compliance with the regulations on personal data protection.

In particular, the complainant stated that the head of the Planning and Management Division (hereinafter, the head of the DPG) of the General Directorate of Prevention, Fire Extinguishing and Rescue (hereinafter, DGPEIS) of the Department of Interior *"which has, among its functions, the elaboration of proposals for specific regulations aimed at volunteer firefighters and the management of the processes of selection and revocation of the appointment of volunteer firefighters, among others"* it disseminated, on date ( ...), through an email addressed to the members or advisers of the Council of Volunteer Firefighters, the contentious administrative appeal filed by the Association of Volunteer Firefighters of Catalonia (hereinafter ASBOVOCA) against Resolution INT/3361/ 2020, without anonymizing or pseudonymizing his personal data (name and surname and ID) that appeared as president of said association.

The reporting person provided various documentation about the events reported.

This complaint was assigned IP number 178/2021.

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 (from now on, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 03/05/2021 the Department of the Interior was required to report, among others, on whether the head of the DPG sent the email subject to complaint without anonymizing or pseudonymizing the data of the reporting person. Likewise, the Department was required to report on whether each of the recipients of the e-mail message sent on (...) were authorized, for the exercise of their duties, to access the full content of the aforementioned resource.

4. On 05/13/2021, the Department of the Interior responded to the above-mentioned request in writing in which it basically set out the following:

- That *"the reported data processing refers to processing by the General Directorate of Prevention, Fire Extinguishing and Rescue"* .
- That, on (...), the head of the DPG sent an email in which the documentation relating to the contentious administrative appeal filed by ASBOVOCA against Resolution INT/3361/2020, of December 16, was attached, of convocation of

process for admission to the Active Section of the volunteer fire brigade of the Generalitat (registration number of the call BV (...)).

- That it is up to the DPG to develop proposals for specific regulations aimed at volunteer firefighters; participate in the management of the selection and revocation processes of the appointment of volunteer firefighters; prepare studies, propose the appropriate material means and equipment for the provision of fire services, among other functions.
- That the head of the DPG *"is a substitute member of the Council of Volunteer Firefighters of the Generalitat as a representative of the Department of the Interior."*
- That *"It is not known that the personal data of the person making the complaint has been anonymized"*, given that the appeal was sent by email in its original format.
- That the data protection delegate of the Department of the Interior has warned those in charge of the DGPEIS, about the need to anonymize or pseudonymize the personal data of the documents sent. For this purpose, it has been indicated that they must hide the personal data of the natural persons appearing in these documents, if applicable (name and surname, ID and address).
- That all the main recipients of the e-mail sent are members of the Active Section of the Generalitat Volunteer Fire Brigade which, together with the Generalitat Fire Brigade, are part of the public fire prevention and extinguishing services and rescues in Catalonia under the organization and supervision of the Department of the Interior. The Department identifies each of the main recipients of the e-mail, specifying in what capacity they intervened in said Section.
- That *"both the sender of the e-mail and all its recipients with a copy are career officials of the Generalitat Fire Brigade who participate in the Council of Volunteer Firefighters of the Generalitat as members of this body or as advisers in the areas of knowledge directly linked to the functions of the respective jobs."*
- That the purpose of the communication of the email subject to the complaint was to inform the people who represented the Volunteer Fire Brigade in the Council, or who attended as advisers in this area, so that they were aware of the contentious appeal administrative appeal which was requested that *"the Court agree, as a precautionary measure, to suspend the processing of the BV call (...), a request that could directly and imminently affect the continuation of the processing of the selection procedure of reference"*, given that it affects directly the functional scope of the Council of Voluntary Firefighters of the Generalitat de Catalunya.
- That the non-primary recipients of the e-mail (recipients with a copy) are career employees of the Generalitat Fire Department who participate in the Generalitat Volunteer Firefighters Council as members of this body or as advisers in the areas of knowledge directly linked to the functions of the respective workplaces.
- That the personal data included in the documentation of the administrative contentious appeal that appears attached to the e-mail subject of the complaint *"are considered to be relevant and necessary minimum data"* for the fulfillment of the intended purpose.
- That in *"the margin of the data published through the website of the Department of Justice ([http://justicia.gencat.cat/ca/serveis/guia\\_d\\_entitats/?idEntitat=16432#](http://justicia.gencat.cat/ca/serveis/guia_d_entitats/?idEntitat=16432#)), the identification and accreditation of the personality of alleges to act as president of the appellant entity constitutes an essential fact for ascertaining the adequacy of the alleged representation and, therefore, for the assessment of the legitimacy of the appeal filed as a determining requirement of its admissibility to proceedings (art. 51 LJCA)."*

The reported entity attached various documentation to the letter.

5. On 26/05/2021 the Authority received a letter from another person, for having included in the same email from (...), subject of a previous complaint, his personal data (as secretary of the association that brought the appeal).

This complaint was assigned IP number 219/2021.

6. On 05/28/2021, the latter complainant was required to, in accordance with the provisions of Article 22.2 of Law 32/2010, present his duly signed complaint, warning him that, in case of not signing the complaint, he would not have the right to be informed of the result of the investigation actions initiated by the Authority.

The complainant did not respond to this request.

7. On 06/07/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Department of the Interior for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.f); 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 07/07/2022.

8. On 21/07/2022, the Department of the Interior made objections to the initiation agreement.

9. On 21/10/2022, 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 the Interior as responsible for 'an infringement provided for in article 83.5.a), in relation to article 5.1.f); all of them from 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 (...), the head of the DPG sent an e-mail to the members or advisers of the Council of Volunteer Firefighters, in which the documentation relating to the contentious administrative appeal brought by ASBOVOCA against Resolution INT/3361/ was attached 2020, of December 16, of the call for the process for admission to the Active Section of the volunteer fire brigade of the Generalitat (registration number of the call BV (...)), which included personal data of the president and secretary of the association (name, surname and ID).

### **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 formulated 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.

Specifically, the accused entity stated that the Volunteer Fire Council, which is a body attached to the DGPEIS, has among its functions that of providing "support to the competent general management in matters of prevention, extinguishing fires and rescues in the processing of the call for access to the Active Section of the volunteer fire brigade" (arts. 5.2 and 59 of Decree 8/2015, of January 27, which approves the Regulation of the volunteer fire brigade of Generalitat de Catalunya and the Council of Volunteer Firefighters of the Generalitat de Catalunya). Likewise, the entity added that article 7 of Decree 8/2015 provides that "The content of the tests will be determined by a resolution of the person in charge of the competent department in matters of prevention, firefighting and rescue, with the previous report of the Council of Volunteer Firefighters of the Generalitat of Catalonia."

Article 5.2 of Decree 8/2015 determines that "It is the responsibility of the general directorate competent in matters of prevention, firefighting and rescue to process the selective tests, with the collaboration of the Council of Volunteer Firefighters of the Generalitat de Catalunya", regarding the entry system to the Active Section of the body.

And article 59 of the same rule, relating to the functions of the Council of Volunteer Firefighters, establishes that the following correspond to it:

- "a) Issue a report on the provisions of a general nature that affect the members of the volunteer fire brigade.*
- b) Propose criteria for interpretation and deployment of the Regulation of the volunteer fire brigade of the Generalitat de Catalunya and other rules that are applicable to them.*
- c) Elaborate studies and proposals that affect the fire prevention and extinguishing and rescue functions performed by members of the volunteer fire brigade.*
- d) Study and propose the adoption of preventive measures aimed at the prevention and extinguishing of fires and rescues, especially with regard to the equipment and provision of the parks.*
- e) Carry out studies in relation to the risks of potential fires and the members of the volunteer fire brigade that can be mobilized in the territory of Catalonia.*
- f) Report on all matters relating to the members of the volunteer fire brigade, at the request of the legally constituted associations of members of the volunteer fire brigade.*
- g) Propose criteria for coordination, cooperation and assistance between the members of the volunteer fire brigade.*
- h) Propose measures to the Public Safety Institute of Catalonia to improve the training, improvement and training of members of the volunteer fire brigade.*
- i) Approve the planning proposal for the annual training activities aimed at members of the volunteer fire brigade.*
- j) Provide support to the general management competent in matters of prevention, extinguishing fires and rescues in the processing of the call for access to the Active Section of the volunteer fire brigade*
- k) Issue a prior report in the cases provided for in this Regulation.*

*l) All others that are legally or by regulation attributed to him."*

Therefore, none of the functions that these rules attribute to the Council of Volunteer Firefighters grant it the representation of the Department of the Interior in court, nor does its exercise require access to the content of the contentious administrative appeal filed by ASBOVOCA against Resolution INT/ 3361/2020, which contained personal data of the President of this association.

Another thing is that, due to his functions, he should have knowledge of the filing of the appeal, which does not mean that he must have access to the text of the same. Precisely, as the accused entity admitted in its letter of 13/05/2021 in response to the request of this Authority, the purpose of the communication of the email subject to the complaint was "to inform the people *who represented the body of Volunteer Firefighters on behalf of the Council, or who attended as advisers in this area, so that they were aware of the contentious administrative appeal filed in which it was requested that the Court agree, as a precautionary measure, to suspend the processing of the BV call (...), this request could directly and imminently affect the continuation of the processing of the reference selective procedure*".

Therefore, as has been advanced, it was not necessary for the members and advisers of the Council of Volunteer Firefighters to access the personal data of the representatives of the association that filed the administrative appeal.

It is worth noting that in that same letter of 13/05/2021, it was recorded that the data protection delegate of the Department of the Interior had warned those responsible for the DGPEIS, about the need to anonymize or pseudonymize the personal data of documents sent

In accordance with the above, and as proposed by the investigating person in the proposed resolution of the present sanctioning procedure, these allegations made by the reported entity cannot succeed.

**3.** In relation to the facts described in the proven facts section, relating to the principle of confidentiality, it is necessary to go to article 5.1.f) of the RGPD, which provides that personal data will be "treated in such a way as to *guarantee Adequate security of personal data, including protection against unauthorized or illegal processing and accidental loss, destruction or damage, through the application of appropriate technical and organizational measures*."

For its part, article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) regulates the duty of confidentiality in the following terms:

- "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.*
- 3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or person in charge of the treatment has ended."*



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 basics of the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9*", including the principle of integrity and confidentiality (art. 5.1.f RGPD).

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form:

*"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, no corrective measure should be required, given that the offending behavior refers to an already accomplished fact, and that the data protection delegate of the Department of the Interior has already warned the DGPEIS, about the need anonymize or pseudonymize the documents sent to said Council.

For all this, I resolve:

1. Admonish the Department of the Interior as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), 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 Department of the Interior.

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](http://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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