File identification

Resolution of sanctioning procedure no. PS 48/2022, referring to the Town Council of Terrassa.

Background

1. On 03/03/2021, the Catalan Data Protection Authority received a letter from a person filing a complaint against the City Council of Terrassa, on the grounds of an alleged breach of the regulations on data protection of personal data . This complaint was extended by a subsequent letter dated 05/02/2021.

The complainant ((...)) stated that in the framework of a non-consensual judicial process for the custody and custody of his minor son, the Family Technical Advisory Team (hereinafter, EATAF) had issued a report that, among others, contained health information about him and his minor son; and, in relation to this report, he complained about the following: a) that the Basic Social Services of the Terrassa City Council (hereinafter, SSB), without having his consent or that of his son, nor having given compliance to the right of information, they had had access to this EATAF report and had incorporated it into the file that the SSBs had open in relation to their minor son; and, b) that the SSB had communicated part of the information contained in the aforementioned report to the Foundation (...) (hereafter, the Foundation), without having obtained its consent; communication that would have been made through the incorporation of the controversial information in a report issued by the SSB in order to refer the minor's case to the aforementioned Foundation so that the family could receive psychotherapeutic support.

In order to prove these facts, the complainant provided various documentation, among others:

a) Report issued by the SSB of *"Derivation-Social Report"* of the case of the complainant's minor son to the Foundation. In this report, which was issued on 09/30/2019 (with the *"update date" section* blank), the following text appears:

"Reason for referral:
Activation of the therapeutic service for (name of minor), in order to accompany him in accepting the conflicting reality between the parents.
From the report made by a psychologist from the EATAF (psychological service of the court) the following can be seen (October 2019 (...)" [then in the report, in italics, information is collected about the state psychological of the minor]

b) Document entitled *"Assistance to the Psychotherapeutic Process Commitment"* , signed by the father (here the complainant) and the mother of the minor on 12/12/2019. By signing this document, the parents commit to *"participation in the psychosocial process when they are beneficiaries"* and to *"continued and active participation in the sessions".*

c) Document issued by the SSB that certifies that *"in relation to the psychotherapy that (name of minor) is receiving from the organization Foundation (...)",* the first session took place on 03/11/2020.

d) Other documentation from which it appears that the EATAF report would have been included in the judicial proceedings on 08/10/2019 and communicated to the parties on 11/10/2019.

2. The Authority opened a preliminary information phase (no. IP 93/2021), 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 23/04/2021 and 28/05/2021, the reported entity was required to report on several issues relating to the facts subject to the report.

4. On 06/05/2021 and 09/06/2021, the City Council responded to the information requests, setting out the following:

- That this family has been a user of the SSB since 2012. That in (...) the couple informs the SSB that they are separating, noting from that moment that " *the minor is at the center of disputes continuously and growing"* reason for which *"advice is requested from the team specialized in child care (EAIA)"* . That " *in January 2019, in accordance with the assessment of the case made by the General Directorate of Child and Adolescent Assistance (DGAIA), which considers the case of the son of Mr. (...) in a situation of slight risk, mainly due to the instrumentalization of the child in the midst of the parents' conflict, the responsibility of the file is transferred to the municipal social services, in accordance with article 101" of Law* 14 /2010, of May 27, on rights and opportunities in childhood and adolescence (LDOIA). That " *Therefore, the social services of the town council of Terrassa, being obliged and at the same time legitimate for the treatment of the information it has by other administrations, in coordination with them and the own prepared or facilitated by the holders".*
- That the EAFAF contacts the SSB during the months of August-September 2019 to *"collect information about the family, in accordance with the obligations of information between administrations and coordination established in article 24, 101 et seq. of Law 14/2010"* . That *"in coordination with the EATAF, a therapeutic resource for the minor is considered necessary",* which is why the SSB is *"initiating the preparation of a possible therapeutic resource".*
- That both parents informed the SSBs that the EATAF, as part of the legal proceedings, had drawn up a report. That *"the conclusions of the EATAF report, expressed by the parents in relation to the need for a therapeutic resource for their child, reinforce the need and the possibility of managing a therapeutic resource for their minor child for free , preferably, placing him on the waiting list"* which is why it was necessary for the SSB to count on this report which was finally provided by the mother on 28/11/2019.
- That *"the request for a free therapeutic resource at the Terrassa City Council is made by both parents as advised by the conclusions of the EATAF and, given that the Terrassa City Council does not have psychologists specialized in therapy with minors, provides this service through the agreement it maintains with the entity (...), which at the same time the City Council subsidizes".*
- That the City Council has not signed with the Foundation *"a data controller contract (...) but a service project by the Foundation (...) to be carried out on behalf of the City Council (.. .) the psychosocial support service for families with special needs".*

- That both parents signed on 12/12/2019 the consent to initiate the *"free therapeutic treatment"* of their minor child at the Foundation.
- *That "in order to be able to provide this service on behalf of the Terrassa City Council, the entity (...) is provided with the data necessary to carry it out, as contained in the so-called referral report, where the professionals collect and provide those data of the entire family unit, not only of the father or the minor, which they consider to be necessary for this entity to carry out the task of providing therapy to the son of Mr. (...), without which it is impossible to initiate any type of therapy with a minor for whom all types of information are unknown and that both parents are in agreement with the therapy being carried out by this entity and they state so in writing"* .
- That due to the pandemic, the minor's first session in the therapeutic resource was delayed until November 2020. That " *the dynamics of interference are also transferred to this psychotherapeutic space and, finally, Mr. (...) states that he is interrupting the treatment"* , which is why the work plan of the SSB to give stability to the minor is interrupted again.

The reported entity attached various documentation, among other things " *the specific bases that governed the granting of subsidies for the realization of projects, activities and services for the year 2019 and 2020, within the framework of the relationship of the Foundation in the period in which the case of the complainant's son arose",* as well as the announcements of the publication of the grants awarded by the City Council of Terrassa linked to said bases, in which the Foundation appears as one of the beneficiary entities to provide the *"psychosocial support for families with specific needs" service.*

5. On 05/23/2022, also during this preliminary information phase, the City Council provided various complementary documentation from which it would appear that the EATAF report, issued in October of 2019, recommended that the SSB urgently put in place a therapeutic resource *"given the child's emotional distress".*

6. On 19/06/2022 and 08/07/2022 the complainant provided additional information and documentation.

7. On 28/07/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of Terrassa for an alleged infringement provided for in article 83.4.a) in relation to the Article 28 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). This initiation agreement was notified to the imputed entity on 07/29/2022.

8. The initiation agreement explained the reasons why no charges were made with respect to other reported facts. Reference is made below to what is considered most relevant and which may have a doctrinal interest. Regarding this, the following was set out in the section of reported events not imputed in the initiation agreement:

"Regarding the collection and processing of the report issued by the EATAF by the SSBs.

As explained in the background, the complainant complained that the SSB had collected the report that the EATAF had issued in the context of a judicial procedure for the custody and

custody of his minor son, without counting the his consent, taking into account, in addition, that this report would collect health data, both his and his minor child's.

Any processing of personal data must comply with the principle of legality (art. 5.1.a) RGPD). According to article 6.1 of the RGPD:

> *"1. The treatment will only be 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 at the request of this pre-contractual measures;*
> *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;*
> *(…).”*

Regarding the treatment of health data, it is also necessary to take into account article 9 of the RGPD, which establishes the general prohibition of the processing of personal data of various categories, among others, data relating to health (section 1). Section 2 of the same article 9 provides that this general prohibition will not apply when one of the following circumstances occurs:

> *"a) the interested party gives his explicit consent for the treatment of said personal data with one or more of the specified purposes, (...);*
> *(...)*
> *h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker’s labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of the Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3;*
> *(…)"*

According to article 9, paragraph 3, of the RGPD:

> *"The personal data referred to in section 1 may be treated for the purposes mentioned in section 2, letter h), when its treatment is carried out by a professional subject to the obligation of professional secrecy, or under his responsibility, in accordance with the Law of the Union or of the Member States or with the rules established by the competent national organisms, or by any other person also subject to the obligation of secrecy in accordance with the Law of the Union or of the Member States or of the rules established by the competent national bodies."*

In relation to this, it is necessary to take into account article 8 of the LOPDGDD, according to which the rule that enables the treatment based on the fulfillment of a legal obligation required of the person in charge (art. 6.1.c/ RGPD), or the treatment based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers (art. 6.1.e/ RGPD), must be a norm with the rank of law.

Likewise, article 9 of the LOPDGDD provides that:

> *"1. Pursuant to article 9.2.a) of Regulation (EU) 2016/679, in order to avoid discriminatory situations, the consent of the data subject alone will not be sufficient to lift the ban on the processing of data whose main purpose is to identify their ideology, trade union affiliation , religion, sexual orientation, beliefs or racial or ethnic origin.*
> *The provisions of the previous paragraph will not prevent the processing of said data under the remaining assumptions contemplated in article 9.2 of Regulation (EU) 2016/679, when applicable.*
>
> *2. The processing of data contemplated in letters g), h) ei) of article 9.2 of Regulation (EU) 2016/679 based on Spanish law must be covered by a rule with the rank of law, which may establish additional relative requirements to your security and confidentiality.*
> *In particular, said rule may cover the treatment of data in the field of health when this is required by the management of public and private healthcare and social systems and services, or the execution of an insurance contract of which the affected be part."*

The explicit consent of the affected persons could be a sufficient legal basis for the processing of the EATAF report by the SSB. In the specific case that concerns us, however , the City Council did not have the explicit consent of the complainant here to process his data (explicit consent that would be required in the event that the report included data relating to the health of the complainant, which is not improbable, but which has not been proven since this Authority does not have the report), which is why it is necessary to analyze whether in this case there is another legal basis from those provided for in articles 6 and 9 (in the event that health data had been processed) of the RGPD, which legitimizes the processing of the data contained in the EATAF report by the SSBs. Well, it is already clear here that in the absence of explicit consent, the reported treatment had a legal basis.

It is necessary to start from the fact that the SSB were managing a file relating to a minor (the complainant's son) in a situation of risk. In these circumstances, Law 12/2007, of 11 October, on social services (LSS), foresees the action of the competent public administrations in situations of vulnerability, risk or social difficulty for children and adolescents (articles 7 and 11).

Article 15.1 of the LSS determines that the public system of social services is structured into basic social services and specialized social services. Basic social services are organized territorially and include, among others, "basic equipment" (EBAS) and non-residential socio-educational intervention services for children and adolescents (art. 16.2 LSS).
Regarding the basic areas of social services, article 34 of the LSS determines:

"1. The basic areas of social services are the primary unit of social care for the purposes of the provision of basic social services.
2. The basic area of social services is organized on a minimum population of twenty thousand inhabitants, taking the municipality as a basis.
3. The basic area of social services must group municipalities with less than twenty thousand inhabitants. In this case, the management corresponds to the county or the associative body created especially for this purpose.
4. Municipalities with more than twenty thousand inhabitants may have more than one basic area of social services, depending on the number of inhabitants and social needs."

Therefore, municipalities with a population of more than twenty thousand inhabitants - as would be the case of Terrassa - have competences in the matter of social services based on what is provided by the LSS and the Social Services Portfolio (Decree 142/2010, of October 11). According to article 5.1 of Decree 27/2003, of 21 January, on primary social care:

"Primary care social services of the Basic Network of Social Services of Public Responsibility are provided in the Basic Area of Social Services. The ABSS is the elementary territorial unit for programming, provision and management of social services."

Annex 1 of the same Decree 27/2003, provides the following, in relation to the basic primary social care services:

"Definition: an organized and coordinated set of professional actions, carried out by the respective technical team, whose purpose is to promote the mechanisms to know, prevent and intervene in people and/or families.
Objectives: guarantee and improve social well-being and promote the integration of people and/or families.
Functions:
Detection and prevention of situations of social risk or exclusion.
Reception and analysis of demands relating to the social needs of the corresponding territorial area.
Information, assessment, guidance and advice.
Application of actions or interventions to support and monitor individuals and/or families.
Management and coordination of the services corresponding to the first level.
Processing and monitoring of programs and benefits that require your intervention.
Community social work.
Processing referral proposals to social services for specialized care or other care networks.
Recipients: all people and/or families who live or are in the respective territorial areas and especially those people and/or families with developmental and social integration difficulties or lack of personal autonomy".

Given that the provision of social services includes various actions in the field of protection of minors, it is also necessary to refer to the LDOIA, specifically, in relation to the management of situations of risk for minors, a situation in which, as 'he said, the minor son of the complainant was found.

Article 99 of the LDOIA establishes that the local administration must intervene if it detects a risk situation and adopt the appropriate measures to act against this situation, in accordance with the corresponding regulations. Article 103 of the same rule provides for the intervention of basic and specialized social services in relation to the various risk situations that may occur (article 102.2 LDOIA), in the following terms: "1. The basic social services must assess the existence of a situation of risk and promote, where appropriate, the measures and resources of social and educational attention that allow to reduce or eliminate the situation of risk by seeking the collaboration of the parents or of the holders of tutelage or guardianship". And article 5 of the same rule determines that "1. The best interest of the child or adolescent must be the inspiring and foundational principle of public actions. (...) 3. The best interest of the child or adolescent must also be the inspiring principle of all the decisions and actions that concern him/her adopted and carried out by the parents, guardians or of custody, by the public or private institutions in charge of protecting and assisting him or by the judicial or administrative authority. (...)".

This specific legal principle, which governs the protection of children and adolescents, consists in the need to attend to and prioritize a higher interest, such as the well-being of the child or adolescent. This well-being, in the case at hand, translates into the need, detected by the EATAF and the SSB themselves, for the minor and his parents to go to a psychotherapeutic care service as quickly as possible. And in order to justify this urgency with the consequent privileged position on the waiting list, it was necessary to have this EATAF report, which was pronounced in this sense.

It is also appropriate to invoke the recent Decree here 63/2022, of April 5, on the rights and duties of children and adolescents in the protection system, and on the procedure and protection measures for children and adolescents, which was not in force at the time the events reported occurred, but which is of interest since it develops the LDOIA and details some of the actions that can be carried out by the competent administrations in childhood and adolescence, and for what is of interest here, the SSB.

> *"Evaluation and technical reports*
> *Article 42*
> *Evaluation*
> *42.1* ***The competent bodies collect the necessary data to assess the situation of the child or adolescent and agree on the most appropriate measure*** *, and make use of technically and legally valid means of evaluation and evidence.*
> *42.2* ***The assessment of the situation of the child or adolescent in the protection procedures must focus on the situations of risk and helplessness described by the law*** *, and be complemented by the system of indicators that regulates article 46 d this Decree. The competent bodies cannot evaluate irrelevant or unnecessary facts to know the situation of the child or adolescent and their family nucleus.*
>
> *Article 43*
> ***Evaluation means***
> *The competent bodies can collect information about the situation of the child or adolescent and their family unit using the following means of evaluation:*

a) Interviews and direct examinations of children or adolescents and their family nucleus. These interviews are of a very personal nature and are conducted under conditions of privacy and confidentiality.
b) ***Documentation provided by the interested parties and by third parties or institutions*** *, and, where applicable, that which is available in the single file of the child or adolescent.*
c) Observation visits in the most direct and closest environment to the child or adolescent and their family nucleus.
d) Collection of school, educational, pedagogical, medical, social, economic, labor, police, criminal reports and all relevant documentation to resolve the case.
e) Explorations made by other services and other means that are considered appropriate, taking into account the specific circumstances of each case.
(...)

Article 57
Intervention of basic social services in situations of risk
57.1 The first intervention in situations of risk, serious or not, is the responsibility of the basic social care service competent by reason of the territory.
57.2 ***The intervention of basic social services consists of the attention, assessment, proposal and application of social and educational care measures and to monitor and evaluate them*** *.*
57.3 The action of basic social services is articulated by means of an individual, family or coexistence intervention plan , in accordance with what is foreseen in the legislation on social services and the legislation on childhood and adolescence. The competent administrative body assigns a reference professional, within the framework of the functions attributed by the social services legislation.

Article 58
Intervention plan
58.1 ***The professional team collects the necessary data*** *, establishes the indicators and factors that contribute to it and assesses the risk situation, in accordance with the assessment criteria provided for in the legislation on childhood and adolescence.*
58.2 ***Once the assessment has been made, the team proposes one or more of the social and educational care measures provided for in article 104 of Law 14/2010, of 27 May*** *(...)".*

At this point, it is not superfluous to say that, although the SSB obtained the EATAF report because the child's mother provided it to them in November 2019, the truth is that they could have obtained it in through the EATAF. In this regard, it is necessary to quote article 24 of the LDOIA:

"Action of public administrations:

1. The actions carried out by public administrations in relation to children and adolescents must respect the basic principles established by this law and

promote tolerance, solidarity, respect, equality, responsibility and, in general, all democratic values.

*2 **. The administrations involved must collaborate and act in a coordinated manner. Especially in matters of protection of children and adolescents** , public services are obliged to provide the information required by the competent department in matters of protection of children and adolescents in order to assess the situation of the child or adolescent, and to carry out the necessary collaborative actions to protect them. **The data that can be transferred between administrations without the consent of the affected person are the economic, labor, social, educational, health, police and criminal data of minors and their parents, guardians or custodians** .*

And to finish, it is necessary to mention the fifth additional provision of the LSS and article 101.4 of the LDOIA, in connection with the requirement established in article 9.3 of the RGPD, regarding the duty of confidentiality that to social service professionals:

For all the above, the processing of the EATAF report by the SSBs is considered lawful based on articles 6.1.e) and 9.2.h) of the RGPD, in relation to the applicable regulatory framework (LSS and LDOIA), given the circumstances of the case and the risk situation in which the minor was.

Regarding the treatment by the SSBs of the EATAF report without complying with the right to information.

Article 14 of the RGPD requires the data controller to comply with the right to information when the data has not been obtained directly from the person concerned, as would be the case here. The same precept, however, relates certain cases in which this duty of information is not enforceable, specifically, and for what is of interest here, provides for this exception when obtaining the information is expressly established by Union or State Law members

This is the case that concerns us here, in which, as we have seen, the collection and processing of data relating to children and their parents is expressly provided for by the regulations (LSS and LDOIA), which is why the City Council did not have to inform the complainant here of the collection and processing of this report. Another thing is that, in the exercise of the right of access, the affected person can know the information that the person responsible for the treatment - in this case the City Council - is dealing with, what is the origin of the information and to whom it goes communicate, among other extremes provided for in article 15 of the RGPD, a right that, according to the proceedings, the complainant here exercised before the City Council.

Regarding the communication of data to the Foundation (...).

The complainant complained that the City Council had communicated his and his son's data to the Foundation (...).

As indicated in the antecedents, the aforementioned Foundation provided the psychosocial support service for families with specific needs on behalf of the City Council (antecedent 4).

This is why the transfer of information between the City Council and the Foundation does not constitute a communication of data in accordance with the provisions of article 4 (sections 9 and 10) of the RGPD, in connection with the article 33 of the LOPD ("access by a person in charge to personal data that is necessary for the provision of a service is not considered a communication of data (...)".

A different issue is that this transfer of data had to be covered by a data processor contract, a formality that the City Council had not fulfilled in this case and which is the subject of imputation in this procedure.

In accordance with what has been exposed and given that it has not been proven during the present information prior to the existence of rational indications that allow it to be considered that the facts analyzed in this section may be constitutive of any of the infractions provided for in the regulations on data protection, it is necessary to agree on its archive".

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 08/02/2022, the accused entity presented a letter in which it acknowledged its responsibility for the alleged facts, while also informing that from 2020 the Foundation does not provide the services of the City Council on behalf of the are the cause of the present sanctioning procedure.

proven facts

Terrassa City Council entrusted the years 2019 and 2020 to the Foundation (...) - by awarding individual grants - the provision of the psychosocial support service for families with specific needs. In order to carry out this provision, the City Council provided the Foundation (...) with the data of the users of the Basic Social Services to whom the said service was to be provided on behalf of the City Council (among them, the data of the complainant here and of his minor son). During the provision of the service, the Foundation also directly collected the data provided by the beneficiaries of said therapeutic service. This data processing carried out by the Foundation (...) on behalf of the City Council, was carried out without having signed the corresponding data processor contract, in accordance with the provisions of article 28 of the RGPD.

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. In accordance with article 85.1 of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the imputed entity he has acknowledged his responsibility and this implies the termination of the procedure.

3. In relation to the facts described in the proven facts section, it is necessary to refer to sections 3 and 9 of article 28 of the RGPD, which provide for the following:

> *"3. The processing by the controller will be governed by a contract or other legal act in accordance with the Law of the Union or the Member States, which binds the controller with respect to the controller and establishes the object, duration, nature and purpose of the processing, the type of personal data and categories of interested parties, and the obligations and rights of the person in charge. Said contract or legal act will stipulate, in particular, that the manager:*
> *a) will treat personal data solely following the documented instructions of the person in charge, including with respect to the transfer of personal data to a third country or an international organization, unless it is obliged to do so by virtue of the Law of the Union or of the Member States that applies to the person in charge; in such a case, the manager will inform the person in charge of that legal requirement prior to the treatment, unless such Law prohibits it for important reasons of public interest;*
> *b) will guarantee that the persons authorized to treat personal data have committed to respect confidentiality or are subject to a confidentiality obligation of a statutory nature;*
> *c) will take all the necessary measures in accordance with article 32;*
> *d) will respect the conditions indicated in sections 2 and 4 to resort to another treatment manager;*
> *e) will assist the person in charge, taking into account the nature of the treatment, through appropriate technical and organizational measures, whenever possible, so that he can comply with his obligation to respond to requests aimed at the exercise of the rights of the interested parties established in chapter III;*
> *f) will help the manager to ensure compliance with the obligations established in articles 32 to 36, taking into account the nature of the treatment and the information available to the manager;*
> *g) at the choice of the person responsible, will delete or return all personal data once the provision of the treatment services is finished, and will delete the existing copies unless the conservation of personal data is required under Union Law or member states;*
> *h) will make available to the person in charge all the information necessary to demonstrate compliance with the obligations established in this article, as well as to allow and contribute to the performance of audits, including inspections, by the person in charge or another auditor authorized by said responsible*
> *In relation to what is provided in letter h) of the first paragraph, the person in charge will immediately inform the person in charge if, in his opinion, an instruction infringes the present Regulation or other provisions in the area of data protection of the Union or the Member States.*
> *(...)*
> *9. The contract or other legal act referred to in sections 3 and 4 shall be in writing, including in electronic format."*

During the processing of this procedure, the fact described in the proven facts section, which constitutes the violation provided for in article 83.4.a) of the RGPD, which typifies the violation as such, has been duly proven of *"the obligations of the person in charge and of the*

person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43" , among which there is that provided for in article 28 RGPD.

The conduct addressed here has been included as a serious infringement in article 73.k) 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:

> *"k) Entrust the processing of data to a third party without the prior formalization of a contract or other written legal act with the content required by article 28.3 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".*

The City Council of Terrassa has informed that the commission with the Foundation that is the cause of this procedure ended in 2020, so it is not considered necessary to require the City Council to formalize a contractor contract in accordance with what is provided for in article 28 of the RGPD. However, taking into account that in the framework of this assignment it provided the aforementioned Foundation with data relating to the users of the SSB, the City Council is required to as soon as possible, and in any case within the deadline maximum of 15 days from the day after the notification of this resolution, certify that the Foundation has deleted or returned to the City Council all the personal data processed as part of this order, in accordance with what is established article 28.3.g) of the RGPD. In the event that the Foundation keeps this data by virtue of the figure of blocking (articles 21 and 33.4 of the LOPDGDD), the City Council must certify that these are blocked.

Once the corrective measure described has been adopted, within the specified period, the City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to carry out the corresponding checks .

For all this, I resolve:

1. Warn the Terrassa City Council as responsible for an infringement provided for in article 83.4.a) in relation to article 28, both of the RGPD.

2. To require the City Council of Terrassa to adopt the corrective measure indicated in the 4th legal basis within the period indicated, and to accredit before this Authority the actions carried out to comply with it.

3. Notify this resolution to the Terrassa City Council.

4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

5. 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,