

In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 51/2022, referring to the City Council of (...).

Background

1. On 04/16/2021, the Catalan Data Protection Authority received, by referral from the Spanish Data Protection Agency, a letter from a person for which he filed a complaint against the City Council of (...), due to an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant (an agent of the Urban Guard of (...)) stated that the City Council contributed within the framework of a certain judicial procedure, which was processed by the Court of Inquiry (...) of Sant Feliu de Llobregat, a copy of the proposed resolution of the disciplinary file (...), referring to him.

The person making the complaint made it clear that he was not a party to said judicial process and that the party reporting or complaining in said judicial process was another agent of the Urban Guard.

The person provided various documentation about the events reported.

2. The Authority opened a preliminary information phase (no. IP 163/2021), 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 12/05/2021 the reported entity was required to report on whether the previously identified Court had requested the City Council to submit the proposed resolution corresponding to the disciplinary file (...) (referring to the person reporting here), or referring to another agent of the Urban Guard.

4. On 31/05/2021, the City Council responded to the above-mentioned request in a letter in which it set out the following:

- That the Court did not refer to any disciplinary file number. It only referred to Decree 691/19, dated 04/04/2019, and the proposal issued and signed on 04/01/2019.
- That this file corresponded to the disciplinary file (...), referring to an agent of the Urban Guard different from the person reporting here. Since on the same day the proposed decree of the file (...), corresponding to the person making the complaint here, was also signed, an involuntary exchange of documents occurred that neither the Court nor the City Council had detected.
- That the error committed and the amendment thereof have been notified to the Court.

The reported entity attached the letter of 25/01/2021, through which the Court required it to certify "*what was the domicile*" of a certain agent of the Urban Guard of (...) (different from the person here reporting) "*for notification purposes at the time of notification of the resolution to initiate proceedings disciplinary (Mayor's Decree (...) dated (...)) and the temporary suspension of employment and salary (Mayor's Decree (...) dated (...))*." Likewise, the Court required the City Council to "*send a certified copy of the proposal issued and signed on (...)by the Head of the Personnel and Organization Department proposing the adoption of the provisional measure of suspension of employment and salary "* of the other agent of the Urban Guard (whom he identified through his first and last name).

5. On 31/08/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of (...) 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 09/21/2022.

6. On 07/10/2022, the City Council of (...) made objections to the initiation agreement.

7. On 16/11/2022, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the City Council of (...) 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 17/11/2022 and a period of 10 days was granted to formulate allegations.

8. The deadline has passed and no objections have been submitted.

proven facts

On 02/02/2021 the City Council of (...) received an order from the Court of Inquiry number (...) of Sant Feliu de Llobregat, which required the City Council to provided a copy of the proposed resolution of the disciplinary file against a certain agent of the Urban Guard of (...), different from the person making the complaint here.

In response to this request, the City Council provided the Court with the proposed resolution of the disciplinary file against the person making the complaint.

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.

The first thing to note is that the allegations in the initiation agreement focused solely on requesting the application of a series of mitigating factors. Specifically, the accused entity invoked the nature, gravity and duration of the infringement; the collaboration of the City Council of (...) with this Authority and the *"ongoing" adoption of measures to "correct and improve its processes to comply with data protection regulations."*

Well, these circumstances invoked by the City Council of (...) could be taken into account in order to graduate the economic amount of the sanction in the event that this consisted in the imposition of an administrative fine, in accordance with what established in article 83.4 of the RGPD.

However, in the present case the sanctioning regime applicable to the City Council does not provide for the imposition of a financial penalty, but a warning in accordance with the provisions of article 77 of Organic Law 3/2018, of 5 December, of protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), which by its very nature is not susceptible to graduation.

For the specific case of collaboration with this Authority, it should be noted that the entities that process personal data have the obligation to assist the Authority (articles 58.1 RGPD and 19 of Law 32/2010). Likewise, as was already pointed out in the proposed resolution, it is also necessary to remember the duty of collaboration of all persons with the Administration that exercises the power of inspection, a duty imposed by article 18 of LPAC.

Without prejudice to the above, it is necessary to point out, in any case, that the adoption of measures to correct the effects of the infringement does not distort the reality of the imputed facts, nor the correction of their legal qualification.

In accordance with the above, the allegations made by the reported entity cannot succeed.

3. In relation to the facts described in the proven facts section, 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 the data personal, including the protection against unauthorized or illegal treatment and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures"*.

For its part, article 5 of the 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."*

It is worth saying that, as part of the previous information, by means of a letter dated 31/05/2021, the City Council admitted that it sent the Court documentation of a disciplinary file (corresponding to the person making the complaint here, which was not part of the judicial process) different from the disciplinary file that was requested (corresponding to another agent of the Urban Guard).

Therefore, 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 basic principles of treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9"*, including the principle of 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 measures should be required to stop or correct the effects of the infringement, given that the infringing behavior refers to an isolated and specific event with which the effects of the infringement would have been consummated.

For all this, I resolve:

1. Admonish the City Council of (...) 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 City Council of (...).
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 1(...) 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,