

**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 52/2022, referring to the (...).

## Background

1. On 11/20/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the (...) (hereafter, the (...)), due to an alleged breach of the regulations on the protection of personal data . The complainant stated the following:

1.1 That as a result of a request for information made to (...), to which it belongs, it kept its email without complying with its right to information. The complainant stated that his email was included in the file of the (...) ' (...) '.

1.2 That the (...) misused the email addresses of its members. In this regard, it indicated that " *The use of this data could be understood as a legitimate interest in the communication of exclusive information about the operation of the service, but I understand that it cannot be used for: - (...), - (...), - (...).*"

Together with the letter of complaint, and for what is of interest here, he provided the following documentation:

- A letter from the (...), dated October 1, 2021 and signed by the Presidency, in which users were informed about various matters related to the (...), including the announcement of the meeting that was to be held on 10/23/2021 and in relation to which it was indicated (page 3):

*"At the end of this document, page 21, you will find the information we have received from the City Council in relation to the COVID Security measures. At the entrance to the room, each attendee must, on a sheet for that purpose:*

- *Put your full name and surname and contact telephone number.*
- *identity card*
- *email*
- *signature*
- *Show your ID*

*Being responsible for all the measures indicated in said information. The lack of any of the five points will not allow access to the room.*

*(...)"*

Also, on page 22 of said document is the agenda for the Convocation of the Extraordinary Assembly of the (...) and, in the final section of this, there is a paragraph dedicated to the delegation of representation and vote, and which includes the following paragraph to be completed if you wish to exercise the right to vote delegation:

*"I..... with ID ..... owner of the property located at C/ ....., nº ....., I DELEGATE my representation and vote to Mr. ...., with ID ....., owner or 1st degree relative.*

*Finally, we just have to add:*

*- Until the vast majority of residents do not withdraw their trust, we will continue to act and report how we have done it up to now.*

*- It is a pity that there are neighbors who do not provide us with their e-mail, since through this they would receive the quarterly invoice, avoiding costs and manipulation, information about breakdowns and:*

- Financial Cash Flow with information on bank accounts, collections, payments, non-payments and bank balances, with monthly frequency.*
- Information related to water supply.*

*Otherwise, receive a cordial greeting from this Board."*

- A letter that the (...) would have sent on 18/10/2021 by email to the members of the aforementioned (...) that contains the following text:*

*"Dear neighbor:*

*Some neighbors have warned us that they are receiving emails from the five neighbors opposed to this Board and even personally asking them to delegate their vote for the assembly to be held next Saturday, October 23.*

*This Board feels the need to remind all the neighbors:*

- the lies*
- The falsehoods*
- The manipulation of our information that these ladies have sent/commented either in writing or personally, thereby creating significant confusion in some cases.*

*(...)*

*And so we could continue, but we are sure that you are very above these ladies as we have verified by the mails we receive or phone calls realizing what their objective is to discredit this Board.*

*(...)"*

*If it is not possible to assist them, we consider it very important that this tiny group realizes once and for all that they are only managing to make a fool of themselves in front of all of you and that they can end their policy of discredit and confusion, so we offer them different alternatives to send us your voting delegation:*

- Fill in the voting delegation that appears at the foot of the call to the president Mr. (...) ID (...) and sending it by mail (...).*

- *Fill out this voting delegation and if they call (...) on the CUA telephone (...) (...) no later than Wednesday, a person will come to pick it up.*

*With the confidence of being able to greet you personally in the assembly, receive a cordial greeting from this Board."*

2. The Authority opened a preliminary information phase (no. IP 477/2021), 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 05/13/2022 the (...) was required to report on:

- The circumstances in which the complainant's personal data were collected, in particular the email address, and whether the right to information was exercised and, if so, that it was documented.
- That it indicate the legal basis and the regulations that founded the collection and processing of the personal data of the users of the (...) and that specify the purpose of the processing of this data.
- Regarding the document dated 18/10/2021, which indicated what would be the legal basis that would enable the inclusion of the specific information that was collected there regarding the request for voting delegation and the references that were made to the rest of the opposing neighbors to the board with the mandate in force at that time.

4. On 05/26/2022, the (...) responded to the aforementioned request in writing in which it stated the following:

- That both the complainant's data and those of the other users of the (...) had been collected *both in the various Assemblies held both of the current (...) and of the predecessor Board (or Entity) (...) of which the current entity is a continuation, as through the contribution of the different neighbors as owners of the farms located in the area (...), in order to facilitate the management of the necessary communications in relation to the supply of drinking water for all the residents and having been required at the beginning of 2016 the appropriate list of users by the Agència Catalana de l'Aigua on the occasion of the approval of the constitution of our entity. (...)'.*

Likewise, he affirmed that this collection of data *' Also always informing you of your right to information regarding the protection of natural persons with regard to the processing of personal data and the free circulation of this data. In any case, of the 347 residents who currently comply with the (...), a total of 258 have given us their email address.'*

- Regarding the legal and regulatory basis that founded the collection and processing of the personal data of the users of the (...), it invoked article 6 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 d 'April, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD) and stated that it was necessary for the fulfillment of the water

supply contract and to provide information related to the same to the neighbors of the area (...).

- With regard to the purpose of the collection and processing of the data, he stated that *'it is mainly the updating of the user relationship in order to be able to issue and deliver the invoices for the water consumption of the different meters as well as the different spills approved in the 'Assembly, deliver the notices and minutes of the ordinary and extraordinary Assemblies that are held annually, deliver information of interest in relation to possible temporary cuts in the water supply for repairs or information on the management of the service and the improvements made to the water supply network and all that is considered to be of interest to the neighboring members of the entity.'*
- In relation to the document of 18/10/2021, it stated that due to the multiple calls and emails received by several users informing that *' both the person reporting and 4 other neighbors had been personally visiting the neighbors (...) for in order to ask them to vote in their favor ', it was interesting to ' put it on record that these 5 neighbors are the most critical and that for some time they have been trying to discredit the members of the current Board of Directors of our organization. (...)'.*

The reported entity, for what is of interest here, attached the following documentation:

- Resolution of the Catalan Water Agency declaring the (...) validly constituted, approving the statutes and *' certifying that our entity is a continuation of the previous Board (...)'.*
- The statutes of the (...), as well as those of the predecessor Board (...).

5. On 07/22/2022, also during this preliminary information phase, the Authority's Inspection Area again requested additional information from (...), specifically, that in lack of documentary evidence of having complied with the complainant's right to information, certify from which date, at least approximately, they had the complainant's data -specifically the email-.

6. On 07/27/2022, the (...) complied with this request by means of a letter stating the following:

- That *'the data of the person reporting (...), specifically his email address, we have known since September 11, 2020 when our entity received an email from the neighbor and member of the (...), Mr. (...), which included Mr. (...) [the person reporting] and three other neighbors in copy view. Without prejudice to the above, inform that a few days later, on October 20, 2020, the same Mr. (...) [the reporting person] sent an email from his same email address to our entity.'*

Along with the written response to the request, he provided the two emails, the first dated 09/11/2020, in which the person making the complaint was a copy; and a second one dated 10/20/2020, sent by the complainant and addressed to the Board of the (...).

7. On 09/07/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the (...) for two alleged infringements: an infringement provided for in article 83.5.b) in relation with articles 13 and 14; and another violation provided for in article 83.5.a) in relation to article 6; 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 circulation thereof (hereinafter, RGPD).

**8.** In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations, and to propose the practice of evidence that it considered appropriate to defend its interests.

**9.** On 4/10/2022, the (...) submitted a letter through which it expressed its disagreement with the initiation of the sanctioning procedure, and proposed the practice of two testimonial statements in order to certify that had complied with the reporting person's right to information in accordance with articles 12, 13 and 14 of the RGPD.

**10.** On 11/16/2022, the instructor agreed to admit the test and provided for the opening of a period of 10 working days, in order to carry out his practice. Likewise, it provided that, together with the testimonial statements, the documentation it considered appropriate could be provided for the purposes of certifying that the right to information had been complied with and the time period in which it was carried out. This agreement was notified to the imputed entity on 11/17/2022.

**11.** On 5/12/2022, the accused entity presented an instance through which it provided the two testimonial statements. Along with these statements, he provided 23 information documents on the collection of personal data, signed by the users of the (...), among them, that of the person making the complaint.

**12.** On 7/02/2023, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority impose on the (...), in first, a fine of two thousand euros (2,000.-€) as responsible for an infringement provided for in article 83.5.b) in relation to articles 12, 13 and 14; and, secondly, a fine of one thousand euros (1,000.-€) as being responsible for an infringement provided for in article 83.5.a) in relation to article 6, all of them of the RGPD.

This resolution proposal was notified on the same date, 7/02/2023, and a period of 10 days was granted to formulate allegations.

**13.** On 02/16/2023, the accused entity paid in advance one thousand eight hundred euros (1,800.-€), corresponding to the monetary penalty proposed by the investigating person in the resolution proposal, once the reductions provided for in article 85 of Law 39/2015.

**14.** On 02/17/2023, he submitted a letter to the Authority in which he acknowledges his responsibility for the alleged acts and provided supporting documentation that he proceeded to make the voluntary advanced payment of the monetary penalty that the person instructor suggested.

Likewise, in order to comply with the corrective measure provided for in the resolution proposal, the (...) has provided a document for the collection of data reporting the extremes provided for in article 13 RGPD, which is analyzed in the 7th law foundation.

## **proven facts**

1. The (...) collected and processed the data of the reporting person without complying with their right to information, in accordance with articles 12, 13 and 14 RGPD.

Thus, (...), on 11/09/2020, collected the data relating to his email address, since it appeared (in copy) in the email that a third party sent to said entity. Later, on 10/20/2020, it was directly the complainant who provided this data to (...), by sending an email.

2. The (...) made use of the personal data of its members for purposes other than those invoked by the reported entity for its collection and not covered by any of the functions provided for in the statutes, specifically, in the statement to its members of 18/10/2021; in which the Board pours negative subjective comments regarding some members, and the delegation of vote is requested exclusively to its president.

### **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 85.3 of the LPAC, both the recognition of responsibility and the voluntary advance payment of the proposed monetary penalty entail the application of single reductions of 20% of the amount of the penalty, cumulative between Yes. The effectiveness of these reductions is conditional on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction. For both cases, sections 1 and 2 of article 85 of the LPAC provide for the termination of the procedure.

The accused entity has not made any objections to the resolution proposal, as it has been accepted to both options to reduce the penalty amount. Nevertheless, and given that allegations were presented to the initiation agreement, it is considered appropriate to reiterate below the most relevant of the reasoned response that the instructing person gave to the allegations before the agreement d initiation.

#### **2.1. In relation to the breach of the reporting person's right to information.**

In relation to the fact of not having informed the reporting person in accordance with articles 12, 13 and 14 of the RGPD, the (...) denies this fact and in the test phase has presented two testimonial statements, that of the person in charge of the administrative tasks and that of the lawyer and member of the entity, who stated that they had complied with the duty of information on repeated occasions. Specifically, according to the lawyer and member of the entity, " *in each and every one of the Assemblies of the (...)(...), which were held from the aforementioned date [25/05/ 2018], both in the one dated July 21, 2018; July 6, 2019, October 23 and November 14, 2021 (having been held in two sessions) and the last one on October 22, 2022, specifically at the beginning of each and every assembly*" .

Well, first of all, it must be remembered that in the previous information phase, the (...) was required on two occasions (13/05/2022 and 22/07/2022) to provide documentary evidence of having made payment the right of information. In response, the entity limited itself to acknowledging that it had collected the data of its users, literally " *In relation to the first point, inform that both the data of the complainant, Mr. (...), as well as the rest of the members of*

*the (...), **have been collected both in the various Assemblies held both of the current (...) and of the predecessor Board (...)**" ; also, who had the data of the reporting person (e-mail) from the dates 11/09/2020 and 20/10/2020 (as explained in the 6th precedent). However, he did not provide any document to prove that he had complied with his duty to provide information.*

Therefore, it should be noted that, during the preliminary information phase, it was confirmed that the (...) collected personal data, and also, that it did not have any documentary means to prove that it had informed its users at the time of the collection of your data.

With respect to the two testimonial statements presented by the (...) in the evidentiary period, it should be pointed out that these are statements from people linked to the accused entity, therefore, party statements, which affirm that compliance had been given to the duty of information, but without providing any other element of evidence to prove that at the time the data was collected (September and October 2020) the information required by the RGPD was provided, which is why they do not have the sufficient entity to distort this imputed fact. This is clear from the testimonial statement of Mr. (...), lawyer and member of the (...), who affirmed "*in each and every one of the Assemblies of the (...)(...) that were held from (...), specifically at the beginning of each and every one of the Assemblies, **I personally informed all the attendees** of the convenience for the associated neighbors to update and report their data to the Board of the entity, so that they can be expedited the communications (...)*" but, it must be insisted, without providing any other evidence to confirm his statements. In this sense, article 5.2 RGPD takes on special relevance, which provides "*2. The person responsible for the treatment will be responsible for compliance with the provisions in section 1 and capable of demonstrating it (<<proactive responsibility>>)*".

Indeed, from the testimony of the witness it is clear that it was not until the last assembly, held on 10/22/2022, that "***the data and signatures of the attendees of the documents attached to this testimonial statement, noted as Documents 1 to 23 for appropriate evidentiary purposes*** . The fact of having provided these 23 documents in which reference is made to some of the extremes provided for in articles 13 and 14 RGPD, (among them, one signed by the person making the complaint here), verifies that prior to this date no can provide documentary evidence that the required information on the processing of personal data was provided.

Regarding the interested party's right to information, article 12 RGPD provides: "*The data controller will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with the articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form, with a clear and simple language, in particular any information directed specifically to a child. **The information will be provided in writing or by other means, including, if applicable, by electronic means** . When requested by the interested party, the information may be provided verbally as long as the identity of the interested party is demonstrated by other means*". In addition, article 13 RGPD provides that the person responsible for the treatment must provide the information, when obtained from the interested person, "*at the time when these are obtained*" and article 14.3 RGPD that "*The person responsible of the treatment will provide the information indicated in section 1 and 2: a) within a reasonable time, once the personal data have been obtained, and no later than within a month, given the specific circumstances in which said data are processed;*" ; these two precepts, in relation to the facts described in the 6th precedent.

Finally, it should be noted that the document of the entity charged to certify compliance with the precepts cited in the previous paragraph, provided as part of this sanctioning procedure,

contains several shortcomings. It should be noted that it does not refer to the retention period of the data (article 13.2.a), nor to the rights of limitation and portability (article 13.2.b), nor to the right to present a claim before the control authority (article 13.2.d); nor to the consequences in case of not providing personal data (article 13.2.e).

Based on all the above, it must be concluded that the two testimonial statements do not distort the imputation for breach of the duty of information in accordance with precepts 12, 13 and 14 RGPD at the time of the collection of personal data.

## **2.2. In relation to the violation of the principle of legality.**

In relation to the violation of the principle of legality for having included, in a document of 18/10/2021, specific information about the request for voting delegation and subjective and negative references about some of the neighbors opposed to the board with the current mandate in at that time, the (...) has limited itself to denying this fact claiming that it has not made use of its users' data " *for purposes other than those that are its own*".

In this regard, it should be noted that the (...) in the preliminary information phase, to the question about what the purpose of the treatment was, stated that: ' it is mainly *the updating of the user relationship to be able to issue and deliver the invoices for the water consumption of the different meters as well as the different spills approved in the Assembly, deliver the notices and minutes of the ordinary and extraordinary Assemblies that are held annually, deliver information of interest in relation to possible temporary cuts of the water supply for repairs or information on the management of the service and the improvements made to the water supply network and all that is considered to be of interest to the neighboring members of the entity.*' All these purposes are suitable for carrying out a good execution of the contract. Likewise, they are also those contained in the information document provided during the test phase, " *the purpose of this file is to be able to carry out effective management of communications, information and other procedures concerning the drinking water supply activities of the (...)*".

However, the fact of processing the data to make subjective and negative comments of some members of the entity (transcribed in background 1.2); as well as the request of the delegation to vote only to its president, cannot be fit within the legitimate purposes of treatment.

In this regard, it is necessary to highlight article 6.1 of the RGPD which provides that the processing of data will only be lawful if at least one of the conditions provided for there is met. In the case at hand, given that we are dealing with an assumption of compliance with a water supply contract, the legal basis that legitimizes the treatment is that of letter b ) " *el tratamiento es necesario para la ejecución of a contract in which the interested party is a party* ". This being the case, it must be concluded that the purposes for which the data were processed constitute a violation of the data protection regulations, having made use of those that was neither necessary nor compatible for the intended purpose and that , in addition, it caused damage to those members of the (...) who aspired to present their candidacy.

This fact entails a breach of articles 6.1 and 6.4 of the RGPD.

**3.** In relation to the conduct described in point 1 of proven facts, regarding the right to information, it is necessary to go to article 12.1 RGPD, which provides:

*"1. The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14 (...)"*

For reference, article 13 of the RGPD provides:

*" Information that must be provided when personal data is obtained from the interested party.*

*1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:*

*a) the identity and contact details of the person in charge and, where appropriate, of their representative;*

*b) the contact details of the data protection officer, if applicable;*

*c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment;*

*d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party;*

*e) the recipients or the categories of recipients of the personal data, as the case may be;*

*f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to adequate or appropriate guarantees and the means to obtain a copy of these or to the place where they have been made available.*

*2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee a fair and transparent data processing:*

*a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period;*

*b) the existence of the right to request from the person in charge of the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data .*

*c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal;*

*d) the right to file a complaint with a control authority;*

*e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data:*

*f) the existence of automated decisions, including profiling, referred to in article 22, section 1 and 4, and, at least in such cases, significant*

*information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

*3. When the controller plans the further processing of personal data for a purpose other than that for which they were collected, he will provide the interested party, prior to said further processing, with information on that other purpose and any additional information relevant to of section 2.*

*4. The provisions of sections 1, 2 and 3 will not be applicable when and to the extent that the interested party already has the information.*

Also by reference, article 14 RGPD provides:

*" Information that must be provided when personal data has not been obtained from the interested party.*

*1. When personal data has not been obtained from the interested party, the data controller will provide the following information:*

*a) the identity and contact details of the person in charge and, where appropriate, of their representative;*

*b) the contact details of the data protection officer, if applicable;*

*c) the purposes of the treatment for which the personal data is intended, as well as the legal basis of the treatment;*

*d) the categories of personal data in question;*

*e) the recipients or the categories of recipients of the personal data, as the case may be;*

*f) in its case, the intention of the person in charge to transfer personal data to a recipient in a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in the articles 46 or 47 or article 49, paragraph 1, second paragraph, refers to adequate or appropriate guarantees and the means to obtain a copy of these or to the place where they have been made available.*

*2. In addition to the information mentioned in section 1, the data controller will provide the interested party with the following information necessary to guarantee fair and transparent data processing with respect to the interested party:*

*a) the period during which the personal data will be kept or, when that is not possible, the criteria used to determine this period;*

*b) when the treatment is based on art. 6, section 1, letter f), the legitimate interests of the data controller or a third party;*

*c) the existence of the right to request from the person in charge of the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, and to oppose the treatment, as well as the right to the portability of the data ;*

*d) when the treatment is based on art. 6, section 1, letter a), or art. 9, section 2, letter a), the existence of the right to withdraw consent at any time, without this affecting the legality of the treatment based on the consent before its withdrawal;*

*e) the right to present a claim before a control authority;*

f) the source from which the personal data come and, where appropriate, if they come from publicly accessible sources;  
g) the existence of automated decisions, including the elaboration of profiles, referred to in art. 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

3. The data controller will provide the information indicated in sections 1 and 2:

- a) within a reasonable time, once the personal data has been obtained, and at the latest within a month, given the specific circumstances in which said data are processed;
- b) if the personal data must be used to communicate with the interested party, at the latest at the time of the first communication to said interested party, or
- c) if it is planned to communicate them to another recipient, at the latest at the time when the personal data are communicated for the first time.

4. When the controller plans the further processing of personal data for a purpose other than that for which they were obtained, he will provide the interested party, before said further processing, with information about that other purpose and any other relevant information indicated in section 2.

5. The provisions of paragraphs 1 to 4 will not be applicable when and to the extent that:

- a) the interested party already has the information;
- b) the communication of said information is impossible or involves a disproportionate effort, in particular for the treatment for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, subject to the conditions and guarantees indicated in art. 89, paragraph 1, or to the extent that the obligation mentioned in paragraph 1 of this article can make it impossible or seriously hinder the achievement of the objectives of such treatment. In such cases, the person in charge will adopt appropriate measures to protect the rights, freedoms and legitimate interests of the interested party, including making the information public;
- c) the obtaining or communication is expressly established by the Law of the Union or of the Member States that applies to the person responsible for the treatment and that establishes adequate measures to protect the legitimate interests of the interested party, or
- d) when the personal data must continue to be confidential on the basis of an obligation of professional secrecy regulated by the Law of the Union or of the Member States, including an obligation of secrecy of a legal nature.

During the processing of this procedure, the fact described in point 1 of the proven facts section, which is considered constitutive of the violation provided for in article 83.5.b) of the RGPD, which typifies as as such the violation of " the rights of interested parties pursuant to

articles 12 to 22 ;", among which is the right to information provided for in articles 13 and 14 of the RGPD.

The conduct addressed here has been included as a very serious infringement in article 72.1.h) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter , LOPDGDD), in the following form:

*"h) The omission of the duty to inform the affected person about the treatment of their personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 2016/679 and 12 of this organic law."*

4. With regard to the conduct described in point 2 of the proven facts section, regarding the principle of data lawfulness, it is necessary to refer to article 5.1.a) RGPD, which regulates the principle of data lawfulness, the which provides that " *Personal data will be: a) treated in a lawful, fair and transparent manner in relation to the interested party (<<legality, loyalty and transparency>>)* "

In accordance with what has been explained, the fact recorded in point 2 of the section on proven facts constitutes the violation provided for in article 83.5.a) RGPD, which typifies the violation of the "basic principles of the treatment, *including the conditions for consent in accordance with articles 5, 6, 7 and 9* ", among which the principle of legality of treatment is contemplated (article 6).

In turn, this conduct has been included as a very serious infraction in article 72.1.d) of the LOPDGDD, in the following form:

*"The use of the data for a purpose that is not compatible with the purpose for which they were collected, without the consent of the affected person or with a legal basis for it".*

5. When the (...) is not met, in any of the subjects provided for in article 77.1 of the LODGDD, the general sanctioning regime provided for in article 83 of the GDPR applies.

Article 83.5 of the RGPD provides that the infractions provided for there are sanctioned with an administrative fine of 20,000,000 euros at most, or in the case of a company, an amount equivalent to 4% as to a maximum of the overall total annual business volume of the previous financial year, opting for the higher amount.

Having said that, it is necessary to determine the amount of the administrative fine to be imposed. According to the provisions of article 83.2 of the RGPD, and also in accordance with the principle of proportionality enshrined in article 29 of Law 40/2015, as indicated by the instructing person in the proposed resolution, two penalties, one of 2,000 euros and another of 1,000 euros.

This quantification of the fine is based on the weighting between the aggravating and mitigating criteria indicated below:

As mitigating criteria in the grading of the fines linked to the two facts proven:

- The category of personal data affected by the infringement - there is no evidence that it affected special categories of data - (art.83.2.g RGPD).
- He has not committed any breach of data protection regulations prior to this procedure.
- The immediate action by the entity in order to reduce the effects of the infringement.

On the contrary, as aggravating criteria that have been taken into account to set the amount of the two fines:

- The nature, severity and duration of the infringement, as well as the number of people affected (article 83.2 a) RGPD). Regarding the number of those affected, with regard to the first proven fact, they are all the members of the entity, and with regard to the second proven fact, a group of members who intended to present their candidacy for the presidency.
- Linking the activity of the (...) with the processing of personal data (art. 83.2.k of the RGPD and 76.2.b/ of the LOPDGDD).

Apart from these aggravating factors which, as has been said, have been taken into account in the grading of the two fines, the following aggravating criterion linked to the first proven fact must be taken into consideration:

- The continuing nature of the offense (art. 83.2.ki 76.2.a LOPDGDD).

**6.** On the other hand, in accordance with article 85.3 of the LPAC and as stated in the initiation agreement, if before the resolution of the sanctioning procedure the accused entity acknowledges its responsibility or does the voluntary payment of pecuniary sanctions, a 20% reduction should be applied on the provisionally qualified amount of the sanctions. If the two aforementioned cases occur, the reduction is applied cumulatively (40%).

As has been advanced, the effectiveness of the aforementioned reductions is conditional on the withdrawal or renunciation of any action or appeal through the administrative route against the sanction (art. 85.3 of the LPAC, in fine ) .

Well, as indicated in the antecedents, on 02/16/2023, the accused entity paid in advance one thousand eight hundred euros (€1,800), corresponding to the amount of the resulting penalty once the cumulative reduction of 40% has been applied . Likewise, by means of a letter dated 02/17/2023, he has acknowledged his responsibility.

**7.** Given the findings of the violations provided for in art. 83 of the RGPD in relation to privately owned files or treatments, article 21.3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, empowers the director of the Authority for the resolution declaring the infringement to establish the appropriate measures so that its effects cease or are corrected.

Well, as it has progressed, within the framework of this sanctioning procedure, the (...) has presented an informative document in order to comply with the duty of information in the collection of personal data. Once this has been analyzed, it must be made clear that it does not comply with all the extremes required by Article 13 RGPD. Among its shortcomings, it should be noted that it does not provide for the warning in letter e) of article 13.2 RGPD, in the sense that it does not express whether any consequences arise from not providing personal data.

Likewise, the document provided provides for two legal bases (that of consent and that of the execution of a contract, article 6.1, letters a) and b), respectively) for a single purpose of the treatment ("To be able to carry out effective management *in the communications, information and other procedures concerning the activities of drinking water supply, conservation and maintenance of the network for all the residents of the area (...)*"), when the aforementioned purpose only fits in the legal basis of letter b), since it is a series of operations that may all be necessary for the execution of the contract. Therefore, the "*consent of the interested party*" as a legitimate legal basis is not applicable in this case and the references to consent made in the document must be deleted. However, in the event that there are other purposes - not directly related to the execution of the contract - they must also be stated in the purposes section and indicate the legal basis that would legitimize the processing of data in relation to each of them they And, in the event that the legal basis of legality for these other purposes is consent (article 6.1.a), the consent of the interested party will need to be collected specifically for each different purpose.

Having said that, the reported entity should be required to adopt the corrective measure consisting of correcting the irregularities as soon as possible, and in any case within a maximum period of 15 days from the day after the notification of this resolution detected in the informative document analyzed, in the terms set out in the previous section.

For information purposes, it is indicated that a guide has been published on the APDCAT web portal to make it easier for data controllers to comply with the duty to provide information under the RGPD ( [https://apdcat.gencat.cat/ca/documentacio/guies\\_basiques/Guies-apdcat/](https://apdcat.gencat.cat/ca/documentacio/guies_basiques/Guies-apdcat/) ).

In relation to proven fact 2, referring to the violation of the principle of legality, given that it is a timely and consummated fact, it is not considered appropriate to require the adoption of corrective measures.

For all this, I resolve:

1. Impose on the (...) two sanctions consisting of two administrative fines, a fine of two thousand euros (2,000.-€), as responsible for an infringement provided for in article 83.5.b) in relation to the articles 12, 13 and 14; and another fine of one thousand euros (1,000.-€) as responsible for an infringement provided for in article 83.5.a) in relation to article 6; all of them from the RGPD. The total amount of the two sanctions amounts to three thousand euros (€3,000).
2. Declare that the (...) has effected the advanced payment of one thousand eight hundred euros (€1,800), which corresponds to the total amount of the two penalties imposed, once the 40% deduction percentage has been applied corresponding to the reductions provided for in article 85 of the LPAC.
3. Require the (...) to adopt the corrective measure indicated in the 7th legal basis and certify to this Authority the actions taken to comply with them.
4. Notify this resolution to (...).

**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,