

File identification

Resolution of sanctioning procedure no. PS 54/2022, referring to the Department of Education

Background

1. On 03/02/2021, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Shared Education Unit of the Bellvitge Community Community Private Foundation (hereinafter, UEC Girona of the Oscobe Foundation).

As a premise, it should be indicated that the shared schooling units (UEC) complement the own resources of secondary schools (ESO), in that they are an external resource for those students who have some difficulty adapting to their secondary education center, and who are offered the opportunity to follow ESO courses in a UEC.

The complainant ((...)of the Oscobe Foundation) stated in his writing that from the UEC Girona of the Oscobe Foundation , which acted under the umbrella of " Oscobe -Escola Noves Tendències-UEC Girona, Unió Temporal Empreses" (joint venture formed by the UEC Girona of the Oscobe Foundation and the Escola Noves Tendències where the students would do training), had asked for personal data from the parents of the students served at the UEC Girona (bank account number, first and last name and ID), to process aid for school transport, without first having given effect to the right to information regarding personal data, provided for in the data protection regulations. Likewise, the complainant stated that once said personal data had been obtained, they were filed " *in folders accessible to anyone, without any kind of security* ".

On the other hand, the complainant also added that the data collected were " *included in a computer management program* " , a software, in the name of the company EJBrot Serveis Integrals de Jardineria SLU social insertion company belonging to the Foundation Oscobe (henceforth, THE OUTBREAK), and that during the month of January 2021 this data would have been transferred to the Coordinating Association of Social Synergy entities (henceforth SINERGIA), without having communicated this to the affected persons. In this regard, it should be noted that the mentions made in this section of the complaint in relation to the company EL BROT and SINERGIA, are behaviors that the person making the complaint had already reported in the framework of the previous information no. IP 406/2020, which were the subject of analysis and archived in the "Reported facts not imputed" section of the PS 9/2022 initiation agreement, referring to the Oscobe Foundation .

2. The Authority opened a preliminary information phase (no. IP 51/2021), 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 04/14/2021 the reported entity was required to report, among others, on the following:

- if the bank details of the students' legal representatives were indeed requested, and in such case, the date (or the period between dates) on which the request was made, as well as the personal data that was requested .
- the legal basis that would legitimize the processing of the aforementioned personal data, and specifically, whether this processing would be legitimized by the consent of the person concerned.
- if at the time of the collection of the personal data the right to information was complied with.
- the security measures implemented to prevent unauthorized third parties from accessing the personal data contained in non-automated files (paper format) for which the entity is responsible for processing.

4. On 04/16/2021, the Oscobe Foundation responded to the aforementioned request in writing in which it stated the following:

- That the "*UTE UEC PNO Girona*" is carried out by award and service contract for carrying out complementary activities specific to Compulsory Secondary Education. Addressed to students with specific educational needs resulting from maladaptation to the school environment, in shared schooling units (UEC) with the Department of Education of the Generalitat de Catalunya, file number (...), with a initial extension with (...) and an extension currently in force from the Department of Education, file (...)."
- That " *The administrative documents of the said contract establish in the Provisions relating to the rights and obligations of the parties, specifically in the twenty-twelfth, section f) the following:*
The contractor undertakes to comply with everything established by Organic Law 15/1999, of December 13, on the protection of personal data and the development regulations, in relation to the personal data to which it has access on occasion of the contract.
*The documentation and information that is obtained or to which it has access during the execution of the services that are the subject of this contract and that corresponds to **the Contracting Administration responsible for the personal data file** , is confidential and may not be subject to of total or partial reproduction by any means or support. Therefore, it may not be processed or edited or transmitted to third parties outside the strict scope of the direct execution of the contract."*
- That " *Given that the Person in charge of the personal data files is the Department of Education and our organization, therefore, has the function **of data processor** , all the data that is collected from the students or their relatives is always done by on behalf of this responsible administration and strictly following its instructions, protocols and forms."*
- That " *in the event that banking data or any other type of personal data was requested, this was by order of the responsible administration ."*

5. On 06/09/2022, also during this preliminary information phase, the Authority's Inspection Area made a second request to the Osborne Foundation requesting that, among others, provided a copy of the contract by which the entity UEC-Escola Noves Tendències-Fundació Oscobe (UTE UEC) would have obtained the status of data controller to process data on behalf of the Department of Education. It was also reiterated that he should report whether the entity had implemented the appropriate security measures in order to prevent

unauthorized third parties from accessing personal data, and especially banking data, contained in non-automated files (paper format).

6. On 06/15/2022, the entity responded to the aforementioned request, through a letter in which it explained that *"the non-automated files are located in the Management Office, to which only authorized personnel have access, guaranteed by access with a key and at the same time, in a filing cabinet accessible only with a key. At the same time, the aforementioned keys are guarded by the Management of the service ."*

With the letter of response, a copy of the *" Contract for the care service in shared schooling units (UEC) and personalized care and support service in shared schooling units-new opportunities programs (UEC) was attached -PNO) for young people, in compulsory secondary education"*, dated 23/08/2016, between the Department of Education (now Department of Education) and the entity Oscobe -Escola Noves Tendències UEC Girona, Union Temporal Empreses, from which it is inferred that the entity awarded the service has the status of being in charge of the treatment on behalf of the Department of Education. He also provided a copy of the resolution extending said contract until 05/31/2021.

7. On 07/26/2022, and still within the framework of this preliminary information phase, the Authority made an information request to the Department of Education to confirm whether during the 2020-2021 school year, the entity UEC-Escola Noves Tendències-Fundació Oscobe acted as the processing manager of the Department of Education regarding the processing of personal data, and in such case, if the Department of Education made effective the right to information provided for in articles 13 and 14 of the RGPD to the families or legal representatives of the students who enrolled at the UEC-Escola Noves Tendències, through the delivery of the corresponding form where the personal data of the students and/or parents or legal guardians are collected.

8. On 08/04/2022, the Department of Education complied with this requirement by means of a letter stating the following:

- That *" this entity had an extended contract for the 2020-21 academic year as well as for the 2021-22 academic year with a new contract as a result of the last tender to carry out care for compulsory secondary school students in the units of 'shared schooling. Therefore, the Department confirms that the Escoles Noves Tendències entity of the Oscobe Foundation during the 2020-2021 academic year has acted as the person in charge of the processing of students' personal data"*
- That *" The Department did not provide a model that included an informative footer on data protection as provided for in articles 13 and 14 of the RGPD so that this entity that provides the UEC service could contact families to request personal data .(...)"*
- That *" when the Department collects the data of all the students through the pre-registration documents, which are the data that the centers use for the subsequent registration of their students, in these there is the corresponding informative section on protection of personal data."*
- That *" As previously mentioned, the Department of Education in relation to the UEC-Escola Noves Tendències de Fundació Oscobe has not provided a model that reports on data protection in accordance with the established in articles 13 and 14 of the RGPD in*

the event that this UEC had to request them. The Department is preparing the model to have it ready for the start of the next academic year 2022-2023."

Together with the letter, the requested entity provided a generic model of the form for " *Pre-registration request for second-cycle courses in early childhood education, primary education and compulsory secondary education in educational centers paid for with public funds. Course 2020-2021*", the clause of the right to information which indicates that the purpose of the treatment will be " *Processing and solving the admission processes of the students in the educational centers paid for with public funds .*"

9. On 22/09/0000, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Department of Education for the alleged infringement provided for in article 83.5.b) in relation to the Article 13, both 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). Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file. This initiation agreement was notified to the imputed entity on 09/23/2022.

10. The initiation agreement explained the reasons why no charge was made with respect to the rest of the facts reported, and specifically, that relating to the facts that the reporting person exposed in relation to the UEC Girona de la Fundació Oscobe .

In this respect, with regard to the events reported on a possible breach of data security by the UEC Girona of the Oscobe Foundation , the initiation agreement indicated that the reporting person did not provide any evidence or element that corroborated his statements; which, that is to say, were denied by the entity that, in response to this Authority's request, detailed the measures it had adopted in order to safeguard the security of data in non-automated formats. On the other hand, with regard to the complaint about the possible communication of the personal data managed by the UEC Girona of the Oscobe Foundation to other companies (EL BROT and SINERGIA), these are behaviors that the person making the complaint had already reported in the framework of the previous information no. IP 406/2020, which were the subject of analysis and archive in the section "Facts denounced not imputed" of the initiation agreement of PS 9/2022, referring to the Oscobe Foundation , to which the agreement of 'initiation of the present sanctioning procedure is referred to resolve to archive, again, the same facts reported.

11. 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. This deadline has been exceeded and no objections have been made.

proven facts

The Department of Education (responsible for the treatment), through the UTE " *Oscobe - Escola Noves Tendències- UEC Girona* " to which it awarded the care service in shared schooling units (UEC) for young people from compulsory secondary education (responsible for processing), during the 2020-2021 academic year, did not exercise the right to information when it collected the data of the relatives or legal guardians of the students

attended at the UEC Girona of the Oscobe Foundation , within the framework of a treatment activity different from that indicated in the general application form for pre-registration in ESO courses.

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 64.2.f) of the LPAC and in accordance with what is indicated in the agreement to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the 'the imputed entity has not formulated allegations in the initiation agreement tending to distort the reality of the imputed facts, or to express disagreement with its legal assessment. In this sense, the initiation agreement contained a precise statement on the imputed responsibility.
3. In relation to the facts described in the proven facts section, it is necessary to go to sections 1 and 2 of article 13 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), which establish the information that must be provided when personal data is obtained from the person concerned:

"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 the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.*

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 responsible for 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 present a claim before 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 the creation of profiles, referred to in article 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 person concerned."

For its part, sections 1 and 2 of article 11 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), referring to transparency and information to the affected person, provide that:

"1. When the personal data is obtained from the affected person, the controller can comply with the duty of information established by Article 13 of Regulation (EU) 2016/679 by providing the affected person with the basic information referred to in section below and indicating an electronic address or other means that allows you to access the rest of the information in a simple and immediate way.

2. The basic information referred to in the previous section must contain, at least:

a) The identity of the data controller and his representative, if applicable.

b) The purpose of the treatment.

c) The possibility of exercising the rights established by articles 15 to 22 of Regulation (EU) 2016/679.

If the data obtained from the affected person must be processed for profiling, the basic information must also include this circumstance. In this case, the affected person must be informed of his right to object to the adoption of automated individual decisions that produce legal effects on him or significantly affect him in a similar way, when this right is given in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

During the processing of this procedure, the fact described has been duly certified in the section of proven facts, which is constitutive of the infringement provided for in article 83.5.b) of the RGPD, which typifies as such the violation of "the rights of the interested parties pursuant to articles 12 to 22 ", among which there is the right of information provided for in articles 13 and 14 of the RGPD.

The conduct addressed here has been included as a very serious infraction in article 72.h) of the LOPDGDD, in the following form:

"h) The omission of the duty to inform the affected person about the processing 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. 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".

By virtue of this faculty, the Department of Education should be required to provide the new model as soon as possible, and in any case within a maximum period of 15 days from the day after the notification of this resolution of the form they have drawn up, to which they refer in their response to the request for information from this Authority, through which it is planned to make effective the right of information to the families or legal guardians of the students cared for at the UEC Girona of the Oscobe Foundation, when your personal data is collected,

as part of a processing activity other than that indicated in the general application form for pre-registration in ESO courses.

For all this, I resolve:

1. Admonish the Department of Education as responsible for an infringement provided for in article 83.5.b) in relation to article 13, both of the RGPD.
2. Require the Department of Education to adopt the corrective measures indicated in the 4th legal basis and accredit before this Authority the actions taken to comply with them.
3. Notify this resolution to the Department of Education.
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,