

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 63/2022, referring to the Institute (...) of the Department of Education.

Background

1. On 07/25/2022, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Institute (...) of the Department of Education (hereinafter, the Institute), due to an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant, the parent of a student in the course (...), stated that the previous day (...) he received a communication from the Institute accompanied by a document showing all the ID of the students in the class of (...) for the next year, linked to the optional subjects that each of the minors thus identified would take. To conclude, he stated ' (...)':

Together with the letter of complaint, he provided the aforementioned document, in which 19 columns are observed, the first of which contains anonymized data and, therefore, it cannot be confirmed whether it is a list of IDs, as stated by the complainant. The remaining 18 columns contain the optional subjects for the 2022-2023 academic year, to be taken by students from (...).

2. The Authority opened a preliminary information phase (no. IP 270/2022), 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 09/13/2022 the reported Institute was required to confirm whether on (...), it sent a message to the parents of the students of (...) (in whole or in part), attaching a file in which certain identifying data of the aforementioned students were included; and, in that case, to indicate the legal basis that legitimized the shipment.

4. On 23/09/2022, the Institute (...) responded to the aforementioned request through a letter confirming that a teacher from the Institute, by order of the director of the center, sent the parents from the students of (...), through the center's intranet, a message together with a file. The Institute explained that this file contained the optional subjects that the students would take and that '*the motivation for sending it was to be able to inform the families of the 3 optional subjects that their children would take during the 22-23 year and so give them time to buy the necessary material (books/digital licenses).*'

Likewise, he confirmed that the file included the IDs of all the students from (...) and argued that *' on purpose, in this attached file the first and last names of the students had been removed in order to protect their data, so that each student could identify himself with his DNI number understood as a personal code. So we considered that this data displayed in isolation did not in any way violate anyone's personal data given that it is dissociated data since the DNI cannot be linked or associated with any other data.'*

The Institute provided a copy of the message from (...), through which it was communicated, literally: *' I am attaching a file of the electives your children will take next year. I am providing you with this information so that you can order a textbook if the optional subject requires it. (See the list of books on the center's website). (...).'*

Together with this message, the document attached to it, entitled (...), which matches the file provided by the person reporting; although, looking at the copy provided by the Institute, it can be confirmed that the first column contains a list of DNI numbers .

5. On 13/10/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Institute (...) for an alleged infringement provided for in article 83.5.a), in relation in article 5.1.a); 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).

6. On 30/11/2022, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Institute (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a); both articles of the RGPD.

This resolution proposal was notified on 1/12/2022 and a period of 10 days was granted to formulate allegations.

7. The deadline has been exceeded and no objections have been submitted.

proven facts

The Institute (...) sent at (...) hours of the day (...), a message to all the parents of students from (...) in which a file was attached which included a list of the personal identity numbers (DNI) of the students of the course, linked to the optional subjects that each of the minors thus identified would take. This message, according to the same, was sent with the purpose of parents ordering the appropriate textbook. As a result, all the recipients of said message were aware of the ID numbers of all the students of (...) of the Institute (...), as well as the optional subjects that each of the identified minors would take for your ID.

Fundamentals of law

1. The provisions of the LPAC , and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, of Catalan Data Protection Authority . In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The accused entity has not made 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.

In the statement of objections to the initiation agreement, the accused entity has acknowledged that it sent a message to the parents of the students of (...) in order to inform them about the purchase of school material, which included a file with the ID numbers of all students.

The dissemination of the DNI number without having any legal basis of those collected in article 6.1 of the RGPD entails the violation of the principle of legality, given that according to the criterion of this Authority, the DNI number is a data personal data and its treatment - even though it has not been associated with the name or surname of the holders - remains subject to data protection regulations.

In this sense, it is necessary to take into account the definition of ' *personal data* ', contained in article 4.1) RGPD: " *all information about an identified or identifiable natural person (<<the interested party>>); an identifiable physical person will be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier such as a number, an identification number, location data, an online identifier or one or more elements of physical identity, physiological, genetic, psychological, economic, cultural or social of said person;*".

Based on the previous definition, there is no doubt that the ID number, despite being treated in isolation, allows the identification of natural persons and is, therefore, a personal date, the treatment of which remains subject to the principles and guarantees of data protection regulations.

Having said that, it should be added that in the case at hand, the dissemination of the ID numbers of the students of (...) with the purpose of informing their parents about the purchase of school supplies, was linked to more information from students, specifically, the specific optional subjects that each of them had chosen, a fact that allowed their identification more easily, even though it was not associated with the respective first and last names.

In accordance with the above, and to the extent that for the purpose of informing about the purchase of school supplies it was not necessary for the parents to access all of this information, the DNI of all the students of the course and the their optional subjects, this data processing cannot be protected by the regulations invoked by the Institute (Organic Law 2/2006, of May 3, on Education and Catalan Law 12/2009, of July 10, of Education), nor in the legal basis of article 6.1.c) of the RGPD given that it does not respond to the need to comply with the public interest mission entrusted to the Institute.

For all the above, the allegations of the denounced entity cannot succeed.

3. In relation to the fact described in the section on proven facts, relating to the principle of lawfulness of the data, it is necessary to go to article 5.1.a) RGPD, which regulates the principle of lawfulness of the data when it states that " *Personal data will be : a) treated in a lawful, fair and transparent manner in relation to the interested party (<<legality, loyalty and transparency>>)* ".

During the processing of this procedure, the fact described in the proven facts section has been duly proven. This fact is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies as such the violation of the *"basic principles of the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9"*, among which the principle of legality of treatment is contemplated (article 6).

The conduct addressed here has been included as a very serious infringement in article 72.1.b) 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:

"The processing of personal data without any of the conditions of legality of the processing established by Article 6 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 the present case, the Institute should not be required to adopt corrective measures in order to correct the effects of the infringement, since it is a *fait accompli*.

For all this, I resolve:

1. Admonish the Institute (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), 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 fourth legal basis.

2. Notify this resolution to the Institute (...).

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 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,

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