

## File identification

Resolution of sanctioning procedure no. PS 65/2022, referring to Bellver de Cerdanya Town Council

## Background

1. On 04/11/2021, the Catalan Data Protection Authority received a letter from a person (hereafter, complainant) in which he filed a complaint against Bellver de Cerdanya City Council, on the grounds of 'an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant stated that the City Council had sent him an application form for registration in the "Registre censal d'animals de companyia", which attached a series of application forms filled out with personal data of inhabitants of the municipality of Bellver de Cerdanya who were owners of a domestic animal.

The person making the complaint accompanied the written complaint with a document, in PDF format, in which it is noted that pages 1 to 3 correspond to an incomplete application form for registration in the municipal register, and the remaining 240 pages correspond to the application forms filled out with personal data of the owners and/or owners of the animals registered in said register. These registration forms contain the first and last name, ID number, postal address, telephone number and, in some cases, the date of birth of the animals' owners. Also, of all the completed registration applications, the most recent one is dated (...)/2021.

2. The Authority opened a preliminary information phase (no. IP 444/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the 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 capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 09/14/2022 the reported entity was required to report on the legal basis that would legitimize the fact that the City Council had communicated here reporting the personal data of third parties, to through the delivery of the application form for registration in the "Censal register of companion animals of the municipality of Bellver de Cerdanya", and confirm whether this document was sent only to the person making the complaint, or whether it was also transfer to other people.

4. On 07/10/2022, the City Council of Bellver de Cerdanya responded to the aforementioned request in writing in which, among other statements, it alleged that the transmission of the PDF document containing the data of the animal registration applicants of municipal company took place due to a "human error" and added that "*It was a one-off event that we had already detected, and that it has not been passed on to anyone else and that it cannot happen again, since we proceeded to block the document.*"

5. On 19/10/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Bellver de Cerdanya City Council for an infringement provided for in article 83.5.a) in relation to article 5.1.f), all of them 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 circulation of these (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 10/24/2022.

6. 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.

The deadline has passed and no objections have been submitted.

### **proven facts**

The City Council of Bellver de Cerdanya, on an undetermined date, but in any case, located between (...)/2021 and (...)/2021, sent the person here denouncing a PDF document with an application form for registration in the municipal "Censal Register of companion animals", which attached a series of application forms filled out with personal data of third parties who own the companion animals registered in said Register ( first and last name, ID number, postal address, telephone number and, in some cases, date of birth).

### **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 initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the accused entity has not made allegations in the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. In relation to the facts described in the proven facts section, relating to confidentiality, it is necessary to refer to article 5.1.f) of the RGPD, which provides that:

*"1. The personal data will be:*

*(...)*

*f) Treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal treatment and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")."*

On the other hand, Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter, LOPDGDD), establishes the following in its article 5, relating to the duty of confidentiality :

*"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 (...)"*

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.a) of the RGPD, which typifies the violation of *"the basic principles for the treatment"*, among which the principle of confidentiality is at the top.

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form:

*"The violation of the duty of confidentiality established by 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 , it becomes unnecessary to require corrective measures for the effects of the infraction given that the infringing behavior refers to a single and already consummated event , and that the reported entity has demonstrated the adoption of actions tending to avoid that an event with the same characteristics is repeated.

For all this, I resolve:

1. Warn the Bellver de Cerdanya Town Hall 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 legal basis 4rt.

2. Notify this resolution to Bellver de Cerdanya City Council.

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,