

## File identification

Resolution of sanctioning procedure no. PS 66/2022, referring to the City Council of Santa Oliva.

## Background

1. On 03/22/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Santa Oliva City Council, on the grounds of an alleged breach of the regulations on personal data protection .

Specifically, the complainant stated that the Santa Oliva City Council had published, by means of an edict of which he provided a copy, Mayor's Decree no. 202x-xxxx of date xx/xx/20xx, which initially approved the Register of vacant properties on a permanent basis in the municipality of Santa Oliva . In the dispositive part (Resolution) of this decree, the following was indicated:

*"First.- To initially approve the Registry of vacant properties with a permanent character in the municipality of Santa Oliva, which consists of the 381 properties listed below:*

(Next, there was a table that contained the 381 properties identified with the cadastral reference and the address of each one, together with the full DNI or NIF number of the people who appeared in each case as liable subjects of the Tax of Real Estate.)

*Second.- Publish the list of vacant properties on a permanent basis together with the DNI or NIF of the subjects liable for the Real Estate Tax (IBI), through collective notification edicts that will be published on the Single Edicts Board ( TEU) of the BOE, in the Official Gazette of the Province (BOPT), on the municipal electronic notice board and on the municipal website, in accordance with what is established in article 45.1 a) of Law 39/2015, of 1 d 'October, of the common administrative procedure of the public administrations, which replaces the personal notification to the interested parties, as shown in art. 58.4 of Law 26/2010, of 3 August, on the legal regime and procedure of the public administrations of Catalonia.*

*In application of the Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights, the publication does not identify the data of the first and last names of the holders, only the numbering of their DNI or NIF*

*Third.- Grant a hearing procedure to the interested parties for a period of TEN working DAYS, starting from the day after the last publication of the notification edicts to the BOE and the BOPT, so that the al· legations that they deem appropriate (...)*

*Fourth.- (...)"*

The complainant considered that the publication of this decree with the indicated data was not in accordance with the law for 3 different reasons:

- 1.1. First of all, he considered that the publication of the full number of the DNI or NIF of the persons interested, violated the principle of data minimization provided for in article 5.1.c) of Regulation (EU), 2016/679, of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data (hereafter, RGPD), as well as section 1 of the seventh additional provision (DA 7a) of Organic Law 3/2018 on Data Protection and Digital Rights Guarantee (hereinafter, LOPDGDD). And to that effect, he provided the letter issued jointly by the data protection authorities on the criteria for publishing the DNI number in the cases provided for in DA 7a of the LOPDGDD ("*Guidance for the provisional application of the Seventh Additional Provision of the LOPDGDD*") , published on the Authority's website.
- 1.2. Secondly, the complainant stated that, although the edict referred to the publication of the list of uninhabited real estate, in reality it was real estate that belonged to people not registered in the municipality of Santa Oliva, since the The City Council had not previously verified whether these properties were really uninhabited, but the list had been compiled based solely on the information contained in the Municipal Register. Therefore, he considered that the publication was not covered by Decree Law 17/2019, of December 23, on urgent measures to improve access to housing.
- 1.3. In the third and last place, he pointed out that the publication of this information posed a risk to his properties, since they could be occupied illegally, or be subject to theft, etc., due to the fact that in the aforementioned list there are also the address of the properties was listed.

2. The Authority opened a preliminary information phase (no. IP 118/2021), 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. On 03/30/2021, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, among other actions, the Tablón was accessed Único Edictal (TUE) and it was found that the announcement with the aforementioned edict was published in supplement no. xx of the Official State Gazette (BOE) dated xx/xx/20xx.

On 06/09/2022 the Authority's Inspection Area made new checks on the publication of the aforementioned decree, and found that the announcement with the controversial edict had been published in the Official Gazette of the Province of Tarragona (BOPT) on date xx/xx/20xx, and which was no longer listed as accessible in the TUE.

In both actions, it was not possible to verify the publication of the edict on the municipal website. From the result obtained, separate proceedings of record were taken.

4. On 06/10/2022 , the City Council of Santa Oliva was required to report on several issues related to the events reported.

5. On 27/06/2022, the City Council of Santa Oliva responded to the aforementioned request through a letter in which it set out, among others and in summary, the following (the redaction is ours):

- *"The City Council published the aforementioned edict notification in the BOE's Single Edicts Board (TEU), the Official Bulletin of the Province (BOPT), the municipal electronic edicts board and the municipal website, replacing the personal notification to the interested parties of which he did not know the data necessary for the notification, and because it is a plurality of recipients, as can be seen from the fourth point of the report issued by the municipal technical services signed on date xx.xx.20xx, the which is attached to the Annex of this report.*

*The legal authorization for the edict publication is found in article 45.1 section a) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPACAP) (...).*

*Nevertheless, the City Council notified interested parties who knew the minimum data necessary for the practice of paper or electronic notification, in accordance with what is established in 41 and 42 of Law 39/2015, of 1 October, of the common administrative procedure of public administrations (LPACAP).*

*The publication date of the edict published on the municipal edicts board was from xx.xx.20xx, to xx.xx.20xx (see Annex 2 and 3 of this report).*

*The date of publication of the edict on the BOE's Single Board of Edicts was Thursday x of xxx of 20xx (see Annex 4 of this report).*

*The date of publication of the edict in the Official Gazette of the Province of Tarragona was x of xxx of 20xx (see Annex 5 of this report)."*

- *" The publications carried out were carried out for the sole purpose of guaranteeing notification to the recipients, through collective notification edicts, in accordance with what is established in article 45.1 a) of Law 39/2015 (...), as it follows from art. 58.4 of Law 26/2010, of 3 August, on the legal regime and procedure of the public administrations of Catalonia .*

*In no case were the edict notifications meant for all the residents of Santa Oliva to know the list of affected properties, as mentioned in the complaint, as this is a misrepresentation.*

*In the present case, and in accordance with the Opinion issued by the APDCAT number 4/2019 dated 05.03.2019, in the case in which the publication is carried out as a substitute or complementary means of the individual notification, it was indispensable and necessary to inform the cadastral reference numbers and addresses subject to resolution, as it concerns the preparation of the register of unoccupied properties in the municipality."*

- *"The reasons why in the published edict the complete ID or NIF number of the persons subject to the tax was included next to the cadastral reference and the address of each property, are in compliance with the section 1 second paragraph of Additional Provision 7a of Organic Law 3/2018 (...)"*

- *"The criteria used to compile the list of permanently vacant properties have been strictly those assessed in the municipal ordinance, specifically those established in article 7.5 of Fiscal Ordinance number 1 regulating real estate tax, which establishes what is transcribed literally: "In any case, the city council can base its decision on data from the municipal population register or on reports from the municipal technical services." Effectively, the information prepared and published in the collective notification edicts has been the result of first selecting the persons subject to the IBI, and then among them, the immovable property that was not included no resident registered on December 31, 2020 (to consider the property unoccupied). Also, in the final resolution of the file, the report issued by the concessionary company for the supply of drinking water CASSA was considered, in accordance with what is determined by article 41 of Law 18/2007, of December 28, in order to verify the data provided by the interested parties in their allegations and in order to detect uses and anomalous situations of the homes (...) In summary, the municipal regulations are based on the registration and the minimum consumption of potable water within the annual period (quarterly data), for the justification of the housing vacancy."*

The reported entity attached the following documentation:

- As ANNEX 1, a report issued by the municipal technical services dated xx/xx/20xx, for the preparation of the municipal register of permanently vacant properties, for the purposes of applying the IBI surcharge. In the 4th antecedent, the following is indicated:

*"Fourth.- As a result of the list of unoccupied properties there are several tax objects for which essential data for the practice of notification are unknown, such as ignorance of the current owners to be pending acceptance of inheritance, lack of the DNI of the holders, lack of the address for notification purposes, to find themselves in different legal-administrative situations pending regularization, of the following properties:*

(Below, there is a list of 35 people who identify themselves with the NIF number, of which, in the case of 29 people, it is indicated that: "There is no personal *data to notify*"; in the case of 4 people, that "cadastral property (heirs) needs to be updated"; in the case of 1 person, that: " - (...): *Tax object under investigation.- (...)*"; in the case of another person, that: "Several owners")

*" Given that this administration does not know necessary data on some tax objects, for the purposes of correct notification, in accordance with what is established in article 45.1 a) of Law 39/2015, of October 1 (...), as follows from art. 58.4 of Law 26/2010, of August 3 (...) it will be necessary to publish the resolution in edicts of collective notification that will be published in the Single Edicts Board (TEU) of the BOE, in the Official Gazette of the Province (BOPT), on the municipal electronic notice board and on the municipal website, which replaces personal notification to the interested parties. In application of the Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights, the publication will not identify the data of the first and last names of the holders, only the numbering of their DNI or NIF ."*

- As APPENDIX 2, the edict published on the municipal edicts board, dated xx/xx/20xx.

- As APPENDIX 3, a document signed on 03/16/20xx by the entity AULOCE, SA ( ePublico manages) *entitled "Certificate of publication on the municipal electronic notice board"* , in which it is indicated that "the Santa Oliva City Council has an electronic headquarters with the " esPublico Gestiona" platform accessible via the Internet on the website <https://santaoliva.eadministracio.cat>, and which has a notice desk space"; that *"on 26/02/20xx the notice board published the "initial approval edict for municipal registration of vacant properties in Santa Oliva"* .
- As APPENDIX 4, the Edict published in the TUE of the BOE no. xx dated xx/xx/20xx.
- As ANNEX 5, the Edict published in the BOPT dated xx/xx/20xx.
- As APPENDIX 6, article 7 of Fiscal Ordinance number 1 regulating real estate tax is reproduced, entitled *"Surcharge for permanently vacant properties"* , in point 5 of which the following is indicated:

*"5. In any case, the declaration of unoccupied residential real estate permanently by the City Council will conform to this procedure:*

*a) The procedure will be initiated through a resolution stating the indications of unemployment, which will be notified to the taxable person. Anyway, the city council can base its decision on data from the population register municipal or in reports from the municipal technical services (...)"*

**6.** On 05/10/2022, the complainant stated, in response to a request for information from the Authority, that the City Council of Santa Oliva published the aforementioned decree in the spaces indicated and with his personal data, without that he had previously notified him individually or had tried to notify him without success . From which diligence of constancy arose.

**7.** On 03/11/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Santa Oliva City Council for an alleged violation provided for in article 83.5 a), in relation to article 5.1 . a), both of the RGPD. This initiation agreement was notified to Santa Oliva City Council on 08/11/2022.

**8.** In the initiation agreement also explained the reasons why, in accordance with the data protection regulations -which is the one that corresponds to apply to this Authority-, it was not necessary to carry out any imputation with regard to the reported il- lawfulness of the criteria used by the City Council to compile the list of real estate that was published, nor about the possible infringement of other rights.

**9.** In the initiation agreement, notified as stated on 8/11/2022, the City Council of Santa Oliva was granted a period of 10 working days to formulate allegations and propose the practice of the evidence that it considers appropriate to defend its interests. This deadline has been exceeded and no objections have been made.

**10.** On 12/19/2022, the instructor of the procedure made a series of checks via the Internet regarding access to the advertisements published in the BOE and the BOPT that contained the controversial edict. Regarding the announcement published on xx/xx/20xx in the BOE, he found that it could only be accessed by entering the corresponding Electronic Verification

Code (CVE) into his search engine. And regarding the announcement published in the BOPT on xx/xx/20xx, it was found that it could be accessed, without the need to enter any code. From the result obtained, the corresponding due diligence was carried out.

### **proven facts**

The City Council of Santa Oliva published in supplement no. xx of the BOE of date xx/xx/20xx, in the BOPT of date xx / xx /20xx , and on the edict board of its electronic headquarters on date xx/xx/20xx, an announcement of an edict through which Mayor's Decree no . 20xx-xxxx of date xx/xx/20 xx, which initially approved the Register of vacant properties with a permanent character in the municipality of Santa Oliva.

In point *One* of the dispositive part of the aforementioned Decree, there was a table containing about 381 properties identified with the cadastral reference and the address of each of these, together with the DNI or NIF number of the people who appeared in each case as liable subjects of the Real Estate Tax (IBI).

The advertisement with the indicated personal data would have been published: in the BOE until xx/xx/2021, after which it can only be accessed with the verification code of the advertisement; in the electronic headquarters of the City Council until xx/xx/2021, and in the BOPT it remains accessible on the date of signature of this resolution.

It is not known that, prior to said publications, the City Council had tried to individually notify all interested persons, specifically the complainant, and that these attempts at personal notification had been unsuccessful.

On the other hand, the publication in the newspapers and the municipal website indicated with the exact address of the property or real estate together with the cadastral reference, in addition to the no. of DNI of the corresponding IBI taxpayers, results in excessive information in relation to the purpose of notification pursued by the City Council.

### **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 Santa Oliva City Council has not made any objections to the initiation agreement. This agreement contained a precise statement on the imputed liability.

3. Legal qualification of the proven facts.

In accordance with the considerations set out below, the facts imputed, and now proven, constitute a violation, on the one hand, of the principle of legality - for the publication of

personal data without legal authorization -, and on the other side, the principle of data minimization - for having published excessive data-. However, and as already stated in the initiation agreement, a single infringement is charged, for breaching the principle of legality, given that the infringement referring to the breach of the principle of minimization is subsumed in the first one.

### 3.1. In relation to the violation of the principle of legality.

Article 5.1.a) of the RGPD regulates the principle of lawfulness of data and determines that: "*personal data will be: a) treated in a lawful, fair and transparent manner in relation to the interested party (<<lawfulness, loyalty and transparency>>).*"

The RGPD establishes a system for legitimizing the processing of data which is based on the need for one of the legal bases established in its article 6.1.

In this regard, the City Council has stated that it published the decree in the places indicated in order to notify the people interested, in application of the cases provided for in article 45.1.a) LPAC and the article 58.4 LRJPCAT, and therefore in reference to the legal basis provided for in article 6.1.e) of the RGPD. However, given the concurrent circumstances, these precepts issued by the City Council do not protect the aforementioned publications, and this for the following reasons:

First of all, article 45.1.a) LPAC provides for the publication "*when the act is addressed to an undetermined plurality of people or when the Administration considers that the notification made to a single interested party is insufficient to guarantee notification to all , and in the latter case it is additional to the one made individually*", and none of these assumptions, in accordance with the antecedents presented, is applicable to the present case, because despite the act affecting a plurality of recipients, as in legatee the City Council, this plurality of people was not indeterminate .

Regarding the general assumption contained in article 45.1 LPAC, in which it is foreseen that administrative acts will be published "*(...) when advised by reasons of public interest appreciated by the competent body*", it should be noted at the outset, that this precept refers only to the publication made in the "*corresponding official newspaper, according to which is the Administration from which the act to be notified proceeds*" (art. 45.3 LPAC), that in this case -given that the act to be notified came from the City Council of Santa Oliva - it would only be the publication made in the BOPT, and therefore it would not protect the publication for the purposes of notification to the BOE or the municipal electronic headquarters.

In any case, there are no public interest reasons - nor has the City Council invoked - that would enable the publication of the mayor's decree in the BOPT. And if it were so, it should be taken into account that article 46 of the LPAC establishes that "*if the competent body appreciates that the notification by means of announcements or the publication of an act infringes rights or legitimate interests, it has to limit to publishing in the corresponding official newspaper a succinct indication of the content of the act and the place where the interested parties can appear, within the period established, to learn the full content of the aforementioned act and to record this knowledge*".

That is to say, in order to assess the lawfulness of the publication of an act, apart from the concurrence of a case provided for in article 45 LPAC, it is also necessary to take into account the limitation provided for in article 46 LPAC, and in in this case this limitation would

be given by the application of the principle of data minimization provided for in article 5.1.c ) of the RGPD. Since the violation of this principle is addressed in the following section (3.1.2), we refer to the considerations made there.

That being the case, the publication made in the BOE would only proceed in the cases provided for in article 44 LPAC, that is to say: "*When those interested in a procedure are unknown, the place of notification is ignored or, once this has been tried, it has not been possible to practice.*"

In the same terms, article 58.4 LRJPCAT, to which the City Council also referred, provides for the publication of the acts in the electronic headquarters and in the corresponding official newspaper or bulletin (in lieu of individual notification) among other cases : "*a) when notification must be made by means of announcements on the notice board of the town hall of the last address in cases where the persons interested in a procedure are unknown, the medium or the place of the notification and this could not be carried out, although it has been tried*".

The aforementioned cases of legal qualification do not apply in all interested persons nor do they generally prevent the publication of their data, especially taking into account that the City Council was aware of an address where to attempt the practice of notification, such as the address of the property recorded by the IBI, and chose, right from the start, to publish the decree in the aforementioned newspapers and electronic headquarters with the data of all interested persons.

In accordance with the above, the City Council published the aforementioned acts without the concurrence of any of the legal bases provided for in article 6.1 of the RGPD that determine the legality of a treatment.

These facts, which were imputed in the initiation agreement, are considered proven taking into account that in the previous phase the Authority verified the publication of the mayoral decree mentioned in the official newspapers and the municipal website indicated; that the City Council recognized its publication in these newspapers and website; and that before the initiation agreement - in which specific facts were imputed - the City Council has not made any allegations that distort its veracity.

These proven facts are constitutive of the violation provided for by article 83.5.a) of the RGPD, which typifies as such the violation of the "*basic principles for treatment, including the conditions for consent to the tenor of articles 5, 6, 7 and 9*", which include, as noted, the principle of legality (art. 5.1.a RGPD).

This infringement is classified as very serious 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."*

3.2. In relation to the violation of the principle of data minimization.



Article 5.1.c) of the RGPD regulates the principle of data minimization and determines that: "*the data will be : (...) adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated ("minimization of data") ;*

The publication in the indicated newspapers and the municipal website of the exact address of the property or real estate together with the cadastral reference, in addition to the no. of DNI of the corresponding IBI taxpayers, it is also an excessive amount of information in relation to the purpose of notification pursued by the City Council, because for this purpose it was sufficient that the published announcement was limited to pointing out that there was a notification in relation to a file related to the Registry of permanently vacant properties of the municipality of Santa Oliva, identifying the affected persons with their no. of DNI - in the cases in which the publication proceeded -, without including any other data.

However, and starting from the premise that in the present procedure it has not been proven that the City Council had attempted to notify the individuals concerned individually of the act prior to the publications made - these publications being consequently illegal - , the infringement for violation of the principle of minimization is subsumed in the infringement consisting of the violation of the principle of legality, in the terms set out in the previous section 3.1.

**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."*

With regard to the adoption of corrective measures, it should be borne in mind that on 19/10/2022 the Authority found, in relation to the announcement published in the BOE, that it was only accessed through the verification in your Electronic Verification Code (CVE) finder. Regarding the publication of the announcement on the notice board of the electronic headquarters of the City Council, on 03/30/2021 and on 06/09/2022 the Authority found that it no longer appeared there , and the City Council itself stated that it unpublished it on xx/xx/2021. That is why the requirement for measures should be limited to the publication made in the BOPT on date xx/xx/20xx.

OK with the above , the City Council of Santa Oliva should be required to ask the Provincial Council of Tarragona as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of this resolution the adoption of appropriate technical measures in order to limit access to the announcement published in the BOPT, through the different types of electronic searches. Once the corrective measure described has been adopted, within the specified period, the Santa Oliva City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to make the corresponding checks.

Equally, when the Provincial Council of Tarragona has made effective the limitation of access to the controversial advertisement, within the maximum period of the following 5 days the City Council of Santa Oliva must communicate this to the Authority.

For all this, I resolve:

1. Warn the City Council of Santa Oliva as responsible for an infringement provided for in article 83.5 a) in relation to article art. 5.1.a) , both of the RGPD.
2. To require the City Council of Santa Oliva to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out to comply with them.
3. Notify this resolution to the City Council of Santa Oliva .
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 City Council of Santa Oliva can file, with discretion, an appeal for reinstatement before the director of the Catalan Authority of Data Protection, 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 City Council of Santa Oliva expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended under the terms provided for in article 90.3 of the LPAC.

Likewise, the City Council of Santa Oliva can file any other appeal it deems appropriate to defend its interests.

The director,