

File identification

Resolution of sanctioning procedure no. PS 69/2022, referring to Gavà City Council

Background

1. On 31/08/2021, the Catalan Data Protection Authority received a letter from a person filing a complaint against Gavà City Council, on the grounds of an alleged breach of data protection regulations of personal data .

Specifically, the complainant, a local police officer, stated that on (...) /2021 he sent an email to (...) the municipal police and (...), with a copy to three more agents from within the organization ((...) in which he requested a modification of the " *morning service documents* ". In this regard, the complainant complained that said email in its entirety (with the literal text, its e-mail as emissary and that of the people to whom it was addressed) was saved in pdf format and with the title " (...) ", to an application to which " *todos los* " have access *membres del colectivo desde cualquier ordenador* ". In the last one, he also complained that the people in charge of making said publication would be " *staff from (...) the municipal police who do not hold the category of police.* "

The reporting person provided as attached documentation, a copy of the referenced email dated (...) /2021, sent from the corporate address in which their first and last names are included, and addressed to a series of recipients with corporate addresses. The subject of said e-mail is " (...) ", and the body of the message is as follows:

*" I hereby request that the corresponding service documents for the morning shift (...) be modified and replaced by those contained in the application.
The reason for this request is that I performed beach service (...) and in the report it is listed as MINIMUM SERVICE, the same mistake also for the (...) in the afternoon shift of (...). "*

2. The Authority opened a preliminary information phase (no. IP 340/2021), 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 09/14/2022 the reported entity was required to inform, among others, whether the email dated (...) /2021 was the subject of publication, and in such a case, to report on the date and the application where said publication was made, as well as the people within the organization who would have access to this application.

4. On 09/27/2022, the City Council requested an extension of the deadline to respond to the request, a request that was accepted and the extension of the deadline was granted for another 5 days.

5. On 10/05/2022, the entity responded to the aforementioned request in writing in which, among others, it stated the following:

- That " *Since August 2019, the municipal police has been making a report of duty, by the (...) who performs shift manager duties, where he indicates various data and among these the overtime hours worked by the agents. These service reports are saved in a folder with the path (...), and from here on for years and months .* "
- That " *It has been established that (...) the agent with (...), sent a email to different recipients motivated by the fact that there was an error in the calculation of hours worked on the days (...).* "
- That " *This email was saved for the sole purpose of having the relationship of hours worked that day, and once verified with certainty what was communicated to be taken into account when informing human resources of the list of overtime hours for the payment of these .* "
- That " *The file is currently saved in the same folder with the rest of the service reports* " .
- That " *The purpose of the archive was not to publish, but to save it in one folder That is to say, it is not a place of publication in use, but rather a place where it is they keep files in case something related needs to be checked later with working days.* "
- That " *All police and administrative personnel have access to the folder* " .
- That " *there has been no violation in the matter of personal data protection, for the reason that the information obtained is necessary for the management of the payment of overtime to the police officers themselves, without any publication of this information in order to make it known to third parties outside the organization of this Local Police or to people outside the administrative staff in charge of payroll management.* "

6. On 03/11/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Gavà City Council for an alleged infringement provided for in article 83.5.a), in relation to 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). This initiation agreement was notified to the imputed entity on 08/11/2022.

7. 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.

8. On 11/22/2022, the City Council requested an extension of the 10-day period granted to present allegations, which the Authority granted, by 5 more days.

9. On 30/11/2022, the City Council made objections to the initiation agreement.

10 . On 06/03/2023, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the Gavà City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), all of them of the RGPD.

This resolution proposal was notified on 06/03/2023 and a period of 10 days was granted to formulate allegations.

11. On 03/15/2023 , the accused entity submitted a statement of objections to the resolution proposal.

proven facts

Gavà City Council, on an undetermined date, but, in any case, located between (...)2021, saved in the computer application where they archive the service reports of the municipal police officers, the image of the e-mail message that the complainant sent to different recipients within the police organization (5), where he explained that there was an error in the calculation of hours for one of the services he had provided days before.

All the police and administrative staff of the Local Police had access to this computer application, in which said email had been saved.

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 made allegations both in the initiation agreement and in the resolution proposal. The first ones were already analyzed in the proposed resolution, but even so it is considered appropriate to mention them here, given that they are partly reproduced in the second ones.

The entity's allegations defend the legitimacy of the City Council to be able to save the image of the email referred to in the proven facts section, in a computer application that could be accessed by all the police and administrative staff of the Local police.

In this respect, with a preliminary character, taking into account that part of the allegations made refer to the fact that the controversial email did not contain personal data of the person making the complaint, it should be noted that, the RGPD defines as personal data " *any information about an identified or identifiable natural person ("the interested party"); any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, will be considered an identifiable natural person, (...)*" (art. 4.1 RGPD).

That being the case, it is unquestionable that the controversial email fits within the concept of personal data established in the RGPD, therefore, it contains information about the complainant: from the fact that he has submitted a request to rectify his work shift and that of

a colleague (" *el (...)* "), like the same information, contained in the text of the email itself, about the work shifts carried out.

On the other hand, the City Council also states that the controversial email was not published anywhere, but that "*it was only filed in the corresponding folder of the organization and management of the municipal police service*", and that its access is for "*all police and administrative personnel*", however, limited to the rest of the public employees of Gavà City Council.

Well, in this regard, it should be noted that neither in the description of the facts that motivated the initiation of the present sanctioning procedure, nor in that contained in the proven facts section of the proposed resolution and of this resolution, that are those that are taken into account when classifying and qualifying the offence, no publication is referred to. The facts proven here refer, as the entity itself acknowledges in its allegations, to the fact that the entity saved the image of the controversial email with certain personal information of the complainant, in an electronic folder located in a computer application, which at that time was accessible to all local police officers and police administrative staff.

In this sense, it should be noted that it is not questioned here whether the computer application used to manage the information relating to the shifts of the services carried out by the local police, where the image of the email was saved, was the appropriate one to save the image in question due to the matter on which the referenced e-mail dealt, but that it was accessible to all administrative staff and all local police officers, so that all of them could access the personal data contained therein, without the prior consent of the affected person, nor the concurrence of any other of the qualifications provided for in article 6 of the RGPD.

Nor can the allegation that for the simple fact that the reporting person sent the e-mail to different recipients, among them to a corporate address related to "(...) the Municipal Police", managed by employees of the administrative body, succeed, it can be inferred that the reporting person did not grant the nature of confidentiality to the referenced email, and based on this, legitimize the treatment that the entity then carried out. In other words, the fact that the complainant sent the e-mail to different recipients, who in his judgment considered that they should be aware of his request for the rectification of certain work shifts, is not a action that in itself is sufficient to enable the entity to give access to the information collected there to all the administrative staff and to local police officers, nor can it be inferred from this that the reporting person consented to such treatment of your personal data.

Lastly, the City Council informs that it has adopted the corrective measure to correct the effects of the violation proposed in the proposed resolution. In this regard, it provides a report from (...) of the municipal police, in which it is indicated that it has already removed the image of the email message from the electronic folder of the referenced computer application, and has limited its access only to those people who would be legitimate to access it in the exercise of their professional duties.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.a) of the RGPD, which provides that personal data must be treated "*in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency")*."

In this sense, the RGPD provides that all processing of personal data must be lawful (Article 5.1.a.) and, in relation to this, establishes a system for legitimizing the processing of data which is based on the need for it to any of the legal bases established in its article 6.1.

In this regard, it should be noted that, the fact of saving the image of the email sent by the complainant, where he exposed the existence of an error in the calculation of the hours of one of the services performed days before, to an application of the Local Police computer system to which all staff have access, would not be covered by any of the authorizations provided for in article 6 of the RGPD.

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of "*the principles basics for treatment (...)*".

The conduct that is addressed here has been collected as a very serious infringement in article 72.1.a) of the LOPDGDD, in the following form: "*The treatment of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679* ", in relation to the principle of legality established in article 5.1.a) of the same RGPD.

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, however, security measures should not be required to correct the effects of the alleged infringement, given that the entity has already stated that it has removed the image of the email message from the electronic folder of the IT application . and that it has limited its access to people who would be legitimate to access it in the exercise of their professional duties.

For all this, I resolve:

1. Admonish Gavà City Council 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 legal basis 4rt.

2. Notify this resolution to Gavà 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,