

## File identification

Resolution of sanctioning procedure no. PS 70/2022, referring to the Catalan Court of Public Sector Contracts of the Department of Economy and Finance.

## Background

1. On 04/19/2022, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Catalan Public Sector Contracts Tribunal (hereinafter, TCCSP), on the grounds of an alleged breach of the regulations on personal data protection .

The complainant stated the following:

- That the company he represents ((...)) submitted an appeal against an agreement of the contracting board in a tender procedure processed by the Department of the Vice-Presidency and Digital Policies and Territory (file (...)).
- That the TCCSP sent certain documentation to all the other tenderers, documentation that included their personal data completely irrelevant for the processing of the appeal (such as their ID, mobile phone, their personal address), which it considered contravened the data protection regulations.

In order to substantiate the facts reported, together with the complaint, various documentation was provided, of which it is worth noting:

- a) Copy of the email that the company (...) (company that also bid in the reference procurement procedure) had sent on 04/07/2021 to the company represented by the complainant here ((...)) in which he was warned that the TCCSP had sent him an email with attached documentation containing his personal data (those of the complainant here). Attached to this email, (...) in turn forwarded the email that the TCCSP had sent to this company - on the same day 04/07/2021 - in which it informed it of the filing of an appeal by the company (...) in the framework of the tender indicated above, and with which five documents were attached, of which two stand out, called 'Accusament received ' and 'RECURS (...) '.
- b) Notification of an office of the TCCSP by means of which interested tenderers were informed of the special appeal in the matter of contracting filed by (...) and it was transferred.
- c) Document ' *Acknowledgment of receipt of the request*' which certifies that the company (...) submitted to the general electronic register of the Generalitat de Catalunya an appeal against an agreement of the procurement board, within the framework of file (...) (hereinafter, DOC 1). This document contains the following fields completed with the data of the complainant here:

*' Details of the representative*

|                                  |            |
|----------------------------------|------------|
| <i>Name</i>                      | (...)      |
| <i>First surname</i>             | (...)      |
| <i>Second last name</i>          |            |
| <i>Type of identity document</i> | <i>nif</i> |

*Identification number* (...)  
*Genre* (...)  
*Date of birth* (...)

*Contact information*

*Email address* (...)  
*Mobile phone* (...)  
*Telephone*  
(...)'

d) Appeal filed by (...) against the agreement of the recruitment board, in which the first and last names and the DNI of the person making the complaint (hereinafter, DOC 2) are included.

e) Copy of the e-mail sent by the person here reporting to the TCCSP on the same day 04/07/2022, in which he asked this body for explanations of why an e-mail message with attached documentation had been sent to the other bidders what your personal data contained.

**2.** The Authority opened a preliminary information phase (no. IP 137/2022), 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 05/27/2022, the reporting person was requested to report on the following points:

- He confirmed that the documents he had provided with his complaint - DOC 1 and DOC 2 (detailed in the letters c/ id/ of the 1st precedent) - coincided with those that the TCCSP had sent to (...) on 07 /04/2021.
- That he indicate which of the documents provided and attached to the mail of 04/07/2022, addressed by the TCCSP to the company (...), contained his personal address.
- To confirm whether the mobile phone number listed in DOC 1 was a personal phone number and not a business phone number.

**4.** On 2/06/2022, the person reporting here responded to the request for information in writing by which he attached the email that on 07/04/2021 the TCCSP forwarded to (...). In his letter, the complainant reiterated that this email, with the attached documentation (among them, DOC 1 and DOC 2), had been sent, not only to the company (...), but also to the rest of the bidders. It also confirmed that the telephone number was personal and that it was irrelevant data when notifying a special resource in matters of recruitment. Regarding the end of the personal address, he did not pronounce.

**5.** On 07/22/2022, and still within the framework of this preliminary information phase, the Authority required the TCCSP to respond to the following points:

- To indicate whether the email that the TCCSP sent on 04/07/2022 to (...) in relation to the appeal filed by the company (...), was also addressed to the other bidders .
- To confirm whether the documents attached to said email are the ones sent to (...) and the other bidders. And, if so, provide a copy of each of the attached documents.
- To indicate which legal basis, of those indicated in article 6 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 data personal data and the free circulation of these (hereinafter, RGPD), justified the sending of this information; and the enabling national regulations .
- To report on the need to include the date of birth in the standardized application forms, as stated in DOC 1.

6. On 10/10/2022, the TCCSP responded to the request in writing stating the following:

- That the email of 04/07/2022 was indeed sent by the TCCSP to all companies interested in the tender, together with the attached documents, including DOC 1 and DOC 2.
- That the information was sent in compliance with the procedure provided for in Law 9/2017, of November 8, on public sector contracts (hereafter, LCSP), under which it is provided (article 56.3) that the competent body for the resolution of the appeal will transfer it to the rest of the interested parties so that they can make allegations within a period of five working days. And that this treatment is protected by article 6.1.a) RGPD.
- That DOC 1 is a standardized document available in the corporate system ' *tràmits.gencat.cat* ' which has not been designed by the Court. That the date of birth of the interested person *is necessary to include in the supporting document for the presentation of the appeal or claim (...) to the extent that there are types of contract such as special administrative, concessions and other legal business in relation to the public domain (concessions for market stalls, beach kiosks or parking lots in public spaces, etc.) that have a hereditary succession regime in their ownership that could lead to the case where the appellant is a person under the age of 'age and that he must act through his legal representative'*.
- That in a first phase of implementation of the electronic processor of special resources in matters of public procurement (TREC), the interposition of the resources was carried out through the mentioned DOC 1; but that ' *the history of appeals and claims presented before the Court has confirmed that this possible circumstance was exceptional and non-existent; for this reason, taking advantage of the launch of one of the evolutionary TREC implemented on June 1 of this year, since then, the presentation of the appeal is made before the Court's own electronic register, accessible on the website of the Court itself, and through standardized models in which this data relating to the date of birth does not appear* .
- That measures have recently been adopted to anonymize the personal data of all the Court's communications.

Along with its letter, the TCCSP provided the documentation that had been sent to all the tenderers, including the DOC 1, DOC 2 and the office in which the tenderers are informed of the filing of a special appeal in the matter of recruitment filed by (...).

7. On 3/11/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the TCCSP for an alleged infringement provided for in article 83.5.a) in relation to article 5.1 .c); both of the RGPD. This initiation agreement was notified to the imputed entity on 8/11/2022.

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 been exceeded and no objections have been submitted.

### **proven facts**

On 04/07/2021, the TCCSP, for the purposes of informing all bidders interested in the contract with file number (...) that the company (...) had filed a special appeal in the matter of recruitment, he sent them an email in which he attached various documents, including the documents called ' *Accusament received*' (DOC 1) and ' *RECURS (...)*' (DOC 2), which contained personal data of the person here reporting.

These documents were sent without anonymizing the name, surname and ID of the person reporting here, who was acting on behalf of the company (...) (in DOC 1 and 2); private telephone number and date of birth (in DOC 1), so that the rest of the tenderers knew these data which were completely irrelevant for the purpose of transferring the appeal filed by (...).

### **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. With regard to the fact described in the section on proven facts, related to the principle of minimization, it is necessary to go to article 5.1.c) RGPD, which provides that "Personal data shall be: *adequate , relevant and limited to the necessary in relation to the purposes for which they are treated (minimization of data) "*.

During the processing of the preliminary information phase, the alleged fact has been duly proven by having recognized the reported entity, which sent all the companies interested in the tender the documents 1 and 2 indicated in the section on proven facts without having anonymized the personal data of the representative of the company (...), unnecessary for the purpose of transferring the special resource in matters of recruitment in accordance with what is provided for in article 56.3 of LCSP.

This fact is constitutive of the violation provided for in article 83.5.a.) RGPD, which typifies as such the violation of " *the basic principles for the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9;* " among which is the principle of minimization.

The conduct addressed here has been included as a very serious infringement in article 72.1.a) 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 that violates the principles and guarantees established by article 5 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 TCCSP should not be required to adopt corrective measures in order to correct the effects of the infringement since it is a fait accompli. In addition, the TCCSP has reported on the adoption of measures to anonymize the personal data of all its communications.

For all this, I resolve:

1. Admonish the Catalan Court of Public Sector Contracts as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), 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 Catalan Court of Public Sector Contracts.

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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