

File identification

Resolution of sanctioning procedure no. PS 81/2022, referring to the Jaume Almera Institute of the Department of Education.

Background

1. On 09/02/2022, the Catalan Data Protection Authority received, by transfer from the AEPD, a letter from a person for which he made a complaint against the Jaume Almera Public Institute of the Department of Education (henceforth, the IES) due to an alleged breach of the regulations on the protection of personal data .

Specifically, the person making the complaint highlighted that on (...)/2022, although the correct date would be (...)/2022, the management of the IES sent an email to " *all the parents of the class (...)*" , " *with the numbers and names of all the students in the class (...)*" , " *providing information on those inoculated and not inoculated with the Covid vaccine . (...)* "

In order to prove these facts, the complainant provided the following documentation:

- Copy of the email, dated (...)/2022, signed by " *(...) from the Jaume Almera Institute*" , which according to its heading is addressed to " *families of students from (...)*" , and which includes a quadrant containing the personal data of 25 students (" *first surname*" , " *second surname*" , " *name*" , " *Covid status*" , " *immunized*" or " *not immunized*").
- Copy of the email, dated (...)/2022, signed by the person making the complaint, addressed to " *the management of the Jaume Almera Institute*" , through which he stated that the sending of said email, dated (...)/2022, which included information on " *inoculated*" and " *non-inoculated*" students , could involve a violation of the personal data protection regulations.
- Copy of the email, dated (...)/2022, through which the (...) of the educational center responds to the email sent by the complainant, dated (...)/2022, and apologizes " *(...) for the error committed in sending the information relating to the management of the group's positive covid cases (...)*" .

2. The Authority opened a preliminary information phase (no. IP 50/2022), 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 08/25/2022, the reported educational center was required to report on the legal basis that would protect the sending to all the families of (...), from the list in which reports on the vaccination status of all minors in this course and indicates the circumstances or justification that would have led to the sending of this information.

4. On 09/09/2022, the management of the educational center responded to the aforementioned request in writing in which it stated the following:

- That "(...) *The treatment of health data of the students of (...) related to the Covid 19 pandemic was carried out in the exercise of a public interest mission attributed to educational centers in accordance with the provisions of Law 12/2009, of July 10, on education (LEC) and Organic Law 2/2006, of May 3, of education (LOE) which provide that educational centers can treat the personal data of your students that are necessary for the exercise of the its educational and guidance function as well as the students' right to enjoy healthy conditions and accessibility in the educational field. This in connection with the public health and sectoral regulations applicable to the case. (...)*"
- That "*Educational centers were forced to comply with public health regulations as Law 9/2021, of March 29, on urgent prevention measures, containment and coordination to deal with the health crisis caused by Covid 19, which established the obligation for all public administrations to facilitate a the competent public health authority the necessary data even of identification for the monitoring of Covid 19. For its part, in the field educational, **decree laws 41/2020, of November 10, and 20/2021, of 14 of September, they regulated the transfer of student health data in relation to Covid 19 between the Department of Health and the centres teachers** The last of these instruments introduced the necessity of have the vaccination data that the Department of Health addressed to the directions of the centers. In compliance with these rules, the directions we had to communicate to the students' families the concrete measures of confinement: who had to quarantine and who didn't within each of the groups coexistence stables that were predetermined where one had been detected positive case in order to carry out epidemiological control and contain possible outbreaks and contagions due to Covid 19 in educational centers. (...)*"
- That, in relation to the sending of the email, dated (...)/2022, "(...) *The managements of educational centers had to inform all the families of students from a close contact group (GCE), i.e. from one group-class, of the occurrence of a positive case of COVID in the group, based on us in the information we received from the person referring to COVID (RECO) assigned by the Department of Health to our center. Of the same way, we also had to inform the students what they had to do confinement and of students who did not have to do confinement, depending on their immune status. In addition, we also had to communicate to families of the place and the time their child had to go to take the test corresponding The beginning of the second quarter of the 2021-2022 academic year (January 10, 2022) it was the time of maximum explosion of COVID cases in schools and institutes Specifically, in the afternoon of (...) the RECO of (...) informed me by email of 6 positive cases of COVID, with their corresponding 6 CGE and the communications derived from the confinements and no confinements and the places, hours and minutes of the corresponding tests. Overall, a total of 146 students and families affected. In non-working hours (as can be seen in the emails presented by the accusation) and with urgency because the completion of the tests was for the next day early in the morning, I had to do all the notifications derived from these cases. In the treatment of the group (...) I made the mistake of forwarding the email received from the RECO, which also contained recommendations for the confinement of Minors. The urgency and the excess of work and responsibility got to me make this mistake. (...)*"

In response to the request, the management of the educational center also highlighted that, on (...)/2022, the (...) of the center "communicated with all the families of the group to apologize for the my mistake " and " understanding in a situation of so much responsibility and too much work (...)" . In the same letter of response, the management of the educational

center stated that, after that date, a similar incident had not been repeated and that the management team decided to hold a training course on the processing of personal data.

5. On 10/27/2022, still within the framework of this preliminary information phase, the Authority sent a letter to the reporting person in order to inform him whether, in relation to the facts reported, he had filed a legal claim, as was apparent from the email, dated (...) /2022, addressed to the management of the Jaume Almera Institute, in which the same complainant stated that "we are under the moral and legal obligation to *put me in touch with the relevant guardian court (...)*".

6. On 10/30/2022, the complainant responded to said office, dated 10/27/2022, and reported the following: " *I reserve the relevant legal action pending the outcome of the actions of your organization (...)*".

7. On 09/11/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Jaume Almera Institute of the Department of Education for an infringement provided for in article 83.5.a) in relation to article 5.1.f), both 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 11/11/2022.

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 passed and no objections have been submitted.

proven facts

The management of IES Jaume Almera, on (...) /2022, sent an email to all the families of the group (...), which included the list of the group's students, minors of age, -identified with first and last name-, where it was detailed whether they were " *immunized*" or " *not immunized*". In this way, the IES revealed to the recipients of the email, the students' personal data, from which it could be inferred which students were vaccinated or not, and which students had previously passed the disease, that is, data of health

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 the disclosure of health data of minors , 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 (hereinafter, LOPDGDD), in relation to the duty of confidentiality, establishes the following in its article 5.1 : *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"*

Likewise, it is necessary to cite article 13 of the LPAC, which lists a catalog of people's rights in their relations with public administrations, in which the right "To the protection of *personal data, and in particular the security and confidentiality of the data contained in the files, systems and applications of public administrations"*.

In the present case, given the information that was revealed with the sending of the email dated (...)/2022, it should be noted that article 9 of the RGPD grants the special category of personal data to data relating to people's health.

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 as such the violation of the *"basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9" including the principle of confidentiality (art. 5.1.f RGPD).*

The conduct addressed here has been included as a very serious infringement in article 72.1.i) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter , LOPDGDD), in the following form:

"i) The violation of the duty of confidentiality established in 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 is considered unnecessary to propose corrective measures, as this is a one-time event that has already been accomplished, and taking into account that the management of the educational center has made it clear that, following the said incident, the management team of the educational center decided to receive training on data processing to prevent a repeat of an event of the same characteristics.

For all this, I resolve:

1. Admonish the Jaume Almera Institute of the Department of Education as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), both of the RGPD.
2. 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.
3. Notify this resolution to the Jaume Almera Institute of the Department of Education.
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 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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