

## File identification

Resolution of sanctioning procedure no. PS 82/2022, referring to the Sant Martí de Centelles Town Council.

## Background

1. On 06/09/2022, the Catalan Data Protection Authority received, by transfer from the Spanish Data Protection Agency (AEPD), a letter from a person (hereinafter, complainant) for which he filed a complaint against the Sant Martí de Centelles City Council, on the grounds of an alleged breach of the regulations on the protection of personal data .

Specifically, the person making the complaint pointed out that when he did a *Google search* by entering his first and last name, he obtained a link (indicated in his complaint) that referred to the minutes of the Extraordinary General Meeting of the City Council, dated ( ...), which contained their personal data (name, surname and full ID number). In order to prove these facts, the reporting person provided a copy of said report and screen prints in relation to the search results on the *Google search engine*.

2. The Authority opened a preliminary information phase (no. IP 307/2022), 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. On 09/16/2022, as part of this preliminary information phase, the Authority's Inspection Area did a Google search , entering the name and surname of the person making the complaint. Thus, a link was obtained that referred to the minutes of the Extraordinary Plenary Meeting of the Sant Martí de Centelles City Council, of (...), corresponding to the public draw that had the purpose of appointing the president, members and alternates of a polling station. The report contained personal data of the complainant and other members of the electoral board. A total of nine people were identified with their first and last name, full ID and voter number. (...)

4. On 09/16/2022, in this preliminary information phase, the reported entity was required to, among other things, indicate the legal basis that in its opinion would justify the open publication of the minutes of the Extraordinary General Meeting, of (...), with the personal details (name, surname, full ID and voter number) of the person making the complaint, and of the other members who were part of the polling station. As well as the reasons that would justify the need to keep it published in the open, taking into account that the minutes correspond to the election of the members of the electoral board of (...).

5. On 10/19/2022, within this phase of prior information and exceeding the 10-day period granted to respond to the first request, the Authority sent a second letter so that within the maximum period of 5 days provided the requested information.

Well, the deadline granted to attend to the Authority's requirements was exceeded, without having received a response.

6. On 10/31/2022, also in the preliminary information phase, the Inspection Area of this Authority made further checks, via the internet, on the facts subject to the complaint and the corresponding evidence was collected.

Specifically, first of all, he accessed the website of the Sant Martí de Centelles Town Hall <https://www.santmarticentelles.cat/> and then the section Town Hall - Electronic Headquarters>Transparency>Proceedings of Full up. Thus, he found that the minutes of the extraordinary plenary session, of (...), were not published in the said section of the website. Then, he did a search on the City Council's website by entering the title "Extraordinary meeting of (...) of (...)" and it was found that said minutes of (...) are not published there. Finally, he did a search on the City Council's website, entering the name and surname of the person making the complaint, and did not obtain any results in this regard.

Secondly, he did a new search through *Google*, entering the name and surname of the person making the complaint and found that the link to seu-e.cat still referred to the minutes of the Extraordinary General Meeting of the City Council of Sant Martí de Centelles, of (...), which contained personal data (name, surname, full ID and voter number) of the complainant and other members of the polling station of (...).  
(...)

7. On 09/11/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Sant Martí de Centelles City Council for an infringement provided for in article 83.5.a) in relation with article 5.1.c) and article 5.1.e), 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 by it concerns the processing of personal data and the free movement thereof (hereafter, 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 Sant Martí de Centelles City Council published the minutes of the Extraordinary General Meeting of the City Council, dated (...), with personal details (name, surname, full ID and voter number) of the person making the complaint here and other persons designated to be part of the corresponding electoral board.

On 31/10/2022 it has been verified that this record, with personal data, continues to be accessible, through the *Google search engine* at seu-e.cat.

### **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 open publication of personal data, it is necessary to refer to article 5 of the RGPD. This precept refers to the principles relating to treatment, and section 1, letters c) and e), provides for the following:

" 1. *The personal data will be:*

(...)

c) *adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ("data minimization")*

d) (...)

e) *maintained in a way that allows the identification of the interested parties for no more time than is necessary for the purposes of the treatment of personal data; personal data may be kept for longer periods as long as they are treated exclusively for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, without prejudice to the application of the measures appropriate technical and organizational techniques that this Regulation imposes in order to protect the rights and freedoms of the interested party ("limitation of the conservation period");*

Well, as was done in accordance with the agreement to initiate this procedure, the publication of the minutes of the Extraordinary General Meeting of the Sant Martí de Centelles City Council, of (...), is considered a data processing that violates the principles established in article 5 of the RGPD. Thus, the publication of all the personal data (names, surnames, full ID and voter number) of the people designated to be part of the corresponding electoral board, would be clearly excessive, as well as the time in which the acta remains accessible on the internet, many years after its issuance, so that it would have remained published for a period much longer than necessary for the fulfillment of its purposes.

During the processing of this procedure, the facts described in the proven facts section have been duly proven, which are constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of "*the principles basic for the treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9*", which include the principle of minimization (art. 5.1.c RGPD) and the principle of limiting the retention period (art. 5.1.e RGPD).

The conduct addressed here has been included as a very serious infringement in article 72.1 paragraphs 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:

*"a) 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 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".*

It should be pointed out that although the minutes of the Extraordinary Plenary Meeting of the Sant Martí de Centelles City Council, of (...), are not currently published on the City Council's website, they are still accessible through the search engine 'internet Google which refers to the link of seu-e.cat linked to the platform of the Consortium of the Open Administration of Catalonia (AOC). ( ...).

In this respect, the City Council is responsible for the processing of the data included in said minutes, given that it is the entity that decides the publication of said minutes and also about the data that must be included (art. 4.7 RGPD) , and therefore, it is the responsibility of the AOC to ensure that the information that has been published through the platform is updated. As things stand, it is necessary to require the Sant Martí de Centelles City Council to carry out the necessary actions so that the minutes of the Extraordinary Plenary Session of the Sant Martí de Centelles Town Council, of (...), cease to be accessible, through the *Google search engine* that refers to the referenced link of the e-mail address. cat.

Once the corrective measure described has been adopted, within the specified period, the Sant Martí de Centelles City Council must inform the Authority within the following 10 days, without prejudice to the authority's inspection powers to make the corresponding checks.

For all this, I resolve:

- 1.** Admonish the Sant Martí de Centelles City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c) and 5.1.e), all of them of the RGPD.
- 2.** To require the Sant Martí de Centelles City Council to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions taken to comply with them.
- 3.** Notify this resolution to the Sant Martí de Centelles Town Council.

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](http://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,