

In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 84/2022, referring to the City Council of (...).

Background

1. On 02/07/2021, the Catalan Data Protection Authority received a letter from a person (an officer of the Municipal Police of (...)) for which he filed a complaint against the City Council of (...), due to an alleged breach of the regulations on the protection of personal data . Specifically, the person reporting stated that on 03/23/2021 he became aware that the Municipal Police officer of (...) with TIP (...) sent an email (via the corporate email address) addressed to the chief inspector of the Municipal Police, the Department of Human Resources and the Department of Safety and Health of the City Council, in which he indicated the specific reason for his medical leave, information that he should not have access the sender, according to the reporting person.

The complainant added that the same agent also sent, on 03/19/2021, an email to the general secretary of the Union of Local Police and Police Force (hereinafter, SPL-CME), through the which revealed their health data. In turn, the complainant indicated that the general secretary of the aforementioned union informed him that the said agent had also sent another email to the members of the board of directors of the same union, which also included health data relating to his person .

On the other hand, the complainant inferred that his health data (the reason for the medical leave) could have been provided to the Harassment Commission of the City Council to which he went as a witness. Also, the person reporting certified that, by means of a letter dated 07/05/2021, the head of Human Resources of the City Council of (...) confirmed that the TIP agent (...) had communicated to the entity information relating to his personal data, given that in said letter he informed him that " *the only documentation* " where the agent with TIP (...) referred to the person claiming " *explicitly* " was the collection in the following terms:

"In this sense i have conocimiento por parte usted that the agent with TIP number. (...) suffering some same actions and behaviors similar ones on their part agents [to those] that I want to put formal complaint and [to] those I refer to in this message electronic _ This harassment and pressure by some _ _ agents that I do I mention led to the dismissal of the agent (...) due to depression or anxiety (confidential information that I have) knowledge for being administratively responsible for receiving discharges and [to] that the agent (...) [sent] by mistake the personal part of the patient 's medical document and not the company's)."

The reporting person provided various documentation about the events reported.

2. The Authority opened a preliminary information phase (no. IP 272/2021), 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 22/07/2021, the reported entity was required to report in relation to the reported events .
4. On 08/17/2021, the City Council of (...) responded to the aforementioned request through a letter in which it basically set out the following:
 - That the human resources department made checks to find out whether employees of the department had received (via e-mail or phone call) information relating to the medical data of a police officer, or whether the 'police officer with TIP (...) revealed some information about the officer with TIP (...), but no information was found about it.
 - That these same checks were also made in order to know if the chief of police had received said information, but that he indicated *"not having any record of this information."*
 - That *"Subsequently, in the review carried out in the extensive documentation presented by the agent with TIP (...) to the human resources department on the occasion of his request to open the harassment commission against another agent of the police, it is detected that in his writing he refers to considerations about the health and the reasons for the medical leave of the agent with TIP (...), information to which he would have had access to manage the medical leaves of the college local police force. These references, despite not revealing medical data properly, did contain allusions to the reasons for the medical leave which should be assessed if they have violated or could violate your privacy for having been used and/or disseminated without your consent (. ..)".*
 - That in the fragment of the letter that could constitute a violation of the personal data protection regulations, the following was indicated: *"(...) This harassment and pressure by some agents that I do I mention led to the dismissal of the agent (...) due to depression or anxiety . (Confidential information [of] that I have knowledge to be administratively responsible for receiving leave , and what the agent (...) sent by mistake the personal part [of the] medical document of the patient and not of the company)"* [the emphasis is from this Authority].
 - That according to the report issued by the data protection delegate, the information contained in this aforementioned letter refers to the health of a person, without any of the circumstances provided for in article 9.2 of the 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 (hereafter, RGPD), nor the processing is based on one of the legal bases of Article 6 of the RGPD.
 - What in said report it is concluded that *"the disclosure of the state of health of the interested party constitutes a violation of the principle of confidentiality contained in art 5.1.f) of the same RGPD, or in terms of Organic Law 3/2018, of the duty of confidentiality provided for in its art 5.1 ("all the people who intervene in any phase of this are subject to the duty of confidentiality)"*.
 - That the person who committed this violation of the principle of confidentiality was aware of the violation, given that he acknowledged it in the fragment of the letter that has been

transcribed earlier (“ Información confidencial [de] que tengo conocimiento por ser administrativamente responsable for receiving discharges, and the agent (...) will mistakenly send the personal part [of the] patient's medical document and not the company's).

- That when this person became aware of the health data of the person concerned, he should have communicated this circumstance to him, and returned the document where it was reflected so as not to need this information, but that in no case was it legitimate to communicate this special category personal data to third parties.
- That the disclosure of the health data was only given to the City Council's human resources department, and there is no evidence that it was passed on to any other municipal department, or outside the City Council.
- That the data protection delegate recommended “*that all City Council staff be informed that they have access to personal data, at least, of the special category of Article 9.1 of the RGDPD that they have a duty of confidentiality , and even assess that in these cases an express signature of the confidentiality commitment is necessary for all municipal users who have access to this type of personal data.*”
- That it is intended to organize a training, dissemination and awareness course on the protection of personal data aimed at the Municipal Police of (...).

5. On 15/11/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the City Council of (...) for an infringement provided for in article 83.5.a) in relation to article 5.1.f); 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, RGDPD). This initiation agreement was notified to the imputed entity on 11/16/2022.

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

The local police officer of (...) with TIP (...), who in the exercise of his duties had had access to the reason for the termination of the person here reporting - since he by mistake send to the City Council the termination notice that is given to the patient, instead of the one that is given to the worker to give to the employer -, did not guarantee the confidentiality of said information, given that he disclosed it to City Council staff.

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 to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the imputed entity has not submitted allegations to the initiation agreement. This agreement contained a precise statement on the imputed liability.

3. In relation to the facts described in the proved facts section, it is necessary to go to article 5.1.f) of the RGPD, which regulates the principle of confidentiality determining that personal data will be "treated in such a way as to guarantee a *Adequate security of personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures* .

For its part, article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) regulates the duty of confidentiality in the following terms:

"Article 5. Duty of confidentiality.

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.

2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with its applicable regulations.

3. The obligations established in the previous sections remain even if the obligee's relationship with the person in charge or person in charge of the treatment has ended."

In this regard, it should be noted that no reference has been included in the proven facts section to the eventual sending of e-mails, by the same local police officer with TIP (...), to the general secretary of the SPL-CME and to the members of the board of directors of the same union, through whom the health data of the complainant would also have been disclosed, given that said shipments have not been tested by the complainant, and to his turn, the City Council, in response to this Authority's request for information, stated that it had no evidence that any health data had been disclosed " *to any other municipal department, nor outside the City Council*". So things , by virtue of the principle of the presumption of innocence enshrined in article 24.2 of the Spanish Constitution and specified in article 53.2.b) of the LPAC, no imputation can be made in this respect.

In accordance with the above, during the processing of this procedure, the City Council has recognized and, therefore, it is necessary to consider the fact described in the section on proven facts, which is constitutive of the infraction provided for in the article, duly accredited 83.5.a) of the RGPD, which typifies as such the violation of "*the principles basics for the treatment , including the conditions for the consent to the tenor of articles 5, 6, 7 and 9*" , among which the principle of confidentiality is contemplated.

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form:

"i) The violation of the duty of confidentiality established by 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, no corrective measure should be required to stop or correct the effects of the infringement, given that the infringing behavior refers to an isolated and specific event with which the effects of the infringement would have been consummated.

For all this, I resolve:

1. Warn the City Council of (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), 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 4th legal basis.

2. Notify this resolution to the City Council of (...).

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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