

File identification

Resolution of sanctioning procedure no. PS 87/2022, referring to the Department of Climate Action, Food and Rural Agenda.

Background

1. On 21/09/2022, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Department of Climate Action, Food and Rural Agenda, on the grounds of an alleged non-compliance with the regulations on personal data protection .

Specifically, the complainant complained that he had received the notification of the "*Resolution of the president of the examination board for obtaining nautical and sports qualifications on the result of the examination review of the call for July 2022 of Mr. (...)*", dated 09/12/2022, which did not refer to him, but to a third party (Mr. (...)). In this regard, the complainant attached a copy of said Resolution, through which a response was given to the request presented by this third party, regarding the review of the conditions in which the tests related to the call to obtain the yacht captain qualification, and in which the name, surname and ID of this third person appeared, as well as that he had obtained the *qualification of "fit in the Navigation module and fit in the generic module."*

2. The Authority opened a preliminary information phase (no. IP 325/2022), 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 09/27/2022, the reporting person was required to, within 10 working days, report on the date and the communication channel through which he received and/or they notified him of the Resolution issued on 12/09/2022 by the president of the Examinations Tribunal, of the Nauticopesquera Training School of Catalonia of the Department of Climate Action, Food and Rural Agenda, which accompanied his letter of complaint. The deadline granted to respond to the Authority's request has been exceeded, without having received a response.

4. On 10/20/2022, the reported entity was required to, among other things, confirm the account of the reported events, and if so, indicate the reasons for which the person reporting this resolution was notified, which corresponded to another person and contained his personal data (name, surname and ID). As well as to point out the actions that were carried out in response to this incident.

5. On 04/11/2022, the Department of Climate Action, Food and Rural Agenda, responded to the aforementioned request through a letter, of the same date, signed by the managing director of the Nautical Sports Training School of Catalonia and the general director of Maritime Policy and Sustainable Fishing, accompanied by various documentation. In summary, he stated the following:

- That " *The applicable regulations are Resolution ACC/3820/2021, of December 23, of the ordinary call for theoretical exams for obtaining recreational nautical titles for the year 2022.* ".
- That the person making the complaint attended " *the call that took place last July 16 at the IES Pedralbes in Barcelona, to be examined as a Yacht Captain .* ".
- That the complainant " *filed a complaint on July 21, 2022* ".
- That " *from the Nautical Fishing Training Area of Catalonia, due to a human error, it was communicated*" to the person making the complaint, " *on September 20 and by e-Notum, the resolution of the claim of another applicant (...) who had also filed a claim.* ".
- That " *Subsequently, we received an email to the mailbox ecnpc.daam@gencat.cat* " through which the complainant " *stated that he had received a notification that did not correspond to him.* "
- That " *Apologies for the human error were conveyed by e-mail and he was informed that he would be notified by e-Notum of the correct resolution.* ".
- That " *On October 6, 2022, the Nauticopesquera Training Area is notified by e-Notum of the correct resolution* " to the reporting person.
- That " *On November 2, 2022, the Nauticopesquera Training Area is notified (...) by e-Notum of the indication that the information received by mistake cannot be used or disclosed (we attach evidence of the electronic notification), with the following text: "In relation to your claim on July 21, 2022, of having received information that did not correspond to you, we remind you in relation to the information received by mistake that the use, disclosure and/or copying without authorization is prohibited in by virtue of current legislation, and therefore we ask you to destroy it and not to spread it."*

As complementary considerations, the reported entity pointed out that the events reported were the result of " *a human error that has subsequently been corrected and measures have been taken to prevent it from happening again* " , among which, detailed that the following actions had been carried out:

- That " *In order for this error not to happen again, from the Nauticopesquera Training School of Catalonia, we have given instructions that in the communications where information is sent to users, a note should be included indicating: "This email is addressed exclusively to the recipient and may contain privileged or confidential information. If you are not the recipient indicated, we remind you that the use, disclosure and/or copying without authorization is prohibited under current legislation. If you have received this message in error, we ask that you immediately let us know via this channel, that you destroy it and that you do not spread it."*
- What *Likewise, we are reducing to a minimum the people and channels through which we send information to users, in order to minimize possible errors .* ".

In order to substantiate its response, the reported entity provided the following documentation:

- Copy of the "*Resolution of the president of the examination board for obtaining nautical and sports qualifications on the result of the examination review of the call for July 2022 of Mr. (...)*", dated 12/09 /2022.
- Evidence of the notification process of said resolution to the person making the complaint, specifying the date of making it available, 20/09/2022, and the date of acceptance, 21/09/2022.
- Copy of the "*Resolution of the president of the examination board for obtaining nautical and sports qualifications on the result of the examination review of the call for July 2022 of Mr. (...)*", dated 12/09 /2022, which corresponded to the person reporting here.
- Evidence of the notification process of said resolution to the person making the complaint, specifying the date of making it available and of acceptance, 10/06/2022.
- Copy of the letter from the head of the Nauticopesquera Training Area of the Nauticopesquera Training School of Catalonia, dated 02/11/2022, notified on the same date to the person making the complaint, through which they gave him instructions to destroy and not disseminate the documentation you received by mistake.

6 . On 11/24/2022, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Department of Climate Action, Food and Rural Agenda for an alleged violation provided for in article 83.5.a) , in relation to article 5.1.f), 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 with regard to the processing of data personal data and the free circulation of these (hereinafter, RGPD). Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file. This initiation agreement was notified to the imputed entity on 11/28/2022.

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 12/12/2022, the Department of Climate Action, Food and Rural Agenda formulated the following allegations in the initiation agreement:

- That "*As we already informed you in our letter of response to the previous information no. IP 325/2022, dated November 4 of this year, incorporated in this file, the response sent by the Escola de Capacitació Nàuticopesquera de Catalunya to a wrong person in response to the allegations presented in the qualification of some exams for obtaining a recreational nautical title, was due to an unintentional human error*".
- That "*As already stated in the file, as corrective measures to the fact that motivates the initiation of this file, on November 2, 2022, the complainant is notified by the ECNPC to destroy and not disseminate the information received by mistake.*"
- That "*Even if it is a one-time event, it is also agreed that in all communications where information is sent to users, a note shall be included indicating: "This mail is addressed exclusively to the recipient and may contain privileged or confidential information. If you are not the intended recipient, we remind you that unauthorized use, disclosure and/or copying is prohibited under applicable law. If you have received this message in error,*

please let us know immediately in this way, that you destroy it and that you do not spread it."

- That "(...) the number of people and the channels through which information is sent to users have been reduced to a minimum, in order to minimize possible errors."
- That "(...) on November 22, 2022, the document "Guidelines and recommendations regarding data protection for transmissions made from the Department to the administrators." It is attached as an attachment. This document, in order to ensure its dissemination among the staff, has been sent via e-mail to all the people who provide their services to the General Directorate of Maritime Policy and Sustainable Fisheries.
- That "We want to highlight, to finish, that this is a one-time error and that it does not affect particularly protected data. And that corrective and preventive measures have been adopted once the error has been detected. Therefore, the imposition of the proposed penalty in this case would not be appropriate, given that due to its circumstances the requirement of culpability does not apply and it would be totally disproportionate to having corrected the error."

The accused entity provided a copy of the document "Guidelines and recommendations on data protection for transmissions from the Department to the administrators."

9. On 11/01/2023, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the Department of Climate Action, Food and Rural Agenda as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.f), both of the RGPD.

This resolution proposal was notified on the same date, 11/01/2023, and a period of 10 days was granted to formulate allegations.

10. The deadline has been exceeded and no objections have been submitted.

proven facts

The Department of Climate Action, Food and Rural Agenda, on 21/09/2022, notified the person here denouncing a resolution of the president of the Examinations Tribunal of the Nauticopesquera Training School of Catalonia, which was addressed to a third person. The said resolution contained the name, surname and ID of this third person, as well as the information relating to the fact that he had been qualified as suitable in the "Navigation module" and in the "generic module", and that he had submitted a request for a review of the conditions under which said tests had been carried out.

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 not made allegations in the resolution proposal, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

In the letter from the delegations, the Department of Climate Action, Food and Rural Agenda reiterated that some of the circumstances that had already been set out in the letter issued by the managing director of the School should be taken into account de Capacitació Nauticoesportiva de Catalunya and the general director of Maritime Policy and Sustainable Fishing, contributed as part of the prior information phase. Specifically, that the imputed fact was the consequence of " *a one-off mistake* ", without affecting " *specially protected data* ", and that " *corrective measures* " had been adopted to alleviate the effects of this one-off event , such as instructing the reporting person to destroy and not disseminate " *the information received by mistake* " . It was also informed about the " *preventive* " measures adopted to prevent an event of the same characteristics from occurring again, such as reducing the number of people and channels for sending information to users, preparing and disseminating it among the staff of the Department the document " *Guidelines and recommendations on data protection for transmissions made from the Department to the administrators* " .

In this regard, although this Authority positively values the Department's actions , this does not detract from the declared facts proven in this procedure, nor their legal qualification. It is a recognized fact that the Department of Climate Action, Food and Rural Agenda, on 21/09/2022, notified the person here denouncing a resolution of the President of the Examinations Tribunal of the Nauticoesportiva School of Catalonia, referring to a third person and which contained their identification data (name, surname and ID) , as well as other information relating to how this third person had been qualified as suitable in the " *Navigation module* " and in the " *generic module* " , and that he had submitted a request for a review of the conditions in which the tests had been carried out in the call to obtain the title of yacht captain .

Having said that, even though the fact reported is due to a one-off mistake that has been corrected and that the accused entity has stated that, due to the circumstances that have arisen, "the requirement of guilt is not met", it *should* be noted that the lack of intentionality does not allow the Department to be exonerated from responsibility. In this regard, it is necessary to take into account the consolidated doctrine of the principle of culpability, highlighting that the sanctioning power of the Administration, as a manifestation of the " *ius puniendi* " of the State, is governed by the principles of criminal law, and one of its principles is that of culpability, which is incompatible with a regime of objective responsibility without fault, but for the element of fault to occur, it is not necessary to have committed willful conduct, but it is sufficient that the infringement occurred due to the negligence of its author. In this sense, the Supreme Court in several judgments, including those of 15/04/2016 and 24/11/2011, refers to the doctrine of the Constitutional Court when it quotes verbatim "objective responsibility does not fit in the scope of administrative *sanctions or without fault, doctrine that is reaffirmed in sentence 164/2005, of June 20, 2005, under which the possibility of imposing sanctions for the mere result is excluded, without proving a minimum of culpability, even for mere negligence* " .

Also the National Court, in the Judgment of 30/10/2017, in matters of data protection, indicated, citing what it had already declared in previous judgments (for all, the Judgment of 12/11/2010), the following: *"But, as we have repeatedly affirmed in this matter, the sanctions do not require intentional intent but mere carelessness or lack of diligence is sufficient; in the words of this Court, the simple negligence or failure to fulfill the duties that the Law imputes to the persons responsible for files or data processing is enough to exercise extreme diligence..." and this, even if no economic gain was obtained"*.

In short, negligence does not require a clear intent to infringe, but rather lies precisely in carelessness, and in this specific case, in the lack of attention required of the entity in fulfilling the duty of confidentiality referred to article 5.1.f) of the RGPD. And at this point, it should be emphasized that the duty of care is maximum when activities are carried out that affect fundamental rights, such as the right to the protection of personal data.

Consequently, given that it has been proven that, on 21/09/2022, the Department of Climate Action, Food and Rural Agenda notified the person here denouncing a resolution that was addressed to a third person, which contained the personal data and other information relating to this third person, the allegations presented cannot succeed, and it must be concluded that the Department violated the principle of confidentiality of the data of the recipient of said resolution.

3. In relation to the facts described in the proven facts section, relating to the disclosure of personal data, it is necessary to refer to article 5.1.f) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 d of April, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, 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"*.

During the processing of this procedure, the fact described in the proven facts section, which is considered 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, the adoption of corrective measures is considered unnecessary , given that the breach of the data protection regulations is due to a specific fact already accomplished and the Department of Climate Action, Food and Rural Agenda has certified that it indicated to the person reporting here to destroy and not disseminate the information received. And to avoid future events of the same characteristics , the Department has reduced the people and channels for sending information to users, and has also drawn up the document "*Guidelines and recommendations in the field of data protection for transmissions made from from the Department to the administrators*", which has been disseminated among the Department's staff.

For all this, I resolve:

1. Admonish the Department of Climate Action, Food and Rural Agenda 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 4th legal basis.
3. Notify this resolution to the Department of Climate Action, Food and Rural Agenda.
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,