

File identification

Resolution of sanctioning procedure no. PS 90/2022, referring to the Department of Culture.

Background

1. On 10/11/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Department of Culture, on the grounds of an alleged breach of the regulations on data protection personal data

In particular, the complainant stated that, on (...) /2021, he had submitted to the Department of Culture's registry an appeal linked "to the *CLT_ (...) process for the provision of a place of senior technician A21 attached to (...), with entry number (...) /2021*". In this respect, the complainant complained that one of the people participating in said process, who " *didn't know her at all*", would have called her on her personal mobile phone to inform her that " *she had received an e-valise*" that included the personal data of the complainant here, ("*name, surname, address, email, personal mobile phone and with the resource that I had presented*") . The complainant added that, as a result of this fact, he had called the unit responsible for " *personnel in the Department of Culture*" and they " *confirmed*" the said incident, ("*that, indeed, my confidential information had been sent and sensitive to the people participating in the process*").

The complainant accompanied his written complaint with a copy of the thread of emails exchanged, on (...) /2021 and (...) /2021, with the (...) of Human Resources of the Department of Culture, with the subject " *Meeting to discuss the appeal in the square of (...) CLT_ (...)*", through which, among other things, the complainant warned that the appeal he had presented would have sent, " *to the 86 people participating in the process*", without deleting their personal data. In response to this email, the (...) of Human Resources of the Department of Culture, indicates the following: " *regarding the subject of your data, it is true that the Selection Manager sent the first notifications of your resource to some candidates without blackening your data. He later amended it.*"

2. The Authority opened a preliminary information phase (no. IP 454/2021), 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 14/10/2022, the reported entity was required to report, among others, which personal data of the complainant here were included in the resource that was sent to third parties, as well as the date on which such communication of personal data took place.

4. On 09/11/2022, within this phase of prior information and exceeding the 10-day period granted to respond to the first request, the Authority addressed a second request to the reported entity so that in the maximum period of 5 days to provide the requested information.

5. On 11/28/2022, the Department of Culture responded to the aforementioned request in writing, dated 11/22/2022, in which it stated the following:

- That " *The Human Resources Management Service manages the processes of provisional provision of jobs in the Department.*" .
- That " *During the 2021 financial year, 179 provisional provision tender files were processed.* " .
- That " *Specifically, for the CLT_(...) process, 85 requests for participation were received and the complainant filed an appeal against the result of the resolution of the process, a fact that was communicated to the participants in two installments via e-Notum as interested parties.*" .
- That " *The first shipment was made on (...) to 51 participants and, by mistake, we confirm that the resource was sent without deleting the personal data to some of the people who submitted to the offer.* " .
- That " *On date (...), the person who made the shipment realized the mistake and communicated it to his boss and also contacted the person making the complaint to explain the facts to him. The rest of the communications to the remaining 34 applicants were carried out correctly.* " .
- That " *(...) It is a mistake, which the person assumed immediately by acknowledging it both to his boss, through mail of the day (...), and to the reporting person, through a phone call also on same day (...).*" .
- That " *The personal data communicated are: name and surname, postal address, email address, and private telephone number. The data was sent on (...) 2021.*" .
- That " *The action derives from a human error and, as such, it was not the will of the organization to carry out this action.*"

The reported entity accompanied the letter of response with a copy of the email, dated (...)/2021, sent from the Human Resources Management Service to the (...) of Human Resources, in the text of which, it was indicated: " *I am sorry to tell you that I have made a serious mistake: in the 51 notifications made until this morning, the attached resolution contained the appellant's personal data, which should have been hidden* " .

6. On 05/12/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Department of Culture for an infringement provided for in article 83.5.a) in relation to the 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, RGPD). This initiation agreement was notified to the imputed entity on 07/12/2022.

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 Department of Culture, on (...)/2021, notified 51 participants of the selection process, " *CLT_(...), for the provision of a senior technician position A21, attached to (...)*" , the appeal

filed by the person making the complaint, without first deleting their personal data (name, surname, postal address, e-mail address, and private telephone number).

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 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 proven facts section, relating to the disclosure of personal data, 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"*.

During the processing of this procedure, the fact described has been duly accredited, with the express acknowledgment of the accused entity in the section of proven facts, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of the *"basic principles for treatment, including the conditions for consent according to the 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 infraction in article 72.1.i) of the 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, no corrective measure should be required to stop or correct the effects of the infringement, given that the infringing behavior refers to a specific event with which the effects of the infringement would have been consummated.

For all this, I resolve:

1. Warn the Department of Culture 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 Department of Culture.
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,

Machine Translation