

File identification

Resolution of sanctioning procedure no. PS 1/2023, referring to the City Council of Cubelles

Background

1. On 11/17/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Cubelles City Council, on the grounds of an alleged breach of data protection regulations of personal data .

In particular, the complainant stated that, in order to process the application for the weapons permit card (type A and type B), the City Council of Cubelles asked to provide, among other documents, the certificate of physical capacity and psychological fitness (health data) and the certificate of no criminal record . In this regard , the complainant complained that these documents, in the case of online processing, should be attached to said application like any other document, making them accessible to the " *administrative staff* " of the entity In the last one, he added that, in relation to the processing of the application for the weapons permit card, the entity did not exercise the right to information about the processing of personal data.

The person making the complaint accompanied the letter of complaint with a screen printout that included information from Cubelles City Council regarding the " *weapons permit card application* " procedure. This image includes, among others, the following sections:

- " *How can you apply?* " Here it is indicated that it can be submitted online or in person. In the case of face-to-face presentation, please note that you must download the weapon permit card application model in pdf format , and present it to the Citizen Participation and Information Office (OPIC) of the City Council. In the case of the telematic procedure, it is indicated that it is necessary to click " *the PROCESS option* " .
- " *Documentation to be provided* " Here it is specified that, among other documentation, the " *Certificate of physical capacity and psychological fitness* " and the " *Certificate of no criminal record* " must be provided.

2. The Authority opened a preliminary information phase (no. IP 470/2021), 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 02/11/2022 the reported entity was required to report, among others, on the legal basis that legitimizes the processing of the "Certificate of physical capacity and *psychological fitness* " and the " *Certificate of non-existence of criminal record* " to process the application for gun permit cards; the personal information included in the certified fingers; the professional category and functions performed by the staff at the service of the City Council who manage and have access to said documentation. It was also required to report s and, at the time of collecting the personal data of applicants for the weapons permit card, both in the case of face-to-face and virtual applications, the City Council exercises the right of information provided for in articles 13 and 14 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 movement of these (hereinafter, RGPD) .

4. On 11/16/2022, the City Council of Cubelles responded to the aforementioned request in writing in which it stated the following:

- That " *The legal basis that, in our opinion, would legitimize the processing of personal data to process the "Weapons permit card application (type A and type B)", and in particular, to carry out the processing of category data special derived from the "Certificate of physical capacity and psychological fitness", as well as the "Certificate of non-existence of criminal records" is the exercise of public powers conferred on the data controller (art. 6.1.e) RGPD) .*
- That " *Article 98 of Royal Decree 137/1993, of January 29, which approves the Arms Regulation, states that under no circumstances may you own or use weapons, or hold the corresponding licenses or authorizations , people whose mental or physical conditions prevent them from using them and, especially, those people for whom the possession and use of weapons represent a personal or third-party risk to public safety, public safety , national defense and the general interest. Among other extremes, the fact of having had a conviction for a violent intentional crime is considered indicative of this risk."*
- That " *(...) this article establishes that in order to apply for special weapons licenses and authorizations, in addition to the documentation required for each case in the corresponding articles of the Regulation, the interested persons must prove possession of the appropriate mental and physical aptitudes and the necessary knowledge about conservation, maintenance and handling of weapons, in the form foreseen. The accreditation of the mental and physical aptitudes necessary to be able to obtain the concession, as well as the renewal of licenses and special authorizations for the possession and use of weapons, must be carried out through the presentation, in front of the investigative offices of the procedures, of the corresponding fitness report."*
- That " *The certificate of physical capacity and psychological fitness that must be attached to the procedure only includes the positive/negative result of the medical and psychological tests to which the applicants are subjected, giving a result of fit or not fit."*
- That " *The personal information that is included in the certificate of no criminal record is the name and surname and the NIF number of the person and that there is no criminal record relating to this person."*
- That " *only the staff assigned to the City Security department, which includes administrative staff and technical commands of the Local Police force, have access to the arms license application process, for the purposes of processing, information, resolution and notification of the file."*
- That " *The people who currently have access are the following:*
 - *1 career management assistant. The functions it carries out are processing and notification of these files.*
 - *1 career administrative officer. The functions it carries out are processing and notification of these files.*

- *2 official sergeants of the Local Police. The functions they perform are reporting and resolution."*
 - *That "The staff of the Cubelles City Council, which includes related persons, receives training on the management and processing of personal data, in relation to the files they deal with."*
 - *That "The security measures implemented to prevent unauthorized third parties from accessing the personal data/documentation provided by applicants are technical and organizational security measures, specifically the control of users authorized to access the data and of the type of access they make and the control of data transmission."*
 - *That "The City Council, at the time of collecting the personal data of gun license applicants, in the virtual applications, makes effective the right to information provided for in articles 13 and 14 RGDPD through a link to the data protection information ((...))."*
5. On 11/23/2022, still within the framework of this preliminary information phase, the reported entity was required to provide a copy of the electronic request for the weapons permit card, which contains the link to the City Council's data protection information.
6. On 29/11/2022, the City Council of Cubelles responded to the aforementioned request, in writing, dated 11/28/2022, in which he stated the following:
- *That the electronic request for the weapons permit card " is made through the electronic headquarters ((...))".*
 - *That the link containing the data protection information " is both in the additional information of the procedure, once the electronic identification has been made using idCAT mobile or idCAT (see image 1); as on the front page of the electronic headquarters, in the INFORMATION OF THE ELECTRONIC HEADQUARTERS section where there is a link to the DATA PROTECTION section (see image 2)." .*
 - *That the link relating to the information on data protection contained in the online application - entitled " data protection policy " - and the link relating to data protection contained in the Headquarters City Council's electronic mail - entitled " data protection " - redirect both to another email address entitled "Electronic Office Information: Data Protection " (...), which contains the following information:*

"Information from the Electronic Headquarters

Data Protection

To be able to access some of the services and procedures of the Electronic Headquarters, users must provide the personal data essential for the provision of the requested service and/or procedure, as well as for the management, administration, provision, expansion, improvement and service information.

These data will be incorporated into the corresponding computerized files of the Cubelles City Council that will be treated in accordance with the regulations established in Regulation (EU) 2016/679 of the European Parliament and of the Council (RGPD), of April 27, 2016 , relating to the protection of natural persons with

regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/CE.

More information by clicking here."

- That, once you click on "*More information*" (*link (...)*), a new website of the City Council opens "*where the entire data protection policy is collected.*"

In order to prove these points, the reported entity provided a copy of the different screen prints of the web pages linked to the different links to which it refers in its writing.

In this regard, it should be noted that the last image is the screenshot of the information that, at the end of the entire chain of electronic links, the Cubelles City Council offers through its website. This information is entitled "Data Protection", and is informed in generic terms about data protection. There, there is a new link to the Register of Municipal Treatment Activities (RAT), a pdf document, which compiles the different treatments carried out by the entity, among these, that of "*Citizen Security*" which, in its in turn, it includes the purpose of "*municipal weapons permit management*", and information is provided on the different ends established in article 13 of the RGPD in relation to this treatment.

7. On 30/11/2022 and 07/12/2022, also during this preliminary information phase, the Inspection Area of the Authority carried out a search through the website of the City Council of buckets

In the first place, he accessed the electronic office of the Virtual Citizen Service Office (OVAC) of the City Council. Then, he accessed the "Home >>Procedures and management" section, clicked on the drop-down "*Public road*" and, from the options that appear, clicked on the procedure "*18-SEG-02. Weapon permit card application (type A and type B)*", which in turn, redirected to a web address with the title "*information on the procedure*", with specific information on the processing of this request. ((...)).

The information contained in "*Information of the procedure*" is the same as that of the screen print that the complainant attached with his written complaint, where the possibility is offered to download the request to present it in person, or electronic processing.

In the event that you opt for the in-person presentation, you can download the pdf form for "*weapon permit card application (type A and type B)*". The said form includes an informative clause on data protection, but the information relating to the right to submit a claim to this Authority is missing.

Likewise, in the paper form, it is also detected that in some of the extremes, the information would be contrary to the information on "Data Protection" which, as reported by the City Council, redirects the online application for the card of weapons permit ((...)). Specifically, the following:

- The legal basis states that the "*legitimation for the main purpose*" is the consent of the interested parties (Article 6.1. a of the RGPD).
- In the information relating to the retention period of the data it is indicated that "*the data will be kept for a period of 10 years, or until their deletion is expressly requested by the interested party*".

Well, the information relating to "Data Protection" that is offered when the application is processed electronically, and which ends up being sent to the municipal RAT, states that the legal basis of the treatment is "Citizen Security " (which includes the treatments for the purpose of " *management of municipal weapons permits* "), is the " *Mission in the public interest or exercise of public powers, in accordance with article 6.1.e) RGPD* ", which coincides with what the City Council stated in its response to this Authority's request for information. It also informs about the treatment of special categories of data, among others, those of health.

With regard to the conservation period, the RAT includes a generic formulation that refers " *to the documentary evaluation tables, approved by the National Commission for Documentary Access, Evaluation and Selection or in the administrative procedure regulations and 'historical archive* '.

In this respect, this Authority verifies that in the Table of Access, Evaluation and Documentary Selection (TAAD) relating to the " *Concession of fourth category weapons cards* ", it determines that the retention period of the data necessary to process the type A cards, it is five years from the closure of the file and for type B cards, the total elimination is foreseen upon the death of the holder or cancellation of the card. Therefore, a different deadline than provided for in the paper form.

8. On 01/03/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Cubelles City Council for an alleged violation provided for in article 83.5.b), in relation to article 13; 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 09/01/2023.

9. The initiation agreement explained the reasons why no imputation was made with respect to the fact reported relating to the fact that, in the case of the telematic procedure for the application for a weapons permit card, the City Council requested attach the certificate of no criminal record and the certificate of physical capacity and psychological fitness, like any other document, and this made them accessible to municipal " *administrative* " employees.

In this regard, in the section on reported facts not imputed, it was indicated that from the manifestations of the City Council it was inferred that the administrative persons who had access to said documentation did so in the exercise of their professional duties, in accordance with the jobs they hold within the organization, and that the entity had adopted the appropriate security measures so that people unrelated to the processing of this type of request could access it.

10 . 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.

11. On 23/01/2023, the City Council made objections to the initiation agreement , which are addressed in section 2 of the legal foundations.

12. On 02/14/2023, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Cubelles City Council as responsible for 'an infringement provided for in article 83.5.b) in relation to article 13, both of the RGPD.

13. This resolution proposal was notified on 02/15/2023 and a period of 10 days was granted to formulate allegations. The deadline has passed and no objections have been submitted.

14. On 03/24/2023, this Authority carried out a search through the website of the Cubelles Town Council, and found that the information on data protection, both that contained in the paper form (which is can be downloaded through the City Council's electronic headquarters), such as the information provided when the application for the weapons permit card is processed electronically, has not been modified.

proven facts

The City Council of Cubelles does not provide all the information indicated in article 13 of the RGPD, in the application form for the weapons permit card ("*18-SEG-02 Application for permit card d 'weapons (type A and type B)*") that he makes available to those interested who want to do the procedure in person. Specifically, in this document the City Council does not provide information on the right to submit a claim to this Authority (Article 13.2.d GDPR).

In turn, this document includes contradictory information in relation to the information on data protection that the entity offers when proceeding with the electronic processing of the request, specifically, that relating to the legal basis and the deadline data conservation.

On the other hand, with regard to the information on data protection that is offered to the interested person who makes the request via telematics, this is not provided in an easy or transparent way. In this regard, the applicant reaches the information on data protection after clicking on a chain of electronic links, which ends up being sent to the municipal RAT, where the person applying for the weapons permit card must search for the processing linked with the purpose of processing the weapons permit cards (types A and B) to obtain the information related to the processing of your personal data, taking into account, in addition, that the RAT does not specify the information about the retention period of the data necessary to process said weapon permit cards, and is referred to the documentary evaluation tables.

On 03/24/2023, this Authority confirms that the information on data protection, both that contained in the paper form (which can be downloaded through the City Council's electronic headquarters), and the information that is offered when the application for the weapons permit card is processed electronically, has not been modified.

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 this regard, in the proposed resolution it was emphasized that the allegations made by the Cubelles City Council were not in themselves allegations tending to distort the facts imputed to the initiation agreement, but only referred, in general terms, to the documents and justifications provided during the previous information phase no. IP 470/2021. That being the case, the investigating person considered that the allegations presented against the agreement to initiate the present sanctioning procedure reproduced those formulated in the prior information phase, which were already taken into account in order to analyze the reported facts, which finally gave rise to said initiation agreement. The initiation agreement indicated the facts that motivated the initiation of said procedure and the reported facts that were not imputed.

So things are, given the lack of new allegations presented against the initiation agreement, in the proposed resolution the facts that had motivated the initiation agreement were considered proven. In other words, the forms for the two applications for the weapons permit card, the paper version and the electronic version, do not comply with the right to information provided for in the data protection regulations.

Firstly, with regard to the paper application, not all mandatory information is provided, given that the information on the right to submit a claim to a supervisory authority is missing (Article 13.2.d of the RGPD), while containing contradictory information regarding the online application. Specifically, the paper application informs that the legal basis is the consent of the interested parties (Article 6.1. a of the RGPD), while, in the case of processing the application electronically, it is informed that the legal basis of the treatment is the mission in the public interest or exercise of public powers (article 6.1. e RGPD). Likewise, the information relating to the retention periods of the data, in the paper request it is indicated that " *the data will be kept for a period of 10 years, or until its deletion is expressly requested by part of the interested party* ", while the information provided during the electronic processing of the request, which is presented through a chain of links that end up being sent to the municipal RAT, is a generic referral in the documentary evaluation tables. In this regard, as indicated in the legal antecedent 7th, the TAAD relating to the " *Concession of fourth category weapons cards* ", determines that the retention period of the data necessary to process the type cards A, it is five years from the closing of the file and for type B cards, total elimination is provided for upon the death of the holder or cancellation of the card. Therefore, different deadlines than those reported on the paper form.

Secondly, with regard to the electronic request, as indicated in the previous section, it does include all the information items provided for in Article 13 of the RGPD, although in a less accessible and transparent way, through a chain of links that ends with a referral to the municipal RAT, where the applicant must look for the personal data processing on which they want to obtain information.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 12 of the RGPD, which provides that: " *The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in the articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible form,*

with a clear and simple language, in particular any information directed specifically to a child . (...)."

And sections 1 and 2 of article 13 of the RGPD, which establish the information that must be provided when personal data is obtained from the person concerned:

"1. When personal data relating to an interested party is obtained, the data controller, at the time it is obtained, will provide all the information indicated below:

- a) the identity and contact details of the person in charge and, where appropriate, of their representative;*
- b) the contact details of the data protection officer, if applicable;*
- c) the purposes of the treatment for which the personal data is intended and the legal basis of the treatment;*
- d) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person in charge or of a third party;*
- e) the recipients or the categories of recipients of the personal data, as the case may be;*
- f) in its case, the intention of the person in charge to transfer personal data to a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in articles 46 or 47 or article 49, section 1, second paragraph, refers to the adequate or appropriate guarantees and the means to obtain a copy of these or the fact that they have been provided.*

2. In addition to the information mentioned in section 1, the controller will provide the interested party, at the time the personal data is obtained, the following information necessary to guarantee a fair and transparent data processing:

- a) the period during which personal data will be kept or, when not possible, the criteria used to determine this period;*
- b) the existence of the right to request from the person in charge of the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, or to oppose the treatment, as well as the right to the portability of the data ;*
- c) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality treatment based on consent prior to its withdrawal;*
- d) the right to present a claim before a control authority;*
- e) if the communication of personal data is a legal or contractual requirement, or a necessary requirement to sign a contract, and if the interested party is obliged to provide personal data and is informed of the possible consequences of not providing such data;*
- f) the existence of automated decisions, including the creation of profiles, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information on the logic applied, as well as the importance and expected consequences of said treatment for the person concerned."*

For its part, sections 1 and 2 of article 11 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), referring to transparency and information to the affected person, provide that:

- "1. When the personal data is obtained from the affected person, the controller can comply with the duty of information established by Article 13 of Regulation (EU) 2016/679 by providing the affected person with the basic information referred to in section below and indicating an electronic address or other means that allows you to access the rest of the information in a simple and immediate way.*
- 2. The basic information referred to in the previous section must contain, at least:*
- a) The identity of the data controller and his representative, if applicable.*
 - b) The purpose of the treatment.*
 - c) The possibility of exercising the rights established by articles 15 to 22 of Regulation (EU) 2016/679.*

If the data obtained from the affected person must be processed for profiling, the basic information must also include this circumstance. In this case, the affected person must be informed of his right to object to the adoption of automated individual decisions that produce legal effects on him or significantly affect him in a similar way, when this right is given in accordance with the provisions of article 22 of Regulation (EU) 2016/679."

During the processing of this procedure, the fact described has been duly certified in the proven facts section, which is considered constitutive of the offense provided for in article 83.5. b the RGPD, which typifies the violation of *"the rights of interested parties pursuant to articles 12 to 22"*, among which is the right to information provided for in article 13 of the RGPD.

The conduct addressed here has been included as a minor infraction in article 74. a of the LOPDGDD, in the following form:

"a) Breach of the principle of transparency of information or the right to information of the affected person for not providing all the information required by articles 13 and 14 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".

By virtue of this power, the City Council of Cubelles should be required to bring to terms as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of this resolution, the following actions:

- With regard to the paper application, be informed about the right to submit a claim to this Authority (Article 13.2.d RGPD); and the information relating to the legal basis that legitimizes the processing of the data to process the request for a weapons permit card (art.6.1.e RGPD) is adjusted, as well as the information on the retention period, so that it coincides with the information that is offered on these ends in the case of the electronic procedure.
- With regard to the electronic request, provide the complete information provided for in article 13 of the RGPD in an accessible and transparent manner, such as, that the electronic request incorporates a direct link to the protection section of data related to the processing linked to the purpose of processing the weapons permit cards (types A and B), provided for in the municipal RAT. The information provided there must match that given in the paper form, in addition to being specific and precise in all its aspects, especially with regard to the retention periods of the data necessary to process the said gun permit cards.

Once the corrective measures described have been adopted, within the period indicated, the City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to carry out the corresponding checks .

For all this, I resolve:

1. Admonish the Cubelles City Council as responsible for an infringement provided for in article 83.5.b) in relation to article 13, both of the RGPD.
2. To require the City Council of Cubelles to adopt the corrective measures indicated in the 4th legal basis and accredit before this Authority the actions taken to comply with them.
3. Notify this resolution to the City Council of Cubelles.
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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