

File identification

Resolution of sanctioning procedure no. no. PS 5/2023, referring to the Housing Agency of Catalonia, of the Department of Social Rights of the Generalitat.

Background

1. On 12/31/2021, the Catalan Data Protection Authority received a letter in which a person filed a complaint against Viladecans City Council, on the grounds of an alleged breach of the regulations on data protection personal data. In particular, the complainant stated that the Viladecans Local Housing Office (OLHV), dependent on the Viladecans Town Council, had processed the renewal of their registration in the Register of Housing Applicants with Official Protection of Catalunya (RSHPO) without his consent and without the said Council having communicated it to him. And he added that said Office had sent, by mistake, an email confirming this renewal of his registration to a third person, which included his and his partner's personal data, such as their ID number and your home address. In order to substantiate his complaint, he provided copies of several messages that this third person would have sent him, specifically:

- An email sent by the third person to the person making the complaint, which in turn contained a copy of an email (1) sent on 11/29/2021 at 8:30 a.m. by the Agency of Habitatge de Catalunya from the address registre@gencat.net to the email address of the third person, with the subject "*Renewal of registration in the Register of HPO applicants*", in the body of which the following was indicated: "*the request has been processed correctly and its registration has been renewed*".
- Some Instagram messages sent on 29/11/2021 by the third person to the person making the complaint, through which he informed him that he had received the email mentioned before (1), regarding the renewal of the registration in the RSHPO, which it contained a lot of his personal data; that he had communicated the error to the OLHV, who had replied that they had several erroneous details of the person reporting (the email address and the contact telephone number). The third person added that she had requested the renewal of the registration at the RSHPO, but that instead she had not received any confirmation from the OLHV.

2. The Authority opened a preliminary information phase (no. IP 530/2021), 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 05/12/2022 the Viladecans Town Council was required to report on several issues related to the events reported.

4. On 12/19/2022, the Viladecans City Council responded to the above-mentioned request in writing in which it stated the following:

"The Local Housing Office (hereafter OLH) of Viladecans is managed by the SPM

VILADECANS MEDITERRÀNIA, SL, (VIMED) by order of Viladecans Town Council.

VIMED acts as data processor, on behalf of the Housing Agency of Catalonia, in relation to the processing of applications (and renewals) for registration at the RSHPO, in compliance with the Agreement signed between the City Council and the AHC.

VIMED uses the tool made available by the AHC to register the requests registration in the Registry. Once an applicant has been registered by VIMED, the data appearing in the Register can only be modified by the AHC. Communications to applicants are always made by the AHC.

On the other hand, the processing tool is located on a server owned by the Agency of Housing of Catalonia.

Renewal applications can be made in two ways: either the applicant does it directly through the AHC website, or the applicant goes to the offices of the OLH where they are helped to fill out an instance that is incorporated into the file that the applicant has in the Registry.

Applicants' personal data can be entered into the management tool by staff authorized by VIMED and also by the staff of the Housing Agency of Catalonia.

On July 9, 2021 VIMED, (...) (acronyms of the name and surname of the third person) went to the Local Housing Office, from where she was helped to fill out the application alone applying for renewal. By mistake, this instance was attached to the file of the reporting person (first and last name initials) instead of the requesting person (first and last name initials of the third person).

From the instance incorporated in the file, it is the Housing Agency of Catalonia who erroneously, modify the personal data in the file of (abbreviations of the name and surname of the person making the complaint) , incorporating the telephone and email address of (...) (abbreviations of the name and surname of the third person) .. and performing to the first (that is, to the address on the file of the first) the corresponding communications.

VIMED has not incorporated the erroneous data into any other file. The correct data has been incorporated into a Register owned by VIMED.

Given that the RSHPO renewal resolutions are issued directly by the AHC, not by the OLH, we cannot certify when they were made, and in no case the WhatsApp application) between (...) (initials of the name and surnames of the third person) and (...) (initials of the name and surnames of the person reporting) once the resolution has been received on the 1st in relation in the register of the 2nd.

In person Mrs. (...) (acronyms of the third person's first and last name) at the local housing office to inform her that she had not been notified of the resolution of her renewal file, but the from another user, this Office proceeded to incorporate the instance containing the renewal request into its Registry file.

Received the notification of the Catalan Data Protection Agency, in relation to the complaint made by Ms. (...) (acronyms of the name and surname of the person making the complaint), on December 13, 2022, VIMED has formally communicated to the technician responsible for the Housing Agency of Catalonia, the need to proceed with the amendment and correction of erroneous personal data, which motivated the complaint. As soon as the Agency informs us of the correction of errors, VIMED will let the affected people know.

VIMED has also contacted the two affected people and both have thanked them for the promptness response from VIMED, which has summoned them in order to process the renewal in person this year in the Register. At the same time, as of today they have been formally communicated by mail, at the same time that the correction of data has been indicated in the file of the complainant, which is proven by means of a copy of the communication made.

In any case, reiterate that the Viladecans OLH has not communicated personal data from one user to another user (...)."

Viladecans City Council attached various documentation to the letter:

- On the one hand, a report issued on 19/12/2022 by the Security Commission in the matter of personal data-DPD of the City Council, from which the following information regarding a collaboration agreement and the Viladecans Mediterrània Municipal Private Company, SL (hereinafter, VIMED) :

"1.- Collaboration Agreement between the Housing Agency of Catalonia and the City Council

of Viladecans relative to the Local Housing Office of this municipality for the year 2019, approved by plenary agreement dated May 2, 2019.

2.- This agreement has been extended annually and, in this sense, the Board of Governors

local of April 20, 2022, has approved the extension addendum to this agreement of collaboration for the year 2022.

3.- Given that the management of the Local Housing Office of the municipality of Viladecans (OLH)

corresponds to the mercantile company SPM Viladecans Mediterrània, SL (VIMED), by virtue of

Agreement no. 12 adopted by the Municipal Plenum, in the regular session held on the 30th

of April 2020, in the following sense:

" AGREEMENT NO. 12.- Approve the Action Framework Program (PMA) 2020-2023 with the Private Municipal Viladecans Mediterrània, SL, as well as the Economic Annex for the year 2020". (Exp. No. 1/2020/C00160)."

The Viladecans Town Council in exercise of the power of self-organization i functional decentralization of powers, through the referred PMA 2020-2023, va proceed to assign and transfer to the private municipal company Viladecans Mediterrània,

SL (VIMED), certain actions, activities and functions with the purpose of lending service to the citizens of the municipality of Viladecans in the subjects they sell

determined according to the social object, among them and for what is now of interest, the management of the Local Housing Office of Viladecans and the housing programs that are determined, which will be carried out by the commercial VIMED, as a functional entity decentralized from the Viladecans Town Council.”

- On the other hand, two e-mails sent by VIMED to the complainant and the third person, respectively, through which he communicated, in essence, the mistake made and its correction:

In the email sent on 14/12/2022 to the third party , VIMED stated, among others, the following:

“(…) the communication of data was carried out by the Housing Agency of Catalonia , the body that manages renovations and other procedures related to the Registry. To announce that, in any case , we have proceeded to request from the Housing Agency of Catalonia on December 12, 2022, the correction of the erroneous data that appeared in the other user's file (telephone and electronic address) , which the Agency did that same morning.”

In the email sent on 12/14/2022 to the person reporting here, VIMED stated, among others, the following:

“(…) as we mentioned via telephone, the error occurred when the renewal request document of another user was incorporated into a file that was not yours but yours. Based on that error, the Housing Agency of Catalonia, the body that manages renovations and other procedures, modified the data on her file and made different communications with that user .

In the first instance, when we found out that the renewal request of the other user was not in her file, we proceeded to incorporate it.

On the other hand, on December 12, 2022, we proceeded to request from the Housing Agency of Catalonia, the correction of the erroneous data; and we are pleased to inform you that, on the same day, the Agency made the correction, as we can confirm through the “screen” of the Registry page where your data appears: (…)”

- 5.** On 12/28/2022 the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, the following was established:

In 2019, the current collaboration agreement was formalized between the Housing Agency of Catalonia -attached to the Department of Social Rights of the Generalitat- and Viladecans City Council, relating to the Local Office of Housing located in this municipality, with the aim of establishing the terms and conditions of the collaboration between the parties for the advice and management of housing services with respect to various tasks under the jurisdiction of the Administration of The Generalitat. The agreement has been extended for the years 2020, 2021 and 2022 through the formalization of the corresponding extension addenda.

Among the functions entrusted to the Local Housing Office of Viladecans, is the reception and transfer to the Housing Agency of Catalonia of applications for registration in the Register of applicants for Housing with Official Protection of Catalonia, which registration gives the right to opt for the allocation of a home with official protection. Registration is valid for one year, and is subject to renewal, which can also be processed through the Viladecans Local Housing Office. In relation to said Register, the Housing Agency of Catalonia is the entity responsible for the treatment.

Starting in any case from the year 2019, the entity that manages the Local Housing Office is the municipal private company Viladecans Mediterrània, SL (VIMED), which, therefore, would act as a sub-responsible for the treatment regarding to the functions entrusted by the Housing Agency of Catalonia to Viladecans Town Council by virtue of the aforementioned collaboration agreement.

From the result obtained, the corresponding due diligence was carried out.

In accordance with the antecedents that have been related up to this point and with the result of the investigative actions carried out in the framework of the previous information, it is agreed to initiate this sanctioning procedure against the Housing Agency of Catalonia in the following sections, all the information required by article 64.2 of the LPAC is indicated.

Likewise, on the same date, it is agreed to initiate disciplinary proceedings against the Viladecans Mediterrània Municipal Private Company, SL (VIMED), of the Viladecans Town Council, for breaching the principle of data accuracy.

6. On 17/01/2023, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the Housing Agency of Catalonia, in which facts were imputed that were initially considered constitutive of the infringement provided for in article 83.5.a) in relation to article 5.1.f), both 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 circulation thereof (hereafter, RGPD). This initiation agreement was notified to the Housing Agency of Catalonia on 01/19/2023.

On the same date, it was agreed to initiate disciplinary proceedings against the Private Municipal Viladecans Mediterrània, SL (VIMED), of the Viladecans Town Council, for breaching the principle of data accuracy.

In the initiation agreement relating to the Housing Agency of Catalonia, this 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

On 09/07/2021 a person (here, a third person) submitted a letter to the Local Housing Office of the Viladecans City Council, which managed VIMED, by which he requested the renewal of his registration in the Registry of applicants for Housing with Official Protection of Catalonia, for which the Housing Agency of Catalonia is responsible for processing, and VIMED subcontracted.

VIMED, as sub-responsible for the treatment, started the procedure for renewing the registration in the said Register, but by mistake incorporated this request for renewal of this third person, in the file *that* the person making the complaint has in the aforementioned Register .

Subsequently, the Housing Agency of Catalonia, without first verifying whether the identity of the person making the request to renew the registration corresponded to the holder of the Registry card to *which* the request, replaced the telephone number and contact address of the person holding the Registry sheet (the person making the complaint) with the telephone number and contact address of the third person who had formulated the renewal request.

The inaccurate treatment of these data led to the Catalan Housing Agency subsequently issuing an erroneous renewal resolution, renewing the registration in the said Register of the person holding the card (here the complainant) who had not requested, instead of the third person who had submitted the renewal request, and that on 11/29/2021 he sent an email to the third person's email address informing him about the renewal of the registration in the aforementioned Register, but which contained a document indicating the renewal of the complainant's registration, and which contained personal data of this person and their partner, with the consequent disclosure of this data to the third party .

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 Housing Agency of Catalonia has not made any objections to the initiation agreement. This agreement contained a precise statement on the imputed liability.
3. In relation to the conduct described in the proven facts section , it is necessary to refer to article 5.1.f) 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 circulation thereof (hereinafter, RGPD), which includes the principle of confidentiality, and provides that: "*personal data will be (...) treated in such a way that an adequate security of personal data is guaranteed, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")."*

The facts alleged in the initiation agreement are considered proven taking into account, on the one hand, the email - provided by the person making the complaint - that the Agency's dependent Registry sent on 11/29/2021 to the third person, with details of the reporting person and their partner. On the other hand, the recognition by VIMED of the mistake made in linking the third party's request to the reporting person's file, as well as the screen prints of

the form in the database of the said Register, in which the reporting person's file is displayed with the telephone number and address of the third person, instead of theirs. And finally, the fact that on 19/01/2023 the Agency became aware of the facts imputed based on the circumstances indicated, and that before this, it has not formulated allegations.

These imputed facts, and now proven, are constitutive of an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as such the violation of: "the basic principles *for the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9*", among others which the principle of confidentiality is included .

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."

Aside from this infraction, the treatment consists in the incorporation of the telephone number and contact address of the third person who formulated the renewal request in the Registry sheet corresponding to the person here making the complaint, binding to this last person to renew the registration (instead of the person who requested it), has also violated the principle of accuracy provided for in article 5.1.d) of the RGPD, and is therefore constitutive of the violation provided for in article 83.5.a) of the RGPD and article 72.1.a) of the LOPDGDD (*"the processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679 "*).

However, it is considered that we are facing an ideal contest of infringements, given that, although the Housing Agency of Catalonia has committed different infringements, there is a direct connection between them, due to the fact that the processing of inaccurate data in the Registration has led to the violation of the duty of confidentiality which is the object of imputation. Therefore, a single infraction should be imputed, and it is considered appropriate to impute the one corresponding to the violation of the duty of confidentiality (art. 83.5.a RGPD, art. 72.1.i) LOPDGDD).

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 appropriate measures to be adopted so that the conduct ceases or the effects of the offense that has been committed are corrected (...)."

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 (...)."

With regard to the need to adopt corrective measures, as set out in precedent 4, in the preceding phase VIMED stated that on 12/12/2022 the AHC had rectified the person's erroneous data complainant who appeared in the Register of Housing Applicants with Official Protection of Catalonia (RSHPO) , and to that effect, provided a letter dated 12/14/2022 that VIMED addressed to the person here complaining, which contained an impression of the screen of the form in the database of the said Registry, in which it is observed that the *file* corresponding to the reporting person shows his telephone number and his contact address, instead of those of the third person, thus evidencing that the inaccuracy has already been corrected , so the adoption of corrective measures should not be required. This, without prejudice to remembering the need to always verify, in any data processing, the ownership of the personal data processed.

For all this, I resolve:

1. Warn the Housing Agency of Catalonia 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 is stated in the 4th legal basis.

2. Notify this resolution to the Housing Agency of Catalonia .

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,