

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

File identification

Resolution of sanctioning procedure no. PS 6/2023, referring to the City Council of (...).

Background

1. On 02/10/2021, the Catalan Data Protection Authority received a letter of complaint against the City Council of (...), on the grounds of an alleged breach of data protection regulations personal _

Specifically, the person making the complaint stated that he was an " active member of the body of the Local Police of (...)" and that he had participated in the selective process of internal promotion to provide " a plaza para corporal de dicho Ayuntamiento ((...))". The complainant complained that, on 02/10/2021, the City Council of (...) published in its electronic headquarters, "abiertamente, para todo el público" , a record that included his personal data (name , surnames and ID), with the result obtained in the tests of this internal promotion process. And that this fact would have allowed an indeterminate number of people to know about his status as an active agent of the City Council's Local Police.

2. The Authority opened a preliminary information phase (no. IP 387/2021), 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. In this preliminary information phase, on 10/06/2022 the reported entity was required to report, among other things, whether during the month of October 2021, as part of the "selective process for fill 1 position of corporal of the local police of the City Council of (...), through an internal promotion opposition competition", the City Council had published on its electronic headquarters the list of the results obtained by the people aspiring to the aforementioned process, identifying them with their first and last names and ID. It also required it to report on the legal basis that would legitimize this publication and the period in which the information would have been published (date of publication and withdrawal).
4. On 14/10/2022, the City Council of (...) responded to the aforementioned request with a letter in which it stated the following:
 - That "On October 6, 2022, the request for prior information no. IP 410/2021, providing the requested information that also responds to prior information request no. IP 387/2021, for the same facts."
 - That "For all this, in accordance with the provisions of article 57 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (LPAC), we request the accumulation of **this complaint which has motivated the initiation**

of the previous information no. IP 387/2021 with the previous information no. IP 410/2021, taking into account the close connection of the facts. "

5. On 26/10/2022, the Authority informed the reported entity that, in this case, it was not appropriate to accumulate the two procedures, nor could it be considered that its response to the information request of IP 410/2021 answered the information requirement of IP 387/2021.

In this sense, the entity was informed that the requirements made in the framework of each of these IPs, although they referred to the same selective process, referred to different publications made throughout the selective process. And that, for this reason, the response to the requirement of IP 410/2021, which was exclusively about the publication of the list of admitted or excluded applicants, could not be understood as responding to the requirement of IP 387/2021, relative to the publication of the results of the tests.

In the letter, the entity was urged to report on the various issues on which it had been requested in the framework of IP 387/2021.

6. On 09/11/2022, the reported entity complied with this requirement with a letter stating the following:
- That "During the month of October 2021, the minutes of the test results corresponding to the third and fourth year and final results of the selection process to cover 1 place of corporal of the local police of the City Council of (...), through an internal promotion opposition competition."
 - That " The identification of applicants was carried out by means of first and last names."
 - That "According to the certificate of publication on the Notice Board, from " esPublico Gestiona", the date of publication of the listing on the Notice Board was October 5, 2021. The document was published for 13 days and the post was removed on October 19, 2021."

The reported entity accompanied the letter of response with a copy of the announcement, dated 05/10/2021, by which the minutes of the test results corresponding to the third and fourth exercise of the selective process of 1 post of local police corporal, and final results. This announcement contained the lists of all the participants who had taken the third and fourth exercise, identified by first and last name, and next to it the score obtained in each exercise, indicating whether that person had passed the test or not. The announcement also contained a final list, with the name and surname of the participants who had passed all the tests and with the final score obtained, once the results of all the tests were added up.

7. Given that it is inferred that the publication reported by the reporting person on 02/10/2021 referred to publications prior to the one the entity had referred to in its response where it only mentioned the publication of the announcement of 05/10/2021, on 05/12/2022, and still within the framework of this phase of prior information, the City Council was required again. In this request, it was requested to report on all the publications made on the bulletin board of the electronic headquarters, during the period between the date of

publication of the list of those admitted/excluded from the referenced selective process and the day 02/10 /2021.

8. On 12/23/2022, the reported entity complied with this requirement by means of a letter stating the following:
- That the processing of personal data that is published (name, surname and the results of the tests) "(...) can be considered protected within the framework of the selective process, based on articles 6.1.c) and i) RGPD in in relation to article 55.1 and 55.2 of Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (EBEP), the article 91 of Law 7/1985, of April 2, regulating the local regime bases (LBRL) and article 287.2 of Legislative Decree 2/2003, of April 28, by which the revised text is approved of the municipal and local regime law of Catalonia (LMC).

In accordance with the aforementioned articles, the principle of publicity imposes, among other aspects, publicity of the process and its regulatory bases, of the lists of people admitted to the selective process, of the score obtained in the different phases of the process , of the final rating of all the participants and the final result of the process.

Article 9.1.e) of Law 19/2014, of December 29, on transparency, access to public information and good governance (LTC) establishes that they must be published, on the transparency portal or on the corresponding electronic headquarters notices and the results of the selective processes for the provision and promotion of staff. This provision is applicable in this procedure since the City Council would have made public, among others, the information relating to the people admitted to the selection process and the final qualification.

The seventh additional provision of the LOPDGDD that regulates the identification of interested persons in notifications by means of advertisements establishes that when it is necessary to publish an administrative act containing personal data of the affected persons, they shall be identified in through your first and last name, adding four random numerical figures from your national identity document, foreigner's identity number, passport or equivalent document. (...)"

- That "(...) 1. As part of the selection process for a position of corporal of the Local Police of the City Council of (...), during the period between the date of publication of the list of admitted and excluded applicants, and the date of entry of the complaint to the Authority, i.e. between (...) and 10/2/2021, the following information was published on the municipal website: "
 - a) "(...) mayoral resolution no. (...), of (...), by which the definitive list of admitted and excluded applicants is approved(...)".
 - b) "(...) the record, of September 24, 2021, of the results of the test corresponding to the second exercise and the call for the third and fourth exercise (...)".
 - c) "(...) the announcement, of October 5, 2021, of the record of the results of the test corresponding to the third and fourth year (...)".

In this regard, the reported entity substantiated its response with the following documentation:

- Copy of Mayor's resolution no. (...), dated (...), by which the definitive list of admitted and excluded applicants was approved. This resolution included the list of the eight applicants admitted, including the complainant, all identified by name and surname, and also indicated that "No applicant is excluded."
- Copy of the certificate, dated 10/15/2021, issued by the " esPúblico gestenia" platform, which certifies that the Mayor's resolution no. (...), dated (...), was published on the bulletin board on (...), for 30 days, until the day (...).
- Copy of the minutes, dated 09/24/2021, "of the results of the test corresponding to the second exercise of the selection process (...)." This record contained a quadrant with the results of the psychotechnical tests corresponding to the second exercise, both the numerical results of the applicants who had passed the tests and those who had obtained the qualification "not suitable", all of them identified by name and surname.
- Copy of the certificate of 10/05/2021, issued by the " esPúblico gestiona" platform, which certifies that the minutes dated 09/24/2021 were published on the notice board on 09/24/2021, during 10 days, until 04/10/2021.
- Copy of the announcement dated 10/05/2021, of the record of the results of the test corresponding to the third and fourth year of the selection process for 1 place of corporal of the local police, and final results . This document had been provided in response to a previous request (legal precedent 6th).
- esPúblico gestiona" platform , which certifies that the announcement dated 10/05/2021 was published on the notice board on 10/05/2021, for 13 days, until 19/10/2021.

9. On 25/01/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of (...), for an alleged infringement provided for in article 83.5. a , in relation to article 5.1. a 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 (RGPD). This initiation agreement was notified to the imputed entity on 01/26/2023.

10. The initiation agreement set out the reasons why no charge was made regarding the reported fact that the City Council of (...) had published on the notice board of the electronic headquarters the list of accepted and excluded applicants of the selection process for internal promotion for the provision of a post of corporal of the Local Police, which included the personal data of the person making the complaint (name, surname and ID), together with the indication that "No no aspirant is excluded".

The first thing to point out is that as part of the previous information actions, it was found that the City Council did not include the ID number of the participants in any of the publications relating to the referenced selection process.

In fact, as indicated in the initiation agreement, in the publication of the list of applicants admitted and excluded from this selection process, the entity only included the list of the

names and surnames of the persons admitted , given that there was no case of any applicant being excluded . The publication was in accordance with the provisions of article 21.1. *b* of Decree 8/2021, of February 9, on transparency and right of access to public information (from now on, Decree 8/2021), which enables the publication of lists of admitted persons and those who have passed the selection process.

Finally, in the same initiation agreement it was also highlighted that, even in the hypothetical case that the name and surname of some excluded person had been included in the list, this publication would not have entailed a violation of the principle of legality, by virtue of what is provided for in article 78 of Decree 214/1990, of July 30, which approves the regulation of personnel in the service of local entities (RPEL). This decree expressly provides that the resolution on the admission of applicants must identify the place where the complete lists of admitted and excluded applicants are made public.

11. 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.
12. On 07/02/2023, the imputed entity made allegations to the initiation agreement .
13. On 04/04/2023, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the City Council of (...) as responsible for an infringement provided for in article 83.5. *a*, in relation to article 5.1. *a* , all of them from the RGPD. This resolution proposal was notified on 04/05/2023 and a period of 10 days was granted to formulate allegations.
14. On 04/20/2023, the accused entity presented a statement of objections to the resolution proposal.

proven facts

On 09/24/2021, the City Council of (...) published on the bulletin board of the municipal electronic headquarters the results of the psychotechnical tests corresponding to the 2nd year of the selection process for a corporal position in the Local Police of the City Council. Among other information, the publication included the names and surnames of the applicants who had obtained the "not suitable" result.

On 05/10/2021, the City Council of (...) published the results of the 3rd and 4th exercise of the selective process which, among other information, included the names and surnames and the numerical result obtained by the people who did not they had passed the aforementioned exercises.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993 apply to this procedure , according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority 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 made allegations both in the initiation agreement and in the resolution proposal. The first ones were already analyzed in the proposed resolution, but even so it is considered appropriate to mention them here, given that they are partly reproduced in the second ones. The set of allegations made by the accused entity are then analysed.

2.1. On the allegations made before the initiation agreement.

The allegations made by the City Council against the initiation agreement were not in themselves allegations tending to distort the facts imputed to the initiation agreement, nor their legal qualification, but were only referred to in general terms to the documents and justifications provided during the prior information phase .

Thus, in the proposed resolution it was indicated that all the manifestations and documentation provided in the previous information phase had already been taken into account in order to analyze the facts reported, which gave rise to the initiation of this sanctioning procedure.

Also, in the resolution proposal, mention was made of article 21.2 of Decree 8/2021, of February 9, on transparency and the right of access to public information. This article, although it foresees that the list of the people admitted in each exercise of the selective process, as well as the identification of the person finally selected, does not contain any provision regarding the publication and dissemination of the qualifications obtained by the people who do not pass the selective processes. Along the same lines, articles 80 et seq. of the Regulation of personnel in the service of local entities, approved by Decree 214/1990, of July 30 (RPEL), provide for the publication of the approved lists, without making any reference to the dissemination of the qualifications of the suspended persons.

Finally, in the proposed resolution reference was made to the "possible damage that the disclosure of this information may cause to the reputation of the people affected." Part of the allegations that the entity has presented against the resolution proposal are based on this text, which are the subject of assessment in the following point.

2.2. On the competence to initiate an ex officio sanctioning procedure for facts that have not been reported, and the classification and classification of proven facts.

The accused entity, based on the text mentioned above about the "possible damages" that the publication of the qualifications of unfit/suspended may cause to the reputation of the affected persons, alleges that the reporting person did not report any moment these eventual damages to his reputation, but only complained about "the publication of his personal data."

In this sense, he considers that this Authority "is proposing a sanction for a reason that has not been reported, and that cannot be observed ex officio by the data protection authority." Likewise, it states that the resolution proposal did not explain "how the grade of a selective procedure can affect the reputation of an applicant", and ended up concluding that the "penalty proposal is not covered by any regulation. "

The first thing to note is that, as provided for in article 62 of the LPAC, the complaint is the means by which a person brings to the attention of an administrative body the existence of a specific fact that can justify the initiation by virtue of an administrative procedure. From here, as provided for in article 63 of the LPAC, it is the competent body (in this case, the

Authority) that has the power to initiate ex officio a sanctioning procedure if, within the framework of the previous investigation actions initiated following the complaint, appreciates sufficient indications about the commission of an infringement of the data protection regulations; this, regardless of whether or not the infringement has previously been reported. In other words, it is not necessary for a conduct to have been the subject of a complaint for this Authority to agree ex officio to initiate a disciplinary procedure.

Once the above has been settled, it must be indicated that, contrary to what seems to be inferred from the entity's allegations, the facts that have motivated the initiation of this sanctioning procedure, and which constitute the proven facts of this resolution does not take as a basis the eventual damages that the publication of the unfit/suspended ratings could cause to the reputation of the people affected. In fact, no reference to these eventual damages is included in its description .

And the proven facts refer only to the controversial publication of the personal data of the participants who did not pass the selective process of internal promotion to provide a position of corporal of the Local Police, which the City Council carried out without having any legal basis that enable this data processing (art . 5.1. to RGPD). These facts, which are those that the person making the complaint presented in the letter of complaint, constitute the commission of an offense classified in the data protection regulations, and its classification and qualification is described in detail in the third section of this sanctioning resolution, to which we refer.

Finally, the controversial mention of " eventual damages" that was included in the legal basis of the proposed resolution was added in order to emphasize the possible adverse effects derived from the aforementioned publications . But this circumstance has not had any impact on the description of the imputed facts, nor on the typification or legal qualification of these.

Having said that, it is difficult to question that the publication of the grades of results in which it is indicated that a person has failed tests may not cause eventual damage and affect a person's reputation, since it is made public and notorious that it has not passed a selective process. In relation to this, it is necessary to point out that there are no reasons of public interest that could justify the identity of people who have failed a test in the selection process being known, especially considering that this person may know that they have not passed the test just checking that it is not in the list of approved participants. All this without prejudice to the fact that, as the entity indicates in its allegations, at no time is it questioned that "under no circumstances is the convening body responsible for the qualification achieved by the candidate."

2.3. On the publication of qualifications with identification of applicants for the selection process.

The accused entity defends that "the publication of the results is an obligation of this convening local administration", given that article 80 of the RPEL, sections 1 and 2, expressly establishes that it is necessary to publish "the list of those approved by score order, which cannot contain a higher number than the number of vacant places offered." And he adds that this "obligation to publish the score can only be interpreted in the sense that it is necessary to publish the grades, approved or suspended."

In relation to this, it is necessary to indicate that the same text of paragraphs 1 and 2 of article 80 of the RPEL, from which the City Council starts to defend the interpretation that it is necessary to publish the qualifications, approved or suspended, expressly establishes that the publications must be from the "approved list in order of score ." That is, it limits the publication to the list of approved people and, from there, sorted by the score of the results obtained in the tests. The interpretation presented by the City Council does not fit within the text of article 80 of the RPEL, which makes no reference to the publication of the qualifications of suspended persons. In accordance with the above, article 21 of Decree 8/2021 provides for the publication of the list of persons admitted in each year of the selection process, as well as the identification of the person finally selected, but it also does not contain any provision regarding the publication of the qualifications obtained by people who do not pass the selective processes.

Thus, although the personnel selection procedures are governed by the principles of publicity and transparency, the legal provisions that regulate these selection processes enable the publication of the lists of people who have been approved in each exercise of the personnel selection processes. It excludes, therefore, the information of people who have been declared unfit or suspended, which must only be published if there is an express legal provision that foresees this or if there is some other legal basis established in the Article 6 of the RGPD. On the other hand, with regard to psychotechnical tests, where special categories of data tend to be treated, it would not be enough to have one of the legal bases established in Article 6.1 of the RGPD , but the provisions of article 9 of the RGPD must also be taken into account. In this case, the publications on the municipal notice board made by the City Council were not protected by any legal provisions and, in this sense, contravened the principle of legality of the processing of personal data provided for in article 5.1. to the RGPD.

On the other hand, the entity states that anyone, if they cross the data from the publication of the list of admitted and excluded persons with the data from the publication of the approved applicants, could also end up finding out the identity of the suspended applicants .

In this regard, it should be noted that, regardless of what has been said in the previous paragraph, the case is that the entity, with the publication of the list of ineligible persons and the results of the exercises (both those approved and those suspended), it directly evidenced the identity of the suspended persons, without the need for any person to take any additional action to find out this information.

Here, it should be noted that, in order to avoid the eventual crossing of personal data included in the various publications of acts derived from a selective process, it is important that these publications remain exposed for the periods strictly necessary to fulfill the purposes of publicity and transparency.

Finally, the accused entity pointed out that in the "publication of qualifications" only the candidates for the selection process were identified "by name and surname", "as indicated by the seventh additional provision of Organic Law 3/2018, of December 5, Protection of Personal Data and Guarantee of Digital Rights" (LOPDGDD) and "the recommendations made by the Catalan Data Protection Authority itself" on this point.

In this regard, it should be remembered that, as indicated in the 10th antecedent, in the initiation agreement the facts referred to the eventual publication of the names, surnames

together with the ID number of the people participating in the selection process, given that it was found that the City Council did not include the DNI number in any of the publications, so that it published less personal data than provided for in the seventh additional provision of the LOPDGDD and article 21 of Decree 8/2021.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5 of the RGPD, relating to the principles of treatment, which in its section 1 letter *a* provides that personal data must be treated " lawfully , loyally and transparently in relation to the interested party ("lawfulness, loyalty and transparency")."

In this sense, the RGPD provides that all processing of personal data must be lawful (art. 5.1. *to* RGPD). In relation to this, it establishes a system of legitimizing the processing of data that is based on the need for one of the legal bases established in its article 6.1 to be met and, if it is a question of special categories, as would be the case of the publication of results of the psychotechnical tests corresponding to the 2nd exercise of the selection process for a corporal position, the provisions of article 9 of the RGPD must also be taken into account.

During the processing of this procedure, the facts described in the proven facts section, which are considered constitutive of the offense provided for in article 83.5, have been duly proven. *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."

The conduct addressed here has been included as a very serious offense in article 72.1. *a* of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), as follows :

"The treatment of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679", in relation to the principle of legality established in article 5.1. *to* the same RGPD.

4. Article 77.2 of the LOPDGDD provides that, in the case of infringements committed by those in charge or in charge listed in article 77.1 of the 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 similar terms 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 this case, no corrective measures should be required to stop or correct the effects of the infringement since, from the information and documentation provided by the entity, it is proven that the publications have already been removed from the headquarters' notice board municipal electronics.

resolution

For all this, I resolve:

1. Warn the City Council of (...) as responsible for an infringement provided for in article 83.5. a in relation to article 5.1. a , both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the City Council of (...).
3. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
4. Order that the 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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, with discretion, the imputed entity can file an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with Law 29/1998, of July 13 , regulator of 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 under 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