

File identification

Resolution of sanctioning procedure no. PS 13/2023, referring to Cardedeu Town Council.

Background

1. On 03/07/2022, the Catalan Data Protection Authority received a letter of complaint against Cardedeu City Council, on the grounds of an alleged breach of the regulations on personal data protection .

In particular, the person making the complaint presented the following circumstances, in relation to the "door to door" waste collection service of the Cardedeu City Council:

- That the reported entity provides users with the waste collection kit as part of the door-to-door service.
- That the buckets that are given to the users of this service have a built-in chip "which is associated with our personal data and our home."
- That the rubbish bins must be located on the public road, which allows anyone to have access to the waste that users deposit in their bins.
- That the reported entity will authorize the staff of the company awarded this service to open the waste bags that users deposit in the bins.

This complaint was assigned no. IP 248/2022.

2. After submitting the aforementioned complaint, on dates 24/07/2022, 16/12/2022, 16/01/2023, 03/02/2023, 06/02/2023, 09/02/2023, 23/02/2023 and 03/01/2023, eight other people submitted separate written statements in which they denounced that the door-to-door waste collection system of the Cardedeu City Council contravenes data protection regulations. These briefs set out the facts in terms, on the whole, similar to those set out in the first complaint.

These complaints were assigned the following IP numbers: 269/2022, 471/2022, 27/2023, 60/2023, 62/2023, 73/2023, 72/2023 and 117/2023 respectively. All of them are the subject of this procedure.

3. The Authority opened a preliminary information phase, in accordance with what is provided for in article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat , and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure.
4. In this information phase, on 07/19/2022 the reported entity was required to:
 - Confirm if, as part of the provision of the door-to-door waste collection service, the buckets and bags that are used have incorporated a chip linked to the person using the service.

- Bring a copy of the data protection impact assessment (AIPD) that was carried out for the implementation of this waste collection system.
 - Specify whether the staff of the company awarded the service had been authorized to open the waste bags .
5. On 02/08/2022, the Cardedeu City Council responded to the aforementioned request through a letter in which it set out the following:
- That "the buckets and containers that are delivered to the users of the service are specifically numbered and have an embedded chip (identifying TAG). The chip, when the bucket is delivered, is linked to a home or commercial establishment. (...)"
 - That "there is no impact assessment related to data protection, due to the implementation of the door-to-door waste collection system."
 - That "Cardedeu City Council has not authorized the staff of the company awarded the door-to-door waste collection service to open the waste bags. A visual inspection procedure is carried out and the weight of the different fractions that are collected is weighed, by experienced workers and/or who have received the necessary training to be able to make an estimate of whether the contents of the bags, taking into account the density, it corresponds to the fractions that are collected that day."
6. On 08/22/2022 and 08/23/2022, also during this preliminary information phase, the person who submitted complaint no. 248/2022 presented a new supplementary letter. In this letter, among other issues, he invoked article 65 of the Regulation regulating the public door-to-door waste collection service in the municipality of Cardedeu, relating to the powers of municipal inspectors, and pointed out that "the objective of these inspections is to issue sanctions to citizens, that is to say, putting an identification chip in the bins is not for public interest, but for revenue collection, since the sanction comes to the home owner by accessing their data personal." (...). Likewise, he also stated that the City Council would have made the delivery of the containment elements necessary for the "door to door" service conditional on the collection of his personal data. The letter was accompanied by various documents.
7. On 10/11/2022 and still within the framework of this preliminary information phase, the Authority addressed a new request for information to the reported entity. On the one hand, in relation to IP no. 269/2022, the City Council was required to certify how it made effective the reporting person's right to information, when he collected the necessary buckets for the door-to-door service. And, on the other hand, he was required to report on certain aspects related to the material used in the provision of the disputed service, and to specify the legal authorization to inspect or control the waste generated by each person user of the service.
8. On 11/24/2022, the Cardedeu City Council complied with the request by means of a letter which, in literal terms, reported the following:
- That "There is no identification procedure for the person using the door-to-door waste collection service through the bags. The bags for the door-to-door waste collection service of the organic fraction, which are delivered to those homes or commercial

activities that want it, do not contain an identification chip. Bags are not provided for the collection of the other fractions of waste (packaging, leftovers, paper and cardboard). (...) There is no identification procedure for the person using the door-to-door waste collection service through the bins. The bins of the door-to-door waste collection service incorporate an identification chip. At the time of delivery, these buckets are linked by means of this chip to a home or commercial establishment. The bucket is associated with a tax unit (UT), that is, with a home or commercial activity, but not with a user person.

- That "The material for door-to-door waste collection (buckets and bags) does not have any code printed on it that allows it to be linked to the person using the service nor does it have any other element that allows a third person to be able to identify the user person. (...) The bins for the door-to-door waste collection service incorporate an identification code that allows the City Council to associate the bin with a home or commercial establishment. This code does not allow, under any circumstances, third parties to associate a bucket with a home or commercial establishment."
- That "The identification chip that the buckets have can only be read by a reader of another frequency. When the chip is read, the code you get is an EPC code (Electronic Product Code), which consists of 24 digits. Using a converter, this EPC code is transformed into a TAG (12-digit code) that can be consulted through a data management software. The people working in the door-to-door waste collection service, using a reader, can read the chip and obtain the TAG code, but they do not have access to any other information."
- That "The waste of any user is not inspected or controlled since the identification procedure is for a home or commercial establishment of the door-to-door waste collection service. The legal basis that legitimizes the processing of data to inspect or control the waste generated by a home or commercial establishment identified by means of an identification chip is the fulfillment of a legal obligation applicable to the person in charge of the treatment, in accordance with the article 6.1 c) of the GDPR. This is established in article 12.5.d) of Law 7/2022, of April 8, on waste and contaminated soil (...)."
- That "The information related to data protection, of the door-to-door waste collection service, which is provided to users, and which, therefore, was also provided to [the person who presented the IP no. 269/2022] [it was provided] through several channels: a) One month before the service was put into operation, letters containing a QR code were sent to all homes in the municipality. The letter contained information regarding the door-to-door waste collection service. People who wanted to collect the buckets had to go to the spaces enabled for this purpose with this letter. At the time of being served, the letter with the QR code was requested, so that the bucket was directly linked to the home (...) b) Once the bucket was linked to the home or commercial establishment, voluntarily, the people who collected it could provide their first and last name, telephone number and email at the same time that the information related to data protection was provided. The purpose of processing this data was to be able to send a proof of delivery relating to the material that had been delivered and to provide an alphanumeric user code to register in the application. At that moment, the consent of the interested person was collected, having previously provided the information related to the duty to inform and in electronic support."

Cardedeu City Council attached various documentation to its letter, among which stands out an e-mail attaching the proof of delivery of the material for the selective collection of waste and the associated codes. This proof does not correspond to the proof of having facilitated the right of information to the person who submitted complaint no. IP 269/2022.

9. On 13/12/2022, the person who presented IP no. 248/2022 provided various documentation related to the events reported. Among this documentation, the Cardedeu City Council's response to some allegations presented by this complainant to the City Council on 08/12/2022, in relation to the "door to door" waste collection service, stands out. . The response of the reported entity to this letter contains the following statements:

"Regarding the particular case of the plaintiff [the complainant here], she was offered the material of the buckets without any connection with personal data. However, on August 19, 2022, the lady [here complainant] was informed that, in the impasse of receiving the resolution of the Catalan Data Protection Agency in response to her requests (...), she could collect the material to carry out the emptying in the emergency area in anonymous and unlimited form. The plaintiff presented herself on Wednesday, August 24 at the Porta A Porta Citizens' Service Office where she was provided with the access key."

10. In view of the content of the latest complaints submitted, this Authority considered it convenient to have more information regarding the door-to-door service provided by Cardedeu City Council. For this reason, on 14/02/2023 the Authority required the reported entity to provide more information about the QR code and the numerical code that incorporate the organic fraction buckets, as well as about the material used in the provision of the service.

11. On 02/22/2023, Cardedeu City Council responded to the request in the following terms:

- The bags of the organic fraction are 100% compostable as they are made with materials of vegetable origin. They are not transparent but, since they are translucent, they allow a visual glimpse of their content. It must be used within the bucket of the organic fraction that the City Council has distributed.
- The City Council does not have mechanisms to guarantee that the bag found in a certain bin is indeed the bag deposited by the person using the service of the address linked to that bin. (...)
- The bins provided by the City Council to service users include a QR code and a 12-digit numeric code. These codes are unique for each address and bucket, and become permanent on the item (bucket, box or container). (...) On the other hand, in the event of a change of residence with the same collection material (same type of bins), the user can choose between these two options: - take the material with them, notifying the City Council so that the 12-digit codes are linked to the new home. - leave the clean material in the home, leaving the buckets attached to it and at the disposal of the new residents who may live there. (...)
- The assignment of numbered buckets to each home obeys a purely random configuration, making it completely impossible to find any relationship that responds

to a logic, between the code of the bucket, box and container and the home or the large generating establishment to which belongs

- The information that the City Council obtains from the reading of the chips that are installed in the bins of each tax unit is as follows: - General participation in the waste collection service. It is understood as the number of days that the buckets are collected. – Participation by fractions. You can compare the day a bin was collected with the theoretical collection fraction of the area to which it belongs. – Incidents of non-collection if they occur.
- The City Council cannot obtain information on the amount of waste generated given that it does not have any system for weighing or volume control of the delivered waste.
- In the case of single-family homes, people using the service must place the buckets for private use on the public road, in front of their home.
- The subject responsible for the infringements resulting from incorrect recycling, is the one whose authorship can be demonstrated."

The reported entity attached various documentation to its letter. Among this, he provided photographs of the buckets of the organic fraction and the "multi-material" buckets, which allow you to visualize that the buckets contain a printed QR code and a 12-digit numerical code. Likewise, it also provided the calendar/schedule in which people using the service must take their bags out onto the public road.

12. On 02/03/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against Cardedeu City Council for two alleged infringements: an infringement provided for in article 83.4. *to* , in relation to article 35; and a second offense 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 movement of such data (RGPD). This initiation agreement was notified to the imputed entity on 08/03/2023.
13. The initiation agreement explained the reasons why no imputation was made with respect to other facts reported. First of all, with respect to the eventual illegality of the processing of personal data carried out in the framework of the provision of the door-to-door service, the Authority considered that it found protection both in Law 7/1985, of 2 of April, regulating the bases of the local regime (LRBRL), as in the revised text of the Waste Regulatory Law, approved by Legislative Decree 1/2009, of July 21, in accordance with article 6.1 e of RGPD And, secondly, regarding the possible inspections of the waste bags, the complaint was filed since it was not proven that unauthorized third parties accessed the contents of the bags, on behalf of the City Council.
14. On 03/22/2023, Cardedeu City Council made objections to the initiation agreement .
15. On 18/05/2023, the person instructing this procedure formulated a resolution proposal, for which he proposed that the director of the Catalan Data Protection Authority admonish Cardedeu Town Council as responsible, firstly, of an infringement provided for

in article 83.4. *a* in relation to article 35; and, secondly, of an infringement provided for in article 83.5. *b* in relation to article 13, all of them of the RGPD.

This resolution proposal was notified on 05/18/2023 and a period of 10 days was granted to formulate allegations.

16. On 05/31/2023, the accused entity submitted a statement of objections to the resolution proposal.

proven facts

1. The City Council of Cardedeu has not carried out the impact assessment on data protection, in relation to the processing of personal data that it carries out as part of the provision of the door-to-door waste collection service. This, despite the fact that this treatment involves a high risk for the rights and freedoms of the people using the service.
2. The City Council of Cardedeu has not proven to have fulfilled its duty of information before the users of the door-to-door waste collection service provided their personal data, in order to obtain the necessary containment elements to deposit their waste. Proof of this is that, in the framework of the previous information, the City Council did not prove that it had informed the complainant of IP no. 269/2022 on the points of article 13 of the RGPD, although it was expressly required.

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 imputed entity has not formulated allegations in the resolution proposal that distort the imputed facts or their legal qualification. Regarding this, the allegations presented by the Cardedeu City Council, which will be analyzed in the 5th legal basis of this resolution, focus on requesting the extension of the deadline established in the resolution proposal to adopt corrective measures to correct the effects of the imputed infractions. Next, it is considered appropriate to reiterate the most relevant of the motivated response of the investigating person to the allegations that the accused entity presented on 03/22/2023 in the agreement to initiate this procedure.

2.1 About the AIPD

Attached to the statement of objections that it submitted to the initiation agreement, the Cardedeu City Council provided a document entitled "Analysis of the need to carry out an Impact Assessment relating to Data Protection (AIPD)) for the implementation of the door-to-door waste collection system in Cardedeu City Council's homes. In this document, it ruled out the need to make an AIPD in relation to the reported data processing. In essence, the entity stated that there are not sufficient factors to consider that there is, with

a high probability, "a high risk for the rights and freedoms of the people affected by the processing of the data."

In relation to this, the City Council argued that the controversial personal data processing does not meet any of the criteria set out in the "List of types of data processing that require an impact assessment related to data protection" (the list) – document drawn up by this Authority, available on its website, which includes these criteria, numbered from 1 to 11, the concurrence of which would imply a risk in the treatment and, therefore, the need to draw up an AIPD–. And, for what is of interest here, in relation to criteria number 1, 7 and 10, he argued the following:

- 2.1.1 In relation to criterion number 1 of the list: "treatments that involve profiling or assessment of subjects, including the collection of personal data of the subject in multiple areas of his life (performance at work, personality and behavior, covering several aspects of his personality or his habits."

The reported entity argued that, by means of the door-to-door system, only the data relating to the address of the properties is processed. Regarding this, he pointed out that the containment elements provided by the City Council incorporate identification chips (TAG), which are linked to a tax unit (UT), that is, to a house, and that these chips can only be read by a high frequency reader. In these terms, he considered that, through the mentioned waste collection system, the City Council does not process personal data.

Likewise, with regard to the location of the buckets, the City Council presented two assumptions. A first case, in which the people using the service must deposit the waste in "the location of the public road closest to the access to the house"; and a second case, referring to multi-family blocks of 10 or more homes, where the space in which the waste must be deposited can be the "portal, if there is sufficient space and easy access by the operators – sidewalk corresponding to the house if it is of sufficient width – reservation of space in the parking lane, if none of the above is possible – in bucket hangers in the space reserved in the parking lane, in case none of the above is possible."

The City Council concluded that depositing the bins close to the house or the portal prevents the re-identification of the people generating the waste and that, therefore, it is not plausible to maintain that the controversial treatment involves profiling or assessment of subjects. In the end, he added that, if it were considered possible to re-identify the person using the service and it was affirmed that they are being profiled, "the objective would not in any case be to evaluate personal aspects but to promote the selective collection and reduction of waste and carrying out the monitoring and control of the service, in accordance with the regulatory regulations. (...)."

As the instructor of this procedure advanced in the resolution proposal, this Authority does not share the position of the reported entity, for the arguments that are set out below.

- First of all, it must be borne in mind that, despite the fact that the door-to-door selective collection of waste is based on the association of the bin with a specific home, and not with a physical person, the truth is that the City Council, without efforts disproportionately, it can access information on the recycling habits of a specific individual, based on crossing the address of a home with the register. In this sense, as the reported entity has recognized, from the reading of the chips located in the containment elements it obtains information about participation in the waste collection

service; on incidents in the matter of recycling; and on the collected fractions (precedent 11th). This information is enough to be able to assess the behavior of the subjects involved in this waste collection model, depending on what their habits are.

- Regarding the above, it must be said that the QR code and the numerical code of each bucket are unique and permanent for each containment element. This fact further increases the risk that third parties passing through the public road will re-identify the person generating the waste, also taking into account that this numerical code is always the same.
- Nor can it be ignored that the use of translucent bags allows municipal staff and third parties to glimpse the deposited waste. In this way, while the bag remains on the public road, third parties could access personal information of the users of the service, such as information on eating and consumption habits or preferences, among others.
- Another circumstance that aggravates the risk of re-identifying the person generating the waste with a bin is that of people who live alone, or who live in a single-family house and have to deposit the rubbish in front of their door.

In relation to the above, it should be noted that, although the City Council has stated that in the case of multi-family blocks the containment elements are left on the portal, this fact does not prevent third parties from being able to view the numerical code of each cube, as well as the contents of the bags that users deposit there.

In accordance with what has been explained so far, it is appropriate to refer to the opinion CNS 60/2021 of this Authority which, in relation to door-to-door waste collection, established the following:

"Despite the fact that the identification is carried out through a coding system, it must be taken into account that the collection of the containment elements takes place in front of the door of the home. This fact increases the risk of re-identification of the waste generator by any person residing in the area or passing through the public road.

And not only that, it also allows (while the bucket remains on the public road) that anyone can have access or obtain various information from the generator of the waste which, both alone and as a whole, can be of particular sensitivity (type of waste, amount and therefore also possible number of residents, habits, preferences and even possible diseases, etc.). Its disclosure could have important consequences for the intimate or private sphere of the user, it could even cause social harm.

In addition, this type of collection model makes it possible to know and even evaluate over a long period of time the behavior of the people who are users, given the recording of the data linked to the reading of the labels incorporated in the containment elements or, where appropriate, the use of cards or electronic key fobs for access to containers. In other words, they allow the creation of profiles on the people who are users. (...)"

In summary, the City Council's allegations cannot succeed given that, on the one hand, door-to-door waste collection involves the processing of personal data and, on the other hand, there is a high risk of processing of profiles or assessment of the subjects.

- 2.1.2 In relation to criterion number 7 of the list: “treatments that involve the use of data on a large scale. In order to determine whether a processing can be considered on a large scale, the criteria set out in the Article 29 Working Party's guidance WP243 'Guidelines on Data Protection Officers (DPDs)' will be considered.

The City Council stated that the only data linked to the door-to-door waste collection service is the postal address of the home, and added that “although many of the homes in the municipality will be treated, this volume of data will not can be considered a large-scale use of data.” Regarding this, the reported entity informed the Authority that 7,505 people in the municipality of Cardedeu are users of the door-to-door service and that they represent 86% of the total.

Neither the RGPD nor the Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) define the concept of “large-scale processing”. Nor do they establish which treatments involve a “large-scale” use of data, although recital 91 of the RGPD gives some guidance (“ large-scale processing operations that seek to treat a considerable amount of personal data at regional, national or supranational and that could affect a large number of stakeholders and probably entail a high risk, for example, due to its sensitivity, when, depending on the level of technical knowledge reached, a new technology has been used on a large scale ”). However, the Article 29 Working Group produced the document “Guidelines on Data Protection Delegates (DPD)” 16/ES WP 243 rev.01, which when determining whether a treatment is due to large-scale term recommends taking into account the following factors:

- The number of interested parties affected, either as a specific figure or as a proportion of the corresponding population;
- The volume of data or the variety of data elements that are the object of treatment;
- The duration, or permanence of the data processing activity;
- The geographical scope of the treatment activity;

By way of example, the Article 29 Group states that “the processing of travel data of persons who use the public transport system of a city (e.g. tracking through transport cards)” is a large-scale treatment.

As the instructor pointed out, there is no doubt that the reported treatment has many similarities with the treatment that has been exemplified; both in terms of the number of people – individuals from a certain population – and the monitoring that is carried out through the code that incorporates the containment elements. And, regarding this, it cannot be ignored that, on the one hand, the provision of the controversial service involves the collection of personal data of at least 7,505 people, who live in homes located in the municipality of Cardedeu; and that, on the other hand, the information that can be obtained is of great variety, since from the translucent bags deposited by the users of the service, various information can be obtained about the person generating the waste.

Finally, it should be noted that the processing of personal data reported is permanent, not sporadic, and is carried out systematically. The criteria of the Working Group of Article 29 consider systematic the treatment that: “- is produced in accordance with a system; - pre-established, organized or methodical; - that takes place as part of a general data collection plan; - carried out as part of a strategy.” And, in this case, there is no doubt that the controversial collection of personal data takes place within the framework of the municipal waste collection strategy, and that it affects the users of this municipal service.

Consequently, the claim that the disputed processing does not amount to large-scale data processing cannot succeed either.

- 2.1.3 In relation to criterion number 10 of the list: "treatments that involve the use of new technologies or an innovative use of established technologies, including the use of technologies on a new scale, with a new objective or combined with others, so that involves new forms of data collection and use with risk to people's rights and freedoms."

The denounced entity argued that the technology used to provide the controversial service "cannot be considered innovative, in the strict sense, as could be the use of fingerprints or facial recognition, since it is a development of identification by barcode medium and the difference with previous technology is not significant." And on this he added that the use of TAG technology does not lead to new ways of collecting and using data, given that only one EPC code is assigned to a tax unit.

Although the controversial treatment does not involve the use of a new technology, it does involve an innovative use of an established technology, which represents a new way of collecting and using personal data, with a risk to the rights and freedoms of individuals .

Article 28.2 of the LOPDGDD lists some cases in which it is considered probable that there is a high risk to the rights and freedoms of people, among which the concurrence of the following can be appreciated:

- "a) When the treatment may generate situations of discrimination, identity theft or fraud, financial losses, damage to reputation, loss of confidentiality of data subject to professional secrecy, unauthorized reversal of pseudonymization or any other economic damage , moral or social significance for those affected. (...)"
- "d) When the treatment involves an evaluation of personal aspects of those affected with the purpose of creating or using personal profiles of them, in particular through the analysis or prediction of aspects related to their performance at work, their economic situation, your health, your personal preferences or interests, your reliability or behavior, your financial solvency, your location or your movements. (...)"
- "f) When a massive processing takes place that involves a large number of affected or involves the collection of a large amount of personal data."

In turn, article 35.3 of the RGPD, sections a and c , establishes that an AIPD must be carried out when a systematic and comprehensive assessment of personal aspects of natural persons is carried out, which is based on an automated treatment, such as profiling, and on which decisions are taken that produce legal effects for natural persons or significantly affect them in a similar way; and when the treatment involves the systematic observation on a large scale of a public access area, as is the case.

As has been argued, there is no doubt that the controversial treatment allows the elaboration of profiles of the people who are users of the service and that it involves the processing of personal data on a large scale.

For all that has been explained, the controversial processing of personal data required the preparation of an AIPD, in accordance with article 35.3 of the RGPD, sections a and c, *in*

line *with* criteria number 1, 7 and 10 of the Authority's list and with article 28.2, sections *a*, *d* and *f*, of the LOPDGDD.

2.2 On the duty to inform users

In the 2nd section of its statement of objections to the initiation agreement, the accused entity reiterated the statements it had made on 11/24/2022, as part of the prior information that preceded this procedure punisher Regarding this, he explained that at the tables where the users of the door-to-door service had to go to collect the material, several large posters were displayed, "which also contained the information related to data protection ." In order to prove the facts, the City Council provided several photographs of the space and of the tables that allegedly contained documents relating to the right to information.

Likewise, the reported entity added that, once the containment element was linked to a home, the users could provide their first and last name, telephone number and/or e-mail, "at the same time that consent was collected for by means of the signature or an affirmative action, in an electronic medium (tablet)." Attached to the statement of objections, the City Council provided a document on the information on the containment elements collected by the person who presented IP no. 269/2022, and in which it is observed that this person would have written "OK".

This Authority does not dispute that the person who submitted the complaint IP no. 269/2022 carried out an affirmative action -consisting of writing "OK"-, in an electronic support provided by the reported entity, when it received the containment elements. However, in the space where the reporting person wrote "OK" there was no reference to the processing of their personal data. For this reason, this Authority cannot consider it accredited that at that time the information provided for in article 13 of the RGPD and article 11 of the LOPDGDD was facilitated.

Regarding the above, the eventual display of the right to information by means of posters is not sufficiently proven either. The images provided by the City Council make it possible to visualize the space where the material was collected, as well as the tables where the containment elements were delivered, but the content of the document in which the City Council states that the information clause was shown, located above the tables, it is illegible. This prevents it from being stated that the points provided for in Article 13 of the RGPD were informed by means of these documents. To this, we must add that the location of the documents, right at the end of each of the tables where the material is collected, would make it difficult for the people affected to see them.

Finally, the City Council indicated that, before the service went into operation, letters were sent to all the homes in the municipality containing a QR code through which information related to data processing was accessed personal However, the entity has not certified that the users of the service accessed this information before collecting the containment elements. And, regarding this, article 12 of the RGPD, under the heading " transparency of the information, communication and modalities of exercises of the rights of the interested party ", establishes that the person responsible for the treatment must provide the person interested party all the information provided for in article 13 " in a concise, transparent, intelligible and easily accessible form, with a clear and simple language (...)." In this sense, it must be concluded that the fact of delivering the information by means of a QR code can be difficult to access for certain people, and especially for the most

vulnerable groups - either because they do not have the necessary electronic resources or because ignorance of the use of this technology.

In accordance with what has been stated, the allegations of the reported entity cannot succeed in order to exempt it from responsibility.

3. In relation to the facts described in point 1 of the proven facts section, it is necessary to refer to article 35 of the RGPD, which regulates the AIPD in the following terms:

- " 1. When it is likely that a type of treatment, in particular if it uses new technologies, by its nature, scope, context or purposes, entails a high risk for the rights and freedoms of physical persons, the person responsible for the treatment will, before of the treatment, an evaluation of the impact of the treatment operations on the protection of personal data. A single evaluation may address a series of similar treatment operations that involve similar high risks.
2. The data controller will seek the advice of the data protection officer, if appointed, when carrying out the data protection impact assessment.
3. The data protection impact assessment referred to in section 1 will be required in particular in the event of:
 - a) systematic and comprehensive evaluation of personal aspects of natural persons that is based on automated processing, such as the creation of profiles, and on the basis of which decisions are taken that produce legal effects for natural persons or that significantly affect them in a similar way;
 - b) large-scale processing of the special categories of data referred to in article 9, paragraph 1, or of personal data relating to convictions and criminal offenses referred to in article 10, or
 - c) large-scale systematic observation of a public access area
4. The control authority will establish and publish a list of the types of processing operations that require an impact assessment related to data protection in accordance with section 1. The control authority will communicate those lists to the Committee in question article 68.
5. The control authority may also establish and publish the list of types of treatment that do not require impact assessments related to data protection. The control authority will communicate those lists to the Committee.
6. Before adopting the lists referred to in sections 4 and 5, the competent control authority will apply the consistency mechanism contemplated in article 63 if those lists include processing activities that are related to the offer of goods or services to interested parties or with the observation of their behavior in various Member States, or processing activities that may substantially affect the free circulation of personal data in the Union.
7. The evaluation must include at least:
 - a) a systematic description of the planned treatment operations and the purposes of the treatment, including, when applicable, the legitimate interest pursued by the person responsible for the treatment;
 - b) an evaluation of the necessity and proportionality of the treatment operations with respect to their purpose;
 - c) an evaluation of the risks for the rights and freedoms of the interested parties referred to in section 1, y
 - d) the measures foreseen to face the risks, including guarantees, security measures and mechanisms that guarantee the protection of personal data, and to demonstrate

compliance with this Regulation, taking into account the rights and legitimate interests of the interested parties and other persons affected

8. Compliance with the approved codes of conduct referred to in article 40 by the corresponding managers or managers will be duly taken into account when evaluating the repercussions of the treatment operations carried out by said managers or managers, in particular for the purposes of impact assessment related to data protection.

9. When appropriate, the person in charge will obtain the opinion of the interested parties or their representatives in relation to the intended treatment, without prejudice to the protection of public or commercial interests or the security of the treatment operations.

10. When the treatment in accordance with article 6, section 1, letters c) oe), has its legal basis in the Law of the Union or in the Law of the Member State that applies to the person responsible for the treatment, such Law regulates the specific treatment operation or set of operations in question, and an impact assessment relating to data protection has already been carried out as part of a general impact assessment in the context of the adoption of said legal basis, sections 1 to 7 they will not apply except if the Member States consider it necessary to carry out said evaluation prior to treatment activities.

11. If necessary, the person in charge will examine whether the treatment complies with the data protection impact assessment, at least when there is a change in the risk represented by the treatment operations."

As the instructing person pointed out, Article 35 of the RGPD establishes that the data controller must carry out an AIPD, when the processing of personal data entails a high risk for the rights and freedoms of natural persons.

For what is of interest here, the controversial data processing required an AIPD, given the concurrence of the cases provided for in article 35.3, sections *a* and *c*, in line with criteria number 1, 7 and 10 of the list, and with the article 28.2 sections, *a*, *d* and *f*, of the LOPDGD.

in point 1 of the proven facts section, which constitutes the offense provided for in article 83.4, has been duly proven. *a* of the RGPD, which typifies the violation of "the obligations of the person in charge and of the manager pursuant to articles 8, 11, 35 to 39, 42 and 43."

The conduct addressed here has been included as a serious infraction in article 73.t of the LOPDGD, as follows:

"t) The processing of personal data without having carried out the assessment of the impact of the processing operations on the protection of personal data in the cases in which it is required."

4. With regard to the fact described in point 2 of the proven facts section, regarding the omission of the duty to inform the affected person, it is necessary to go to article 83.5 *b* of the RGPD, which typifies as such the violation of "the rights of the interested parties pursuant to articles 12 to 22", among which is the right to information provided for in article 13 of the RGPD.

For its part, sections 1 and 2 of article 13 of the RGPD 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 applicable, of their representative;
- b) The contact details of the data protection delegate, 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, if applicable;
- 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 and 47 or the article 49, section 1, second paragraph, refers to adequate or appropriate guarantees and the means to obtain a copy of them or the fact that they have been provided.

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

- a) The period during which the 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 of the treatment based on prior consent 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 profiling, referred to in article 22, sections 1 and 4, and at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party."

In turn, sections 1 and 2 of article 11 of the LOPDGDD, regarding transparency and information to the affected person, establish 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."

In accordance with what has been stated, the fact recorded in point 2 of the proven facts section - failure to report the content established by article 13 of the RGPD and article 11 of the LOPDGDD - constitutes the infringement provided for in article 83.5 *b* of the RGPD, previously transcribed, in relation to the right to information.

In turn, this conduct has been included as a very serious infraction in article 72 *h* of the LOPDGDD, as follows:

"h) The omission of the duty to inform the affected person about the processing of their personal data in accordance with the provisions of articles 13 and 14 of Regulation (EU) 16/679 and 12 of this Organic Law."

5. 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."

By virtue of this power, the person instructing the procedure proposed the corrective measures that are specified below, so that as soon as possible, and in any case within a maximum period of one month from the day after the notification of the resolution, the City Council of Cardedeu implements them. Specifically, it proposed to urge the reported entity to make an AIPD in relation to the processing of personal data that it carries out in the framework of the provision of the door-to-door service, and to facilitate the right of information to all users of this service, in accordance with the points provided for in article 13 of the RGPD and 11 of the LOPDGDD, and to report specifically on the creation of profiles.

Regarding this, by means of the letter submitted on 05/31/2023, the reported entity argued that the one-month period proposed by the instructor to adopt the aforementioned corrective measures was insufficient, and asked to extend it up to a maximum period of three months, based on the following:

- Regarding the AIPD, he pointed out that the City Council did not have it and that it had to start the work to create it. He also stated that he would have been aware that "the Waste Agency of Catalonia (ARC) is working, together with this Authority, on a model guide for the preparation of the AIPD in relation to the waste collection service door to door, for local bodies". And he added that, as they had been informed, the ARC "plans to publish and disseminate the aforementioned guide on Thursday, June 29, 2023." In this sense, they pointed out that the aforementioned guide will be a very useful tool to prepare the required AIPD since, as they argued, "it will complete the Practical Guide on impact assessment related to data protection" published by the Authority.
- Regarding compliance with the right to information, they highlighted that it had to be provided to a very large number of people.

In light of what has been explained, this Authority agrees to modify the deadlines proposed by the instructor and partially approve the request of the accused entity, extending the deadline for adopting corrective measures up to a maximum of 2 months, to count from the day after the notification of this resolution, and this in accordance with the following considerations.

It should be noted that the Cardedeu City Council should have carried out the AIPD before starting the processing of the personal data of the users of the door-to-door service, and that it should also have satisfied the right of information to users of the service. With regard specifically to the preparation of the AIPD, on the dates when it implemented the door-to-door service, the City Council had it available on the Authority's website the Practical Guide on impact assessment relating to data protection, which contains practical guidance for those responsible for the processing of personal data, and could have consulted it. And, regarding the guide that the ACR plans to publish, it should be noted that this document does not constitute an annex or addendum to the guide published and prepared by this Authority. In short, excessively delaying (up to 3 months, as requested by the entity) the implementation of the corrective measures unjustifiably prolongs the non-compliance with the RGPD and the LOPDGDD.

All in all, the City Council of Cardedeu should be required to carry out an AIPD as soon as possible, and in any case within a maximum period of two months, from the day after the notification of this resolution, in relation to the processing of personal data carried out in

the framework of the provision of the door-to-door service, and facilitate the right of information to all users of this service, in accordance with the terms provided for in articles 13 of RGPD and 11 of the LOPDGDD, and specific information on profiling.

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

resolution

For all this, I resolve:

1. Admonish Cardedeu City Council as responsible for two infringements: an infringement provided for in article 83.4 a , in relation to article 35; and another offense provided for in article 83.5 b in relation to article 13; all of them from the RGPD.
2. To require the City Council of Cardedeu to adopt the corrective measures indicated in the 5th legal basis and to accredit before this Authority the actions carried out to comply with them.
3. Notify this resolution to Cardedeu City Council.
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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal 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