File identification

Resolution of sanctioning procedure no. PS 18/2023, referring to Gavà City Council.

Background

1. On 08/19/2022, the Catalan Data Protection Authority received a letter by which a person filed a complaint against Gavà City Council (henceforth, the City Council), on the grounds of an alleged breach of the regulations on the protection of personal data .

The complainant stated that on 28/06/2022, when he entered " *My folder* " -located in the City Council's electronic headquarters- to check the status of the complaint he had made to the City Council for the inconvenience caused by a bar located in the basement of the building where she lived, she noticed that there were some documents that she had not provided. These documents were an instance that the person who ran the mentioned bar had presented on 16/03/2021 to the City Council, in which he requested a change in the arrangement of the tables on the terrace, and the scanned copy of the residence permit of this person The petition contained the name, surname, postal address and NIE number of the petitioner.

In order to substantiate the reported facts, a copy of the disputed documentation related to a third person was provided with the complaint.

2. The Authority opened a preliminary information phase (no. IP 291/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application 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 information phase, on 6/10/2022 the City Council was required to report on the following issues:

- What would have led to the fact that, in the electronic citizen folder (from now on, the citizen folder) of the complainant, housed in the electronic headquarters of the City Council, documents were included that were not linked to any file to which she was a party, and that contained data of a third person.

- The procedure by which the documents to which the interested persons could access, in relation to the files of which they were part, were included in the electronic citizen folder. If a protocol had been established, a copy had to be provided.

4. On 19/10/2022, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That the Council had contacted T-Systems, which is the company that provides the Council with the file management software. This company asked the City Council to identify *"the specific file for which the complainant made the claim to the person who runs the bar, since,*

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if they didn't find him, they wouldn't be able to tell us exactly what had happened."

- That, with the information provided with the request, the City Council had not been able to identify which file was linked to the person making the complaint, so T-Systems had not been able to determine what had happened.

- That T-Systems had informed the City Council that no protocol has been established to include documentation in the citizen folder and that the documents displayed in the electronic headquarters for each of the files are as follows:

  "1. The "Documents" Section shows: 1) The documents provided by the interested party when the file is registered, 2) If it comes from the electronic register, the proof of registration and the form data are also shown.
  2. In the "Administrative Notifications" Section: The documents are displayed
  notifiable, that is to say, the outgoing ones.
  3. In the "Actions " Section, the list of actions that, in the configuration, are marked as consultable from the electronic headquarters are shown and, if these actions have generated exit documents (that is, notified or communicated and signed) or input documents, these two types of documents are also displayed. However, if they are internal documents, they are not displayed in the electronic headquarters."

5. On 10/24/2022, this Authority provided the City Council with additional information so that it could locate the file that would have been linked to the complainant.

6. On 7/11/2022, the City Council responded with a letter in which it transcribed the municipal technical report that had been issued on 31/10/2022 and which stated the following:

- That the explanation had been found in the fact that the person reporting had access to documents with personal data of the person who runs the bar. The file in question was opened on 16/03/2021, when the latter presented an instance to request the modification of the arrangement of the tables on the terrace of the bar; this file gave rise to " *a procedure for Occupancy of public or private land for the installation of terraces (2.0)/Authorizations for special common use of the public road: terraces, bars and restaurants. Both the opening organic unit and the organic unit responsible for this file is the Administrative Unit for Citizen Security (...).”*

- That " *it is relevant to note that, in this file, on 16/03/2021, (...), two actions of 'reception of complementary documentation' were registered by the Administrative Unit of Citizen Security. The documentation that went to this file was the complainant's documentation, which was recorded, at the same time, as a 'related person' of this file."*

- That *"taking into account that the complainant was listed as a 'related person' in the file for which the person who runs the bar requested a change in the layout of the tables on the terrace, we understand that, for this reason, the complainant had access to documents with personal data”* [of the person who runs the bar] .

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- That what has happened is " *a material error in the management of the file that any employee of a Public Administration can make, so we understand that there are no reasons to consider that an administrative offense has been committed."*

7. Taking into account the previous manifestations, this Authority considered it necessary to have more information. For this reason, on 15/12/2022 he addressed a new request to the City Council to report on the following:

- What was the job position of the person who considered the complainant as a ' *related person* ' in the file opened on 03/16/2021, relating to a procedure for the occupation of public land to install terraces, initiated as a result of the request of the person who ran the bar, and what would have been the justification for this connection.

- What were the implications of being listed as a ' *related person* ' in an electronic file of the City Council, and if the electronic file management system allowed any citizen listed as a ' *related person* ' in an electronic file to access inevitably to all the documentation it contained, despite not having the status of an interested party. If this was not the case, it was necessary to explain in detail how the reporting person was able to electronically access the documentation of another citizen.

8. On 12/01/2023, given that the deadline had been exceeded without the City Council responding to the request of 12/15/2022, this Authority reiterated the request for it to respond within 5 days .

9. On 30/01/2023, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That *"the procedure to relate the instance presented by the now complainant with the activity of the Bar about which he complained, was carried out by the administrative department of Citizen Security of the City Council".* And that *"this action on the electronic administration platform was carried out by exercising the 'documentation reception' option. It was done this way because the complainant's instance was directly related to this bar activity."*

- That the data protection delegate of the City Council, *"together with the aforementioned administrative department of Citizen Security and the municipal IT technical services carried out several tests and verified that if it was chosen on this electronic administration platform the option of 'Receipt of documentation' to file an instance related to a pre-existing file, a person could access all the documentation that was part of that same file."*

- That *"according to the company in charge of the processing, the casuistry that implements a shared access to the documents, is when there is more than one person interested in the file and documentation has been provided at the time of registration and some complementary contribution has also been made without prior request by another interested party of the file. In this case, interested parties can see the documentation provided by other interested parties.* "

  That , however, *"it must be borne in mind that the shared documentation is only among those interested in the specific file (it is not a general publication of the information) and although in some types of files this may be natural and appropriate, in many others it is*

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not convenient, as may be the specific case of the claim of the citizen in question. Therefore, on this electronic platform, requests are filed by means of other options, without having access to other documentation that does not correspond to the interested party ". That, " *as a general rule, access to the file from the citizen's file is enabled to people who act as an interested party or representative. The rest of the people related to the file do not have access unless it is specified in the configuration of the procedure."*

- That *"in view of the incident that occurred and its technical findings, the City Council required an urgent meeting with the company in charge T-Systems ITC Iberia, SAU ' , as responsible for the treatment, to be the company awarded the service of acquisition, implementation and maintenance of an electronic administration platform for the City Council".* And that, during this meeting, the City Council required the aforementioned company to guarantee, immediately, the confidentiality of the treatment service for the specific option of "Reception of documentation", described *above* .

- That, in response to the municipal request, T-Systems has announced that it has adopted the technical solutions listed below:

  "A. Corrective measures to solve the violation of the security of personal data (immediate measures to alleviate the possible negative effects). Immediate software update.

  B. Preventive measures to prevent it from happening again. (Which ones, deadlines and those responsible for implementation). In *order to avoid this situation, the product area of Tao brand files will modify with an update the behavior of the management of the documents provided in cases of multi-stakeholder files. The web service is modified so that this sharing of documents from the file is not carried out and only the sender of the provided documentation can consult this documentation. Likewise, they communicated that the release date for the software update would take place on January 27, 2023. "*

- That " *The municipal technical services have verified the effective implementation of these technical solutions. Indeed, after the communication from the company in charge of the adoption of these technical solutions, the municipal technical services have verified that in this "Receipt of documentation" option of the electronic administration platform, confidentiality is already guaranteed of the treatment service and, consequently, the personal data protection regulations are complied with."*

- That, at the moment, *"between the City Council and the aforementioned company in charge they have in operation a telematic channel for communication of incidents",* but that in view of what happened the City Council's data protection delegate and the data protection delegate of the company is working on a *"new incident communication protocol for the purposes of guaranteeing a more immediate and effective response to any incidents in the field of personal data protection."*

10. On 21/03/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against Gavà City Council for two alleged infringements: one provided for in article 83.5. *a* in relation to article 5.1. *f* _ and the other provided in article 83.4. *a* in relation to article 25; 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).

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Likewise, he appointed Ms. Anna Ferrando, an employee of the Catalan Data Protection Authority, to be the person responsible for the case. This initiation agreement was notified to the imputed entity on 03/23/2023.

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.

The deadline has been exceeded and no objections have been submitted.

proven facts

1. On 28/06/2022, the complainant entered his personal electronic folder (called *"my folder"*), hosted at the Gavà City Council's electronic headquarters, to check the status of the complaint that he had made to the said City Council for the inconvenience caused by a bar, and he accessed a series of documents that he had not provided.

The documents to which the complainant had access had been presented to the City Council by a third person - specifically, who ran the same bar against which the complainant had complained - in order to request a change in the arrangement of the tables in the bar terrace; this request had given rise to " *a procedure for the occupation of public or private land for the installation of terraces"* (file ref. (...). These documents contained data relating to the person who ran the bar (name, surname, postal address, a scanned photocopy of the residence permit and the fact that he had submitted an application to the City Council and the subject of this application).

2. The complainant's access to the documentation that contained the data of a third person, and that was linked to a procedure in which he was not considered an interested party, was facilitated by the following:

2.1. On 03/16/2021, the person who ran a bar presented an instance to the City Council requesting a change in the layout of the tables on the terrace. As a result of this instance, an electronic file was created which was managed using software (file manager).

2.2. Subsequently, the complainant filed a complaint for the inconvenience caused by this same bar. Using case management software, City staff who received this complaint mistakenly linked the complainant to a pre-existing case (the one that had been initiated as a result of the bar manager's complaint). This link was made by exercising the option *"Receipt of documentation"* of the pre-existing file.

2.3. The electronic file management program of the City Council is designed in such a way that, when documentation is incorporated into a file using the *"Receipt of documentation" option* , in the cases of files in which there are several interested parties ("multi-stakeholder" file), each of them can view all the documentation that is included in the electronic file; that is to say that the interested person who accesses it not only views the documentation they have provided, but also that which other interested persons have provided. The documentation that is included in a "multi-stakeholder" file is complete, that is to say that it has not been treated to prevent the

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interested parties from reciprocally accessing the data of the rest, without any justification or legal basis.

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. In accordance with article 64.2. *f* of the LPAC and in accordance with what is indicated in the agreement to initiate this procedure, this resolution should be issued without a previous resolution proposal, given that the imputed entity has not formulated allegations to the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. Charged infringements

3.1. In relation to the conduct described in point 1 of the proven facts section, relating to the principle of confidentiality, 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 (RGPD), which provides: " *1. Personal data will be: (...) f) treated in such a way as to guarantee adequate security of personal data, including protection against unauthorized or illegal treatment and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures (integrity and confidentiality).* "

During the processing of this procedure, the fact described in point 1 of proven facts, which constitutes the offense provided for in article 83.5, has been proven. *a* of the RGPD, which typifies as such the violation of " *the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9* ", which include the principle of confidentiality

The fact of having given access to the complainant, by mistake, to a *'pre-existing electronic file'* led to the violation of the principle of confidentiality, since he accessed information that had nothing to do with his complaint and corresponded to a file in respect of which she was not considered interested; this file contained information relating to a third person.

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

"The violation of the duty of confidentiality established in article 5 of this organic law."

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3.2. In relation to the conduct described in point 2.3 of the proven facts section, relating to data protection by design and by default, it is necessary to refer to article 25 of the RGPD, which provides for the following:

> *"2. The controller will apply the appropriate technical and organizational measures to ensure that, by default, only the personal data that are necessary for each of the specific purposes of the treatment are processed. This obligation will apply to the amount of personal data collected, the extent of its treatment, its retention period and its accessibility. Such measures will guarantee in particular that, by default, personal data are not accessible, without the intervention of the person, to an indeterminate number of natural persons.*

During the processing of this procedure, the fact described in point 2.3 of the proven facts has been proven. This imputed fact is constitutive of the offense provided for in article 83.4. *a* of the RGPD, which typifies as such the violation of " *the obligations of the responsible and of the manager pursuant to articles 8, 11, 25 to 39, 42 and 43* ", among which there is the collection in the article 25 of the RGPD transcribed above, regarding data protection by design and by default.

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

> *"The lack of adoption of technical and organizational measures that are appropriate to ensure that, by default , only personal data is processed necessary for each of the specific purposes of the treatment , accordingly with what he demands article 25.2 of Regulation (EU) 2016/679."*

As was already advanced in the initiation agreement, in the present case it is estimated that the two imputed offenses would be closely linked, since one would be a necessary means for the commission of the other (the non-implementation of measures appropriate, in accordance with data protection by design and by default, would have led to the violation of the principle of confidentiality). We are therefore faced with a case of an ideal contest of infringements, regulated in article 29.5 of Law 40/2015, of October 1, on the legal regime of the public sector, which establishes that " *when the commission of an offense necessarily leads to the commission of another or others, the penalty corresponding to the most serious offense committed must be imposed."* In these cases, only one sanction should be imposed, the one corresponding to the most serious infringement of those allegedly committed, in this case the one relating to the violation of the principle of confidentiality, classified as very serious.

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."*

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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 the case that concerns us here, this Authority believes that it is not necessary to require the City Council of Gavà to adopt any corrective measures since, as has been advanced (precedents 9th), this entity has reported that it has carried out several actions so that, through the file manager, the documents provided by each of the people interested in the "multi-stakeholder" files can only be viewed by the person who provided the documentation.

resolution

For all this, I resolve:

1. Warn the City Council of Gavà 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 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 Gavà City Council.

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 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.

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The director

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