

File identification

Resolution of sanctioning procedure no. PS 19/2023, referring to the Autonomous University of Barcelona.

Background

1. On 09/27/2022, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Universitat Autònoma de Barcelona (UAB), on the grounds of an alleged breach of the regulations on personal data protection .

The complainant stated that the UAB would have published on the internet, in an open format, the result of the hospital teaching unit assignment draw for the 2022-2023 academic year, which allows viewing the hospital centers that have been assigned to certain students of the medical degree, which appear identified with their first name, surname and unique identification number (NIU). The complainant, who in his capacity as a student of the medical degree was also identified in the aforementioned list, pointed out that this publication allows anyone to know the teaching unit assigned to each student and, also, their timetables, since they are public. He added that, in addition, the NIU serves to identify each student on the UAB Virtual Campus, as well as in the lists of academic results. Therefore, as of the controversial publication, anyone could associate an NIU with a specific student.

The complainant provided a screenshot that allowed the publication of the controversial list, relating to the "*result of the hospital teaching unit allocation draw (2022-2023)*" to be viewed .

2. The Authority opened a preliminary information phase (no. IP 331/2022), 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. On 09/27/2022, based on this prior information, the Authority's Inspection Area carried out a series of checks on the facts subject to the complaint. Thus, it was found that, after entering the search concept "*Result of the hospital teaching unit allocation draw*" in an internet search engine, by clicking on the first result of the search, the controversial list is accessed, that matches the document provided by the complainant. This document allows you to view the name, surname and NIU of certain medical degree students, as well as the hospital center that was assigned to them.
4. On 01/24/2023, the Inspection Area repeated the check indicated in the previous antecedent and found that the list was still published.
5. In this information phase, also on 01/24/2023, the UAB was required, among other things, to report on the legal basis that would protect the publication of the results of the hospital teaching unit allocation draw , in open format, including the names, surnames and NIU of each student.

6. On 03/02/2023, the UAB responded to the request through a letter from its data protection representative, in which he set out the following:

- That "*in accordance with the study plan for the Degree in Medicine, students carry out mandatory clinical care practices in health centers in concert with the Autonomous University of Barcelona (hospital teaching units)*".
- That "*in order to determine at which of the various agreed centers the internships will be carried out, an assignment procedure is carried out, approved by the Permanent Board of the Faculty of Medicine of the UAB, which sets the criteria*".
- That "*as it is a competitive competition procedure, in application of the Seventh Additional Provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), the publication of the result of the assignment we understand that it responds to the fulfillment of a legal obligation (art. 6.1 b RGPD), as well as to the fulfillment of a mission in the public interest or in the exercise of public powers (art. 6.1 e RGPD), d in accordance with the mission assigned to universities to provide higher education services (art. 1 of Organic Law 6/2001, of 21 December, on universities)*".
- That "*with regard to the personal data published in the list, this data protection delegate has repeatedly warned of the obligation, in these cases, to identify the interested persons exclusively with their first and last names, without any other information identification (such as DNI or NIU). However, the complexity of the University's organization, with more than 40,000 students, 600 degrees, and almost 6,000 public employees, including academic staff and administration and service staff, means that, exceptionally, they can give situations of inadequate compliance, although the will of the UAB has always been to observe and comply with the legal obligations that pertain to it, and especially in this case the principles of the processing of personal data.*"
- That "*the NIU (University Identification Number) is the code that identifies people as members of the university community of the Autonomous University of Barcelona. It consists of seven figures and is assigned when you join the university, either at the time of enrollment, in the case of students, or when the employment contract or appointment as an official is formalized, in the case of UAB workers. (...)*"

In the end, the denounced entity made it clear that it had downloaded the controversial document from the network.

7. On 03/14/2023, also during this preliminary information phase, the Inspection Area found that the controversial document relating to the "*Result of the hospital teaching unit allocation draw (2022- 2023)*" was no longer published.

8. On 03/21/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the UAB for an infringement provided for in article 83.5. a in relation to article 5.1 c ; 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 03/23/2023.

In the initiation agreement, the accused entity was granted a period of 10 working days to formulate allegations and propose the practice of the tests it considered appropriate to defend its interests.

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

proven facts

In an undetermined period, which at least covers from 27/09/2022 to 24/01/2023, dates in which the Authority carried out the verifications indicated in the 3rd and 4th antecedents, the UAB disseminated through from the internet the list corresponding to the "*result of the hospital teaching unit allocation draw (2022-2023)*", which contained personal data of certain students of the Degree of Medicine, among which were included those of the complainant. Specifically, the list contained the name, surname and NIU of the affected students.

On 03/14/2023 , it was found that the aforementioned listing was no longer accessible.

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. In relation to the facts described in the proven facts section, related to the publication of a list in which the affected persons -students of the UAB Medicine Degree- were identified by name, surname and university identification number , it is necessary to go to article 5.1. *c* of the RGPD, which provides that personal data must be "*adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (data minimization)*."

During the processing of this procedure, the fact described has been proven in the proven facts section, which is constitutive of the offense provided for in article 83.5. *to* the RGPD, which typifies the violation of "*the basic principles for treatment* " which includes the principle of data minimization .

The conduct addressed here has been included as a very serious offense in article 72.1. *to* the LOPDGDD, as follows:

"The processing of personal data that violates the principles and guarantees established by Article 5 of Regulation (EU) 2016/679"

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 terms similar to the LOPDGDD, article 21.2 of Law 32/2010 , determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

In the present case, it is unnecessary to require the UAB to adopt measures to correct the effects of the infringement, given that the controversial document is no longer published on the entity's website.

resolution

For all this, I resolve:

1. Admonish the Autonomous University of Barcelona as responsible for an infringement provided for in article 83.5. a in relation to article 5.1. c , 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 the Autonomous University of Barcelona.
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.

The director

Machine Translation