

## File identification

Resolution of sanctioning procedure no. PS 22/2023, referring to the Sant Boi de Llobregat Town Council.

## Background

1. On 03/05/2022, the Catalan Data Protection Authority received a letter of complaint against Sant Boi de Llobregat Town Council (henceforth, the Town Council), on the grounds of a alleged breach of the regulations on personal data protection .

The complainant stated that, on 02/05/2022, he received an email from the City Council with the subject "Invitation to the Screening and conversation STEM Arreu, Friday 6 May at 7:30 p.m. at Cinemas Can Castellet ". This message had been sent to numerous recipients without using the bcc option, and therefore with everyone's email address visible. The complainant also complained that he had no record of having given his data to Sant Boi de Llobregat City Council.

Along with the complaint, he provided a copy of the indicated email and several responses to this message, which consisted of an invitation to an activity within the La Tecnòloga science and technology campus.

2. The Authority opened a preliminary information phase (no. IP 161/2022), in accordance with what is provided for in article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. In this information phase, on 01/03/2023 the reported entity was required to:
  - Please confirm if, on 02/05/2022 at 16:46 hours, he addressed the mentioned message to numerous private accounts, without using the hidden copy.
  - Attest if the reporting person had provided their data for this purpose.
  - Indicate whether the City Council had a protocol or instruction on the use of e-mail.
4. On 03/15/2023, the Sant Boi de Llobregat City Council responded to the aforementioned request through a letter in which it stated the following:
  - Confirming that on 05/02/2022, at 4:46 p.m., the City Council sent a message addressed to numerous private accounts from a corporate email account, without using blind copy.
  - That the reason it was sent without a blind copy was one-off human error.
  - That the data of the person reporting had been obtained from the registration he made on 10/09/2019 in the online course "Co-education: tools for an emotional and feminist

education", included in the programming of the Resource Center and Women's Documentation. It added that the reporting person gave consent to the use of personal data for the purpose of "promotion, registration and management of registrations for the activities and trainings of the CRDD [Women's Resource and Documentation Center]."

- That the legitimizing legal basis for sending the informative email of 05/02/2022 is article 6.1. to the 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 of such data (RGPD): "consent of the affected person for one or more specific purposes and mission carried out in the public interest."
- That the City Council does not currently have any protocol or instructions on the use of e-mail. He added that the Information Technology and Systems Service is working to implement a system that manages mass mails, to avoid human errors in sending. It also stated that the person who sent the controversial email apologized to the people affected.

The reported entity attached to the letter the reproduction of the aforementioned apology email and a model registration form for the course Co-education: tools for an emotional and feminist education, which includes a section called Authorization of your data.

5. On 03/21/2023, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the internet on the facts subject to the complaint. Thus, it was found that the website <https://igalutatsantboi.cat/qui-som/> of the CRDD includes the science and technology campus La Tecnòloga, in the What we do section.
6. On 03/28/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Sant Boi de Llobregat City Council, for an alleged violation provided for in article 83.5. a , in relation to article 5.1. f \_ all of them from the RGPD. This initiation agreement was notified to the imputed entity on 03/30/2023.
7. The initiation agreement explained the reasons why no imputation was made regarding the complainant's complaint due to the fact that he had no record of having provided his data to the City Council. Regarding this, the reported entity reasonably justified that the reporting person had provided them when he enrolled in an online course of the CRDD, with the purpose that they would be treated for the promotion, registration and management of registrations in the CRDD activities and trainings; among these activities, there would be the event to which he was invited through the controversial email. All this, without prejudice to the power of the interested person to exercise the right to the deletion of their personal data, in accordance with article 17 of the RGPD.
8. 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.
9. On 04/17/2023, the Sant Boi de Llobregat City Council presented a letter in which it did not question the imputed fact nor its legal qualification, and recalled that "once the open copy

was sent (cc ) nowhere (sic) of hidden copy ( cco ) - as would have been the correct form -, an apology email was quickly sent by the managing department."

In the same letter, the City Council informed the Authority of the measures it had taken to prevent the situation that had prompted the initiation of this sanctioning procedure from occurring again:

- The creation and dissemination among municipal staff of a protocol of "Good practices in the protection of personal data and e-mails."
- Scheduling meetings with different technical heads, with the aim of reinforcing knowledge and good practices regarding personal data.
- The creation of the personal data unit and the opening of a communication channel, so that staff related to the processing of personal data can address their queries.

With its letter, the accused entity provided various documentation that would prove the measures implemented.

10. On 05/25/2023, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Sant Boi de Llobregat City Council as to responsible for an infringement provided for in article 83.5. *a* in relation to article 5.1. *f* , both of the RGPD.

This resolution proposal was notified on 05/26/2023 and a period of 10 days was granted to formulate allegations.

11. The deadline has been widely exceeded and no objections have been filed.

### **proven facts**

On 05/02/2022, at 4:46 p.m., Sant Boi de Llobregat City Council sent an email to a list of 230 recipients, including the complainant, with the subject " Invitation to the Projection and conversation STEM Arreu, Friday May 6 at 7:30 p.m. at Cinemes Can Castellet", through which they were invited to an activity within the La Tecnòloga science and technology campus. This message was sent without using the BCC option, which resulted in all recipients having access to the email address of the other recipients of the message.

### **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 made any objections to the resolution proposal . As has been advanced in the antecedents, before the initiation agreement the City Council presented a letter in which it limited itself to acknowledging the facts and describing the measures that

had been taken to avoid future situations like the one described in the proven facts . In addition, the City Council stated that "once the sending was carried out in open copy (cc) instead of (sic) hidden copy ( cco ) - as would have been the correct form -, an apology letter was quickly sent for part of the management department."

As explained by the instructing person in the proposed resolution, this Authority positively values the fact that the City Council has apologized to the people affected and that it has adopted measures to prevent the incidents from occurring again. However, these actions do not affect the declared facts proven in this procedure, nor their legal qualification.

It is an uncontroversial fact that, on 02/05/2022, at 16:46 hours, the Sant Boi de Llobregat City Council sent an email to a list of 230 recipients without using the tool or the option of hidden copying, as indicated in the proven facts, action that contravenes data protection regulations.

3. In relation to the fact described in the proven facts section, regarding the sending of an email without using the blind copy option, it is necessary to go to article 5.1. f of the RGPD, which provides for the following:

"1. The personal data will be:

(...)

f) processed in such a way as to guarantee adequate security for personal data, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical and organizational measures ("integrity and confidentiality")".

This principle of integrity and confidentiality provided for by the RGPD must be complemented with the duty of confidentiality contained in Article 5 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (LOPDGDD), which establishes the following:

"Article 5. Duty of confidentiality

1. Those responsible and in charge of data processing as well as all the people who intervene in any phase thereof are subject to the duty of confidentiality referred to in article 5.1.f) of Regulation (EU) 2016/679.

2. The general obligation indicated in the previous section is complementary to the duties of professional secrecy in accordance with the applicable regulations.

3. The obligations established in the previous sections remain even if the relationship of the obligee with the person in charge or person in charge of the treatment has ended".

Likewise, it is appropriate to mention article 13 of the LPAC, which lists a catalog of rights of people in their relations with public administrations, which in letter h expressly *includes* the right "To the protection of personal data personal, and in particular to the security and confidentiality of the data contained in the files, systems and applications of the public administrations."

During the processing of this procedure, the fact described in the proven facts section has been proven, which constitutes the offense provided for in article 83.5. a of the RGPD, which typifies the violation of the " principios básicos para el tratamiento (...), among which confidentiality is at the top.

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

"i) The violation of the duty of confidentiality established in article 5 of this Organic Law."

4. Article 77.2 of the LOPDGDD provides that, in the case of infractions committed by those responsible or in charge listed in article 77.1 of the same law, 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 this case, there is no need to adopt corrective measures given that, on the one hand, it is a one-time event that has already been accomplished; and, on the other hand, the Sant Boi de Llobregat City Council took several actions to prevent an incident of the same nature from occurring again.

## **resolution**

For all this, I resolve:

1. Admonish the Sant Boi de Llobregat City Council, as responsible for an infringement provided for in article 83.5. a in relation to article 5.1. f , both of the RGPD.

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

2. Notify this resolution to Sant Boi de Llobregat 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 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

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