

File identification

Resolution of sanctioning procedure no. PS 33/2023, referring to the Sant Andreu de Llavaneres Town Council.

Background

1. On 12/16/2022, the Catalan Data Protection Authority received a letter of complaint against the Sant Andreu de Llavaneres City Council, on the grounds of an alleged breach of the regulations on the protection of personal data .

In particular, the person reporting stated the following circumstances in relation to the door-to-door waste collection service of Sant Andreu de Llavaneres Town Council:

- That the reported entity provides the containment elements that users of the service must use to deposit their waste.
 - That the waste must be deposited in the bins located on the public road, in front of the home of each user.
 - That the provision of this service involves the processing of personal data that entails a high risk for people's rights and freedoms.
2. The Authority opened a preliminary information phase (no. IP 470/2022), 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. In this information phase, on 02/22/2023 the reported entity was required to report on the processing of personal data carried out within the framework of the provision of the door-to-door waste collection service and, also, to provide a copy of the data protection impact assessment (AIPD) that had been carried out for this service, if available.
 4. On 02/22/2023, 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. In this sense, it was found that on the website of the Sant Andreu de Llavaneres Town Council, in the section that appears in the upper menu, relating to door to door, information is offered regarding the provision of this service. Among the published information, the following stands out:
 - "Why do door-to-door get better selective collection results? The good results are mainly due to the limitation of the days that the remainder can be removed, which is the fraction we want to reduce and also because the waste contribution is individualized. Since we leave them in front of our portal and they are no longer anonymous, we can track participation and implement individualized taxation systems with which those who recycle the most pay the least. (...)"

- "All the buckets and containers have a chip that allows contributions to be counted and participation to be tracked. This technology is what will allow us to implement, in the future, a fairer rate system."
- "Nappies and pet excrement – cat litter, etc. – they are considered the remaining fraction, which is collected on Fridays, but in some cases they cannot be saved and taken out once a week, so we give the option of taking them out every day in a separate bag and with the identification sticker ."

5. On 03/08/2023, the City Council responded to the request for information in the following terms:

- That "the Sant Andreu de Llavaneres City Council implemented the door-to-door waste collection system in the municipality on October 17, 2022."
- That "the door-to-door waste collection service consists of the collection of four fractions: a) The remainder fraction b) The packaging fraction c) The paper and cardboard fraction d) The organic matter fraction (FORM). In all cases, waste is collected using the bins provided by the City Council (...)."
- That "people who use single-family homes, village houses or multi-family buildings with few neighbors (3 homes on the ground floor, first floor and second floor) deposit the buckets at the door of the building."
- That, "users of multi-family buildings, with more neighbors who cannot put the bins at the door of the building due to a lack of space, deposit the bins in an area authorized by the City Council, which consists of in a reserved space on the public road."
- That, "there is no obligation to use transparent or semi-transparent bags to deposit them in the waste collection bins (...)."
- That, "the Sant Andreu de Llavaneres City Council has voluntarily collected, at the time of delivery of the gray and brown bins that are linked to each home (postal address), the following personal data of citizens: first and last name , phone number and email address."
- That, "the treatment of the postal address of the home linked to the gray and brown bins delivered has as its purpose the subsequent control and monitoring of the door-to-door waste collection service, in compliance with Law 7/2022, of April 8, waste and contaminated soil for a circular economy. In accordance with the principle of data minimization (Article 5.1. c RGPD) the City Council must only process personal data that is adequate, relevant and limited to what is necessary in relation to the purpose of the treatment. (...)."
- That, "the Sant Andreu de Llavaneres City Council did not carry out an impact assessment related to data protection, due to the implementation of the door-to-door waste collection service."

The reported entity pointed out that the legal basis that legitimizes the processing of the data relating to the address of the homes, as part of the provision of the service, is the fulfillment of a public interest mission or the exercise of powers public, in accordance with article 6.1. *and* 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) . In these terms, he indicated that the legal framework that must be taken into consideration is the following: Law 7/1986, of April 2, regulating the bases of the local regime (art. 25.2. b and 26.1 . a) ; Legislative Decree 2/2003, of April 28, approving the revised text of the Municipal and Local Government Law of Catalonia (art. 66.3.l *and* art. 67.a) ; state law 22/2011, of July 28, on waste and contaminated soil (art. 12); revised text of the Waste Regulatory Law, approved by Legislative Decree 1/2009, of July 21 (art. 10, 11, 42 and 53); Law 16/2017, of August 1, on climate change (art. 22. c); and Law 7/2022, of April 8, on waste and contaminated soil (art. 5.2).

Finally, with regard to the personal data relating to the first and last name, email address and telephone that the users voluntarily provided to the City Council when they collected the door-to-door kit, the entity argued that the treatment of this data is enabled by the consent that users of the service gave at the time of collecting the containment elements (art. 6.1. *to* RGPD).

The reported entity provided a report that analyzes the reasons why an AIPD is not necessary, within the framework of the provision of the door-to-door service.

6. On 31/03/2023 and still within the framework of this preliminary information phase, the Authority addressed a new request for information to the Sant Andreu de Llavaneres City Council, to provide information on the characteristics of the elements of containment that he gave to the people using the service and to indicate the time slots for waste collection.
7. On 04/18/2023, the City Council responded to the request in the following terms:
 - That waste collection is carried out by means of a 20 liter bucket with a brown UHF RFID TAG, for the organic fraction, and by means of a 40 liter bucket with a gray UHF RFID TAG, for the fractions of paper, packaging and the rest.
 - That the containment elements delivered by the City Council have an alphanumeric code, printed on a label, which is unique and permanent for each bucket, which is linked to a single home. Regarding this, the City Council indicated that "the alphanumeric code consists of a 12-digit code that specifies the municipality, the capacity of the bin, the type of container (organic or ambivalent) and the specific home. For example in the identification code "LL020O000001", "LL" corresponds to the municipality of Sant Andreu de Llavaneres; "020" corresponds to the 20 liter bucket; "O" corresponds to the organic fraction; and "000001" is the specific code of the bucket linked to a specific home."
 - That "as a measure to avoid the re-identification of the specific homes of the service by means of the codes printed on the buckets, at the delivery points of the material to deposit the waste, the distribution of buckets was carried out randomly, according to the order of arrival of the users. In this way, even with the information on the code of a specific house, it is not possible to infer the street or the number of the house since

there is no correlation between the codes by virtue of the geographical situation of the houses."

- That, thanks to the reading of the chip of the containment elements, the City Council obtains information on participation in the service and on any incidents.
- That there is no regulation that regulates the provision of the door-to-door waste collection service, and that the City Council has not sanctioned users who have not recycled correctly. On top of that, waste that is not properly recycled is not collected.
- That users can deposit waste in the bins located on the public road from 8 to 10 p.m., and that collection begins at 10 p.m. and ends around 4.15 a.m.
- That, at the moment, no bonus is applied to the waste rate based on data collected on the contribution of waste from people using the service. However, in compliance with Law 7/2022, on waste and contaminated soil for the circular economy, the City Council is working so that, from the year 2024, a waste rate according to with the contributions of each home.

The reported entity attached to its letter several photographs of the containment elements that it gave to the users of the service and which allow the visualization of the 12-digit numerical code and the QR code that they incorporate.

8. On 05/23/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the Sant Andreu de Llavaneres Council for the alleged infringement provided for in article 83.4. a in relation to article 35; all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, regarding 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 05/26/2023.

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

The Sant Andreu de Llavaneres Council has not carried out an impact assessment on data protection, in relation to the processing of personal data carried out in the framework 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.

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, relating to the failure to carry out an impact assessment, it is necessary to refer to article 35 of the RGPD, which provides for the following:

"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 the treatment, an evaluation of the impact of the processing 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 processing operations and the purposes of the processing, including, when applicable, the legitimate interest pursued by the controller;

- b) an evaluation of the necessity and proportionality of the treatment operations with respect to their purpose;
 - c) an evaluation and 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, paragraphs 1 to 7 no they will 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.”

In accordance with article 35.3 of the RGPD, sections *a* and *c* , an AIPD is required when the person in charge of data processing carries out a systematic and comprehensive assessment of personal aspects of natural persons based on automated processing, such as the elaboration of profiles, and on which decisions are adopted that produce legal effects for natural persons or significantly affect them in a similar way; and, also, when the treatment involves the systematic observation on a large scale of a public access area. It should be noted that, as stated in the agreement to initiate this procedure, both of the circumstances described constitute inherent aspects of the door-to-door service and that, therefore, determine the obligation to carry out an AIPD.

In turn, on the need to carry out an AIPD, article 28.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) lists some cases in which 'understands likely that there is a high risk to people's rights and freedoms. Among these, and for the purposes that are of interest here, are the following :

- When the treatment may generate situations of discrimination, identity theft or fraud, financial loss, damage to reputation, loss of confidentiality of data subject to professional secrecy, unauthorized review of pseudonymization or any other economic, moral or social harm significant for those affected (art. 28.2. to LOPDGDD).

- When the treatment involves an evaluation of personal aspects of those affected in order to create or use personal profiles of them, in particular through the analysis or prediction of aspects related to their performance at work, their economic situation, their health, their personal preferences or interests, their reliability or behavior, their financial solvency, their location or their movements (art. 28.2. *d* LOPDGDD).
- When there is a massive treatment that involves a large number of affected or involves the collection of a large amount of personal data (art. 28.2. *f* LOPDGDD).

On the other hand, in accordance with article 35.4 of the RGD, previously transcribed, the Authority published on 06/05/2019 the list of types of data processing that require an impact assessment regarding the Data Protection, before starting treatment. As indicated in the aforementioned document, when the treatment meets two or more criteria included in this list, an AIPD may be required. And the more criteria the treatment meets, the greater the associated risks and the more certain it is that an AIPD needs to be done. In this case, the following criteria should be highlighted:

- Treatments that involve profiling or assessment of subjects, including the collection of data on the subject in multiple areas of his life (performance at work, personality and behavior), which cover various aspects of his personality or habits (criterion number 1).
- Treatments that involve the use of data on a large scale (criterion number 7).
- 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 it involves new forms of collection and use of data, with risk to the rights and freedoms of people (criterion number 10).

The Sant Andreu de Llavaneres City Council has confirmed that it has not carried out an AIPD to find out the impact that the door-to-door waste collection service could imply for data protection (precedent 5th). And this despite the fact that this service makes it possible to draw up profiles of the people using the service, on which legal decisions can be adopted that significantly affect them; it involves the systematic observation on a large scale of the public road; and, it uses a technology that involves new ways of collecting and using personal data, with a risk to people's rights and freedoms.

3.1 On the systematic evaluation of personal aspects of natural persons and on the possibility of creating profiles

Despite the fact that the door-to-door service is based on the association of a bucket with a specific home, and not with a physical person, the collection of containment elements takes place on the public road, in front of the door of each home ; in certain cases, this makes it possible to associate the buckets, and therefore the waste, with specific people without disproportionate efforts. In this sense, through its website, the reported entity informs that the fact of leaving the waste in front of each home means that these are no longer "anonymous" (precedents 4th) and, therefore, can be linked to people specific physical

In relation to the above, this Authority cannot avoid the risk of re-identification of the person generating the waste with the containment element. The bins provided by the City Council must be used and incorporate a QR code and a 12-digit numerical code, which is unique and permanent for each address. This circumstance increases the risk of re-identifying the person generating the waste, given that the numerical code is always the same, a risk that is accentuated in the case of single-family homes or when only one person lives in the home.

Linked to the above, in accordance with the time slots established by the Sant Andreu de Llavaneres City Council, a person may have deposited their waste on the public road at 8:00 p.m. and that it is not collected until 04:00 hours. This is a large and sufficient temporal space for anyone to access and view the waste of a third person.

In relation to this, the fact that the waste remains on the public road for such an extended period of time and that the bags do not incorporate any identification code, not only allows third parties to view the waste deposited in the bin, but also that anyone can change the bags deposited by the person using the service for those of another person. Circumstances that could allow erroneous information to be linked to a specific address, and ultimately to a person.

The door-to-door system also makes it possible to know, and even evaluate, the behavior of the people who are users of this service. On the one hand, the data linked to the reading of the labels incorporated in the containment elements – specified in the 4th and 7th antecedents – are recorded; and, on the other hand, the system makes it possible to obtain information even on the periods in which a person is absent from his home, by not depositing the waste on the public road.

Ultimately, this Authority cannot ignore the fact that the waste that users deposit in the garbage reveals very diverse information about their habits, preferences and even possible diseases. In this sense, the obligation to identify the bag in which diapers and domestic excrement are deposited with a specific sticker makes it possible to obtain information about the user's most intimate sphere, or if he lives with a pet.

In accordance with what has been explained so far, the opinion CNS 60/2021 of this Authority which establishes the following in relation to door-to-door waste collection should be brought to the table:

"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. (...)"

3.2 About the processing of personal data on a large scale

The door-to-door waste collection system involves the processing of personal data of the users of the service on a large scale.

Regarding this, neither the RGPD nor the LOPDGDD define the concept of "large-scale processing", nor do they establish which treatments involve a "large-scale" use of data. However, recital 91 of the RGPD gives some guidance: " large-scale processing operations that aim to process a considerable amount of personal data at a regional, national or supranational level and that could affect a large number of interested parties and they probably entail a high risk, for example, due to their sensitivity, when, depending on the level of technical knowledge reached, a new technology has been used on a large scale. "

In turn, the Article 29 Working Party produced the document Guidelines on Data Protection Delegates (DPD) 16/ES WP 243 rev.01 which it recommends taking into account, when determining whether a treatment is carried out on a large scale 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 group in article 29 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.

Well, the treatment carried out as part of the door-to-door service 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 follow-up that is carried out carried out through the code that incorporates the containment elements. Regarding this, the working group of article 29 considers 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 stratum egia."

In this case, the processing of personal data reported is carried out on a large scale, given that it takes place within the framework of the municipal waste collection strategy and affects all users of this municipal service.

3.3 On the use of a technology that represents a new way of collecting and using personal data with risk to people's rights and freedoms

In relation to this point, it should be noted that, despite the fact that the use of TAG technology does not entail new ways of collecting and using personal data, it does involve an innovative use of a consolidated technology, which represents a new way of using

personal information at risk for people's rights and freedoms. This circumstance reinforces the need to assess the risks and threats to the rights of users of this service.

In conclusion, given the concurrence of the cases provided for in article 35.3 of the RGPD, sections *a* and *c*, in accordance with criteria number 1, 7 and 10 of the list and with article 28.2, sections *a*, *d* and *f* of the LOPDGDD, it was necessary to carry out an AIPD before processing personal data.

During the processing of this procedure, the City Council of Sant Andreu de Llavaneres has recognized that it does not have the AIPD, which constitutes the infringement established in article 83.4. *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, 25 to 39, 42 and 43 ". Among these is the one included in article 35 of the RGPD, relating to the lack of personal data protection impact assessment.

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

"(...) will issue a resolution declaring the infringement and establishing, in its case, the measures to be taken to stop the conduct or correct the effects of the infringement that has been committed.

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 . (...)".

By virtue of this power, the Sant Andreu de Llavaneres Town Council should be required to, as soon as possible, and in any case within a maximum period of 2 months from the day after the notification of this resolution, carry out an AIPD in relation to the processing of personal data carried out within the framework of the provision of the door-to-door service.

Once the corrective measure described has been adopted, within the specified period, the Sant Andreu de Llavaneres Town Council must inform the Authority within the following 10 days, without prejudice to this Authority's inspection powers to make the corresponding checks.

resolution

For all this, I resolve:

1. Declare that the City Council of Sant Andreu de Llavaneres has committed an offense provided for in article 83.4. a in relation to article 35, both of the RGPD.
2. To require the City Council of Sant Andreu de Llavaneres to adopt the corrective measures indicated in the 4th legal basis, consisting of carrying out the impact assessment in the matter of personal data protection, and to accredit before this Authority the actions taken to term to fulfill it.
3. Notify this resolution to the Sant Andreu de Llavaneres Town 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