

Carrer Rosselló, 214, Esc. A, 1st 1st
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ARCHIVE RESOLUTION of the Prior Information no. IP 40/2018, referring to the Illustrious Bar Association of Mataró

Background

1.- En data 22/01/2018 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit pel qual el senyor (...) formulated a claim against the Illustrious Bar Association of Mataró (hereinafter, CAM), for not responding to the request to exercise the right of access, provided for in article 15 of the Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD), applicable at the time of the facts. This claim has given rise to rights protection procedure no. PT 4/2018. In the same letter Mr. (...) brought to the attention of this Authority some facts that in his opinion could be contrary to the LOPD. Specifically, it stated that: "The interested party has filed the complaint because the College, as usual, informs the lawyers that the interested party "has multiple open disciplinary files", an expression that the colleagues (...) and (. .) have been used on several occasions against the interested party before the courts in the last five years".

2.- As a result of these specific facts reported in addition to the claim on the right of access, the Authority opened a preliminary information phase (no. IP 40/2018), in accordance with article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the administrative procedure common of the public administrations (LPAC), in order to determine if the facts were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the concurrent relevant circumstances.

As part of this information phase, by means of orders dated 03/21/2018 and 06/21/2018, the CAM was required to report on whether the information regarding Mr. (...) had been the subject of numerous disciplinary proceedings had been dealt with in the Board of Governors of the College or in another body of the corporation where the persons mentioned by the complainant (Mr. (...)) would have attended and Mr. (...). Or otherwise, to point out how these people would have accessed this information regarding Mr. (...).

The CAM responded to the previous request by means of a letter dated 05/18/2018, received at the Authority on 06/25/2018, in which it stated, among others, the following:

"1st.- The processing of any informational and/or disciplinary file in which the said lletrat Mr. may be an interested party. (...) is treated solely and exclusively within the Ethics Committee and the Board of Governors of this Bar Association.

2n.- In no case has reference been made to third parties that Mr. (...) has been the subject of numerous informational and/or disciplinary proceedings.

3rd.- Nor Mr. (...) nor Mr. (...) are or have never been part of the Ethics Committee or the Board of Governors of this College.

4th.- The lawyers Mr. (...).

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5ê,- We do not know the statements that both Mr. (...) and Mr. (...) could have made about Mr. (...), which, should they have been made, the Mataró Bar Association would not be responsible under any circumstances."

Fundamentals of Law

1.- In accordance with the provisions of article 2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, in relation to article 5 of the Law 32/2010, of October 1, of the Catalan Data Protection Authority, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Agency Catalan Data Protection Authority, the director of the Catalan Data Protection Authority is competent to issue this Resolution.

2.- Based on the account of events that has been presented in the antecedents section, it is necessary to analyze the reported events.

The person making the complaint stated in the letter of complaint that the CAM routinely informed registered lawyers about the opening of numerous disciplinary files against the person making the complaint. In particular, he referred to two lawyers, who, according to the complainant, would have made statements indicative of such an extreme before the courts on several occasions during the last five years.

The facts reported refer to two data treatments: (1) on the one hand, the possible communication by the CAM to registered lawyers of personal data of the complainant here, without his consent, referring to possible violations committed by him and which would have given rise to disciplinary proceedings; and (2) on the other hand, the eventual communication by two registered lawyers to members of judicial bodies and to persons in judicial processes processed by them, of the same personal data of the aforementioned complainant. Well, it should be noted that this resolution will only refer to the first treatment mentioned (1), since the second (2), referring to the disclosure of information that would have been carried out by two lawyers, exceeds the powers attributed to this Authority.

Regarding, therefore, the communication of data that the complainant states that the CAM would have carried out, in the written response to the request for information the CAM has flatly denied the facts, pointing out that it has not communicated to third parties the 'initiation of disciplinary proceedings against the person reporting here, and that only the members of the Ethics Commission and the Governing Board of the CAM have access to this information, among which, he points out, none of the two lawyers identified by the complainant

In this regard, it is necessary to start from the premise that the access by the members of the Governing Board of the CAM to the mentioned information regarding the complainant here, without his consent, would be justified because it is the competent body for the exercise of disciplinary power, in accordance with article 84.3 of the Statutes of the CAM (DOGC no. 5662, of 2/07/2010), in relation to what is provided for in articles 26.b) and 50.1 of Law 7/2006, of May 31,

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of the exercise of qualified professions and professional associations. So the art would apply. 6.2 of the LOPD, in force at the time of the events.

Likewise, with regard to access to this information by the Ethics Committee, the same article 84.4 of the Statutes of the CAM establishes that for the processing of a disciplinary procedure an instructor will be appointed from among the members of the College who are part of the Ethics Committee. The official CAM website (www.icamat.cat) also states that: "the purpose of the Ethics Commission is to process, investigate and resolve all those complaints addressed to lawyers registered in the Illustrious Bar Association of Mataró and to lawyers registered in other Bar Associations the Spanish State, whose professional performance has taken place in the area of the judicial party of the Courts of Mataró and this Bar Association (...)". Consequently, art would also apply. 6.2 of the LOPD.

With regard to the communication of data to two identified lawyers and which is specifically reported here, as a result of the investigation carried out by the Authority there is no indication that such dissemination had actually taken place. In this regard, only the statement made by the person making the complaint is recorded, without being accompanied by any element tending to accredit such statement. What's more, even in the case - not proven - that the two aforementioned lawyers had made the indicated statements before the courts as part of the processing of other judicial processes, it would be insufficient to conclude that the CAM had previously communicated to said lawyers the information regarding the complainant here. In this regard, the CAM has pointed out that the two lawyers identified by the complainant "have been part of 5 and 2 ethical files" in which the complainant was also a party, a circumstance that could explain the origin of the data known by the two lawyers, and which according to the complainant here they would later have spread.

3.- In accordance with everything that has been set forth in the 2nd legal basis, and since it has not been proven during the present information prior to the existence of rational indications that allow imputing any fact that could be constitutive of any of the infractions provided for in the LOPD, it is necessary to agree on the archive of the present actions.

Article 89 of Law 39/2015, in accordance with articles 10.2 and 20.1 of Decree 278/1993, provides that the filing of the proceedings shall proceed when the following is made clear in the instruction of the procedure: "b) When the facts are not proven; d) When the person or persons responsible does not exist or has not been identified or appear exempt from responsibility".

For all this,

RESOLVED

First.- File the previous information proceedings number IP 40/2018, relating to the Illustrious Bar Association of Mataró.

Second.- Notify this Resolution to the Illustrious Bar Association of Mataró and communicate it to the complainant.

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Third.- Order the publication of the Resolution on the Authority's website (www.apd.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 article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the denounced entity can file, with a discretionary character, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the Courts of Administrative Disputes, 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 administrative contentious jurisdiction.

Likewise, the reported entity may file any other appeal it deems appropriate for the defense of its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)