

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

Identification of the file File

resolution of the previous information opened following complaints numbers IP 71/2018 and IP 76/2018, referring to Barcelona City Council.

Background

1. On 27/02/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Barcelona City Council, on the grounds of an alleged breach of the regulations on personal data protection. In particular, the complainant stated that the door-to-door waste selective collection system that the City Council had implemented in the old town of the Sarrià neighborhood would allow the collection and processing of personal data of the users of the service. In this sense, the person reporting pointed out that certain waste could allow the user to be identified through a chip or sticker (containing a QR code and a numerical code). The reporting person

provided a photograph related to the events reported.

This complaint was assigned the number IP 71/2018.

2. The Authority opened a preliminary information phase, in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (from now on, LPAC), 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 relevant circumstances involved.
3. On 06/03/2018, the Catalan Data Protection Authority received a new letter from another person in which he also filed a complaint against Barcelona City Council, on the grounds of an alleged non-compliance of the regulations on personal data protection. Specifically, the person making the complaint stated that with the new waste collection system, users must leave paper or cardboard on the street for hours in a bag, where there would predictably be documentation with personal data that would be within reach of anyone.

The number IP 76/2018 was assigned to this complaint.

4. On 03/08/2018, as part of 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 through the internet pages linked below, the City Council reported the following:

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ÿ <http://ajuntament.barcelona.cat/ecologiaurbana/ca/residu-zero/recollida-selective/door-to-door>

Among others, this website reported that:

"The organic matter bin has an identification chip, just like the translucent bags for recyclables (plastics + metals).

It is also planned to identify those bags or buckets left outside the collection days/hours, and this will be done by means of a "bag or bucket left incorrectly" sticker.

During the information campaign for the deployment of door-to-door collection and until it is communicated in a timely manner, no penalties are foreseen for those who do not comply."

ÿ http://ajuntament.barcelona.cat/ecologiaurbana/sites/default/files/guia_informativa_orta_porta.pdf

This link allowed access to the "Porta a porta Sarrià informative guide" prepared by Barcelona City Council. There it is indicated that the 20 liter organic waste bin that must be taken down in front of the building's gate: "carries a chip to be able to identify the operational management of the service and correct possible errors."

In turn, as explained in said guide, the translucent yellow bags (for recyclables: metal and plastics), which must be used compulsorily and which the City Council provides free of charge during the first year of implementation of the new collection system: "they will carry a chip to be able to identify them and correct possible errors."

Finally, with regard to sanitary waste, it was also reported that: "The City Council will provide free labels to identify this type of waste, which must be removed in an opaque bag."

5. In this preliminary information phase, on 03/15/2018 the reported entity was required to report, among others, on whether the code attached to the bags (plastic and metal) and the chip that is integrated into the bucket of organic matter, are always the same for each of the users; as well as what was the legal authorization to inspect or control the waste generated by each user.
6. On 03/28/2018, Barcelona City Council responded to the request mentioned in through a letter in which he stated, among others, the following:

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- That the chips do not allow the identification of the people using the buckets or the bags
 - That no personal data was collected during the delivery process of the bags and buckets. Specifically, the data that was collected was a delivery code based on a correlative number, the codes of the buckets and bags, the date of delivery and a code that refers to the 4 zones into which the door was divided at the door
 - Given that the 4,240 existing homes in Sarrià Vell were divided into 4 zones, it is completely impossible to link this number to any specific address.
 - That correlative numbers do not allow people to be identified either, not even indirectly. These numbers were requested by each of the 10 informants who distributed the material to homes, to a central system that distributed them correlatively based on the order of arrival of the requests.
7. On 06/20/2018, the Authority received an email message from the second person reporting here (IP 76/2018), in which he stated that the Barcelona City Council could identify the users of the service from the recycling bags with label.
8. On 07/11/2018, also within the framework of this preliminary information phase, the Authority carried out an inspection at the premises of the Waste Management and Cleaning Directorate of the Barcelona City Council, to verify certain aspects related to the door-to-door selective waste collection system that had been put into operation, as a pilot test, in the old town of the Sarrià district of Barcelona. In that face-to-face inspection, the representatives of Barcelona City Council stated the following:
- That through the chips or stickers on the buckets and bags, it is not possible to identify a the users of the service.
 - That in the beginning, there was certainly the intention to identify the users of the service. However, upon consultation with the City Council's legal counsel, the identification of physical persons was ruled out.
 - That when the information provided to the citizen (such as that published on the internet) was prepared, the identification of the users had not yet been ruled out in order to adopt individualized corrective or sanctioning measures. This information will be corrected soon.
- ÿ That the neighborhood where the door-to-door collection service has been implemented was divided into 4 zones (each with around 1,000 homes).
- That the chip is not linked to any home. It is a random sequential number.
 - That when the buckets and bags with chips were delivered, they were not linked to the home or the person using it.
 - That the purpose of the chip is to produce service statistics. As an example, through the chip (which reads the corresponding truck) you can determine the volume of collections and

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- allow you to manage the frequency of collection; or the degree of recycling (based on the chips delivered).
- That in the case of the bucket, each chip corresponds to a house, but without settling there a bond
 - That in the case of bags, the chip/code is the same for each package (of about 20 bags). And each bag pack has a different chip. Together with the chip, there are two numerical labels also attached to the bags already "from the factory", which contain a numerical code that corresponds to that of the chip, in order to facilitate its distribution (a sticker was left in the bag and the (the other was collected by the staff who distributed the bags to identify which ones had been delivered).
 - That in the case of the bins, there are also two labels with the chip code (one was left in the bin and the other was picked up by the delivery staff).

Finally, the inspection staff required the inspected entity to, within 10 working days, rectify the information that appeared on the internet and that could generate confusion regarding the possible identification of people using the service.

9. On 20/07/2018 and 25/07/2018, Barcelona City Council reported that it had corrected the information that was provided through the internet.
10. On 07/23/2018, also within the framework of the preliminary information phase, the Authority's Inspection Area verified via the Internet that the information required in the act of in-person inspection.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.
2. Based on the account of facts that has been presented in the background section, it is necessary to analyze the facts denounced

2.1. About door-to-door collection

In this regard, the complainants stated that through the chips or codes in the buckets and bags, the users of the service could be identified.

Certainly from the information that the City initially provided on its website (which has already been corrected), it could be inferred that the identification of natural persons was possible. In fact, the representatives of the City Council in the act of inspection

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face-to-face meeting carried out on 07/11/2018, they admitted that initially it was planned to link the waste to the people using the service, but that this option was discarded after consulting with the City Council's legal advice .

Well, from the previous information actions carried out, no element has been found that allows us to infer, not even tentatively, that the Barcelona City Council can identify the people who use the door-to-door service, based on the chips or codes on the bags and buckets.

In the present case, therefore, the data that the City Council collects through the chips, are treated in an anonymized form, so that the identification of physical persons is not allowed without requiring disproportionate efforts.

In this regard, Recital 26 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such (RGPD), which from 25/05/2018 has displaced the LOPD in everything regulated by the RGPD; provides that the principles of data protection do not apply to anonymous information, that is to say to information that is not related to an identified or identifiable natural person, nor to data made anonymous so that the interested party is not identifiable or ceases to be so. And it is added, that the RGPD does not affect the treatment of this anonymous information, even for statistical or research purposes.

Given that Barcelona City Council does not process personal data within the framework of the provision of the waste collection service through the door-to-door system, the data protection regulations do not apply. In this sense, the art. 4.1 of the RGPD defines "personal data" as "all information about an identified or identifiable natural person".

2.2. About personal data in paper waste

The second of the complainants explained that the deposit by the users of paper waste on the street (in a bag), as a step prior to its collection by the City Council, could lead to third parties being able to consult the personal data that in said waste could be found.

Indeed, as the second of the complainants rightly pointed out, there is the possibility that among the paper waste there may be personal data, and even special categories of data. But there is no such eventuality

Barcelona City Council could be held responsible, but the responsibility for this possibility should fall on the person who deposits papers with personal data in the waste bags.

Therefore, it is the person using the service who, with respect to the paper documentation in their possession and in which they are

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personal data, must act with due diligence in order to prevent third parties from accessing said information.

In accordance with everything that has been explained so far, it must be concluded that there is no violation of data protection regulations in the collection of paper waste, through the door-to-door system implemented by the City Council of Barcelona and to which the two complaints that gave rise to the present investigative actions referred.

3. Consequently, given that during the prior information it has not been proven that there are rational indications that allow imputation of any fact that could be constitutive of any of the violations provided for in the applicable legislation, it is necessary to agree to the archive of these performances Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is made clear in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement; (...) c) When the proven facts do not manifestly constitute an administrative infraction".

resolution

Therefore, I resolve:

1. File the actions of prior information numbers IP 71/2018 and IP 76/2018, relating to Barcelona City Council.
2. Notify this resolution to Barcelona City Council and communicate it to people complainants
3. 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 discretion, 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 which provides for article 123 et seq. of Law 39/2015. 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.

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Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)

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