

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

File identification

Archive resolution of the previous information no. IP 90/2018, regarding the municipal group of Ciutadans-Partido de la Ciudanía at the Sant Vicenç dels Horts City Council.

Background

1. On 20/03/2018, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the municipal group of Citizens-Partido de la Ciudanía at the City Council (in hereinafter, GM C's), due to an alleged breach of the regulations on the protection of personal data. The person making the complaint pointed out that the office of GM C's would be accessed by people affiliated with this party "having in that office a computer with reliable information from that entity [the City Council of Sant Vicenç dels Horts] and protected by Law 15/1999 of December 13 on Data Protection (...)." The reporting person provided various documentation relating to the events reported.
2. The Authority opened a preliminary information phase (no. IP 90/2018), in accordance with the provisions of 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 common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they 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. As part of this information phase, by means of an official letter dated 04/26/2018, the City Council was required to inform, among others, whether it had established any security measures for guarantee that third parties cannot access the computer equipment located in the offices of the municipal groups.
4. The City Council of Sant Vicenç dels Horts responded to the previous request through a letter dated 05/08/2018, in which it provided various information but did not provide the required information regarding the computer equipment that is made available to the groups municipal
5. Given the above, and also within this phase of prior information, by means of office of 05/15/2018, the request for this information was reiterated.
6. The City Council of Sant Vicenç dels Horts responded to the previous request through a letter dated 06/04/2018, in which it provided a report issued on 06/01/2018 by

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responsible for Systems and Technologies in which the following was noted, among others:

- That the teams located in the offices of the municipal groups require the identification of the user and their authentication by means of a password.
- That it cannot be accessed anonymously.
- That the City Council implements the access policies with the active directory of Windows 2008 Server and following the policies of the National Security Scheme.

The reported entity provided various documentation with its letter.

7. On 10/30/2018 and still within the framework of this preliminary information phase, the Authority carried out an inspection in the office of the GM of C's, to verify certain aspects related to security of the personal data processed through the computer equipment located there. In that on-site inspection, the Authority's inspection staff verified the following:

- That the computer in the office of the C's municipal group was protected with a user code and a password.
- That when starting the computer session, it was necessary to enter a password that was not corresponded to the name of the user.
- That the office of the municipal group was locked, which the reception staff of the City Council will give to the representative of the inspected entity. In turn, it was also found that the computer was closed.

On the other hand, the representative of C's GM stated that no one could access his office without being present; just as the computer session was closed once the office was left.

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 set out in the background section, it is necessary to analyze the facts reported, relating to the security of the data processed through the computer equipment located in the GM C's office.

In this regard, the complainant referred to the complaints he had made before the City Council due to the fact that "members of the Cs party of this City Council in the office

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of the only elect, affiliates enter and leave said office, having in said office a computer with reliable information from said entity". And it was added to the complaint that the councilor of the GM of C's could have stored on said computer information from the City Council to which he could have accessed due to his condition, and which should be protected according to the LOPD.

In this sense, as indicated by the head of Systems and Technologies in the report issued on 01/06/2018, the computer equipment of the C's GM's office (like the rest of the corporate computers) was equipped with the measure of security regarding the identification and authentication of users provided for in article 93 of Royal Decree 1720/2007, of December 21, which approves the Regulations for the deployment of the LOPD (hereafter, RLOPD).

It should be noted at this point that the circumstance indicated in the complainant's complaint (that people affiliated with a party enter the office of a GM where there is a computer), does not in itself imply that said affiliated people can access the information stored on the computer, as long as appropriate security measures are implemented to ensure that unauthorized third parties cannot access personal data.

In the present case, the City Council certified that the computer was protected with a user name and password, without the complainant questioning this statement, since his complaint referred only to the fact that unauthorized persons were in that dependency.

At this point, it should be highlighted that the Authority's inspector staff found on 10/30/2018 that, indeed, the computer equipment located in the office of the GM of C's at the headquarters of the Sant Vicenç City Council dels Horts, had implemented an identification (user code) and authentication (password) system.

On the other hand, the person making the complaint has not provided any evidence that allows it to be inferred that the security of the data relating to the computer equipment subject to the complaint has been compromised, beyond the possibility that in that office there may be to access people who are not part of the GM.

This is why the principle of presumption of innocence is applicable here, given that it has not been possible to prove the existence of evidence of infringement and, therefore, administrative responsibility cannot be demanded in accordance with article 53.2 .b) of the LPAC.

In accordance with what has been exposed and given that it has not been proven during the present information prior to the existence of rational indications that allow it to be considered that the facts analyzed in this section could be constitutive of any of the

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infringements provided for in the regulations on data protection, it is necessary to agree on their archive.

3. In accordance with everything that has been set forth in the legal basis 2, and given that during the previous 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 on the archive of these actions. 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".

resolution

Therefore, I resolve:

1. File the previous information actions number IP 90/2018, regarding the municipal group of Ciudatans-Partido de la Ciudanía at the Sant Vicenç dels Horts City Council.
2. Notify this resolution to the GM of C's and communicate it to the person making the complaint and to the Sant Vicenç dels Horts City Council.
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.

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

The director

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M. Àngels Barbarà i Fondevila
Barcelona, (at the date of the electronic signature)

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