

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

File identification

Prior information no. IP 146/2018, referring to Aqualogy Solutions, SAU

Background

1. On 06/27/2018, it was registered with the Catalan Data Protection Authority (APDCAT) a letter from a person making a complaint about Mrs. Maria del Mar (...) (...) against Aqualogy Solutions, SAU (hereinafter, MUSA), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant stated that on 01/06/2018 he signed a lease with the owner of a certain property located in Barcelona.

He added that he agreed with the owner and the property manager not to change the ownership of the water contract (the owner would be the property manager, according to the person making the complaint), but he did authorize the manager so that proceeded to make the change of bank direct debit with the company supplying the water supply service. Subsequently, the complainant indicated that on 27/06/2018 he received, at his address, a contract from MUSA, which already contained his personal data (such as first and last name, DNI, address or account IBAN number current).

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (IP 146/2018), 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 1 October, on the common administrative procedure of public administrations (henceforth, LPAC), in order 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. On 06/29/2018, 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. Specifically, the "Templates" section of the website of Aqualogy Solutions, SAU (<http://www.musa.cat/cat/plantillas>) was accessed. Within this section, the following documents were consulted:
 - "SUBROGACIÓN CONTRACT" template, used in the event of a change of owner.
 - "PRIVACY POLICY".

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4. On the same date, the Authority's Inspection Area also accessed the "Contract the Service" section of the website Aigües de Barcelona, Empresa Metropolitana de Gestió del Cicle Integral de l'Aigua, SA (<http://www.aiguesdebarcelona.cat/ca/contratar-el-servicio-suministro>). Within this section, the following documents were consulted, which are attached to this diligence:
 - "Water supply" contract.
 - "Letter of authorization to hire", "Individual" version.
5. In this information phase, on 03/07/2018, MUSA was required because inform, among others, about the source from which the data of the reporting person were obtained (name and surname, DNI, address and IBAN); what was the specific legal basis that justified the processing of data subject to complaint; as well as the reasons why the privacy policy informs interested parties of the possibility of filing a complaint, only with the Spanish Data Protection Agency.
6. Also in the framework of the information phase, on 03/07/2018 Aigües de Barcelona, Empresa Metropolitana de Gestió del Cicle Integral de l'Aigua, SA (hereafter, Aigües de Barcelona) was required because reported, among others, whether he had communicated the data of the person reporting to MUSA.
7. On 07/17/2018, MUSA responded to the aforementioned request through a letter in which it stated, among others, the following:
 - That on 06/05/2018, through the customer service number of Aigües de Barcelona, a call was received from a person who identifies herself as Mrs. María del Mar (...), only bidding to make a change of ownership and current account of the water supply contract.
 - That in the course of the call, this person consents to subrogate himself in the maintenance contract for the water measurement equipment with MUSA; as well as the communication of your data to MUSA.
 - That MUSA's commercial activity does not have the nature of a public service; like this since this is developed throughout the Spanish territory.The reported entity attached various documentation to the letter; as well as the audio of the disputed call.
8. On 07/17/2018, Aigües de Barcelona responded to the aforementioned request through a letter in which he stated, among others, the following:

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That on 06/05/2018, at 1:31 p.m., the Aigües de Barcelona telephone customer service received the request to change ownership and bank account of the supply subject to complaint.

- That the applicant provided the necessary data to make statements managements.
- That it was explicitly asked whether the applicant would be the new holder of the contract, answering that yes and identifying herself as Mrs. María del Mar (...).
- That this person consented to subrogate himself in the meter maintenance contract with MUSA. For this reason, Aigües de Barcelona communicated the details of the complainant to MUSA.

The reported entity attached to the letter various documentation and the audio of the call.

9. On 07/19/2018 and still within the framework of this preliminary information phase, the Authority's Inspection Area carried out the following checks:

9.1. Regarding the recording of the call provided by Aigües de Barcelona, it is confirmed the next:

- That a person calls the attention service of Aigües de Barcelona, requesting the change of ownership and current account of the supply contract for the property leased by the person making the complaint. This person provides the water supply contract number to the Aigües de Barcelona employee on two occasions ((...)).
- That the Aigües de Barcelona employee asks the caller who is the current holder of the supply contract, and the latter replies that "Fuster Administradores SL".
- That after the employee requests the address of the supply contract, es have the following conversation:

Aigües de Barcelona (AB) employee: "You will be the new owner of the water"

Interlocutor (I): "Yes"

AB: "Tell me your ID so I can register you as a new water holder"

And: "(...)15Y"

AB: "Your names and surnames, please?"

I: "Maria del Mar (...)"

- Next, the Aigües de Barcelona employee asks the interlocutor if she wants to subrogate herself in the water meter maintenance contract with MUSA.
The interlocutor answers in the affirmative, as well as consenting to the communication of her data to MUSA.

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- ÿ The Aigües de Barcelona employee also requests a telephone number, providing 932185637, as well as the bank account number (...1324).
- 9.2. The phone number provided by the caller to the Aigües de Barcelona worker (932185637) is searched through Google, noting that the first result is linked to "Fuster Administradores SL".
- 9.3. Also through Google, search for "carpenter administrators". The information displayed by the search engine, linked to the Google Maps service, links this company to the phone number that the caller provided during the disputed call.
- 9.4. The inspection staff calls the person making the complaint, noting that his voice differs from the person who called the Aigües de Barcelona customer service.

Fundamentals of law

1. In accordance with article 5 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and article 15 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the director of the Catalan Data Protection Authority is the competent body to exercise the power of inspection and the power to sanction in relation to the processing of personal data carried out by the entities included in article 156 of the Statute of Autonomy of Catalonia and in article 3 of Law 32/2010.

In this case, however, the entity that could be responsible for the processing of the personal data that is the subject of a complaint is not included in the cases that are the competence of this Authority, according to what is provided for in the aforementioned precepts. In the complaint, MUSA was identified as the reported entity, an entity included within the jurisdiction of this Authority. Now, as has been done in the antecedents, this Authority has verified that the processing of personal data referred to in the complaint would not be attributable to the reported entity, but to the entity Fuster Administradores SL which, as inferred of the investigative actions carried out, he would have called the customer service of Aigües de Barcelona impersonating the person making the complaint. In the course of this call, the interlocutor claimed to be the reporting person, and consented to subrogation in the maintenance contract for the measuring equipment.

Therefore, the determination of any responsibilities that Fuster Administradores SL could have incurred, for the treatment of personal data subject to a complaint, would be outside the competence of the Catalan Data Protection Authority.

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2. In accordance with what has been set out in legal basis 1, and given that in accordance with article 141 of Law 40/2015, of October 1, on the legal regime of the public sector, the public administrations are obliged to respect the legitimate exercise of the powers of other administrations, it is considered appropriate to transfer these previous actions with the Spanish Data Protection Agency, in order to elucidate any responsibilities that may have been incurred.
3. Next, it is appropriate to address the performance of Aigües de Barcelona and MUSA, given that the processing of personal data carried out by these entities would indeed be included in the scope of competence of this Authority. In this sense, the National Court, in its judgment of 13/10/2017 (appeal 1846/2015), in a case in which the identity of the person reporting had been impersonated, states that:

"However, this Chamber considers, as it appears from the document incorporated in the records, that the complainant's personal data were processed without her consent by Gas Natural Sur when processing a change of owner of the electricity contract for a house in her name, which has not been proven either by means of a written contract or by means of a recording of the telephone conversation that is invoked by the acting entity. Subsequently, in addition, up to five invoices were issued for the electricity supply contract in the name of said complainant, corresponding to the house of which she was the tenant, for the period between 03/21/13 and 11/17/13 .

GNS processes the personal data of the reporting person by incorporating them into its database and issuing invoices to its name. It is necessary that the person holding the data unequivocally authorizes its treatment and in this case the complainant's consent to this type of treatment has not been proven."

In the present case, it should be noted that he was the interlocutor of the entity Fuster Administradores SL, who pretended to be the person reporting here, provided his personal data to Aigües de Barcelona for subrogation in the maintenance contract for the metering equipment (in the latter case, Aigües de Barcelona acted as the person in charge of MUSA), which is proven through the recording of the call that has been provided. In this conversation, the person impersonating the complainant provided his first and last name and ID ("María del Mar (...) with ID "(...)15Y"), the number of water supply contract ((...)), the until then holder of the contract (Fuster Administradores SL) and the address of the supply, so that Aigües de Barcelona cannot be required to show a lack of diligence in the verification of the identity of the person from whom the data was collected.

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In turn, MUSA acted with due diligence in the treatment subject to complaint, given that it forwarded the contract for the change of owner of the maintenance contract for the water measurement equipment to the address of the person making the complaint to which the contract referred, in order to initial it with his signature and thus have the unequivocal consent of the interested person accredited. It is worth noting that the recording provided also states that Aigües de Barcelona would send the contract of exchange of the holder of the water supply to the address of the supply.

In accordance with everything that has been set out, and given that during the previous information it has not been proven that there are rational indications that allow any fact to be imputed that could be constitutive of any of the infractions provided for in the applicable legislation, it is agreed on the archive of these actions, without prejudice to the measures required in the 4th legal basis. Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure: "d) When it does not exist or does not it has been possible to identify the person or persons responsible or appear exempt from responsibility".

4. Article 58.2.d) of the RGPD empowers the control authorities, in the exercise of their corrective powers, in order to order the person in charge or in charge of the treatment that the treatment operations comply with the provisions of this rule. In turn, article 8.2.c) of Law 32/2010 empowers the Director of the Authority to require the persons responsible and those in charge of the treatment to adopt the necessary measures for the adequacy of the treatment of personal data subject to research in current legislation.

It is by virtue of this power that, despite the archive decision based on the arguments expressed above, it is considered appropriate to require MUSA so that within a maximum period of 10 days from the day after the notification of this resolution, carry out the following actions:

4.1. About the right to information

As part of the previous actions, it has been established that MUSA informs the interested parties of the possibility of submitting a complaint only to the Spanish Data Protection Agency. In this regard, MUSA considers that it is carrying out a commercial activity that does not have the nature of a public service, since no regulation typifies the sale and maintenance of meters as a public service activity owned by a Catalan administration. In addition, MUSA states that it develops its activity throughout the Spanish territory.

Well, as stated in the contract signed between Aigües de Barcelona and MUSA dated 01/01/2016 (provided by MUSA, in response to the Authority's request), one of the

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material elements of the public water supply service are the measuring equipment (art. 26 of the Regulation of the Metropolitan Service of the Integral Water Cycle). In fact, the measurement of consumption through water measuring equipment is what is used
basis for invoicing water supply by the supplying entity (art. 45 of the aforementioned Regulation). Likewise, it is worth saying that Aigües de Barcelona, in its letter of 07/17/2018, also confirms that "the correct provision of the supply service necessarily involves the adequate maintenance of the meter or measuring equipment."

Therefore, it must be concluded that the activity carried out by MUSA must be considered inherent in the public water supply service, and therefore the data processing carried out within the framework of the provision of this service is included in the cases over which this Authority has jurisdiction (art. 3 of Law 32/2010).

On the other hand, the circumstance invoked by MUSA relating to the fact that it provides services throughout the Spanish state, does not exempt it from providing the correct information to the people affected, as a result of the existing distribution of competences. And in any case, in the documents that the inspector staff accessed on 06/29/2018 (indicated in the 3rd antecedent), there are constant references to the Regulations of the Metropolitan Service of the Integral Water Cycle, by which it is obvious that the territorial scope of these documents is restricted to the Metropolitan Area of Barcelona.

Therefore, MUSA should be required so that, within the aforementioned period, it modifies the information it provides to the users in relation to the treatments linked to the provision of the water supply service in Catalonia, regarding the right to present a claim before the Catalan Data Protection Authority.

4.2. About data processing

Given that in the present proceedings it has been established that it was not the affected person who effectively consented to subrogate himself in the maintenance contract for the measurement equipment, MUSA must be required to, within the aforementioned period, delete (without prejudice to its blocking) the data of the reporting person linked to the maintenance contract of the measuring equipment, unless his consent had been obtained (in case he had signed the contract sent to his address for his signature).

Once the corrective measures described have been adopted in the period indicated, within the next 10 days MUSA must inform the Authority, without prejudice to the Authority's inspection powers to carry out the corresponding checks .

5. As stated in the previous legal basis, the personal data protection regulations empower the director of the Authority to order the person in charge or person in charge of the treatment that the treatment operations are comply with the legislation

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current It is by virtue of this faculty that, despite the archive decision based on the arguments expressed above, it is considered appropriate to require Aigües de Barcelona so that within a maximum period of 10 days from the day after the notification of the present resolution, reverse the change of ownership of the water supply contract, unless the consent of the person making the complaint had been obtained (in case he had signed the contract sent to his address).

In this sense, in the present actions it has been established that it was not the affected person who effectively consented to the change of ownership of the water supply contract. However, the complainant admitted in his letter of complaint that he had authorized the estate administrator to manage the change of direct debit. It is for this reason that, although this data was provided by a person impersonating the complainant here who would be linked to the administration of estates, Aigües de Barcelona could continue to process the personal data of the complainant necessary to carry out charging the water supply to your bank account.

Once the corrective measures described have been adopted in the period indicated, within the next 10 days Aigües de Barcelona must inform the Authority, without prejudice to the inspection powers of this Authority to carry out the corresponding checks.

For all this,

Solution:

1. Transfer the referenced actions to the Spanish Data Protection Agency, with a testimony of this resolution translated into Spanish, regarding the processing of personal data of the complainant here, carried out by the entity Fuster Administradores SL.
2. File the previous information actions number IP 146/2018, regarding Aqualogy Solutions, SA and Aigües de Barcelona, Empresa Metropolitana de Gestió del Cicle Integral de l'Aigua, SA.
3. Require MUSA to adopt the corrective measures indicated in the 4th legal basis and certify to this Authority the actions taken to comply with them.
4. Require Aigües de Barcelona to adopt the corrective measures indicated in the 5th legal basis and certify to this Authority the actions taken to comply with them.

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5. Notify this resolution to MUSA and Aigües de Barcelona; and communicate it to the person reporting
6. 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 a period of one month from the day after its notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. You can also file an administrative contentious appeal directly 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, regulator of administrative contentious jurisdiction.

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)