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## File identification

Archive resolution of the previous information no. IP 150/2018, referring to Granollers Town Council

## Background

1. On 01/06/2018, the Catalan Data Protection Authority received a letter from a trade union in which it filed a complaint against Granollers Town Council, on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the complainant union stated that the Local Police officers who provide services during the night shift access the Information System Police (henceforth, SIP) to obtain certain information about the vehicles that have been sanctioned, which the Sanctions Unit of the City Council previously identifies, and detailed the system in the treatment of this information, and expressed its doubts about if it complied with data protection legislation.

The complaining union provided various documentation relating to the facts reported.

2. The Authority opened a preliminary information phase (no. IP 150/2018), 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. In this information phase, on 06/27/2018 the Granollers Town Council was required to inform, among others, whether the officers of the Local Police accessed the SIP to consult the "Database de Vehículos" of the General Directorate of Traffic of the Ministry of the Interior (hereinafter, DGT); as well as what were the personal data of the owners of the vehicles that are provided to the staff of the Sanctions Unit of the City Council.
4. On 07/09/2018, Granollers City Council responded to the request mentioned in through a letter in which he stated, among others, the following:
  - ÿ That the control room operators and certificate instructors are in charge of searching the SIP for the data that the local police sanctions unit requires to investigate the sanctioning files in which the identity of the owner of the reported vehicle is unknown . The necessary information is accessed to

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the initiation of the traffic penalty file and specifically to identify and be able to notify the owner of the vehicle, using the powers granted by Law 16/1991.

- That the local police sanctions unit is made up of administrative staff who report hierarchically to the Chief Inspector of the Granollers local police.
  - That the DGT files of vehicles reported to the SIP are consulted when they are not included in the agent's report card in cases where the offending driver is identified "on site"; nor in the City Council's own databases (the municipality's vehicle register) or that of the Sanctions Unit (GT-Win).
  - That the purpose of the consultation is to obtain the address of the owner of the vehicle, when this is not available, thus complying with article 90 of Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, circulation of motor vehicles and road safety (hereafter, RDL 6/2015).
  - That the data provided to the staff of the sanctions unit is the copy, in paper or electronic format, that the DGT database ordinarily displays on the computer screen from which it is accessed.
  - That these public employees, as authorized personnel, exclusively process personal data for the exercise of their functions, which consist of carrying out the necessary tasks for the processing of the disciplinary file.
- ÿ That the retention period of the vehicle DGT file consulted through the SIP is the same as that determined by the entire sanctioning file, of which it forms part: 5 years.

Granollers City Council attached various documentation to the letter.

#### 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 the processing of data by the sanctions unit

The complaining union explained that the staff of the sanctions unit who are not members of the Local Police, process the personal data of the owners of the vehicles reported by Local Police officers and blue zone guards. These data are provided by the Local Police officers, after consultation with the SIP, following them

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instructions received In the same sense, later on the complaining union referred to the doubts that the police officers would have brought to it for the "transfer of thousands of personal data obtained through <<keys, codes and personal and non-transferable users of each of the officers/ police commands of certificates>> to personnel who are not authorized to access these police databases" or the "massive access to police data by personnel who could not have the authorization to access the database policemen".

The agreement signed on 05/12/2002 between the Granollers City Council and the Department of Justice and Interior of the Generalitat de Catalunya (according to the denomination in force at that time) on the connections to the SIP, provides that the Local Police of Granollers can access through this information system the SIP of vehicles (SIP VH), apart from the SIP file of natural persons (clause 1.3). In turn, the SIP connection also facilitates access to the DGT's "Vehicle Database" (clause 1.4), among other state files.

So, from the aforementioned agreement it is inferred that users authorized to access the SIP they must have the status of Local Police officers. The previous consideration means that the staff of the person responsible for the treatment (Granollers City Council) who do not have the consideration of a police officer, can in no case be a SIP user. So, it can be concluded that the administrative staff of the sanctions unit cannot have access to the SIP, as indicated by the complainant union.

However, this does not imply that only the personnel who have the status of police are authorized to process the personal data that have been consulted in the database of the DGT through the SIP. Indeed, they will also be able to process the personal data that the police officers have consulted in said database, the municipal staff who require it for the exercise of their duties.

In this sense, as the Granollers City Council has informed, among the functions entrusted to the personnel of the sanctioning unit, there is the processing of sanctioning procedures initiated in traffic matters. These functions include the practice of reporting complaints and other administrative acts that are part of the sanctioning procedure.

Having reached this point, it is appropriate to refer to article 90 of RDL 6/2015 regarding the practice of notification of complaints, it provides the following:

"1. The administrations with sanctioning powers in traffic matters must notify the complaints that are not delivered to the act and the other notifications that result in the sanctioning procedure to the road electronic address (DEV).

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In the event that the accused does not have it, the notification must be made at the address that has been expressly indicated for the procedure and, if there is a lack, at the address that appears in the records of the autonomous body Prefecture Central Traffic.”

In accordance with the above, when it is not known that the affected person has been assigned an electronic street address, nor that he has expressly indicated an address for notification purposes for that procedure, the Granollers City Council must notify the complaint and the rest of acts at the residence of the affected person that appears in the register of the autonomous body Prefecture Central de Trànsit.

With regard to the DGT's Vehicle Registry, article 2.1 of Royal Decree 2822/1998, of 23 December, which approves the General Vehicle Regulations, provides the following:

"1. The Central Traffic Office will keep a Register of all registered vehicles, which will adopt computerized means for its operation and which will include, at least, the data that must be entered in the driving permit or license, as well as how many vicissitudes they suffer subsequently those or their ownership.

It will preferably be aimed at the identification of the owner of the vehicle, the knowledge of its technical characteristics and its ability to drive, the verification of the inspections carried out, the compulsory car insurance arranged and the fulfillment of other legal obligations, to ascertain the Vehicle Park and its distribution, and for other statistical purposes.

The Vehicle Registry will have a purely administrative character, it will be public to interested parties and third parties who have a legitimate and direct interest, by means of simple informational notes or certifications, and the data that appear in it will not prejudice questions of ownership, fulfillment of contracts and, in general, how many of a civil or commercial nature can be raised regarding the vehicles.

It will also have a supporting function for the different public administrations, judicial bodies and civil or commercial registries with which relates

The functioning of the Registry, the form and effects of its annotations, as well as the scope of its publicity will also be adjusted to the regulations contained in annex I.”

That being the case, it must therefore be concluded that the consultation of the Vehicle Registry is not restricted to members of the bodies and security forces, but that it is public under the conditions set by the precept transcribed and is subject to the regulations on data protection of personal character, as established in Annex I of Royal Decree 2822/1998. In turn, this register also fulfills the function of contributing to the exercise of the functions attributed to other Public Administrations.

In the present case, it is inferred that the Granollers City Council does not have direct access to the data contained in the DGT's Vehicle Register, so it accesses it through the SIP, as foreseen in the agreement signed with the Generalitat de Catalunya. It is for this reason (access via SIP) that only the police can consult the data, but the subsequent processing of the data on vehicles as part of the sanctioning procedure corresponds to the staff of the sanctions unit.

In short, the processing of data subject to complaint is legitimate in the fulfillment of a mission carried out in the public interest in accordance with what is established in 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 thereof (RGPD). This mission in the public interest is provided for in article 90 of RDL 6/2015 previously transcribed.

For everything that has been explained so far, the processing of data relating to the owners of vehicles reported for traffic violations, first consulted by members of the Local Police in the database of the DGT through the SIP and then processed by non-police personnel of the sanctions unit, which must be considered authorized to be necessary access for the exercise of their functions.

## 2.2. On the principle of purpose limitation

The complainant union also questions the violation of this principle, considering that access to the SIP to consult the data of the owners of the vehicles reported for a traffic violation in order to practice the notifications of the sanctioning procedure, would be a different purpose to that provided for in the agreement signed to access the SIP.

Well, in the agreement of 05/12/2002 mentioned above, it is specified that its purpose is to authorize the Local Police of Granollers to connect to the SIP "in order to use it to carry out inquiries, investigations and other procedures in execution of their own police services."

In this sense, the execution of police services referred to in the agreement must not be associated only with those treatments carried out by the Local Police with

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police forces, but would also include the administrative purposes in which this police force intervenes.

Article 66.3.b) of Legislative Decree 2/2003, of April 28, by which the revised Text of the Municipal and Local Government Law of Catalonia is approved, attributes to the municipalities the competence in traffic management of vehicles and people on urban roads. Likewise, Law 16/1991, of July 10, on local police forces grants them the competences in the matter of traffic management (article 11.b). These powers must be understood to include the regulation, monitoring and discipline of traffic.

Well, the exercise of these powers by local bodies necessarily implies that the persons allegedly infringing must be identified in the terms provided for in RDL 6/2015.

The same happens with respect to the vehicles reported by the watchmen who control the parking with time control in the municipality, which could have infringed the Granollers Municipal Traffic Ordinance. In these cases, the complaint is made by a watchman and therefore not a member of the Local Police of Granollers, and then the sanctioning file is processed by the sanctioning unit attached to said Local Police. In any case, whoever consults the DGT database, through the SIP, is always a member of the local police.

Therefore, in the present case, the principle of limitation of purpose regulated in article 5.1.a) of the RGPD is not violated.

### 2.3. About the conservation of data and users

The complainant union stated that it did not know whether the reports generated by the SIP following the consultation of the reported vehicles are destroyed. He added that he also did not know the users who have access to it.

In relation to these facts, it should be indicated that the reporting union does not refer to any conduct contrary to the regulations on the protection of personal data, but rather expresses a lack of knowledge about certain aspects of the treatment carried out by the sanctions unit, a once the agents provide them with the information on the owners of the vehicles consulted in the DGT database through the SIP.

In this regard, the City Council has informed that the disciplinary files in traffic matters, in which the aforementioned reports are incorporated, are kept for a period of 5 years. In this respect, and in view of the manifestations of the City Council, it is not superfluous to remember that the destruction must refer to both paper and automated data processing.

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When the users, the City Council has also informed that they can access the controversial information about the vehicles, the members of the Local Police and the administrative staff of the sanctions unit, as long as and when this access is necessary for the exercise of their functions.

#### 2.4. About wrong queries

In the last one, the complainant union explained that it could be possible for the agents, when consulting a large number of vehicles in the SIP, to make a mistake when typing the license plate, so that the personnel of the sanctions unit would access the data of owners of unreported vehicles.

In advance, it should be made clear that the union does not refer to fait accompli, but raises a mere hypothetical case.

Having said that, it is important to remember that the person in charge must act with the required diligence, which includes that the personnel who consult the license plates in the information system must verify that the information extracted from the DGT corresponds to that of the vehicle effectively reported, in order to avoid errors. Thus, if at that time it is detected that the error hypothesized here has occurred, then the erroneously extracted information should be rejected and/or destroyed at that time.

Otherwise, that is to say if that erroneous information is incorporated and treated improperly in a subsequent procedure, the City Council could be responsible for any breach of the regulations on the protection of personal data, for violation of the principle of accuracy, without prejudice to any disciplinary liability that the material author of those facts may incur.

4. 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, provides that it is necessary to file the actions when the following "c) is highlighted in the instruction of the procedure When the proven facts do not manifestly constitute an administrative infraction".

resolution

Therefore, I resolve:

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1. File the actions of prior information number IP 150/2018, relating to the City Council from Granollers.
2. Notify this resolution to Granollers City Council and communicate it to the union reporting
3. Order the publication of the resolution on the Authority's website ([www.apd.cat](http://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 Granollers City Council can interpose, on an optional basis, a 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 of article 123 et seq. of the 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.

Equally, the Granollers City Council 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)