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File identification File resolution of  
prior information no. IP 152/2018, referring to the Tax Management Body of the Provincial Council of Barcelona

#### Background

1. On 12/06/2018, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Management Body  
Tax office of the Diputació de Barcelona (hereinafter, ORGT), due to an alleged breach of the regulations on the protection of personal data.

The person making the complaint explained that on 12/6/2018 he made a phone call to the ORGT Fine Payment Service, in order to pay the amount of a fine imposed on him by the City Council of Olesa de Montserrat (fine reference number: (...)). The person making the complaint pointed out that during the conversation he was informed that his personal data would be included in a file, at which time this person would have stated that, although the intention was to pay the fine, he did not want his personal data linked to the payment of the penalty to be included in any file. To this request, the response of the person from the ORGT who attended to him by phone to process the payment of the fine was "that this is not

could be That if I wanted later I could remove them from the file, but that to pay the fine I had to be included in the file". In the last one, the person reporting here stated that he provided his data in order to be able to take advantage of the reduction of the amount of the fine and reiterated his wish to "remove my data from the file".

2. The Authority opened a preliminary information phase (no. IP 152/2018), 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 06/25/2018 the ORGT was required to report on whether it acted as the person in charge of the treatment relating to the collection of debts corresponding to the payment of fines imposed by the City Council of Olesa Montserrat; confirm the account of the narrated events, or otherwise present his version of the events. Also, to report on the debt payment system when the procedure is carried out by telephone and what are the specific personal data that are requested from the person who wants to pay a debt, and the reasons why it would be justified to collect

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this data; which data of the person reporting here was collected, in which file, and the way in which their right to information was complied with.

4. On 07/20/2018, the ORGT responded to the aforementioned request in writing in which it stated the following:

- That the ORGT "is competent for the collection of debts corresponding to the payment of fines imposed by the Town Council of Olesa de Montserrat by virtue of the delegation agreement in favor of the Diputació de Barcelona, and the signed delegation agreement between ORGT and Olesa de Montserrat City Council, on May 26, 2009, under the provisions of article 7 of the Revised Text of the Tax Regulatory Law

Premises “;

- That the ORGT "is the one who has the status of responsible for the treatment";
- That "at no time does the interested party express any disagreement with the recording of the call or any opposition to the processing of the requested personal data";
- That "Regarding the telephone payment procedure, only the minimum and strictly necessary data are requested to be able to make the payment, depending on the service requested by the taxpayer. First of all, the identification data of the fine to be paid is requested, consisting of:

- registration number and model of the vehicle
- locality of the infringement

These are data provided by the interested party and that the ORGT already has, but they are verified during the procedure.

Regarding the data relating to the means of payment, it is requested:

- Card number and expiry date
- ID of the card holder
- Contact telephone number

These are the data needed to make the payment.

Personal data is only used for the telephone payment process but is not used for any other process or transferred to third parties in any way. (...)"

- That "The General Collection Regulation and the specific regulations approved by the ORGT are applicable to the payment of fines, which in article 57 of its General Ordinance on the management, settlement, inspection and collection of statutory revenues public has the following: "3. The fines can be paid at a collaborating bank, by phone by calling the ORGT's Telephone Service or online at the ORGT's electronic headquarters.
- That "At the time of the call there was a recorded speech which is transcribed below: (...) We inform you that the data provided will be included in the ORGT ownership files"

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## 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 antecedents section, it is necessary to analyze the reported facts, and specifically, whether the collection of certain personal data by the ORGT in order to be able to process the payment of a penalty related to a traffic violation, is data processing that would find coverage in one of the authorizations provided for in article 6 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 circulation thereof (hereafter RGPD).

In this respect, it should first be noted that article 5.1.a) of the RGPD provides that all processing of personal data must be lawful: "1. The personal data will be: processed in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency"), and from the perspective of the minimization principle, article 5.1.c) of the RGPD establishes that: "1. Personal data will be: c) adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (minimization of data). Likewise, article 4.2 of the RGPD defines the concept of treatment as: "any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction".

Therefore, the collection of data that gave rise to the complaint that is analyzed here, made by a person who expressed by telephone the intention to make a credit card payment of a penalty for a traffic violation, in accordance with art. 4.2 of the RGPD constitutes a processing of personal data, which must be submitted to the principles of legality and minimization enshrined in article 5.1, letters a) ic), of the RGPD. And in case of breach of these principles, we could potentially be faced with an infringement provided for in article 83.5.a) of the RGPD, a provision that typifies as an infringement the violation of: "a) los principios básicos para el tratamiento , including the conditions for consent pursuant to articles 5, 6, 7 and 9".

It is therefore necessary to determine whether, in the processing of personal data referred to in the complaint, the ORGT violated the aforementioned principle of legality. In this regard, the RGPD establishes a system for legitimizing the processing of data based on the need for one of the legal bases established in article 6.1 to be met:

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"1. The treatment will only be lawful if at least one of the following conditions is met:

- a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to responsible for the treatment;
- d) the treatment is necessary to protect the vital interests of the interested party or another physical person;
- e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child

(...)"

And in article 6.3 of the RGPD the following is provided:

"3. The basis of the treatment indicated in section 1, letters c) and e) must be established by:

- a) the Law of the Union, or
- b) the law of the Member States that applies to the person responsible for the treatment.

The purpose of the treatment must be determined in said legal basis or, in relation to the treatment referred to in section 1, letter e), it will be necessary for the fulfillment of a mission carried out in the public interest or in the exercise of conferred public powers to the person in charge of the treatment."

The person bases his complaint on the fact that, when the person from the ORGT who attended to him informed him that his data would be incorporated into a file, he opposed it, stating that he only wanted to payment, but did not want their details to be included in any file. In this regard, the ORGT - in the response to the request for information made by this Authority - denies that the person reporting here had objected to his personal data being collected and included in a file in order to process the payment of the penalty In any case, leaving aside this issue, it is necessary to determine whether the ORGT could carry out the controversial data processing, to have a legal basis other than the consent of the person concerned, which would allow

consider the processing of the data necessary to manage the payment of the penalty lawful.

In particular, it is necessary to determine whether the data processing reported here could be covered by article 6.1.e) of the RGPD, which enables the processing that is necessary for the fulfillment of a mission carried out in the public interest or the exercise of public powers by the data controller. Also, it should be emphasized that in accordance with article 6.3 of the RGPD, the basis of the treatment indicated in article 6.1.e) must be established in the law of the European Union or by the law of the Member States that 'applies to the treatment, a requirement that must be understood as referring to a rule with the rank of law.

In the case at hand, the reported data processing derives from competences attributed to traffic matters by rules at the level of law to the Public Administration, in concrete, of the powers in exercise in the matter of sanctions in traffic matters, and the consequent power to manage the execution of the penalty that may be imposed.

According to the provisions of article 25 of Law 7/1985, of April 2, regulating the bases of local regime (LRBRL), the Town Councils have powers in traffic matters:

"1. The municipality, for the management of its interests and within the scope of its competences, can promote all kinds of activities and provide all public services that contribute to meeting the needs and aspirations of the neighborhood community in the terms provided for in this article.

2. The municipality exercises, in any case, powers, under the terms of the legislation of the State and of the autonomous communities, in the following matters: (..)

g) Traffic, vehicle parking and mobility. Urban collective transport.  
(...)"

Likewise, article 66 of Legislative Decree 2/2003, of April 28, which approves the The consolidated text of the Municipal and Local Regime Law of Catalonia provides the following:

"1. The municipality, for the management of its interests and within the scope of its competences, can promote all kinds of activities and provide all public services that contribute to meeting the needs and aspirations of the community of residents.

2. Local bodies have powers in the areas of citizen participation, self-organization, (...), and the management of economic resources, with the scope set by this Law and the respective sectoral legislation

3. The municipality has its own powers in the following matters:  
(...)

The organization of the traffic of vehicles and people on urban roads  
(...)"

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It is also necessary to cite here article 2 of the revised Text of the Law regulating Local Finances, approved by Royal Legislative Decree 2/2004, of March 5 (hereafter, TRLHL), according to which the resources of local entities are , among others: "g) The product of fines and sanctions in the scope of their powers."

Regarding the competition for the management of the collection of local entities, article 7 of the TRLHL has the following:

"1. In accordance with the provisions of article 106.3 of Law 7/1985, of April 2, Regulating the Basics of the Local Government, local entities may delegate to the autonomous community or to other local entities in the territory they are integrated , the powers of management, liquidation, inspection and tax collection that this law attributes to them.

Also, local entities may delegate to the autonomous community or to other local entities in the territory of which they are integrated, the powers of management, liquidation, inspection and collection of the remaining revenues of Public Law that correspond to them".

And in this sense, article 7 of the Law on traffic, movement of motor vehicles and road safety, approved by Royal Legislative Decree 6/2015, of October 30, provides which corresponds to the municipalities "a) The regulation, ordering, management, surveillance and discipline, by means of their own agents, of the traffic on the urban roads under their ownership, as well as the reporting of infractions committed on these roads and the sanction of the same when it is not expressly attributed to another Administration", and regarding the payment of traffic fines, article 110 of the same RDL 6/2015 provides that 2. The organs and procedures of the executive collection are those established by the applicable tax regulations, according to the authorities that have imposed them".

Thus, for the purposes of the aforementioned articles, traffic fines are financial resources of local entities and managed by them. In turn, the Olesa de Montserrat City Council has delegated the collection of debts related to traffic violations in favor of the ORGT, through the "Delegation Agreement signed between the ORGT and the City Council of "Olesa de Montserrat, on May 26, 2009", under the provisions of article 7 of the TRLHL.

In the case at hand, it should be noted that the procedure followed by the ORGT when processing the payment of traffic fines is regulated in the General Ordinance on management, settlement, inspection and revenue collection of public law whose management has been delegated to the Diputació de Barcelona or is carried out through inter-administrative collaboration" (hereafter, the General Ordinance), issued under the provisions of article 106.2 of the LRBRL , articles 11, 12.2 and 15.3 of the TRLHL and the fourth additional provision, section 3, of Law 58/2003, of 17 December, General Taxation. It is worth saying that at the time when the events reported here occurred, the modification of the General Ordinance made on 29/11/2018 was not yet applicable, and consequently the references made to this rule

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are understood to be made in the previous version published on 28/05/2015 in the Official Gazette of the Province of Barcelona.

The first thing to say is that part of the data of the reporting person who requested the ORGT was done for the sole purpose of identifying the sanctioning file to which the payment that the reporting person wanted to make was linked and denounced there. These are data known to the ORGT and to the interested party, given that they are data collected in the traffic complaint by the reporting agent, and their treatment is provided for in regulations at the level of law. Thus, article 87 of RDL 6/2015 provides the following:

"2. Complaints for traffic incidents must include, in any case: a) The identification of the vehicle with which the alleged offense was committed. b) The identity of the accused, if known. c) A succinct description of the fact, with an expression of the place or section, date and time. (...)"

Likewise, in relation to the data contained in the complaint, article 51 of the General Ordinance, relating to complaints of traffic violations under municipal jurisdiction, provides the following: "2. When the City Council has delegated to the Diputació de Barcelona the collection of the fines, it will transfer to the ORGT by recording directly in its database the complaints and the identification elements of the vehicle and the infringement. The ORGT will process the information obtained from the town hall and complete it with the necessary data, relating to the owner of the vehicle, to edit the notification of the complaint.". In turn, article 117, relating to the use of identification and authentication systems to relate electronically with the ORGT, establishes that natural persons may use: "Identification and authentication systems, such such as the use of keys agreed upon in a previous registration, or the provision of information known by the ORGT and the interested party", as would be the case with the data that identify the disciplinary file mentioned above.

On the other hand, with regard to the rest of the data that was collected during the call, it is data relating to the means of payment by credit card. Specifically, the "Card number and expiration date; ID of the card holder; Contact telephone number", and in this sense it is data that is considered necessary to be able to pay the penalty through the system chosen by the person

interested

In this regard, Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), in its article 98 enables different channels to make effective the payment of administrative sanctions, among these, the credit card: "2. When an administrative resolution, or any other form of termination of the administrative procedure provided for in this Law, gives rise to a payment obligation derived from a pecuniary penalty, fine or any other right that must be paid to the public treasury , this must be carried out preferentially, unless it is justified



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impossibility to do so, using any of the following electronic means: a) Credit and debit card".

In accordance with this legal provision, article 56.3 of the General Ordinance regulates the payment of fines for traffic violations:

"3. The fines can be paid by bank card, at the time of the complaint, when the reporting agent has the appropriate computer equipment, or by accessing the gateway with the bar code via the interested party's mobile phone. the bank payment that offers the service.

Otherwise, the fines can be paid at a collaborating bank, by phone by calling the ORGT's Telephone Service or online at the ORGT's electronic headquarters."

And according to article 134 of the General Ordinance, relating to making payments:

"1. If the person obliged to pay has a document issued by the ORGT suitable for making the payment, he can opt for one of these modalities:

(...)

a) By phone, calling the Telephone Information Center"

Having said that, it should also be borne in mind that the ORGT had to know the various personal data requested from the complainant in order to process the payment of the penalty (credit card number and expiry date, national identity document of the card holder and mobile phone number) given that they are relevant and necessary elements to be able to manage the payment correctly and securely. The lack of any of these data could affect the security of the identity of the person making the payment or the effectiveness of the payment.

For all the above, for the purposes of the provisions of article 6.1.e) of the RGPD, the competence from which the reported data processing derives, both with regard to the data necessary to identify the disciplinary file such as those necessary to make effective the payment of the penalty, is provided for in the rules of law. Therefore, for the purposes of article 6.1 of the RGPD, it is considered that the processing of the data reported here was lawful, and that said processing had a sufficient legal basis (art. 6.1.e of the RGPD). Likewise, from the perspective of the principle of minimization (art. 5.1.c of the RGPD), it is considered that the personal data processed were the minimum in order to be able to process the payment of the imposed traffic penalty. All this, without prejudice to the right of the person reporting here to exercise his right to the deletion of his personal data in accordance with article 17 of the RGPD.

3. In accordance with everything that has been set forth in the 2nd legal basis, and given that during the previous information it has not been proven that there are rational indications that allow imputation



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any fact that could constitute 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 line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when in the instruction of the procedure clearly the following: "a) The non-existence of the facts that could constitute the infringement".

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 152/2018, relating to the Organization of Tax Management of the Provincial Council of Barcelona.
2. Notify this resolution to the Tax Management Body of the Provincial Council of Barcelona and communicate it to the reporting person.
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 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,