

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

File identification

Archive resolution of the previous information opened following the complaints IP numbers 183/2018, IP 188/2018, IP 189/2018 and IP 308/2018, referring to Barcelona City Council

Background

1. On 06/21/2018 the Spanish Data Protection Agency (hereinafter, AEPD) issued a decision to archive the actions initiated following several complaints regarding the receipt of emails from the domains democraciaciudadana.org and democracia21d.cat (file no. E/07180/2017). It is worth saying that previously, from this Authority, 459 complaints had been sent to the AEPD by people who complained about having received election-related messages in their email address, in which on the occasion of the elections to the Parliament of Catalonia on 21/12/2017 the vote for the Ciutadans political party was requested. In that archive resolution, among others, the AEPD declared itself incompetent to know the facts related to the Municipal Institute of Informatics of Barcelona City Council (hereafter, IMI), given that the treatments carried out by the IMI would reside in the jurisdiction of this Authority. In this sense, as stated in said resolution, by means of a letter dated 28/03/2018, IMI informed that the IP address belonged to the internet exit router that the employees of the Barcelona City Council they use to access the wifi through the mobile; as well as that due to technical problems it had not been possible to retrieve the information relating to the owner of that address at the date and time when the domain democraciaciudadana.org was validated, which opened a security incident to retrieve this information.

This resolution was notified to the Authority on 06/29/2018.

2. The Authority opened a preliminary information phase (no. IP 183/2018), 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. On 11/07/2018, the Catalan Data Protection Authority received a letter from a person stating that he did not agree with the file resolution issued by AEPD in file no. E/07180/2017, and that he had been notified as a reporting person.

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

Given that in that resolution of the AEPD it was agreed to transfer the actions to the Authority regarding the IMI, on 07/12/2018 this person was informed that a phase of 'investigation in order to find out the circumstances of the events and the subjects responsible, in what affected the Barcelona City Council. With regard to his disagreement with the resolution issued by the AEPD, it was indicated that without prejudice to presenting the resources it considered appropriate against that resolution, the Authority was not competent to review the decisions adopted by the AEPD in the framework of their competences. This letter of complaint was assigned the number IP 188/2018.

On 07/12/2018, the Catalan Data Protection Authority received a letter from another person in which he also stated that the AEPD had communicated to him the archive resolution previously identified, and requested that this Authority to investigate the facts. On 12/07/2018 this person was also informed that the Authority had already started an investigation phase. This document was assigned the number IP 189/2018.

4. As part of this preliminary information phase opened by the Authority, on 07/16/2018 the Barcelona City Council was required to report, among others, on the actions that had been carried out as a result of the open security incident and that was mentioned in precedent 1.
5. On 27/07/2018, Barcelona City Council responded to the request mentioned in through a letter in which he stated the following:
 - That a technical problem was detected in the collection of logs from the exit router of the corporate mobile Wi-Fi network, which caused the unavailability of the evidence collected by said router.
 - That in the face of this situation, a security incident was opened.
 - That the opening of this security incident triggered root cause analysis and inspection tasks and obtained evidence of Wi-Fi network connections of up to 2291 mobile devices (the Wi-Fi network used is a courtesy network for all council buildings).
 - That it was not possible to recover the information corresponding to the navigations of these Internet connections, having not been able to identify with more concreteness the cause of that situation.
6. On 28/09/2018, also during this preliminary information phase, the Barcelona City Council was again required to report on whether the electronic addresses contained in the attached Excel file (which contained the 459 e-mail addresses of the people who had reported to the Authority the receipt of e-mails for electoral purposes), were listed in one of the databases of Barcelona City Council, and in this case, which specify in which ones.

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

7. On 11/10/2018, Barcelona City Council responded to the previous request to through a letter in which he stated the following:

- That the electronic addresses provided by the Authority were cross-checked with the two municipal databases that include the citizens' email field: the improved system of citizen attention and the register of subscriptions to newsletters and other digital communications.
- That the result is that of the 459 electronic addresses, 166 are registered in the database of the improved system of citizen attention and 99 in the register of subscriptions to newsletters and other digital communications.
- Given the complexity of the organization of Barcelona City Council, there is the possibility that one of these electronic addresses could occasionally appear in some other database apart from the two mentioned, but it would be a residual fact.

Barcelona City Council provided two spreadsheets detailing the respective intersections.

8. On 10/25/2018, and still within the framework of this preliminary information phase, the Authority's Inspection Area verified that in the two spreadsheets that contain the electronic addresses listed in both municipal databases and which have turned out to be the same as those provided by the Authority, there were 81 repeated electronic addresses in one and the other database. In turn, it was also verified that the electronic addresses of the two people who reported the facts to this Authority after receiving the resolution of the AEPD and in which they had received the controversial mail, did not consist of any the two Barcelona City Council databases that contain the email field.

On 10/27/2018, the Catalan Data Protection Authority received a letter from a person stating that on 12/18/2017 he had received a message of info @democraciaciudadana.org. The reporting person states that he did not know where that data had been obtained. This document was assigned the number IP 308/2018.

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.

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

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 validation of the "democraciaciudadana.org" domain.

According to the research carried out by the AEPD, it is proven that the democraciaciudadana.org domain was validated from an IP address owned by the IMI (as reported by the entity where it was register the aforementioned domain, at the request of the AEPD, the action to validate is subsequent to the registration and has the purpose of confirming the registration and verifying the data provided). For its part, the democracia21d.cat domain, from where several emails were also sent, was validated from a Wi-Fi network of a certain political party, included in the scope of action of the AEPD, issue that was filed by that institution in its already mentioned resolution.

In turn, at the request of the AEPD, on 03/28/2018 the IMI reported that that IP address corresponded to the internet exit router that City Council staff use to access the wifi using devices mobile Subsequently, by means of a letter dated 24/07/2018, in response to this Authority's request, the IMI specified that this wifi is a courtesy network for all City Hall buildings.

On the other hand, the IMI has also stated by means of a letter of 24/07/2018 that despite the opening of a security incident, it has not been able to recover the information corresponding to the internet connections that were made through the controversial Wi-Fi network during the time period in which the "democraciaciudadana.org" domain would have been validated, given a technical incident in the router which meant that the information regarding the navigations was not registered.

In short, in the present actions of prior information it has not been possible to determine the identity of the person who connected to the courtesy Wi-Fi network of the Barcelona City Council, through which he validated the domain "democraciaciudadana.org".

2.2. About the source of the emails

It is then appropriate to address whether the electronic addresses to which several emails were sent for electoral purposes from the democraciaciudadana.org and democracia21d.cat domains could have been obtained from Barcelona City Council databases.

In this sense, this Authority requested on 09/28/2018 the City Council of Barcelona in order to check whether 459 electronic addresses corresponding to several people who had reported the sending of the e-mails

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

controversial (which were included in a file attached by the Authority), were listed in the Consistory's databases.

On 11/10/2018 Barcelona City Council reported that those electronic addresses had been crossed with those listed in the two municipal databases that contain the field referring to the electronic address (the improved system of attention citizen and the registration of subscriptions to newsletters and other digital communications). To this end, the City Council provided two spreadsheets with matching email addresses.

From this crossing, it was found that in the database of the improved system of citizen attention, 166 of the 459 electronic addresses provided by the Authority were coincidental. In other words, the coincidence was only 36.16%.

Regarding the second of the bases (the registration of subscriptions to newsletters and other digital communications), the matching addresses were 99. That is, a match of only 21.57%.

Likewise, according to the checks carried out by the Authority's inspector staff on 10/25/2018, in the two lists provided by the City Council with the electronic addresses matching those that had received the controversial email, there there were 81 duplicate email addresses.

So things are, the total number of electronic addresses incorporated in the two municipal databases, which also appeared in the file provided by the Authority (excluding those not repeated), amounted to 184. This figure assumes that the coincidence between the electronic addresses provided by the Authority and those contained in the municipal databases was 40.08%. As a result, 60% of the electronic addresses that had reported receiving the controversial email were not included in the City Council databases mentioned above.

On the other hand, the City Council itself acknowledges in its letter of 10/10/2018 that "given the complexity of the organization of the Barcelona City Council, there is the possibility that one of these electronic addresses could occasionally appear in some other database apart from the two mentioned". However, he qualifies this possibility as a "residual fact".

As things stand, there are no sufficient indications to infer that, for the sending of the controversial e-mails, the data included in the Barcelona City Council databases that contained the e-mail address field were used.

In view of this, it must be concluded that the actions of prior information do not allow imputing any eventual access and use of the databases of the Barcelona City Council

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

for sending the disputed email messages. Indeed, 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.

This principle or right that governs disciplinary matters is contained in article 53.2.b) of the LPAC, which recognizes the right "To the presumption of non-existence of administrative responsibility until the contrary is proven".

Having established the above, it should be made clear that the data of the persons reporting the IP 188/2018 and IP 189/2018 were not contained in the City Council databases indicated above. With respect to the person reporting the IP 308/2018, given that his email address was not included in the list provided by the Authority, it has not been possible to check whether he appeared in those municipal databases, although even in the case of appear there, such an eventuality would not alter the consideration that leads to the present filing decision.

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 highlighted in the instruction of the procedure: "b) When the facts are not accredited; (...) d) When the person or persons responsible does not exist or has not been able to be identified or appear exempt from responsibility".

resolution

Therefore, I resolve:

1. File the actions of prior information numbers IP 183/2018, IP 188/2018, IP 189/2018 and IP 308/2018, relating to Barcelona City Council.
2. Notify this resolution to Barcelona City Council and communicate it to people who reported the facts after the AEPD had issued the resolution indicated in the previous 1st.
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



Autoritat Catalana de Protecció de Dades

IP 183/2018, IP 188/2018, IP 189/2018 and IP 308/2018

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

of replacement 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 LPAC. 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

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)

Machine Translated