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File identification

Archive resolution of the previous information no. IP 205/2018, referring to Barcelona City Council.

Background

1. On 07/17/2018, the Catalan Data Protection Authority received a letter in which a person filed a complaint against Barcelona City Council, on the grounds of an alleged breach of the regulations on data protection of personal data, related to the exercise of the right of cancellation.

Specifically, the person making the complaint stated that in April 2018 he requested the Barcelona City Council to take the necessary measures so that, when an internet search was carried out for information about his person with name and surname, information regarding his classification in the 2016 Race of Mercy would not appear as a result of the search, as would happen if he entered his first and last name in the Google search engine. He then pointed out that the City Council had responded to his request by means of a letter of 15/05/2018, by which his request was appreciated and he was informed that the cancellation of his data that appeared in the file "087 Users of Sports Services", as well as that they had communicated such cancellation to the entity Chip Training SL, to whom they had communicated their data, so that they would also cancel them.

However, the complainant claimed that if he entered his first and last name in the Google search engine, a link to a blog (...) was also obtained, where his name could be viewed and surnames next to the classification he had obtained in the 2016 Cursa de la Mercè.

2. The Authority opened a preliminary information phase (no. IP 205/2018), 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, on 07/19/2018 the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint, and draw up the corresponding minutes. In this verification, it was found that if the name and surname of the complainant were entered into the Google search engine, a list of indexed results was obtained as a result, and in 7th place was the blog to which he was

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referencing the reporting person, where you could view their first and last name next to the classification obtained in the 2016 Cursa de la Mercè.

Secondly, the website of the Barcelona Sports institute (an autonomous body of Barcelona City Council) was accessed, and through the "agenda" section, subsections "sports", "sports competitions" and "athletics", information on the 2018 Cursa de la Mercè was accessed (no information was found on the 2016 Cursa de la Mercè). On the right of the page there was a link to a website of the Chip Timing, SL entity, which contained a registration form for the 2018 Mercè race [<https://xipgroc.cat> (...)]. At the foot of this form was the following legal notice:

"Legal warning

You have the right to access, rectify and delete your data, as well as other rights regarding it. You can consult additional information about and protection of this treatment www.bcn.cat/ajuntament/protecciodades.of data a

By processing this form, you actively consent to the processing of your data for the mandatory and marked purposes. (...)"

It also included the rules of the (<http://www.barcelona.cat/cursamerce/ca/reglament.php>). race
Among these rules, the following clause appeared as 25th and at the end:

"Participants explicitly allow their name, surname, gender and year of birth to be published on the lists of registrants, as well as on the list of results if they finish the race, following the established regulations. By entering you accept these regulations and the FCA Cross Country Racing Regulations.

The organization will decide any incident that is not foreseen.

In accordance with the data protection regulations, we inform you that, by sending this form, you give consent, by ticking the corresponding boxes (), for Barcelona City Council to process your data for the following purposes:

-I authorize the management of the registration and sending of information linked to the Cursa de la Mercè 2018

-I authorize the transfer of data to Institut Barcelona Esports."

In the sentence that followed the first authorization button, there was a link to a page of the entity Chip Timing SL, where the following was indicated:

"I authorize the transfer of my personal data for the management of the registration and the transmission of information linked to the Cursa de la Mercè 2018, legitimized by agreement

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with the consent of the interested party. Your data will be treated by Chip Timing SL (Championchip) (...) as 'data controller', and by Club La Sansi, for the proper management of these entities in this sporting event: manage, process and administer participation (publishing your data on the list of registered participants, as well as the result; the photograph and/or video of participation; conducting surveys, statistics and market analysis and participant profiles), and always under the guidelines of the responsible for the file: Barcelona City Council.(...)"

In the sentence that followed the second authorization button, there was a link to a page of the entity Chip Timing, SL where the following was indicated:

"I authorize the transfer of my personal data to the Barcelona Sports Institute for the purpose of providing me with information on municipal sporting events and activities, legitimized in accordance with the consent of the interested party (...)."

Thirdly, the website of Chip Timing SL was accessed, and through the search field for the races, the link was clicked on the image corresponding to the Cursa de la Mercè 2016 web link <http://lameya.barcelona.cat/cursamerce/ca/inici.php>, where there was only information about the Cursa de la Mercè 2016. On the other hand, in the "legal notice" section of this website, it was pointed out, among others, the following:

"The personal data that you provide us implies express consent for the administrative and commercial management of the use of our own services, products and promotions or of organizers/promoters of events that are our clients, as well as for CHAMPIONCHIP to inform through any means on these, unless you tell us otherwise (...)"

Given that CHAMPIONCHIP is a company dedicated to the accreditation/registration of participants in competitions and recreational-sports events, as well as the timing of public participation results, the data of registered users and registered participants will be edited and made public on the web, with free and free access by any staff. In the event that the participant of an event does not want their identifying data (name, photograph and ID) to be public, after the publication of the results on the web, they can exercise the right of cancellation, opposition and/ or the right to "be forgotten", as described later in this informative note.(...)"

4. In this information phase, on 25/07/2018 Barcelona City Council was required to report on several issues relating to the events reported.

5. On 31/07/2018, Barcelona City Council responded to the aforementioned request through a letter in which it set out the following:

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"First of all, in your letter it is stated that "the complainant states that last May he requested the Barcelona City Council to carry out the necessary arrangements so that, when an internet search was carried out of information about your person with your first and last name, information regarding your classification in the Curs a de la Mercè 2016 does not appear as a result of the search ".

This is not the request that, at the time, Ms. (...) that, in at that time, it was limited to requesting the deletion of the sports services user file. We attach a copy of the request made to the City Council by the complainant, entered in the municipal register on April 23, 2018 (and with registration number (...) where he requests "that the deletion of my personal data contained in the file 087 Users of Sports Services, Mercè 2016 race classification that appears in the Google search engine". A copy is attached (annex 1).

Having said that, we inform you of the following:

I. We confirm that Barcelona City Council is responsible for processing c.

The City Council and the Barcelona Sports Institute have signed an agreement for the assignment to the IBE of the personal data that make up the Sports Services Users file, registered in the Data Protection Register of Catalonia.

The results will be published on the website <http://ameva.barcelona.cat/cursamerce/> municipal pdf/listatalfabetic.pdf

This information about the list of the Cursa de la Mercè 2016 is not available on the internet (municipal website and other well-known websites). Attached is a document from the development directorate of the Municipal Institute of Informatics stating this fact (annex 2).

II. We attach a copy of the request submitted by the complainant on April 23

by the Municipal Register (annex 1), as well as the answer issued by the Institute

Barcelona Sports (annex 3) and copy of the Accreditation of the request to remove the indexing on

Google of the document in .pdf format with the list of registrants in the Cursa de la Mercè 2016" issued by the Municipal Institute of Informatics (annex 2).

In other words, the municipal action goes beyond the request made in the sense of, on the one hand, canceling the data referenced in the file of service users

sports and, on the other hand, remove the google indexing of the pdf document with the list of registrants in the Cursa de la Mercè 2016.

III. Rule 25a of the current regulations of the 2018 race, for the 2016 edition was divided into 2 sections, the content being the same:

"25th {2016). The participants explicitly allow their name, surname,

sex and year of birth are published in the lists of registered persons, as well as in that of

results, if they finish the race, following the established regulations.

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26th {2016}. Signing up implies acceptance of this regulation and the FCA cross-country race regulations (<http://www.fcatletisme.cat/Ruta>). The organization will decide any incident that is not foreseen." The company Chip Timing, SL was in charge of time control and management

results of the 2016 edition of the Mercè race commissioned by the IBE, organizers of the Race."

The Barcelona City Council attached to the letter of response the documentation required by the Authority, consisting of: a copy of the application submitted by the person making the complaint before the City Council in May 2018; copy of the response letter from the council; and a copy of the letter addressed to Google requesting the removal of the indexing of the document with the list of registrants in the 2016 Cursa de la Mercè.

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 reported facts.

The person making the complaint complained about Barcelona City Council's alleged disregard for the right to cancel their data corresponding to the result they obtained in the 2016 La Mercè race. Specifically, they pointed out that , when using the Google search engine to perform an internet search with her first and last name, the link appeared to a page containing a classification list for the 2016 Race of Mercy, where she was identified with her name and surname as a participant.

For its part, the City Council stated that in the letter of request that the complainant presented to the council on 04/23/2018, this person made a different request to the reason for the complaint made before the Authority, since in the words of the City Council, "it was limited to asking for the deletion of the file of users of sports services".

In this regard, it should be noted that the request submitted by the person making the complaint in front of the City Council she was quite understanding about its scope. While it is true that it was requested "(...) to proceed with the deletion of my personal data contained in the following files", everything seems to indicate that this sentence appeared

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pre-printed on the model form provided by the City Council itself. In the same form, there was a table below to specify the request for cancellation, as made by the person making the complaint. Specifically, in the field referred to the "file", the person reporting here indicated: "087 Sports Services Users"; in the field referred to "Data to be deleted", this person indicated: "Mercè 2016 race classification that appears in the search engine"; and in the field referred to "Justifying documentation" the reporting person indicated: "google search and classification document where my name appears".

Thus, there is no doubt that the cancellation request presented by the person making the complaint here referred to the publication on the internet of his data in the classification list for the Mercè race held in 2016, and in particular the publication accessed through the Google search engine.

Regarding this publication on the internet, from the information presented in the background it can be inferred that the entity Chip Timing SL was responsible for publishing on the internet and on its website the list with the classification obtained in the race of the Mercè 2016, which included the data of the person reporting.

Article 16.4 of the LOPD, in force at the time of the events, established that: "if the rectified or canceled data have been previously communicated, the data controller must notify the rectification or cancellation effected to those "have communicated, in the event that the latter maintains the treatment, that it must also proceed with the cancellation".

In the letter of response, the City Council stated that it was responsible for the processing of the data of the participants in the 2016 Mercè race. Consequently, the City Council was obliged to notify the cancellation of the data to those who 'had communicated. It is not clear whether or not the entity Chip Timing SL acted as a data controller - through the formalization of the corresponding contractor contract-, since the information provided by the City Council does not match that published on the internet and which has been transcribed in the antecedents of this resolution. For the same reason, doubts are also raised as to whether this private entity was acting as responsible for the treatment relating to the publication on the internet of the classification list of the 2016 Mercè race, or whether such a condition was held by the City Council. In any case, to the extent that the City Council was responsible for the file "087 Users of Sports Services", and had considered the cancellation of the data, it was obliged to unpublish the personal data of the person reporting included in this file and that they appear on the internet, either on the municipal website (<http://lameva.barcelona.cat/cursamerce/pdf/listatafabetic.pdf>) -through a direct action-, or also on the website of the Chip Timing entity that acted on behalf of the City Council (<https://xipgroc.cat>) -through the communication corresponding to this entity-

In this regard, the City Council stated in the written response to the request for information that the data of the reporting person published in the

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municipal website, as well as on well-known websites. On the other hand, by means of the letter dated 15/05/2018 in response to the cancellation request, the City Council informed the person here denouncing that the cancellation had been communicated to the entity Chip Training - it seems that it would be a transcription error, and that the entity Chip Timing SL would be alluded to - so that it would also proceed with the cancellation. And he also pointed out that he had requested Google to de-index the file of registrants for the 2016 Race of Mercy.

On the other hand, in the act of verification carried out by the Authority's inspection services on 07/19/2018, it was found that the classification list was not accessible from the municipal websites mentioned in the antecedents, nor from the website managed by the Chip Timing entity.

That being the case, the actions of the City Council do not show a disregard for the right of cancellation of the person making the complaint, beyond noting a certain delay in the response to the cancellation request, since it would have been carried out five days beyond the ten-day period provided for in art. 16.1 of the LOPD.

Another thing is that the aforementioned classification list may be accessible through a web page that is owned by a third party, unrelated to the City Council. This seems to be the case, because in the same act of verification of the Authority it was verified that, as the complainant maintained, the aforementioned classification list with the complainant's data was still accessible on the internet through a web address. This address, (...), corresponds to a blog whose owner's identity is unknown to this Authority, but which in any case does not appear to be linked to Barcelona City Council.

The exposition leads to the conclusion that, with regard to the facts reported, it is not observed that the City Council has committed an infraction of the data protection regulations, due to neglect of the right of cancellation, exercised by the person here reporting. However, given that the Barcelona City Council is the public administration responsible for the celebration of the Mercè race - which includes managing the publication of the classification of the participants, and therefore who must ensure mainly due to the personal data of these people -, if the City Council had previously notified the owner of the mentioned blog of the controversial list, in such a case the City Council should address that person so that they also proceed to the cancellation of the data they open in their file, and the deletion of the one published on the internet at the indicated address. But this communication from the City Council would only be relevant in the unlikely event that it had previously communicated the aforementioned list to the person holding the blog, and on the other hand it would not be relevant if the person holding the blog had captured it on their own from Internet.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information it has not been proven that there

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there are rational indications that allow the imputation of any fact that could be constitutive of any of the infractions provided for in the applicable legislation, it is necessary to agree on the archive of these performances 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: "c) When the proven facts do not constitute, in a manifest manner, an administrative infraction".

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 205/2018, relating to Barcelona City Council.
2. Notify this resolution to Barcelona City Council and communicate it to the person making the complaint.
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,