

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

File identification

Archive resolution of the previous information no. IP 223/2018, referring to the City Council of (...).

Background

1. On 07/27/2018, the Authority received a letter in which a person filed a complaint against the City Council of (...), on the grounds of an alleged breach of data protection regulations of a personal nature.

In particular, the complainant explained that on 07/27/2018 a person from the Citizens' Service Office of this City Council had accessed the municipal register of inhabitants, or in any case their registration data, and had communicated them to a third person, without their consent. The personal data that had been disclosed according to the complainant were the date of registration in the municipality ((...)/2018), his first and last name and private address. The complainant added that this communication of data had harmed him personally.

2. The Authority opened a preliminary information phase (no. IP 228/2019), 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 03/08/2018 the City Council of (...) was required to: 1) provide a copy of the access register to the municipal register, referring to the personal data of the reporting person, carried out on 27/07/2018, as well as those carried out in the previous 5 months, that is to say, from 1/02/2018 to 27/07/2018; 2) detail in each case the procedure carried out and the reason justifying access to the municipal register; 3) reported on any unjustified access and/or disclosure of personal data of the reporting person; 4) reports on the people who can access the municipal register, indicating the first and last name and the position or workplace they hold; and 5) reports on the instructions that the City Council has given to OAC workers regarding the confidentiality of personal data.

4. On 14/08/2018 the City Council of (...) requested an extension of the deadline to respond to the request for information, an extension which was granted by agreement of the same date.

5. On 08/27/2018, the City Council responded to the aforementioned request through a letter in which it stated the following:

- In relation to the access register:

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"In this sense, we refer to the response received from the Presidency Area of the Assistance Service at the Municipal Organization of the Provincial Council of (...) (a copy of which is attached to this letter), according to which, after consulting the information provided by the IT Services of the Provincial Council of (...), it is stated that:

- On July 27 at 9:(...) h, the user of the register of inhabitants of the Office of Attention to the Citizen of the City Council of (...), Mrs. (...), accessed from the registry management program of the Provincial Council of (...) the NIF (...) that corresponds to Mr. (...) that is registered in the register (...) of Carrer (...) no. (...) and that, from this information, at 9:25 a.m., he consulted the data on the register (...) where Mr. (...), at the same address as Mr. (...), Street (...) no. (...). We do not know what motivated this access.

- (...) the user Ms. (...), on July 4 at 12:34 p.m., at the request of Mr. (...), changed his registered address from street (...)((...)) no. (...) towards Carrer (...) no. (...) and at 12:35 p.m. issued a registration flyer so that the resident could update the address on his ID, driver's license or social security.

Given that the management of the computer program of the Municipal Register is in charge of the Assistance Service of the Municipal Organization of the Provincial Council of (...), the City Council of (...) does not have the possibility of finding out data of a technical type unless through the assistance of the Provincial Council. For this reason, we must refer to the information provided by this entity."

- With regard to the reasons that justified the accesses noted:

"At the time of issuing this answer, the official Mrs. (...) is enjoying his vacation period, which is why it has not yet been possible to obtain more information regarding the actions of July 27."

- Regarding the finding of unjustified access and/or disclosure of personal data of the reporting person:

"With the information we have, neither the City Council of (...), nor the Provincial Council of (...) we are aware that none of these accesses were unjustified."

The letter from the City Council also contained a table identifying the public employees of the council who had access to the data of the Register, and highlighted in bold the two people who had had access to the personal data of the person reporting that appear in the municipal register.

6. Subsequently, the Authority received a second letter dated 15/10/2018 from the City Council, expanding the first, in which, in addition to reiterating the statements made initially, it added the following:

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"6. On September 7, the official of the city council (...), (...), with a professional administrative category and assigned to the Citizen Service Office (OAC), appeared in relation to the APDCAT prior information file number IP 223/2018.

7. From the previous appearance, the Municipal Secretary issued a record of which the development section is transcribed:

"Development of the appearance:

The employee is informed of the contents of the file.

Proceed to request the employee's version of the facts and DECLARE:

a) That under no circumstances will the City Council's OAC provide third parties with data on individuals appearing in the registers and that strict compliance with the provisions of the LOPD is given.

b) That Mr. (...) he was not given any certificate of his registration, given that a third person is registered at the requested address (Street (...) no. (...)) after his registration in the register.

Logically, no verbal or written information about the identity or other personal data of Mr. Mr. (...) (current owner of the home and who is registered).

c) That this City Council does not provide personal data. However, it is the usual procedure of this town hall to facilitate the date of a subsequent registration that has consequences for the particular interests of those previously registered in that home.

As there are no further matters to discuss, the session is adjourned at 11:30 a.m. and the present minutes are extended, which I, the Municipal Secretary, certify."

Conclusions

a) Taking into account the above considerations, the undersigned technician considers that it is appropriate for the Mayor's Office to expand the response to the request of the Catalan Data Protection Authority formulated in the Prior Information file no. 223/18 in the terms set out in this report. >>"

7. On 07/29/2019 and still within the framework of this preliminary information phase, the Authority sent a letter to the person making the complaint, in which he was asked to provide additional information of which it could be inferred the commission of the facts he had denounced. More specifically, to identify the person to whom the City Council allegedly communicated their data listed in the Population Register.

8. After the granted deadline has passed, it is noted that the Authority has not received any further written submissions from the person making the complaint.

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 Catalan Data Protection Authority, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Agency

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Catalan Data Protection Authority, the director of the Catalan Data Protection Authority is competent to issue this resolution.

2.- Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this resolution.

The complainant stated in his written complaint that on 07/27/2018 a person from the Office of Citizen Assistance (hereafter, OAC) of this City Council had accessed the municipal register of inhabitants, or in any case to his registration data (the date of registration in the municipality, his first and last name and private address), and he had communicated them to a third person - whom he did not identify -, without his consent. The complaint was related to a property, of which the person making the complaint is the owner.

In accordance with article 6.1 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of this data and which repeals Directive 95/46/CE (hereafter, RGPD), in order to consider the reported data communication lawful, at least one of the six cases provided for in sections a) af) (legal basis of treatment). At the outset, the case provided for in section a) should be excluded, as it refers to the consent of the person concerned - in this case, the person making the complaint given his statements.

In this regard, from the information provided by the City Council of (...) it appears that on 27/07/2018 an employee of the City Council's OAC accessed the register of inhabitants, and consulted the data corresponding to a third person (A), who was registered in the same address where the complainant is registered, who is the owner. According to the City Council, as a result of this access, the user consulted the register data relating to the person making the complaint.

The City Council does not specify the reason why this user accessed the register. Initially, he stated that from the information he had, there was no unjustified access, and in the second letter he presented to the Authority, he reproduced the statements made by said user in the appearance he would have made on 09/07/2018 before the municipal secretary, among which he pointed out the following: *"That Mr. (...) -whom we call A- was not given any certificate of his registration, given that at the requested address (street xxx no. xx) a third person is registered there - the owner here reporting -, after his registration in the register. Logically, no verbal or written information was provided on the identity or other personal details of the gentleman (...) - the complainant here - current owner of the house and who is registered there)".* From these statements, it can be inferred that on 07/27/2018 the mentioned user of the register would have accessed the register database following an appearance by the third person (A) at the municipal offices, or in any case of a request from this third person (A), who required access to his data from the municipal register.

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On the other hand, in the letter sent to the Authority on 08/27/2018, the City Council stated that: *"On July 27 at 9:23 a.m., the user of the register of inhabitants of the Citizen Service Office of the City Council of (...), Mrs. (...), accessed from the registry management program of the Provincial Council of (...) the NIF (...) that corresponds to Mr. (...) – whom we call A- who is registered in the x/x/xxxx register of Carrer (...) no. (...) and that, from this information, at 9:25 a.m. he consulted the data on the x/x/xxxx register where Mr. (...) - the complainant here - at the same address as Mr. (...) - here Mr. A-, street (...) no. xx. (...)"*.

As can be seen from these statements, the mentioned user of the register would have accessed the database of the register, then she would have entered the NIF of this third person (A), and she would have accessed a register sheet linked to an address of 'an immovable property. From here, he would have consulted the data of the person making the complaint due to the fact that his registration was linked to the same address or property to which the registration of the third person (A) was linked, accessing the person's data reporting

The complainant stated that the City Council had communicated data to a third party, but the City Council has denied this. Specifically, the user who on 07/27/2018 accessed the data from the register relating to the complainant would have stated, in an appearance made on 09/07/2018 before the municipal secretary, that: *"this City Council does not provide personal data"*, and more specifically that: *"(...) nor was any verbal or written information provided about the identity or other personal data of Mr. (...)"*, referring to the reporting person .

The Authority informed the person denouncing the City Council's allegations, to the effect that he provided information about the identity of the transferee and about the communication itself, warning him that if he did not provide this information very the actions would probably be archived due to lack of proof of the facts he had reported. But on the date of signature of this archive resolution, no writing from the complainant has been entered in the Authority's register. Consequently, the Authority does not have elements that allow it to question the demonstrations made by the City Council.

As things stand, we do not know - because the complainant has not provided this information - if the person to whom he considers that his data should have been disclosed is the person referred to by the City Council (whom we call A). And the Authority does not have any evidence to support that the City Council communicated personal data of the person making the complaint to this other person (A). But in any case, it is worth saying that if the reporting person was referring to this other person (A), to the extent that he was registered at the same address as the reporting person, it could not be ruled out that he had knowledge of some information of the complainant, such as his first and last name, through the reception of messages in the mailbox of the building, or through neighbors or other people outside the City Council. So that the lack of proof about the origin of the disclosed data would prevent the City Council from being charged with an illegitimate communication of data.

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3.- In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have addressed in this resolution, the commission of any of the infractions provided for in the applicable legislation, it is appropriate to agree to its archive.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 223/2018, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) and 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 persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed 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, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,