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File identification

Archive resolution of the previous information no. IP 232/2018, referring to the City Council of terrace

Background

1. On 01/08/2018, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Terrassa City Council, due to an alleged breach of the regulations on the protection of personal data. In particular, the complainant stated that a few years earlier, through an application submitted on 01/25/2012 to the Terrassa City Council, he authorized the electronic notification of all procedures of which he was the holder and had to be notified, and for this purpose provided his email and mobile phone; but that subsequently, through a new request presented to the City Council, dated 11/28/2014, he revoked this consent to receive electronic notifications.

The complaint of the person reporting here consisted of the fact that, despite having revoked his consent, the City Council had continued to send him electronic notifications of different administrative acts. He specifically referred to the resolution of 01/26/2018 issued in the framework of the procedure with reference no. (...), which the City Council notified him on 02/08/2018; and three emails dated 07/06/2018, 07/08/2018 and 07/11/2018, through which the City Council made several electronic notifications available to him (all with the same document code, (...).pdf, and shipping code, (...).

The reporting person provided various documentation relating to the events reported: 1) request submitted on 25/01/2012 before the Terrassa City Council, whereby it authorized the electronic notification of all Terrassa City Council procedures in which it is the owner and must be notified; 2) request submitted to Terrassa City Council on 11/28/2014 by which consent to receive electronic notifications was revoked; 3) printing of the electronic evidence of the practice of the notification of the sanctioning resolution of 01/26/2018 issued by the Terrassa City Council in the reference procedure (...); and 4) printing of the three emails of the dates indicated above, in which the electronic notifications were made available to you (all of them with the document code (...).pdf and shipping code (...)).

2. The Authority opened a preliminary information phase (no. IP 232/2018), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to areas of competence of the Generalitat, and article 55.2 of

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Law 39/2015, of October 1, on the common administrative procedure of public administrations (from now on, LPAC), to determine if the facts 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 that occurred.

3. In this information phase, on 31/08/2018 the City Council of Terrassa was required to report on whether the complainant, after having revoked consent to receive electronic notifications on 24/11/2014, had once again authorized the City Council to communicate through electronic means.
4. On 09/14/2018, Terrassa City Council responded to the request mentioned in through a letter in which he stated the following:
 - That since the day on which the complainant submitted the request for revocation of consent (24/11/2014), his personal data are not included in the database of the Terrassa City Council of the persons who authorize the global electronic notification for all acts and/or procedures of the Terrassa City Council.
 - That, despite having revoked the global electronic notification, any citizen can authorize the City Council to make electronic notifications for a specific process or procedure. In this respect, the City Council indicated that within the framework of the procedure with reference (...), the complainant here and the person complained about, presented two documents of allegations in which they indicated, for notification purposes, both his postal address as the email address you entered there. On the other hand, regarding the three notices sent by email between 07/06/2018 and 07/11/2018, the City Council informed that these correspond to the notices that are generated when the interested person has pending access in the notification electronic, and linked them to the procedure with reference (...), where the person reporting here also authorized as a means, for the purposes of notifications, his postal address and email.

The City Council of Terrassa attached to the letter various documents, among others, the written allegations that the complainant here would have presented in the procedures (...) and (...). In these letters that the City Council links to the two aforementioned procedures, the same City Council form was used, in which in the 1st block of personal data there is a section with the following content "Fill in the data and mark the medium for notification purposes, otherwise we will use the address"; and then a cross is marked, both in the "Address" field and in the "E-mail" field, which contains the e-mail address that the complainant here would have indicated.

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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 background section, it is necessary to analyze the reported facts relating to whether the City Council of Terrassa would have violated the right to the protection of personal data of the herein complainant in notify through electronic means the resolutions issued in the framework of two sanctioning administrative procedures, without their prior consent.

The processing of the personal data of the e-mail of the complainant here for the purposes of electronic notifications, could potentially constitute the infringement provided for in article 44.3.b) of Organic Law 15/1999, of 13 December, on the protection of personal data (LOPD), a precept that typifies as serious "Processing personal data without seeking the consent of the affected persons, when this is necessary in accordance with the provisions of this Law and its provisions of deployment". In this respect, article 6.1 of the LOPD states that "The processing of personal data requires the unequivocal consent of the affected person, unless the law provides otherwise". Indeed, the art. 14.1 of the LPAC allows natural persons to choose whether or not to communicate with public administrations by electronic means, so that the processing of email data for the purpose of sending administrative notifications required their consent, as will be argued later.

Before analyzing whether or not this consent existed, in relation to the quote that is made here of the LOPD, as a preliminary consideration it is necessary to indicate that the infringing types provided for in the LOPD were repealed by Royal Decree-Law 5/2018, of 27/7, of urgent measures for the adaptation of Spanish law to the regulations of the European Union in the matter of data protection. In turn, the RDL 5/2018 and the LOPD have been repealed by Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (hereafter, LOPDGDD), which in its article 72.1.b) classifies as a very serious infraction the same conduct mentioned above. In any case, it will be the previous regulations that apply within the framework of these previous actions, in accordance with what is provided for in the transitional provision 3a of the LOPDGDD.

Likewise, it must also be said that one of the notifications referred to in the complaint (procedure (...)) happened before 25/05/2018, and therefore before the full application of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4,

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relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (RGPD), while the notifications made in the framework of the procedure (...), occurred once the GDPR was already in full force. In this regard, the art. 5.1.a) of the RGPD expressly includes the principle of legality of data processing. In relation to this principle of lawfulness in the processing of personal data, article 6.1 of the RGPD lists the cases in which it is understood that a treatment is lawful, and among others, determines that the treatment will be lawful when the interested party has given his consent for one or several specific purposes (art.6.1.a.), and art. 7 of the RGPD adds the conditions that must be met in order to consider the consent to be valid. In this regard, both article 3.h) of the LOPD as recital 32 and article 4.11 of the RGPD define the consent of the interested party in the same terms: a manifestation of free, specific, informed and unequivocal will.

Having made the previous considerations, it is necessary to resume the analysis of the processing of personal data carried out by the Terrassa City Council regarding the electronic notifications of acts issued in the framework of two administrative procedures punishing the person making the complaint here, in order to determine if said treatment could be contrary to the provisions of the LOPD and the provisions of the RGPD.

From the content of the documentation provided both by the person making the complaint and by the City Council of Terrassa, it can be seen that the person making the complaint gave consent to receive electronic notifications of all acts dictated in the procedures processed by the City Council of Terrassa, by means of a request presented to the City Council on 25/01/2012, consent but later revoked on 28/11/2014. As has been advanced, the reason for the complaint lies in the fact that, despite the revocation of consent, the Terrassa City Council would have continued to send him notifications through electronic means, specifically within the framework of the two sanctioning administrative procedures already indicated. (...)

Regarding this reported fact, the Terrassa City Council has provided a copy of the letter presented by the person making the complaint on 24/11/2017, in which he made allegations relating to the administrative sanctioning procedure (...). Likewise, the City Council has also provided two written statements of allegations presented by the person making the complaint, dated 01/17/2018 and 02/23/2018, in relation to the file (...). Well, in all these written statements, the person making the complaint marked as means, for notification purposes, the personal e-mail and the postal address, as has been advanced in the previous 4th.

To what has been indicated at the beginning of this legal basis, it should be added that article 14.2 of the LPAC lists a series of groups that would be obliged to relate electronically with public administrations, among which but not would include the person reporting here, who could take advantage of the provision in article 14.1 of the

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LPAC, in which it is provided that "Physical persons can choose at all times whether to communicate with public administrations to exercise their rights and obligations through electronic means or not, unless they are obliged to relate to through electronic means with public administrations. The means chosen by the person to communicate with public administrations can be modified by that person at any time".

So things are, from the written statements of allegations that the person reporting here would have formulated in the framework of the two sanctioning procedures mentioned, (...) it is evident that certainly the person reporting here and the person reported there, gave their consent unambiguously and specifically, as required by the RGPD, so that the notifications made in the framework of these sanctioning procedures specific could be done through electronic means, which involved the processing of the personal data of the e-mail.

3. (...) (...) (...) (...) (...) In accordance with everything that has been set out in legal basis 2, and given that during the information previously it has not been proven that 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 to archive 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 obviously the following; "c) When the proven facts do not manifestly constitute an administrative infraction".

resolution

Therefore, I resolve:

1. Archive the actions of prior information number IP 232/2018, relating to the City Council from Terrassa.
2. Notify this resolution to Terrassa City Council and communicate it to the person reporting
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 that foresees

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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

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)

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