

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

File identification

Archive resolution of the previous information no. IP 233/2018, referring to Girona City Council

Background

1. On 01/08/2018, the Catalan Data Protection Authority received a letter from a person who was making a claim/complaint against Girona City Council, on the grounds of an alleged breach of the regulation on protection of personal data. In particular, the complainant stated that the Girona City Council used an incorrect Girona postal address to notify him of a mayoral decree of 06/25/2018, which agreed to initiate disciplinary proceedings.

The complainant added that this address is the one listed as the addressee in a cardboard box located next to a paper container, which led to the initiation of said sanctioning file. In this regard, the complainant pointed out that in the document called "Sustainability sanctions self-assessment", he did use the correct address, located in the municipality of Olot.

The reporting person provided various documentation relating to the events reported along with his complaint, which he supplemented by email dated 09/05/2018.

2. The Authority opened a preliminary information phase (no. IP 233/2018), 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 17/09/2018 the Girona City Council was required to inform, among others, whether it was requested, through a query in the databases of the 'National Institute of Statistics, data on the address of the complainant; as well as if the Olot address was not used in the processing of the sanctioning file, which was recorded in the notification of the self-assessment derived from the aforementioned file.

4. On 18/09/2018, Girona City Council responded to the aforementioned request through a letter in which it set out, among others, the following:

- That the notification of initiation of the sanctioning procedure also included the liquidation. Therefore, a second specific notification was not made to the Olot address. The

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settlement is generated automatically from the tax management information system, and in particular the tax address data that is in the system is collected. These data appeared there for other previous managements of this person in 2009, which it is not possible to specify given that in compliance with the established in the corresponding table of access and documentary evaluation, it is planned to destroy the documentation that has passed 4 years from the date of payment or cancellation of the charge.

- That the Girona address used was the one on the cardboard box as the package's delivery address.

- That the notification of initiation of disciplinary proceedings, sent by certified mail, is
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practice through personal notification to the interested person at the mentioned address in Girona in the 2nd attempt on 07/27/2018, as stated in the notice of receipt from the Post Office.

- That the notification was correctly practiced the City Council did not do any other management of verification or rectification of the address, since it was given as valid. For this one reason, the notification of the final penalty was also served on the same address of Girona

The City Council attached various documentation to the letter.

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.

In the present case, the complainant complains about the fact that the Girona City Council notified him of the agreement to initiate disciplinary proceedings at an address in Girona, despite being registered in Olot. The facts imputed to the person reporting here in that sanctioning procedure consisted of having allegedly deposited an unfolded cardboard box outside the paper container. On the label of that cardboard box, the person reporting here was identified with his name and surname, as the recipient of the shipment, together with the address and mobile number. It is an undisputed fact that the City Council used this data to notify the agreement to initiate the aforementioned sanctioning procedure.

Regarding the place where the administrative notifications made on paper are to be carried out, it is necessary to go to what is provided for in articles 41 and 42 of the LPAC. The art. 41.3 of the LPAC provides that

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in the case of procedures initiated at the request of the interested party, the notification must be made by the means indicated for that purpose by that party, and adds that if it is not possible to make it in accordance with the requested by the interested party, "must be practiced in any suitable place for this purpose, and by any means that allows to record the reception by the interested party or his representative, as well as the date, the identity and the content of the notified act". And the art 41.4 of the LPAC, for the procedures initiated ex officio, foresees the possibility that the acting public administrations can request, through a consultation in the databases of the National Institute of Statistics (hereafter, INE), the data on the domicile of the interested person collected in the municipal register, sent by the local entities.

As has been advanced, the Girona City Council notified the initiation agreement at the Girona address contained in the indicated cardboard box. Certainly, as the complainant notes in his written complaint, in the settlement (receipt document generated so that the accused person could pay the penalty, with a discount for voluntary payment) that was attached to the 'agreement to initiate the sanctioning procedure addressed to the Girona address, it contained the Olot address where the person making the complaint is registered. In this regard, the Girona City Council has informed by means of a letter of 18/09/2018 that this settlement document is generated automatically from the tax management information system, adding that the Olot address already it was included in its tax management information system, for having been used for a previous action.

Faced with this situation, Girona City Council could have sent the notification of the initiation agreement to the Olot address that was included in the tax management information system. However, it should be noted that this was an address that was included in the tax management information system of Girona City Council for a tax action corresponding to the year 2009, which could raise doubts about its possible outdated nature . At this point it is necessary to invoke the principle of accuracy, contained in article 5.1.d) of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons regarding the processing of personal data and the free movement of such data and which repeals Directive 95/46/CE (RGPD). This principle requires that the processed data be accurate and up-to-date, and requires the adoption of all reasonable measures so that inaccurate data is deleted or rectified without delay.

Returning to the regulation on administrative notifications, it is necessary to specify that in the cases of proceedings initiated ex officio, as happened in the sanctioning procedure led by the City Council against the complainant here, the LPAC does not specify clearly which should be the address to be used for sending notifications, nor what would be the order of priority if there were several options. Indeed, the only provision of the LPAC refers to the power of public administrations to be able to obtain, through consultation with the INE, data on the address of the person interested for the purposes of the notification

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of initiation of the procedure (art. 41.4 LPAC), an option that must be understood for these cases in which an appropriate place for the purposes of practicing paper notifications is unknown, or when the place to which it had been attempted practice paper notification, had unsuccessful result.

But this was not the situation in which the Girona City Council found itself, since precisely as a result of the events that had led to the initiation of the sanctioning procedure, it had a domicile of the person concerned, which in appearance could be considered valid, at least for the purpose of making a first notification attempt. At this point it should be noted that the cardboard box was empty, so it could be assumed that the contents had previously arrived at the address on the label. That being the case, it must be recognized that the address on the box in question could be presumed to be valid.

And it is worth saying that this presumption of validity will be corroborated later, when, after having made two unsuccessful notification attempts at the indicated address in Girona, it is certified that the interested person went to the post office, where he collected the shipment that contained the initiation agreement of Girona City Council. From this it can be inferred that the corresponding notice had been left at the aforementioned address, which would have led to the person there being the addressee and here making the complaint, going to the Post Office to collect that notification.

In short, that the address used by the Girona City Council would have been revealed to be suitable for the purpose pursued. Consequently, it must be concluded that there are no indications that allow the City Council to be accused of violating the principle of accuracy.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the previous information it has not been proven that there are rational indications that allow imputing 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: "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 233/2018, relating to Girona City Council.
2. Notify this resolution to Girona City Council and communicate it to the person making the complaint.

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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,