

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

File identification

Archive resolution of the previous information no. IP 235/2018, referring to the Secretary of Penal Measures, Reintegration and Victim Support of the Department of Justice of the Generalitat of Catalonia.

Background

1. On 03/08/2018, the Catalan Data Protection Authority received a letter from a person for which he was making a complaint against the General Directorate of Penitentiary Services (which has now been called the Secretariat of Criminal Measures, Reintegration and Victim Support) of the Department of Justice, due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that a certain educator of the Brians 1 Penitentiary Center would have revealed "in front of the world" data relating to his person, relating to the existence of a complaint by an inmate against this educator presented before the Ombudsman, as well as "personal information of my wife, wife".
2. The Authority opened a preliminary information phase (no. IP 235/2018), 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, by means of a letter of 17/09/2018, the person making the complaint was requested to specify the date on which the educator allegedly disclosed his personal data; as well as providing some evidence and/or testimony to prove the existence of the facts reported.
4. On 11/10/2018 he received the written response from the person reporting, in which he stated, among others, that "the events took place in the month of March", as well as stating the reasons for the who, in their opinion, could not provide any testimony or evidence in relation to the facts reported.
5. On 07/11/2018, also during this preliminary information phase, the reported entity was required to report, among others, on the reasons and purpose for which the educator would have disclosed the insider's personal data.
6. On 11/19/2018, the Department of Justice responded to the aforementioned request through a letter in which it provided the testimony of the educator referred to by the complainant. Among others, this educator stated that he did not know what the

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reporting person when he claimed that he disclosed certain information in front of everyone. The educator added that the internal person's information had been processed within the framework of the multidisciplinary team.

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 states that a certain educator at the Brians 1 Penitentiary Center would have revealed "in a talk in front of the world that I reported him to the Ombudsman and disclosed personal information about my marriage, wife and personal data that they don't come to tell me that no one listens to them and in fact they are data of a confidential nature." However, the person making the complaint did not provide any element tending to prove the fact that he was reporting, despite having been expressly requested by this Authority. In this regard, in response to the Authority's request to provide evidence or witnesses, the complainant, by means of a letter dated 09/25/2018, stated the following: "You believe that people who want to leave is he going to go against who opens the doors?".

For his part, the educator of the Brians 1 Penitentiary Center to which the complainant refers, by means of a letter dated 13/11/2018, has stated that he is unaware of the facts indicated by the complainant. And he adds that the "intern's information has been processed within the framework of the multidisciplinary team", a body of the CP made up of several professionals, which in principle would be authorized to access the data of the interns necessary for the exercise of their functions.

As things stand, it must be concluded that as a result of the investigative actions carried out, sufficient evidence or evidence has not been obtained to allow imputation of the eventual violation of the duty of confidentiality that was reported.

Consequently, 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, which is included in article 53.2.b) of the LPAC, recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise".

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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".

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 235/2018, relating to the Secretary of Penal Measures, Reintegration and Attention to the Victim of the Department of Justice of the Generalitat of Catalonia.
2. Notify this resolution to the Department of Justice and communicate it to the complainant.
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,