

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

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 247/2018, referring to the company (...), SL.

Background

1. On 27/08/2018, the Catalan Data Protection Authority received a letter of complaint against the City Council of (...), on the grounds of an alleged breach of the regulations on data protection personal data.

In particular, the complainant stated that on 02/08/2018 he approached the school (...) of this locality (henceforth, the School), where the summer camp organized by the culture department of this City Council took place, in order to talk to his minor daughter. According to the complainant, the person in charge of the summer camp denied him entry, arguing that he had an order from his boss not to let him in. In the continuation of his letter, he pointed out that, subsequently, a team from the local Police arrived and received a call from a child - in reference to the Social Services -, asking him about the reason why the complainant here was to school. The complainant complained about the fact that this City Council had communicated his personal data to the local Police of this City Council and also to the Social Services, without having his consent.

2. The Authority opened a preliminary information phase (no. IP 247/2018), 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 06/25/2019 the City Council of (...) was required because reported on several issues related to the events reported.

4. On 07/12/2019, the City Council responded to the aforementioned request through a letter in which it stated the following:

- As previous questions he stated:

- The Summer Camp organized by the City Council of the dependencies of the school (...), in events described was managed by the company (...). The company was contracted by the City Council through the public SL.
- procurement personal data practices regulating the treatment of

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the application of a set of clauses defined in accordance with the requirements of the legislation on the protection of the processing of personal data that could affect one a in development of its functions.

- The facts related by the citizen were the subject of a claim to Trustee of Complaints previously, procedure in which the Trustee indicate that it had been acted upon properly."

- With regard to the question relating to whether the summer camp had contacted the local Police and Social Services and given information about the person making the complaint, the City Council stated that:

"The staff of the summer camp does not go communicate any type of personal data to Social Services in from the Regio ab Company. Equally, the fact that the person who left Social Services were them that the school access to the facilities of is not could father a

With respect to the fact that the staff of the camp are also data on their type of required in the face of the 90 angry attitude Mr. of (...) in the face of the instructions given by the Social Services to the school premises

no a in

The City Council accompanied its written response with various documentation, including the following two documents:

1. A letter issued on 05/09/2018 by the manager of the entity (...), SL, which stated, among others, the following:

"(...) At the beginning of the camp, the father asks us to be able to see the girl inside the school during the 5-10' of the children's entrance (...) they authorize this minutes (...).

During this period of July, childhood confer the person in charge of make did not meet in the same center. agree contact with childhood. Childhood calls us one by one

And is to the following:

-Do not let the father in during the reception minutes. According to childhood already (...). we? We had it, didn't having allowed

So we acted the day after the meeting with childhood. when it goes appear the father, the going tell him he's show that childhood orders we could visit the school, that day come with go

and when I tell him he leaves

call the police to report the problem. a for The facts

gone to come (...) Finally it's is in

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2. A letter dated 17/01/2019 from the Grievance Ombudsman, by which he closes the investigation actions initiated following the letter of complaint presented by the person making the complaint before that institution, regarding the facts reported here.

5. As part of the investigation, the Authority consulted the public procurement services platform, specifically the profile of the contractor, and found that the company (...)SL (hereinafter, (...)) is listed as the successful bidder for the summer camp service contract organized by the City Council of (...), which was formalized on , which was formalized on 06/05/2018.

The thirty-first clause of the set of contractual clauses, entitled "other obligations of the contracting company", regulated in section 5) the obligations of the contractor towards data protection, citing article 12 of Organic Law 15/1999, of December 13 on the protection of personal data, which regulated the figure of the person in charge of the treatment.

From the result obtained, the corresponding due diligence was carried out.

6. As a result of what has been explained, the previous information we are dealing with (IP 247/2018), initially referred to the City Council of (...), was focused on the person in charge of the treatment, the company (. ..).

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations, and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, the director of the Catalan Data Protection Authority is competent to issue this resolution.

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this resolution.

The complaint made by the complainant refers to two communications of his data which, according to this person, the City Council would have carried out without his consent to: on the one hand, the Social Services of the Consell Comarcal del Baix Empordà ("childhood"); and on the other hand, the Local Police. Specifically, the complainant stated in his written complaint that:

"the organizing board of the home called the local police with the intent of facilitating my personal data."

The City Council and the company that provided the service on behalf of the City Council, (...), have denied that any communication of the complainant's data had been made, stating what is set out below and that is analyzed separately.

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2.1. Regarding the eventual communication of data to the Social Services.

Regarding this first reason for complaint, the City Council has pointed out that: "they were technicians of Social Services that are directed to the staff of the home facilities in order to inform them that is not of summer camp order to inform them that is not

Although the entity (...) states the same in its letter of 09/05/2018, it then admits that it communicated to "infancia" - in reference to the Social Services - the incident involving the reporting person on the day that the Local Police attended the school premises, which took place on a date unknown to the Authority, but which would be around July 2018. The communication of this incident to the Social Services, entailed the transmission of information referring to the person making the complaint, which was not known to these Social Services (specifically, the personation of the complainant in the educational center, his desire to establish contact with his minor daughter, and the subsequent reaction to the refusal of the staff of the home to accede to his request), which constitutes a communication of data, and, therefore, it is necessary to analyze whether there is a legal basis that legitimizes the treatment he did

In this regard, the fact that the complainant's data that (...) would have communicated to the Social Services, refers to an action by the complainant that pursued a contrary purpose to the previous command of the Social Services, who had communicated to (...) that they could not allow the complainant access to the school premises, in order to establish contact with his daughter.

The intervention of the Social Services must be understood within the framework of the exercise of the powers attributed to the Councils in this matter (arts. 27.1 and 31 Law 12/2007, of 11 October, on social services). For its part, the entity (...), as the awardee of the summer camp service organized by the City Council, was obliged to notify the Social Services of any fact relating to the minor attending the summer camp summer that could be relevant for the exercise of the functions entrusted to the Social Services, as was the incident that occurred with the complainant, for the reason indicated.

As things stand, the communication of the complainant's data by (...) to the Social Services, regarding the presence of the complainant in the home's premises, was protected by the legal basis contained in article 6.1.c) of Regulation (EU) no. 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 movement of such data and which repeals Directive 95 / 46 / EC (hereinafter, RGPD), which provides that the treatment is lawful when:

"the treatment is necessary for the fulfillment of a legal obligation applicable by in the responsible for the treatment."

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2.2. Regarding the eventual communication of data to the Local Police.

With respect to this second reason for complaint, the City Council has also denied that summer camp staff communicated the complainant's personal data to the Local Police. Specifically, he pointed out that:

"(...) the camp also does ⁹⁰ carry out any type of communication of personal data, of Mr. (...) in it just goes away ⁹⁰ not require ⁹⁰ in the face of the angry negative attitude of the staff ⁹⁰ front of the school buildings of the summer camps. ⁹⁰ non-compliance with the instructions indicated by the Social Services in

The Authority has no evidence that the complainant's personal data was communicated in the call made by the staff of the summer camp to the Local Police, as he maintains. And in the letter issued by the manager of (...) it is only pointed out that: "we proceeded ⁹⁰ call the police report to for of the problem ⁹⁰ The police ⁹⁰ to come (...)".

However, it cannot be ruled out that the information regarding the complainant that the staff of the home provided to the Local Police when they requested their presence, was information that allowed the complainant to be identified. If this were the case, the treatment carried out would constitute a communication of data. Although, as noted, the Authority has no record of this, it is considered appropriate to analyze whether in such a case there would be a legal basis that would legitimize the eventual communication of data.

In this regard, it should be borne in mind that the staff of the summer camp who required the presence of the police, perceived a violent attitude in the reporting person. Specifically, the manager of (...) pointed out in her letter that:

"when ⁹⁰ appearing to tell school (an) by is a traffic light school from the image ⁹⁰ we could allow him to enter no ⁹⁰ and down the street (...).
 (...) the father goes ⁹⁰ say that or ⁹⁰ they left him
 enter or ⁹⁰ he took the little girl

From this story it can be inferred that the intervention of the local police would have the purpose of assisting the staff who managed the summer camp in the face of a conflict that they understood could end up affecting the safety of the minors and in general of all the people attending the house

With regard to the applicable regulations, it is necessary to start from the provision contained in article 4.3 of Organic Law 4/2015, of March 30, on the protection of public safety, which establishes the following on the factual assumption that must motivate police intervention in order to guarantee public safety:

"3. The intervention activity ⁹⁰ is ⁹⁰ justified by the existence of a specific threat objectively dangerous behavior that, reasonably, is likely to ⁹⁰ or ⁹⁰ of one cause real damage by concrete, attempt against the rights and ⁹⁰ a ⁹⁰ public safety and ⁹⁰ in

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individual and collective data of the complainant, as well as the identity of the

On the other hand, article 28.3 of Law 4/2003, of April 7, on the regulation of the public security system of Catalonia establishes that the functions specific to the local police are:

"d) Collaboration with the public security authorities and the local security board in the performance of police functions, in accordance with what is specified by the local security board."

And article 34.1 of Law 4/2003 establishes that:

"1. Citizens can direct what they see fit to the security authorities the complaints and the requests that to think is appropriate about the provision of the various agent services."

On the basis of the aforementioned regulations, in the event that the request for intervention made by the staff of the summer camp to the local Police was aimed at guaranteeing the safety of the people attending the camp, especially of registered minors, and since it is a legal obligation of the City Council to ensure their safety, the eventual communication of the complainant's data to the local Police when they require their intervention, would be protected by the legal basis contained in article 6.1.c) RGD, which provides that the treatment is lawful when:

"the treatment is necessary to comply with a legal obligation applicable to para responsible for the treatment."

3.- In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information has not been proven, in relation to the facts that have been addressed in this resolution, any fact that could be constitutive of any of the violations provided for in the applicable legislation, it must be agreed your archive.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 247/2018, relating to the company (...), SL.
2. Notify this resolution to the company (...), SL and the complainant.
3. Communicate this resolution to the City Council of (...).

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4. 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 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 notification, in accordance with what is 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,