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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 250/2018, referring to the City Council of (...) and the Department of Territory and Sustainability of the Administration of the Generalitat.

Background

1. On 09/01/2018, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Department of Territory and Sustainability (hereafter, TES) of the Government of the Generalitat, due to an alleged breach of the regulations on the protection of personal data.

Specifically, the person making the complaint indicated that: *"Since the notification of the file and the same procedure in 2009, I have been demanding that the Generalitat remove the content of the following URL from the public exhibition on the internet, by virtue of data protection..., of the right to be forgotten, since apart (.sic) from disclosing my private data, it includes my family, and it seriously damages my personal and professional image for being outdated".* He then pointed to the internet address he was referring to, noting that the document accessed through that address included *"private matters and anyone can download it just by searching for my name on Google"*. In the last one, he also complained about the publication of the aforementioned announcement in the BOPB, stating that he had already been *"delivered the relevant notifications"*.

The internet address to which the complainant referred corresponded to the Register of Urban Planning, dependent on the TES Department. Specifically, through the address indicated by the complainant, the following document was accessed: the edition of the official bulletin of the Province of (...) (BOPB) no. (...), dated (...)2009, on page (...) of which there was an announcement published at the behest of the City Council of (...), by which it was made dissemination of a Mayor's Decree, dated (...)/2009, which included the names and surnames of several people, including the person making the complaint.

2. The Authority opened a preliminary information phase (no. IP 250/2018), 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.

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

3. On 09/06/2018, the Authority's Inspection Area made a series of checks via the Internet, and verified that no. of BOPB was accessible through the address indicated by the reporting person, and that through the introduction of the reporting person's first and last name in the search button of the corresponding application, access to the announcement of the City Council of (...), where their personal data appeared.

On the other hand, from the introduction in the Google search engine of the name and surname, or the NIF, of the reporting person, the link to different web pages was obtained as a result, and it was found that none of the first 20 links obtained corresponded to the address indicated by the complainant in his letter of complaint, nor were they accesses to the aforementioned BOPB. From the result obtained, the corresponding due diligence was carried out.

4. By letter dated 11/30/2018, the complainant was requested to provide a copy of the documentation proving that he had submitted his request to the TES Department, as he did on the same date, accompanied by a written document of four requests addressed to the Administration of the Generalitat through its Virtual Office of Procedures (henceforth, OVT) on 09/07/2017 and 09/12/2017.

5. From 06/26/2019 to 06/28/2019, the Authority's Inspection Area again carried out the same checks on the Internet that it carried out on 09/06/2018, with identical results, and raise the corresponding due diligence of record.

6. On 07/03/2019, the City Council of (...) was required to report on various issues relating to the events reported.

7. On 07/17/2019, the City Council of (...) responded to the aforementioned request through a letter, where it pointed out that the announcement it published in the BOPB "*(...) is it is an edict notification given that the personal notification could not be made*".

Attach the following documentation to your letter:

- Letter of notification of the Decree dated (...)/2009 to the person making the complaint and to another person
- Proof of Post indicating the unsuccessful attempt to notify the Mayor's Decree to the person making the complaint, made on 07/10/2009 at 11:10 a.m., and the reason for such result ("absent delivery") , as well as indicative of the fact that it would not have been withdrawn once the period of permanence on the list had expired.
- An office dated 07/11/2009 that the City Council would have sent to the City Council of (...), by which the publication edict of said notification is sent to it, so that it is displayed on the board of 'announcements from that town hall, in application of the provisions of art. 59.5 of Law 30/1992, of November 26.
- The edict published on the Board of Edicts of the City Council of (...), where the municipal secretary records its publication from 7/11/2009 to 26/11/2009.
- The edict published on the Board of Edicts of the Town Hall of (...), where the municipal secretary does record its publication for fifteen days.

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

- Copy of page no. (...) of BOPB no. (...), dated (...)2009, which contains the City Council Decree of (...) dated (...)/2009, which contains the personal data of the complainant.

8. On 03/07/2019 the Authority required the TES Department to indicate, among others, whether it had responded to the requests submitted by the person reporting.

9. On 01/28/2020, the TES Department responded to the aforementioned request, by means of a letter in which it stated the following:

"The complainant made, through the contact form on the website of the Generalitat Administration, the queries with identification (...)

Identification (...) -1 It

was created on 09/07/2017, addressed to the Autonomous Entity of the Official Journal and Publications.

The unit that signs as "Portal del DOGC" gave him an answer dated 09/12/2017.

As you can see in the detail of the Annex, in the response you are informed that the document was not published in the DOGC but in the BOPB and, in addition, they comment that the link you refer to corresponds to the Department's website of Territory and Sustainability.

Identification (...) -2 It

was created on 09/07/2017, addressed to the Autonomous Entity of the Official Newspaper and Publications.

On 12/09/2017 it appears as "Rejected", we understand that by the same unit that responded to the previous query. The reason is "Duplicate management. The citizen's request has already been answered."

Identification (...) -3 It

was created on 09/07/2017, addressed to the Autonomous Entity of the Official Journal and Publications.

On 12/09/2017 it appears as "Rejected", we understand that by the same unit that responded to the previous query. The reason is "Duplicate management. The citizen's request has already been answered."

Identification (...) -4 It

was created on 12/09/2017, with the theme "Mobility and Transport" and, therefore, this time it did reach the Department of Territory and Sustainability.

From the Department's Information Point, a response was given on 09/18/2017.

As you can see in the detail of the Annex, in the answer it is recommended that you address the Provincial Council of (...), as the body competent in the publications in the Official Gazette of the Province of (...), and contact details are provided.

Therefore, this Department confirms that it responded to this last request. (...)

This corporate application is only used to make inquiries, submit complaints or make suggestions to the different units of the Generalitat Administration.

But it is not the means to carry out procedures subject to the administrative procedure and, therefore,

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

entries are not made in the register either of the entries or of the answers that are sent to the people who are addressed. Likewise, responses are not made by formal notification.

On the other hand, the website of this Department to which the complainant refers in his request links to the Registry of Urban Planning of Catalonia (RPUC). This is the instrument for electronic dissemination of current urban planning that the Administration of the Generalitat is equipped with to comply with Legislative Decree 1/2010, of August 3, which approves the revised text of the Law of Urbanism, modified by Law 3/2012, of 22 February, amending the revised text of the Urbanism Law. This rule establishes that urban planning instruments are public and that anyone can consult them at any time, also electronically (...)

As an official newspaper, it cannot be modified once it has been published, beyond introducing the corresponding amendments in subsequent issues. For this reason, the Department understands that keeping published in the RPUC an official newspaper with a direct relationship with the referenced file does not represent any violation of data protection regulations on its part."

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 that are the subject of this resolution.

First of all, it should be noted that the regulations applicable to the events reported are Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD), as it is the law in force at the time of the facts to occur.

The complaint made by the complainant refers to two data treatments, which will be analyzed separately: on the one hand, the legitimacy of the publication of the advertisement with personal data will be analyzed in BOPB no. (...), dated (...)2009, by order or command of the City Council of (...) (2.1.); and on the other hand, the action of the TES Department will be analyzed in response to the complainant's request regarding the online publication in the Urban Planning Register of the BOPB no. (...) that contains the advertisement with your personal data (2.2).

As a matter common to both treatments, it should be remembered that the dissemination of personal data through the Internet, despite not having specific recipients, is considered, from the point of view of the protection of personal data, a communication or assignment of data in the sense of article 3.i), in relation to article 11, both of the LOPD. In accordance with

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

these articles, the dissemination of personal data via the Internet is only relevant when it is carried out within the framework of the functions that each has attributed to us and the consent of those affected is counted, or, in its absence and in essence, has the authorization given by a rule with the rank of law.

2.1. About the publication of the announcement with personal data in the BOPB no. (...) by order of the City Council of (...).

In the present case, the dissemination of personal data was carried out through the BOPB, whose official edition is in electronic format. Through the publication of the aforementioned announcement in the BOPB, the City Council of (...) made public a mayoral decree, dated (...) / 2009, which required the complainant and two others -one in a subsidiary way- the payment of an economic amount for the expenses generated a the City Council in procedure no. (...) relating to the possession of domestic animals and public health, following the subsidiary execution of the resolution, referring to spot disinsection for fleas.

The complainant stated in the letter of complaint that he had already been given the corresponding notifications, with which statement he questioned the legitimacy of the publication of the decree in the BOPB, and consequently also of the communication of the personal data contained therein.

In this regard, the City Council of (...) has provided the Authority with various documentation mentioned in the antecedents section, from which it is clear that the publication of the announcement in the BOPB took place after personal notification had been attempted at the addresses of the addressees, and it had not been possible to do so due to the absence of the addressees, and once the deadline for removing the notification from the list has passed corresponding Post Office.

This action by the City Council of (...) complies with the provisions of article 59.5 of Law 30/1992, of November 26, on the legal regime of public administrations and the common administrative procedure, of application at the time of the events - in the wording prior to that operated by Law 15/2014, of September 16-, which precept established that: *"when those interested in a procedure are unknown, the place of the notification or the means referred to in point 1 of this article, or when notification has been attempted and failed, notification must be made through announcements on the notice board of the City Council at its last address, in the Official Gazette of the State, of the autonomous community or of the province, depending on which is the Administration from which the act to be notified originates, and the scope territorial of the body that dictated it"*.

In accordance with the above, the communication of personal data derived from the publication of the mayor's decree in the BOPB, is covered by article 59.5 of Law 30/1992, which provides for the publication of administrative acts before failed notification attempts.

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

Consequently, from this fact it cannot be inferred that the City Council of (...) has committed an infraction of the provisions of the LOPD.

Another thing is that at present it is not appropriate to maintain access to the personal data contained in the announcement, once the purpose pursued with the publication of said act (with the personal data) has been fulfilled, and that it was none other than his notification to the interested persons - among them the person making the complaint - for their knowledge, the latter circumstance which is made clear in the requests submitted by this person through the OVT of the TES Department. Thus, in accordance with the principle of data minimization provided for in art. 5.1.c) of the RGPD, and taking into account that the BOPB is an official publication that must be preserved unaltered indefinitely *ex lege*, it is appropriate to adopt measures in order to avoid access to this personal data by of third parties. Thus, among other measures, the City Council of (...) -as issuing body and responsible for the announcement- should require the DIBA -as managing body of the BOPB to adopt the necessary technical measures to prevent the controversial ad was indexed by BOPB's internal search engines.

2.2. About the publication of the BOPB no. (...) - which contains the aforementioned announcement - on the website of the Urban Planning Registry, dependent on the TES Department.

Secondly, the complainant complained about the alleged neglect by the TES Department of his request to delete his personal data - and those of other family members - that appeared in the announcement published in the BOPB no. (...), which was accessed through an electronic address of the Urban Planning Registry of Catalonia (hereafter, RPUC).

It is stated in the actions that the reporting person addressed to the TES Department request dated 09/12/2017, through which he requested the elimination of BOPB no. (...) accessible through the RPUC. This request could well be linked to the exercise of the right of cancellation regulated in article 16 of the LOPD and articles 31 to 33 of the RLOPD, in which the right to the deletion of those processed data that were inadequate or excessive.

The TES Department responded to the request on 18/09/2017, indicating to the complainant that he should address the DIBA, *"since it is the competent body in the matter you raise"*.

In relation to this answer, it should be clarified, first of all, that although this Department is not responsible for the publication of the controversial announcement on the BOPB website -since it is the City Council of (...)-, yes, it is from the files published on the website of the Urban Planning Registry of Catalonia (hereinafter, RPUC), given that it depends on this Department (art. 18.2 Decree 305/2006, of July 18, by which approves the Regulation of the Urban Planning Act). In this regard, the Authority has verified that a

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

through the address of said Registry indicated by the reporting person, access to the full content of BOPB no. (...) where the controversial advertisement appears. In other words, it is not a link to the DIBA website, but the newsletter is downloaded from the RPUC website itself. Thus, from the moment that this information was provided from the website for which the Department was responsible, we are dealing with data processing, and consequently, it was obliged to respond to the cancellation request made by the person complainant on 09/12/2017, in accordance with article 16.1 of the LOPD. For this purpose, the Department's information point should have forwarded this request to the competent body of the Department, in accordance with article 14.1 of Law 40/2015, of October 1, of Legal Regime of the Public Sector (LRJSP), and article 24.5 of Royal Decree 1720/2007, of December 21, which approved the Regulation for deployment of the LOPD, (RLOPD).

Even so, from this "lack of processing" it cannot be inferred that the Department has committed an infringement of data protection regulations, specifically the serious infringement provided for in art. 44.3.e) of the LOPD, referring to the impediment or obstruction of the exercise of the so-called *habeas data rights*, among which was the right of cancellation. This conclusion is reached based on the consideration that from the answer given by the information point by mail dated 09/18/2017, where it was pointed out: *"In response to the question you raise, we recommend that you address the Provincial Council of (...), as it is the body competent in the matter you raise. The contact details are (...)"*, it does not appear that there is a will to prevent or hinder the right of cancellation of the person making the complaint, nor is it a conscious action that the response prevents the exercise of the right. This, without prejudice to what is pointed out below about the legal conformity of this answer.

With regard to the virtuality of the cancellation request presented by the complainant to the TES Department, it must be stated, at the outset, that the communication of data collected from official newspapers is covered by article 11.2 .b) of the LOPD, which exempted the concurrence of the consent of the affected persons *"when it comes to data collected from sources accessible to the public"*. Now, in order for the publication in the RPUC to comply with data protection regulations, it is necessary that it is respectful of the principles that preside over it, and in accordance with current regulations, it must be supported by a base legal of those provided for in art. 6 of the GDPR.

The Department uses as justification for the dissemination of the personal data contained in the announcement, the legal obligation it has to make public urban planning instruments, but this response cannot be favorably received, since this purpose could well comply by publishing in the RPUC only the urban planning rules of the BOPB in question, without the need to publish the data of the person making the complaint and those of their relatives appearing in another announcement published in the same BOPB. In other words, the publication of these personal data is not protected by the obligation to publicize the urban planning instruments provided for in article 103 of Legislative Decree 1/2010, of August 3, which approves the Revised text of the Urban Planning Law, by the

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

which are excessive and therefore its withdrawal proceeds, since it also does not seem to be able to defend itself in a legal basis given the considerations made in the previous heading *in fine* (2.1).

Finally, it is appropriate to refer to the part of the complaint referring to access through the Google search engine to the announcement of the BOPB published in the RPUC. In this regard, the Authority has carried out several checks on the internet during the preliminary information phase, in particular, searches in the Google search engine, sometimes entering the name and surname of the person making the complaint, and other times their NIF, and the result obtained in all cases it has been found that none of the first 20 results correspond to the address indicated by the person making the complaint in the letter of complaint. It is not known, therefore, that the information published in the RPUC is indexable by this search engine.

Nevertheless, even if the publication of personal data of the person making the complaint in the RPUC is excessive in accordance with the purpose invoked by the Department, and that for this reason its withdrawal proceeds, taking into account, as already said, that the data have been collected from a source accessible to the public (the BOPB), and that it is legitimate to continue publishing them in this means of dissemination, the imputation of an infringement to the Department for this same action would not proceed.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out in the framework of the previous information, no fact has been proven, in relation to the events reported, that could be constitutive of any of the infractions provided for in the applicable legislation, it is necessary to agree on its archive.

4. However, for the reasons indicated in the 2nd legal basis - on the basis of which it is considered that the dissemination of the complainant's data in the announcement published in the BOPB no. (...) which can be accessed through the DIBA website <https://bop.diba.cat> and through the RPUC is excessive taking into account the purpose of the publication, it is appropriate to require the City Council of (...) and the TES Department to carry out the following actions to the extent possible in order to comply with the provisions of this resolution:

4.1. Regarding the City Council of (...): carry out the appropriate procedures before the DIBA in order to adopt the appropriate technical and IT measures in order to prevent access to the personal data of the person making the complaint and of their relatives listed in the announcement published in the BOPB no. (...) of (...)2019, specifically to prevent the controversial announcement from being indexed by the BOPB's internal search engines.

4.2. With regard to the TES Department: adopt the appropriate measures so that the publication on the RPUC website of the town planning rules of the Granollers Town Council contained in the BOPB no. (...) of (...)2019, does not involve the publication of the announcement of the City Council of (...) which contains the personal data of the person making the complaint and his family members and that these data are accessible by third parties.

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

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 250/2018, relating to the City Council of (...) and the Department of Territory and Sustainability of the Administration of the Generalitat.
2. Require the City Council of (...) and the Department of Territory and Sustainability to carry out the actions indicated in the 4th legal basis of this action, and certify before this Authority the actions carried out to comply - them
3. Notify this resolution to the City Council of (...), the Department of Territory and Sustainability, and the person making the complaint.
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 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,