

Carrer Rosselló, 214, esc. A, 1st 1st
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File identification

Archive resolution of the previous information no. IP 282/2018, referring to the Berguedà Regional Council.

Background

1. On 03/10/2018, the Catalan Data Protection Authority received a letter from a person in which he filed a complaint against the Berguedà Regional Council (hereafter, CCB), on the grounds of an alleged breach of the regulations on the protection of personal data. Specifically, the complainant questioned the legal basis that would legitimize the implementation of the door-to-door collection system.
2. The Authority opened a preliminary information phase (no. IP 282/2018), 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 04/10/2018, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported. Specifically, access was made to the "FREQUENT QUESTIONS" of the CCB website "triem.cat", where the following was reported:

"WHY DO ALL CONTRIBUTION ELEMENTS CARRY CHIPS?"

1. *Allows you to control the service and resolve incidents. Many times there are complaints about buckets or uncollected bags. With the chip readings the technicians doing the tracking can immediately see what has been collected and what no.*
2. *Allows to solve detected incidents in less than 24 hours. The fact that incidents can be collected and can be associated with a home allows the technicians to immediately inform the affected person and solve the incident*
3. *It is a co-responsibility tool. Under the current model those who recycle and those who do not pay exactly the same rate. With the control of the chips in the future, a system can be implemented where those who recycle the most pay the least. The concept, in this case, is the same as when we talk about water, light and gas. If we had a single meter in the city for water, electricity or gas, consumption would probably increase because the bill would be paid by everyone and there would not be a higher cost for those who consume more. The same goes for waste, if there is none*

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a control to determine who recycles and who does not, only those who are very sensitized separate all the fractions at source. By implementing a control, "a waste counter", the majority of citizens incorporate new habits of separation.

DOES THIS MEAN WE WILL BE CONTROLLED NOW?

It is not a question of control for control. We don't wonder if they are controlling us with the water, light or gas meter; nor do we wonder about car number plates and speed cameras. Just like the water we consume, or the light or gas we spend is controlled through a meter and then everyone pays their bill with the waste they end up doing the same. Therefore, it is not a matter of control but of co-responsibility.

WHICH ACTIONS WILL BE SUBJECT TO PENALTIES?

No one who participates in door-to-door, even if they make mistakes or mistakes, will be penalized. Only uncivil actions such as leaving non-standardized bags on the public road or in bins or leaving furniture or other bulky waste will be the subject of sanctions.

HOW WILL THEY KNOW IF WHAT THEY COLLECT IS CORRECT? WILL THEY OPEN OUR BAGS?

No bag is opened. Collection teams quickly see if the delivered material is correct without opening any bags. How? The containers, if they are well separated, do not weigh; the organic must be removed in a compostable bag and without opening it you can sense its content; the paper and cardboard is removed without a bag, so you can see if it is properly separated.

Only abandoned and non-approved bags will be opened because these are indeed uncivil acts subject to sanctions.

HOW IS DATA PROTECTION GUARANTEED?

The chip is associated with a housing, that is to say an address. The data used are the same as the current ones (associated with the waste rate). All the data that will be collected at the time of delivering the door-to-door kit will be done in accordance with current legislation and with the consent of the citizen."

4. On 10/24/2018, and still within the framework of this preliminary information phase, the Authority carried out an inspection at the CCB offices, to verify certain aspects

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related to the implementation of the door-to-door collection system. In that face-to-face inspection, the representatives of the CCB stated, among others, the following:

- That the CCB has been delegated the responsibility for waste management.
- That for the implementation of the door to door, the addresses that were already available for the management of the municipal waste management service fee had been used.
- That the waste bags and organic waste bins contained chips that identified the user indirectly through the address. The packaging and paper bags did not have any chips.
- That the identification of the user was necessary for the collection of the corresponding fee. The rate was the same for all users.
- That the waste collected through the door-to-door system was not inspected.
- That the processing of the door-to-door system data had not been planned to sanction infringements.

5. On 06/19/2019 he received an e-mail message from the complainant, in which he indicated the following: *"Referente a mi denuncia (...) les manifiesto mi voluntad de retirarla definitivamente, por lo cual Please cancel it."*

6. In this information phase, on 06/02/2020 the reported entity was required because reported, among others, whether the address of the person using the service was printed on the buckets or bags that incorporated a chip.

7. On 12/02/2020, the CCB responded to the aforementioned request through a letter in which it explained, among others, that none of the elements incorporating a chip contained the address of the user.

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 that are the subject of this file resolution.

In advance, it is necessary to point out that the withdrawal of the person reporting ever the complaint he made does not bind this Authority. And this, given that the complaint is not considered a request that initiates a procedure. Indeed, the previous actions that

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were initiated as a result of said complaint, prior to the start of the procedure, it is appropriate to open them to the competent body (art. 55 of the LPAC).

Having established the above, from the present actions of prior information, it is inferred that at least the bags of remains and the buckets of organic waste that the CCB delivers to the users of the waste collection service, contain chips that allow the CCB's authorized technicians to indirectly identify the person using the service through the address.

At this point, it must be emphasized that third parties other than authorized CCB staff cannot link the bags or waste to the user. In this regard, the CCB has confirmed by means of a letter of 12/02/2020 that none of the elements incorporating a chip (bags and containers) can display the address to which they are linked.

On the other hand, the complainant did not provide any element with his complaint tending to distort this end. In turn, the withdrawal of the person making the complaint has made it difficult to obtain more information from them about the facts reported.

Having said that, articles 25.2.b) of Law 7/1985, of April 2, regulating the bases of the local regime (hereinafter, LBRL) and 66.3.l) of Legislative Decree 2/2003, of 28 April, by which the revised Text of the Municipal and Local Regime Law of Catalonia (hereafter TRLRCL) is approved, provides that municipalities have powers in the collection and treatment of waste.

And articles 26.1.a) of the LBRL and 67.a) TRLRCL define waste collection as one of the minimum services that must be provided in all municipalities.

As the representatives of the CCB stated in the face-to-face inspection carried out on 24/10/2018, the municipalities have delegated the provision of this service to the CCB.

On the other hand, article 10 of Legislative Decree 1/2009, of July 21, which approves the Revised Text of the Waste Regulatory Law (hereafter, LRR), foresees as one of the actions to reduce the production of waste:

"1. To reduce the production of waste and its danger, the following must be encouraged:

a) The application of the best technologies available that favor the reduction of waste, the concentration, the saving of natural resources and energy, and that reduce the risks to the environment and people's health. (...)

2. Economic and fiscal measures aimed at promoting the reduction of waste production, treatment to reduce its danger, material recovery and recycling must be established. Measures aimed at reducing packaging and packaging waste are a priority.

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3. Public administrations must promote research to reduce the production of waste and its dangerousness. (...)"

In turn, article 22.c) of Law 16/2017, of August 1, on climate change, relating to waste, establishes that:

"The measures that are adopted in the matter of waste must be aimed at reducing the vulnerability of the population and the emissions of gases with a greenhouse effect, prioritizing the strategy of zero waste in order to save material and reduce - their processing, especially in the reduction and penalization of products packaged with an intensive use of fossil fuels, and specifically they must be aimed at: (...)

c) The promotion of selective collection, especially of organic matter, to avoid its deposition in landfills."

And article 11 of the LLR, regarding selective collection, provides that:

"4. The municipalities enjoy the power to regulate the selective collection of municipal waste in accordance with the specific determinations resulting from the legislation of the Generalitat in the matter and, in particular, from Legislative Decree 2/2003, of April 28, by which s approves the revised text of the Municipal and Local Regime Law of Catalonia."

Based on this qualification, the CCB approved the General Waste Ordinance on 01/10/2017. Article 12 of said Ordinance contemplates that one of the home collection systems for domestic users (waste generated by private homes) is collection by means of bags deposited on the pavement or in the designated accumulation areas.

As a result of this forecast, the CCB began to implement the door-to-door waste collection system.

Having established the above, the CCB justifies in the frequently asked questions section of the information website about the waste collection system (triem.cat), that the identification of the users, among others, is required to control the service and resolve incidents that may arise with the person using the service. That is to say, for the exercise of the inspection powers related to the collection of waste, which Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia recognizes in the public administrations of Catalonia to ensure the current legality (article 88.1).

Well, in order to achieve the objectives of improving recycling and promoting selective collection provided for by the regulations that have been transcribed, through the door-to-door waste collection system, it is necessary that CCB technicians with inspection functions can identify the users in order to resolve them with them incidents in waste management.

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In short, in the present case the processing of personal data would be based on the fulfillment of a mission in the public interest or the exercise of public powers, in accordance with what is provided for in article 6.1.e) of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereinafter, RGPD).

On the other hand, at the discretion of this Authority, the processing of personal data within the framework of the provision of the waste collection service through the door-to-door system, would be proportionate taking into account the considerations made by the CCB.

In this regard, as reported by the CCB, the chips, buckets or bags do not include printed the address of the person using the service, nor any other personal data that would allow their identification. According to what is indicated on the CCB information website about the waste collection system, only the CCB technicians with inspection functions can indirectly identify the users from the chips incorporated in the bags and buckets. This identification, according to the CCB, is limited to those cases in which incidents linked to the provision of the service are detected. It should also be noted that third parties outside the technical fingers would not be able to identify the user to whom the chip is linked.

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 it has not been accredited, in relation to the facts that have been addressed in this resolution, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 282/2018, relating to the Regional Council of Berguedà.
2. Notify this resolution to the CCB.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.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. A contentious appeal can also be filed directly

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administrative 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,

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