

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

## File identification

Archive resolution of the previous information no. IP 288/2018, referring to Sabadell City Council.

## Background

1. On 09/10/2018, the Catalan Data Protection Authority (hereinafter, APDCAT) received a letter from a person in which he made a complaint against Sabadell City Council, on the grounds of an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that he was the tenant of the property located in Sabadell and that, until approximately 2015, he had paid the fee for the provision of municipal waste collection, transport and treatment services. However, the complainant indicated that in recent years, specifically since 2017, "without prior notice and without any reason for non-payment on their part", the City Council had proceeded to charge said fee directly to the person who owns the property. The person making the complaint added that the tax rate (according to the social tariff) of said rate is determined based on the cadastral value of the property and the net annual income level of the set of incomes subject to Income Tax the Individuals (hereinafter, Personal Income Tax) of the family unit or residents of that home.

Given the above, the person making the complaint pointed out that the satisfaction of the rate by the person who owns the property (who knows the cadastral value of the property) implies that the income level of the tenants is revealed.

The complainant provided various documentation.

2. The Authority opened a preliminary information phase (no. IP 288/2018), 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 preliminary information phase, on 22/10/2018 the reported entity was required to inform, among others, what was the legal basis that enabled the disclosure to the owner of the property of information regarding the income level of the tenants' family unit.

4. On 05/11/2018, the Sabadell City Council responded to the above-mentioned request in writing in which it set out, among others, the following:

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- That the reason why the City Council does not address the lessee for the collection of the fee, is that Fiscal Ordinance 3.6 establishes in article 3.2 that "In any case, he has the status of a substitute passive subject of the taxpayer is the owner of the properties, who may, if necessary, pass on the fees paid to the users, who are the beneficiaries of the service. Consequently, the City Council will settle the fee in the name of the natural persons, legal entities or entities referred to in article 35.4 of the General Tax Law that hold ownership of the properties."
- That this regulation is in accordance with what is established in article 23.2.a) of the Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Law regulating local finances (hereinafter , LRHL) and article 36.3 of Law 58/2003, of December 17, general taxation (hereinafter, LGT).
- That although the person who occupies the property has the character of a passive subject, the regulations regulate a substitute, who is obliged to fulfill the legal obligation of payment.
- That article 11.1 of Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD) establishes that the data can only be communicated for purposes directly related to the legitimate functions of the transferor and the transferee with the prior consent of the interested party, except for the cases in section 2. Specifically, section 2.a) includes the case that the transfer is authorized by law.
- That the applicable Municipal Ordinance provides that the City Council will hand over the receipt to the owner of the property as a substitute for the taxpayer.
- That the owner has the status of an interested party, since he must deal with the payment of the receipt and based on article 53.a) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) has the right to access the information and the data relating to the income are necessary in this case to calculate the amount of the fee.
- That the person who owns the property has been charged the fee since 2017.

#### 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 antecedents section, it is necessary to analyze the reported facts, specifically, the alleged communication of data from the family unit of the person reporting here -tenant-, by from the City Council to the home owner.

In relation to the facts that are the subject of the complaint and the documentation provided, it is proven that the Sabadell City Council liquidated the person who owns the home where

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where the person making the complaint resides as a tenant, the fee for the provision of municipal waste collection, transport and treatment services, as provided for in fiscal ordinance number 3.6 of Sabadell City Council and the applicable regulations.

With regard to this regulation, article 35 of the LGT defines as "taxable persons" "natural or legal persons and entities to which the tax regulations impose the fulfillment of tax obligations", where it includes others include, taxpayers and taxpayer substitutes. On the other hand, in the same regulatory body, it is also defined in

"taxpayer" as "the taxable person who performs the taxable event"; and to the "substitute for the taxpayer" as "the taxable person who, by law and in place of the taxpayer, is obliged to fulfill the main tax obligation, as well as the formal obligations inherent to it" (art. 36.3 LGT) .

With regard to the payment of fees, the LRHL defines the taxpayer as one who benefits from or is affected by the municipal service (article 23.1. b). In turn, article 23.2.a) also provides that "They have the status of substitutes for the taxpayer: a) In the rates established due to services or activities that benefit the occupants of homes or premises or affect them, the owners of these properties, which, if applicable, can affect the quotas on the respective beneficiaries". [the underlining is from this Authority]

Therefore, both the tenant of the house (taxpayer) and the owner (substitute taxpayer) can be liable for the waste tax. However, the LGT it expressly obliges the owner as a substitute for the taxpayer (not as subsidiary responsible), to comply with the main tax obligation, as well as with the formal obligations inherent to it (art. 36.6 LGT). This, without prejudice to the fact that it may later demand from the taxpayer the amount of tax obligations satisfied.

Therefore, the position of taxpayer, which both the LGT and the LRHL impose on the figure of the taxpayer's substitute (that is, the home owner), legitimizes the City Council for demand the payment of the aforementioned fee. So things are, the management and collection of the fee for the provision of waste collection, transport and treatment services necessarily requires the processing of data and information of various kinds, among others, personal data of the taxable persons, is that is, of the taxpayer and the taxpayer's substitute. In relation to the legality of the treatment, it is necessary to go to article 6.1.e) of Regulation (EU) 2016/679 of the Parliament and of the Council, of 27 April 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data and which repeals the Directive 95/46/CE (RGPD), which considers the processing of personal data that is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers granted to the person in charge of the treatment lawful, as is the case of Sabadell City Council. In this same sense, article 8.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) specifies that "The processing of personal data can only be considered based on the fulfillment of a mission accomplished

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in the public interest or in the exercise of public powers conferred on the person in charge, in the terms provided for in article 6.1.e) of Regulation (EU) 2016/679, when it derives from a competence attributed by a rule with the rank of law", as is the case.

In short, the treatment object of complaint is considered to be lawful.

In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions carried out in the framework of the prior information, it has not been proven that there are rational indications that allow imputing any fact that could be constitutive of any of the infractions provided for in the applicable legislation, it is necessary to agree on the archiving of these actions.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 288/2018, relating to Sabadell City Council.
2. Notify this resolution to Sabadell City Council and notify the person making the complaint.
3. Order the publication of the resolution on the Authority's website ([www.apd.cat](http://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,