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File identification

Archive resolution of the previous information no. IP 304/2018, referring to the City Council of Santa Coloma de Gramenet.

Background

1. On 25/10/2018 the Catalan Data Protection Authority received a letter in which a person filed a complaint against Santa Coloma de Gramenet City Council, on the grounds of an alleged breach of the regulations on data protection of personal data.

In particular, the complainant stated that the City Council of Santa Coloma de Gramenet had provided the entity ASIMSA (Asistencial de Servicios de Mantenimiento, SA), without its authorization, some invoices that it had issued on various dates in the years (. . .), in the execution of works commissioned by this City Council, documentation in which his personal data was included. The complainant maintained that the ASIMSA entity subsequently incorporated these invoices as attached documentation to the claim it presented before the Court of First Instance (...) of (...), for a claim of amount against the person making the complaint , and which gave rise to ordinary procedure no. (...)/2015, in the framework of which Sentence no. (...)/(...), of December 16, of which he provided a copy. The disputed invoices, of which he also provided a copy (documents no. 7 to 11), were dated November 8 and 11, and December 3, 12 and 16 of (...), and in each of them an entry stamp from the Santa Coloma de Gramenet Town Hall was stamped on it.

2. The Authority opened a preliminary information phase (no. IP 304/2018), 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 18/02/2019 the City Council of Santa Coloma de Gramenet was required to report on several issues relating to the events reported.

4. On 01/03/2019, the City Council responded to the aforementioned request through a letter in which it set out the following:

- "That has been checked in the database of the Register of entries and exits of documents of the General Register of this City Council, in the period from January 1, (...) to December 31 (...), if there has been any registration of entry and/or exit of documents in name

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of ASIMSA, SA, and that no entry or exit record has been found in the name of this company (...).

Therefore, it is not known that ASIMSA SA had applied to this City Council or that this City Council had provided the invoices indicated in the APDCAT letter by Mr. (A), in the period between January 1, (...) and December 31, (...).

In relation to the five invoices (one repeated) provided by the complainant, you can check the entry stamp in the General Register of the City Council, with the corresponding date and number. of entry Well, in the same invoices that are in the Treasury department, which we provide with this writing, marked as documents numbers 2 to 6, you can check the same entry stamp, but there is also the entry stamp in accounting service and the seal of the invoice verification act. In all of them, as you can see, the entry stamp for the accounting service is the day after the entry in the General Register of this City Council.

Really, if it were the case that the City Council had provided the invoices to ASIMSA SA, they could not be the copies attached to the complaint submitted to the APDCAT, since as can be seen in the procedure for making the payment, first they registered in the accounting service the day after the entry by the General Registry, putting their corresponding stamp, to then be conformed by the service also with their corresponding stamp.

In short, that the original invoices in the possession of this City Council had more stamps, and that if copies had been provided it would have been with these stamps.

- "Consulted with the corresponding service of the City Council, it appears that Mr. (...) his name appears on the website for the year (...), in the Budget Section (...), in the list of suppliers, with the total amount of his contractual relationship with the City Council, for in order to comply with the international transparency indicators (IT), and in no case do the published invoices come from this contractual relationship with the City Council. It is attached as document no. 7 the report of the Head of the Department of digital information, writing and documentation.

In addition, it must be noted, as provided for in article 2.3 of Royal Decree 1720/2007, of December 21, "Also, the data relating to individual entrepreneurs, when they refer to them in their capacity as traders, industrialists or shipping companies, must also be understood as excluded from the regime of application of the protection of personal data." Well, in this case, it is an individual entrepreneur who is an industrialist, and who had a professional relationship with this City Council."

- Well, in the copy of sentence no. (...)/(...), of December 16, states that the company ASIMSA SA presented the demand for ordinary judgment, on September 30, 2015, against (...), and in the third legal basis of the same sentence, ASIMSA SA, it says verbatim "(. . .) shortly after the departure of Mr. (B) from the ASIMSA company, this remittance to Mr. (C), head of accounting administration of said company, an electronic mail with the four invoices issued by the defendant to the City Council of Santa Coloma (A)", therefore Mr. (A) knew through the demand of ASIMSA SA, that it had invoices issued by Mr. (A) in the name of the City Council of Santa Coloma de Gramenet, and it is not until the day

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25/10/2018, which presents a letter to the APDCAT, denouncing a possible breach of data protection regulations by this body.

In addition, the sentence states that it was Mr. (B) who sent a copy of the invoices, not the City Council of Santa Coloma de Gramenet."

- "On the other hand, it must be said that the LOPD, regulated the prescription of infringements in article 47.1 establishing that very serious infringements prescribe after 3 years, serious ones after two years and minor ones after one year. In addition, in article 47.2 of the LOPD, it was noted that "The limitation period begins to count from the day the offense was committed".

It should be noted that it is not recorded that this City Council facilitated the invoices, which are attached by Mr. (A) in the letter presented to the APDCAT, to the company ASIMSA SA Likewise, it is not known that the invoices were published on the website of the City Council in the year (...). However, and in the hypothetical and remote case that some type of infraction has been committed by this City Council, the date is not recorded, and in any case the three-year statute of limitations would have already passed. In addition, the complainant knew that the company ASIMSA SA had invoices issued by him in the name of this City Council, since the admission of the claim, that is to say, since 10/22/2015, as it can be verified in the second factual background of the sentence.

Therefore, be that as it may, any type of infringement would be time-barred, since to date no disciplinary proceedings have been initiated before this City Council in relation to an alleged violation of the data protection regulations."

The City Council attached to the letter a copy of the aforementioned invoices that appeared in the council's files, each of which had stamped all the municipal seals that the City Council indicated in its response letter. It also provided as document no. 1 a report issued on 02/22/2019 by the head of the General Affairs Service, which stated the following:

"A search has been made in the DB of the Register of Entry and Exit of Documents of this City Council in the period from January 1 (...) to December 31 (...) applying the following criteria (...).

That's why

I report

That no logout containing this information was found."

In the last, as document no. 7 provided a report issued on 02/26/2019 by the head of the Digital Information, Writing and Documentation Department, which stated the following:

"At the request of the Legal Services Department, (...), I proceeded to verify the appearance of the name of Mr. (...) on the municipal website in the year (...).

Last May 22, 2018 we proceeded to put up the new municipal website, so I had to do the checks on the old site archived on the municipal servers and which is only accessible from the municipal network.

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In the year (...) Mr. (...) appears in the list of suppliers, in the Budget section (...), without invoices being attached to this list (...)

As you can see in the screenshot, the name and the total amount of your contractual relationship with the City Council in the aforementioned year appear. This list was published in order to fulfill the transparency indicators."

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1(...)3, in relation to article 5 of Law 32/2010, of 1 October, of the Catalan Data Protection Authority, and article 15 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, is competent to issue this resolution 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.

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. It is worth saying that, in response to certain allegations made by the City Council that, although the Authority does not have full evidence, everything points to the complainant being an individual entrepreneur, and in this case the provision would be applicable in article 2.3 of the Development Regulation of the LOPD, approved by Royal Decree 1720/2007, of December 21 (hereafter, RLOPD), which excluded from its application, among others, individual industrial entrepreneurs, such as follows: *"Similarly, the data relating to individual entrepreneurs, when they refer to them in their capacity as traders, industrialists or shipping companies, will also be understood to be excluded from the regime of application of the protection of personal data".*

Nevertheless, it is deemed appropriate to carry out a series of considerations on the merits of the matter, in the event that the previous regulatory provision, of restrictive interpretation, does not apply in the case at hand.

The complaint made by the complainant regarding the delivery of invoices with his data by the City Council of Santa Coloma de Gramenet towards the ASIMSA entity, refers to a possible communication of data, which was regulated in art. 11 of the LOPD, which required, in essence, the consent of the affected person, or in its absence, that the communication was covered by a rule with the status of law.

In the present case, it becomes unnecessary to analyze the concurrence of any of the cases provided for in the indicated precept, since the City Council has provided the Authority with various information and documentation from which it is clear that the council would not have made the communication

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of reported data, and in any case the reporting person has not provided any evidence from which it can be inferred that the City Council communicated their data.

In fact, the invoices that the complainant provided together with the letter of complaint that he submitted to the Authority, where he pointed out that they were the invoices that the City Council had delivered to the ASIMSA entity, are not identical to the invoices that they appear in the archives of the City Council. The difference lies in the stamps that are stamped on one and the other, and it is not a minor issue: while on the invoices that are open in the municipal archives, 4 stamps are stamped municipal, only 1 stamp appears on the invoices provided by the person making the complaint municipal, corresponding to the Town Hall Entry Register. In addition, as the City Council rightly points out, there is only 1 day difference between the dates of the City Hall entry stamps and the dates of the stamps stamped by the Accounting Service, as follows:

- Invoice no. (...), of 08/11/(...): the stamp of the entry register is dated 19/11/(...), and the stamp of the Accounting Service is dated 20/11 /(...).
- Invoice no. (...), dated 13/11/(...): the stamp of the entry register is dated 19/11/(...), and the stamp of the Accounting Service is dated 20/11 /(...).
- Invoice no. (...), of 03/12/(...): the stamp of the entry register is dated 18/12/(...), and the stamp of the Accounting Service is dated 19/12 /(...).
- Invoice no. (...), dated 12/12/(...): the stamp of the entry register is dated 18/12/(...), and the stamp of the Accounting Service is dated 19/12 /(...).
- Invoice no. (...), of 16/12/(...): the stamp of the entry register is dated 19/02/(...), and the stamp of the Accounting Service is dated 20/12 /(...).

This means that the eventual communication of the invoices that appear in the City Council's archives could only have occurred on the same day that the person making the complaint presented the invoices at the City Council's entry register - without having conformed-, because the next day the Accounting Service stamped its seal, a hypothesis that is considered highly improbable. In addition, the judicial process in which ASIMSA contributed the invoices issued by the complainant, was initiated following the presentation by ASIMSA of the letter of demand on 09/30/2015, when almost 2 years had already passed since the invoices had been received by the City Council, so it does not seem reasonable that ASIMSA requested a copy of these invoices from the City Council before 20/11/(...) or 19 or 20/12/(...) with the intention of providing them in a judicial process, but that he presented the claim 2 years later, on 09/30/2015.

Secondly, the City Council has provided a report issued on 02/22/2019 by the head of the General Affairs Service, where it is pointed out that from the search for information carried out in the database of the Register of Entry and Exit of Documents of the City Council in the period between 01/01/(...) and 12/31/(...), no exit register was found that contains the name or surnames of the reporting person, or the name or NIF of the entity (ASIMSA). So the City Council does not know that the ASIMSA entity had requested access to said information, nor consequently that the City Council had given it to them.

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Thirdly, the City Council has provided a report issued on 26/02/2019 by the head of the Department of digital information, writing and documentation, from which it is clear that, among the information that the year (...) was published on the municipal website for reasons of transparency, referring to the list of suppliers of the City Council, where the person making the complaint *appears, only "the name and the total amount of their contractual relationship with the City Council in the aforementioned exercise", "without invoices being attached to this list"*. So there is no record that the City Council had disseminated this information through its website.

To what has been explained so far, it should be added, as the City Council has pointed out, that in the Judgment handed down by the Court of First Instance (...) of (...) in the aforementioned judicial process, it is pointed out that ASIMSA stated that he had the invoices issued by the complainant because on 8/01/2014 the manager and administrator of the entity (in turn a friend of the complainant) sent them by email to the head of administration and accounting of the entity, as follows (FD 3rd):

"(...) The plaintiff already points out in his letter of demand that the invoice that is now being claimed was issued after the termination of the administrator and manager of the ASIMSA company, Mr. (B), and that the invoicing system of ASIMSA was controlled by Mr. (B), also noting that on January 8, 2014, close to the departure of Mr. (B) of the ASIMSA company, this referral to Mr. (C), responsible for administration and accounting of said company, an email with the four invoices issued by the defendant to the City Council of Santa Coloma, and that on February 28, 2014, when Mr. (B) he was no longer an administrator or manager of the ASIMSA company, sending another email from his email address, in which it is confirmed that Mr. (A) collected all the money and that Mr.

(B) was the one who had to make the payment to ASIMSA".

From what was stated in the judgment, it is clear that the ASIMSA entity already had the invoices that it later provided in the judicial process, a circumstance from which it can be inferred that it would not have requested them from the City Council.

In conclusion, from all the documentation provided by the City Council of Santa Coloma de Gramenet in these actions, it cannot be inferred that this City Council had carried out the reported data communication, and the mere allegations made by the person reporting in his letter of complaint are lacking in evidentiary support.

On the other hand, it should be stated, as the City Council has pointed out, that even in the denied case that the City Council had carried out the reported data communication, the eventual infringement would have prescribed. Indeed, the corresponding infraction was provided for in article 44.3.k) of the LOPD, which provided as a serious infraction *"the communication or transfer of personal data without having legitimacy for that, in the terms provided for in this Law and its regulatory provisions for development, unless it constitutes a very serious infraction"*, and serious infractions prescribed 2 years after they were committed (art. 47

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LOPD). Regarding the determination of the *status quo*, the complainant did not indicate in his written complaint the date on which he considered that his data had been communicated, but if it is taken into account that, according to the complainant, ASIMSA would have provided these invoices together with the letter of demand that he presented on 30/09/2015 before the Court of First Instance (...) of (...), the communication of data from the City Council towards ASIMSA s 'would have occurred no later than 9/30/2015. Well, if this date is taken into consideration as the *current day*, the 2-year limitation period ended on 09/30/2017 and, therefore, the infringement would have expired long before the complainant submitted the written of complaint before the Authority, on 2/10/2018.

Finally, we cannot fail to say, even if merely for illustration purposes, that the eventual concurrence of a legitimate interest of ASIMSA in accessing this data, could have justified a hypothetical communication of data by the City Council towards this entity. In fact, the disputed invoices that ASIMSA provided in the aforementioned judicial process were closely related to the subject of the lawsuit that ASIMSA filed against the person making the complaint here - whom it had sued for allegedly not having paid the entity the part of the amount of these invoices corresponding to the material that the organization had given him to carry out works at the City Hall-. This apart from the conformity or not with law of their allegations.

So ASIMSA could well have asked the City Council for access to this information based on the concurrence of a legitimate interest (founding its economic claim), and the right of defense (art. 24 CE). So everything indicates that, if a communication of data had occurred, it would be protected by article 7.f) of Directive 95/46/EC of the European Parliament and of the Council, of October 24, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data - of direct effect in accordance with the Judgment of the Superior Court of Justice of the European Union dated 24711/2011- , which provided for the case in which a communication of data - without the consent of the affected person - was necessary *"for the satisfaction of the legitimate interest pursued by...the third party or third parties to whom the data is communicated, always that does not prevail over the interest or fundamental rights and freedoms of the interested party that require protection (...)"*.

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 304/2018, relating to the City Council of Santa Coloma de Gramenet.

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2. Notify this resolution to the City Council of Santa Coloma de Gramenet and the complainant.

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 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,