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## File identification

Archive resolution of the previous information no. IP 340/2018, referring to the General Directorate of Institutional Relations and with the Parliament of the Department of External Action, Institutional Relations and Transparency.

## Background

1. On 02/12/2018, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Department of External Action, Institutional Relations and Transparency (hereinafter, the Department), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant - assigned to the General Directorate of Institutional Relations and with Parliament (hereafter, the DG) - complained about the use by the aforementioned DG of his corporate email address, for unrelated matters in the workplace he occupies. In the words of the complainant, the mentioned personal data would have been used to *"favor and call for a specific and partisan participation promoted by an association or assembly with which I have no relationship"*.

The reporting person, in order to prove the facts set out above, provided a copy of an email sent to different people on 11/16/2018 at 8:58 from the generic corporate address corresponding to the DG, with the subject *"RV: Letters to (...) – 2nd round"*, in which the recipients of the e-mail were encouraged to write a letter to (...), action which, as indicated in this email, it was linked to the project that "Adic-EXI" had started in April 2018, *"with the aim of supporting the (...) which, at that time, was imprisoned and far from home"*.

2. The Authority opened a preliminary information phase (no. IP 340/2018), 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 05/12/2018 (reiterated on 07/01/2019) the Department was required to report on the circumstances that would have led to the sending of the email subject to the complaint; and, if applicable, state the reasons that would have justified this sending to the workers attached to the Department that are recorded there.

4. In a letter dated 02/11/2019, the Department responded to the aforementioned request in a letter in which it set out the following:

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- That *"the facts that happened were that, on November 16, 2018, at 8:58 a.m., an email was forwarded from a generic address of the General Directorate of Institutional Relations and with the Parliament with the subject 'RV Letters to the (...)2nd round', which was addressed to the corporate mailboxes of the working staff of this Directorate General"*.
- That *"the Department does not recognize in this fact any other intention than to bring closer who has been (...) of the Department, (...), currently imprisoned, to the staff with whom he has had any relationship in the exercise of his duties , through an initiative promoted by the Assembly in Defense of Catalan Institutions (ADIC), made up of workers from the Department itself, with the aim of informing colleagues.*  
*We do not understand that there was any private interest in this email nor was it intended to obtain any particular benefit, except to accompany the ex-(...)in his presidium in a gesture of goodwill"*.

#### 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. Specifically, as set out in the antecedents, the complainant complained about the DG's use of his corporate email address for matters unrelated to his job; in the words of the person reporting, to *"favor and call for a specific and partisan participation promoted by an association or assembly with which I have no relationship"*.

First of all, it should be noted that the controversial e-mail was sent to e-mail addresses, all of which are corporate - including that of the person making the complaint here - addresses to which any employee of the Generalitat de Catalunya, and not only the DG, has access. It is worth saying, however, that the possibility of accessing this data would not in itself justify any subsequent use, but that these uses would be delimited by the principle of purpose.

This principle is contained in article 5.1.b) of 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 of these (hereafter, RGPD), in which the following is determined: *"Personal data will be: (...) b) collected for specific, explicit and legitimate purposes, and will not be subsequently*

*with said ends; in accordance with article 89, paragraph 1, the further processing of the data*

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*personal data with archival purposes in public interest, scientific and historical research purposes or statistical purposes will not be considered incompatible with the initial purposes ("limitation of the purpose")".*

In relation to the case analyzed here, it must be agreed with the reporting person that the content of the message would not be directly related to the content of the existing employment relationship between the working people to whom the mail is addressed and the DG. But having said that, what cannot be ignored is that the content of the mail could be framed within the social relations that are established in the workplace. In this sense, it is a public and notorious fact that the use of corporate electronic addresses for purposes unrelated to the strict provision of services, such as celebrating birthdays, making collections for various purposes, is not at all unusual. etc. As an example, a situation comparable to the one analyzed here would be if the mail had been sent to the same recipients, with the purpose of encouraging anyone who had been part of that unit, and who was immersed in a complicated personal situation. Social conventions, in this case in the workplace, can give rise to actions that would not strictly conform to data protection regulations if this is interpreted strictly and inflexibly, but it is considered that this kind of actions do not have the sufficient entity to justify the initiation of a sanctioning procedure for a violation of the principle of purpose, conduct typified as an infringement in article 83.5.a) of the RGPD, and that -after the commission of the facts - has been considered a very serious violation of article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), which repeals the Organic Law 15/1999, of 13 December, on the protection of personal data (LOPD).

At this point it is necessary to bear in *mind "the restrictive and never expansive character that must preside over any administrative sanctioning action included, clearly it is regulated in the Organic Law 15/1999"* (Judgment of the National Court of 15/06/2015). In the case that concerns us here there are several circumstances to assess and which would support the criterion that has been advanced, contrary to the initiation of a sanctioning procedure. First of all, that the aforementioned mail was sent to a small group, namely that the people who provided service to the said DG and to whom the mail was addressed, were only 20 people. Second, that it was sent to corporate email addresses, not private addresses. Thirdly, that in said mail he was writing a letter addressed to a person who had been his (...) in a Department in which, given the small number of people who provide service, it is more feasible the establishment of personal/social relationships not strictly linked to the workplace -despite admitting that in the specific case of the person reporting, it seems that such a relationship would not have existed-. To all of the above must also be added the fact that, at the time when the reported events occurred, the new LOPDGDD had not yet entered into force, a rule that in its article 19.3 determines and clarifies in which circumstances the processing that can be done by public administrations of contact data is adjusted to the data protection regulations, as would be the case with corporate e-mail.

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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 is concluded that there are no indications with the entity sufficient to lead to consider appropriate the initiation of a disciplinary procedure against the DG, it is necessary to agree on the archiving of these actions. All this, in accordance with articles 89 of the LPAC and articles 10.2 and 20.1 of Decree 278/1993.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 340/2018, relating to the Directorate General of Institutional Relations and with the Parliament.
2. Notify this resolution to the General Directorate of Institutional Relations and to the Parliament, and to 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. They can also directly file an administrative contentious appeal before the administrative contentious courts, within two months from the day after their notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the administrative contentious jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,