

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

Archive resolution of the previous information no. IP 11/2019, referring to the City Council of (...)

## Background

1. On 10/01/2019, the Authority received a letter in which a person filed a complaint against the City Council of (...), on the grounds of an alleged breach of the regulations on the protection of personal data. Specifically, the complainant (owner of the property located at c. (...)19 de (...)) stated that on June 20 and 27, 2016, the technical architect of the City Council (Mrs. . (...)) provided an expert who provided services to the company (...), SL (a company dedicated to appraisals and valuations that would have been hired by the owners of the property adjacent to their -c .

(...), 21-, with whom the person reporting here claimed to have several litigations), data relating to her and her husband to the extent that they were owners of said property; specifically, that the City Council had instituted "an urban infraction case for non-compliance with the distance from the building to the front of the street". The person making the complaint added that, in addition, this same municipal technique would have made it easier for the aforementioned expert to consult this planning infringement file.

In order to prove the facts subject to the complaint, the person making the complaint provided a copy of a sheet that would form part of the expert report drawn up by the company (...) dated 06/29/2016, which contained the following literal:

"Consultation was made on whether there was an open file on planning violations that affected the properties subject to the opinion, to the municipal technical architect of the City Council of (...), on Monday, June 20, 2016 and later on June 27 of 2016, stated that the property located at number 21 (Defendant) had no record of urban infraction, but the property located at number 19 (Plaintiff) did have a record of urban infraction for failure to comply with the distance from the building in front of the street.

Asked especially if the side fence of the property located at number 21 (Defendant) did not comply with any urban regulations, he stated that he was not aware that they did not comply with any urban regulations that could be applied to it and that in any case they would be more than prescribed,

This expert requested to be able to consult the urban planning files, but these files were found in the municipal archive, which is deposited in another locality, so it was impossible to consult them, stating that they would be communicated as soon as they were available for consultation.

2. The Authority opened a preliminary information phase (no. IP 11/2019), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the procedure

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penalty 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 if the facts 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 that occurred.

3. In this information phase, on 01/21/2019 the reported entity was required to report the following in relation to the reported events:

- Report under which circumstances the City Council would have facilitated the company's expert (...) the data relating to the person making the complaint here, specifically that the City Council had initiated a planning infringement case in relation to the property of which it is the owner.
- Indicate if the City Council facilitated any person working for the company (...) to see the file for an alleged planning violation that would have been committed against the person making the complaint. If you answer affirmatively to this question, detail the circumstances in which this access took place, such as, the day of access, if full access was provided to the entire file or only to a part, if prior to the access certain data relating to the owners of the property contained there - such as ID, bank details - were anonymised, as well as any other circumstances deemed relevant.
- Indicate the legal basis that, if applicable, would legitimize the communication of the data relating to the person making the complaint - in his capacity as owner of the property located in c. (...), 19- in the company (...).

4. On 29/01/2019, the City Council of (...) responded to the aforementioned request through a letter in which it stated the following:

- That the technical architect Ms. (...) has been on duty at another City Council since 06/24/2018, so "this request cannot be answered".
- That "after consulting the documentation working in this City Council, there is no record of urban discipline related to this request during the year 2016".

5. In view of the information provided by the City Council, on 02/06/2019 (reiterated on 02/22/2019) a new request was sent to him to provide the following information:

- Report in which City Hall Ms. (...).
- Inform if the property is located in c. (...), 19, of which the person making the complaint here would be the owner, had never (be it in 2016 or in some other year) been the subject of a file for urban planning infringement for non-compliance with the distance of the building to the front from the street. If you answer affirmatively to this question, indicate the exact date on which the City Council would have carried out the first action related to the aforementioned file

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6. On 02/20/2019, the Authority received, by transfer from the Spanish Data Protection Agency (AEPD), the complaint that the same person making the complaint had made before the AEPD, for the same reporting facts before this Authority.

7. On 02/27/2019, the City Council responded to the request indicated in the 5th precedent, reporting the following:

- That the technical architect, Ms. (...), since 24/06/2018 he is in commission of services at the City Council of (...).
- That "after consulting the documentation working in this City Council, on October 20, 2017, by Decree 095, a procedure was initiated to protect urban legality in relation to the works that were being carried out in c/ (... )19 consisting of the realization of works not contemplated in the project (...). The first action related to the file is on October 5, 2017"

8. On 06/03/2019 the Authority sent a letter to Mrs. (...), through the City Council where he currently provided services, in order to answer certain questions related to the events reported.

9. On 19/03/2019 the City Council of (...) provided the Authority with additional information, specifically.

- That on 05/10/2018 the person making the complaint had filed an instance before the City Council complaining that "the municipal technician disclosed her and her husband's personal data".
- That on 05/21/2019 the technical architect had issued a report in which she expressly stated the following: "I have never provided personal data of the owners of the plot located at c. (...), 19 to nobody".
- That "due to computer problems, the complaint of 10 May 2018"
- That, "as indicated in the transcribed report (...) no data has ever been provided personal of the plot located at c. (...)19 to no one".
- That this information is also transferred to the person making the complaint.

10. On 05/04/2019 Ms. (...) responded to this Authority's request for information, reporting the following:

- That the facts detailed in the company's report (...) in relation to the communication of data by the person here denouncing a professional of said company are not true.
- That the file that affected the estate of c. (...) no. 19 "was initiated subsequently to the requested date of hearing".

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- That "on 21/06/2018 I issue a report in response to an instance presented by the person (name of the complainant here) in which I mention that I have not provided any personal data of the person concerned to anyone".

11. On 04/05/2019, the City Council of (...) was again required to provide the following documentation:

- Complete copy of the documentation contained in the urban planning legality protection file initiated on 10/20/2016, relating to the property owned by the complainant here.
- If applicable, a copy of any communication or information contained in the City Council's files relating to the property of c. (...)19 and that it is prior to 05/10/2017.

12. On 04/05/2019 the company (...) was required to respond to the following questions related to the events reported:

- If they were fully ratified in the content of the information contained in the report that (...) issued on 06/29/2016 (1st precedent).
- In the case of fully ratifying the content of the report, indicate whether you had any element or documentation that supported the information collected in this part of the report.
- Report if, after 27/06/2016, the company (...) had gone to the Town Hall of (...) in order to consult any file related to the estate of c. (...)19; and, if so, report on the following: a) whether the City Council had facilitated the hearing and/or copy of the file; b) which person provided it; and, c) the date on which this inquiry occurred.

13. On 04/15/2019 (...) he responded to this last request, reporting the following:

- That "The consultation was carried out on the basis of an order to carry out an expert opinion, to be attached to the answer to a demand filed by the property of the property located in C(...)núm. 19 of (...) suing the owner of the opposite property located at number 21 of the same street for an alleged invasion of the fence of the latter property within his property (...)
- That "The inquiry consisted of whether my client's property (C(...)no. 21) had any records of urban infractions, the answer being negative, I also told her that I had observed that the neighboring construction breached the urban planning regulations regarding the maximum setback of the land allowed next to my client's fence, and the minimum distance from the construction to the boundaries of the property, responding that certain breaches had already been detected and that in any case could initiate an urban planning violation case. It is clear that in the aforementioned consultation I understood that this file had already been initiated, which is why I included it in the report, it is obvious that it was probably a confusion on my part or a misinterpretation of what I was told" .

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- That "I don't have any document that validates the information collected since it was verbal. If he had had documentation, he would have attached it to the opinion, as is usual in this type of work".
- That "visits to the City Council were frequent, given the repeated complaints between the neighboring properties and the danger posed by the progressive deterioration and subsequent collapse of the fence of the property owned by my clients".

14. On 04/25/2019 the City Council of (...) complied with the request dated 04/05/2019 (11th precedent), providing a copy of the required documentation.

#### 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, in particular, the alleged disclosure of data of the person making the complaint here and of her husband, by the technical architect of the City Council, to an expert from a company dedicated to appraisals and valuations that had been hired by the owners of the property adjacent to that of the person making the complaint. Specifically, the person making the complaint here complained that the municipal architect revealed to this expert that the City Council had instituted "an urban infraction case for non-compliance with the distance from the building to the front of the street", and had facilitated the consultation of this planning infringement file.

As explained in the 1st antecedent, the person making the complaint here, in order to prove the fact complained of, provided a copy of part of what would be a report drawn up by the expertise company (partly transcribed in the 'antecedent 1r). As indicated in this report, the municipal architect of the City Council, on June 20 and 26, 2016 revealed to the expert of the said company that the property located at no. 19 of c) (...), [property of the complainant here and her husband] "tiene un expediente de infracción urbanística por incumplimiento de la distancia de la edificación al frente de la calle". It could also be inferred from the content of this report that the technical architect would have provided this expert, on an undetermined date but in any case close to 06/27/2016, a view of said disciplinary file.

In this regard, the present complaint should be filed based on the following considerations:

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- The only evidence that would be available to the person making the complaint in order to prove the facts that are the subject of the complaint would be what is contained in the report drawn up by an expertise company. Well, in this respect it is worth saying, first, that the City Council and the person who at that time was the technical architect of the City Council, flatly deny that the controversial information was facilitated to the expert of the aforementioned company. But it is that, in addition, what is completely relevant is that the same expert who would have prepared the report, admits that he may have misinterpreted the information verbally provided to him by the City Council (precedent 13). Therefore, and in view of the disparity of versions about the facts - on the one hand the facts that are described in the report; and, on the other hand, the statements made in this file by the people directly involved would apply the right to the presumption of innocence enshrined in article 24.2 of the Spanish Constitution, and the article 53.2.b) of the LPAC, which determines that "The sanctioning procedures must respect the presumption of non-existence of administrative responsibility until the contrary is proven".

- That, as reported by the City Council, it was not until 10/20/2017 that a procedure for the protection of urban legality was initiated in relation to the works that were being carried out on the property owned by the complainant here, and that the first action related to said file dates back to 10/05/2017. To the above, it should be added that among the documentation in the file, there is no element or data that allows us to cast doubt on this statement by the City Council. In view of all this, one can only conclude the improbability that in June 2016 the City Council provided the expert with information - either verbally or by giving a view of the file - about a procedure that had not yet been initiated, without even having initiated any action in this regard.

- For the hypothetical case - not proven - that in that meeting held in June 2016 between the expert and the technical architect, the latter had provided some type of information relating to the controversial property - information that, as has been said, could not be related to an eventual sanctioning file - the eventual infringement that this communication of data would have entailed, would already be prescribed. In effect, the eventual responsibilities that this Authority could have demanded from the City Council - in the event that these hypothetical revelations had occurred - for the commission of the offense provided for as serious in article 44.3.d) in relation with article 10 of Organic Law 15/(...)99, on the protection of personal data (currently repealed but in force on the dates indicated), they would have already expired at the time when the complaint before this Authority, and this because any infringements would already be time-barred, in accordance with what was provided for in article 47 of the LOPD, in which it was determined that serious infringements would be time-barred after two years from the day in that the offense has been committed.

- Finally, to everything that has been said about the lack of accreditation of the reported data communication and the eventual prescription if it had indeed occurred, it must be added that the legal system recognizes the right of access - with certain conditions and always respecting data protection regulations - to the information contained in the files

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administrative, whether by persons interested or not interested in the corresponding administrative procedure. In addition, in matters of urban planning - as would be the case analyzed here - all persons have the status of interested parties without the need to prove special legitimacy, given the recognition in the sectoral regulations of public action, which justifies the need for everyone to have ample information on this matter (article 12.1 of the Revised Text of the Urbanism Law, approved by Legislative Decree 1/2010, of August 3).

3. In accordance with everything that has been set forth in the legal basis 2, and given that during the previous information it has not been proven that there are rational indications that allow imputation of any fact that could be constitutive of any of the violations provided for in the applicable legislation, it is necessary to agree on the archive of these actions.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is made clear in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement; b) When the facts are not proven; (...) e) When it is concluded, at any time, that the infringement has prescribed".

resolution

Therefore, I resolve:

1. Archive the actions of prior information number IP 11/2019, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) and communicate it 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 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. You can also directly file an administrative contentious appeal 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.

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Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,

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