

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

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 14/2019, referring to the City Council (...)

Background

1. On 16/01/2019, the Catalan Data Protection Authority received a letter in which a person (hereinafter, complainant) filed a complaint against the City Council (...) (hereinafter, City Council), due to an alleged breach of the regulations on personal data protection.

Specifically, the complainant stated that the City Council had published on its website and on various social networks (Instagram, Twitter and Facebook) a letter of response to two instances that it had presented on 14/12/2018 before this City Council, and that he had disclosed these writings before communicating the answer to him personally. He added that in its response letter the City Council had mistakenly addressed the Association (...) (hereinafter, (...)), as if both instances had been presented on behalf of this association, when - according to the complainant - one of them presented it in a private capacity. At the same time, he also complained about the fact that with the publication of the response to both instances, the City Council would have revealed certain information with the aim of harming him.

2. The Authority opened a preliminary information phase (no. IP 14/2019), 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 09/07/2019 the City Council was required to report, among other issues, on the reasons that in its opinion would justify disclosure on the municipal website and on various social networks of the answer given to the person reporting on his request for information regarding the reason for the withdrawal of the certificate granted by "(...)" from the council headquarters.

4. On 07/18/2019, the City Council responded to the aforementioned request in writing, in which he stated the following:

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

"1. The City Council (...) notified the complainant of the response to the two requests for information dated 14/12/2018 (ref... and...), which it resolved by means of a decree.

Highlight that, in both applications, the complainant is listed, in one as the applicant and, in the other, as the representative of the applicant (association (...)), with the designation of the same postal address for the purpose of notifications.

Consequently, the fact that the response is addressed to the interested person in a single letter does not seem to entail a violation of the personal data protection regulations that are the subject of this prior information procedure.

A copy of the two instances presented by the complainant to the City Council on 14/12/2018 (...) is provided.

A copy of the notification to the interested person of the decree dated January 11, 2019, which resolves the two requests made (...) (DOC 03 Notification of the decree), as well as the proof of receipt of the notification of the decree (...).

2. The City Council published on the municipal website and on social networks (Instagram, Twitter and Facebook), for reasons of public interest, the response to the requests for information submitted on 14/12/2018 by the reporting person. This publication was carried out anonymously, without including any personal data of the reporting person.

The publication of this resolution on the municipal website and on social networks was carried out in compliance with article 10.1.h) of Law 19/2014, of December 29, on transparency, access to public information and good governance, as it is an administrative resolution of public relevance, and in order to set out the position of the City Council on the facts, in relation to the certificate delivered by (...) to the City Council (...), for the record number of storms in the municipality achieved in 2014, a matter discussed in the ordinary Plenary session (...). The resolution dated January 11, 2019, as published (DOC 05 Anonymized decree published and DOC 06 Screenshots of the publications on the networks) is attached.

Here is a sample of some of the publications in the digital press that have been published in relation to these events (...)."

Among the documentation provided by the City Council was the instance that the complainant would have presented in a private capacity on 14/12/2018 before the City Council, in which he stated the following:

"We want to know how the organization (.sic) of the events of the (...) of 2019 is going and also how the investigation into the disappearance of the certificate awarded by (...) which disappeared from the room

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

*of the town council that was voted in full that it would be and which, given the decay of the town council, did not notice and communicated in writing alert'n (.sic) of this fact
I request: that we are digging (.sic) how is the investigation (.sic) to find the person responsible."*

The City Council also provided the Mayor's Decree, dated 11/01/2019, which was published on the internet, in which the name and surname of the complainant were omitted. In its dispositive part, the following was indicated:

"FIRST.- MAKE available for your consultation the requested documentation on January 21, 2019 from 1 to 3 p.m. to see the expenses of this City Council.

SECOND.- REFER US to what was expressed in previous requests regarding the Events of La (...), and which also dealt with the GAIP, taking into account that the organizer of the event was the entity (. .) and the City Council another collaborator. It is necessary to address them as the organizers of the previous editions.

THIRD.- Regarding the question you are asking us about whether it has been investigated because the certificate granted by "(...)" is not publicly displayed at the City Council, indicate that the City Council has been able to verify from the information appearing in various media and on digital platforms that the certificate was granted by you yourself, since the address of the organization that you indicate as certifying the diploma is the same address that you indicate in the requests addressed to this City Council, as well as the address of the (...)."

The publications provided by the City Council corresponded to the digital newspapers La Razón and El Periódico. The news published on (...)/2014 in the newspaper La Razón had the following title and subtitle: "(...)(...)". And an article published in the newspaper El Periódico on the same date echoed the news from the newspaper La Razón.

5. On 04/14/2020, the Authority's Inspection Area verified the publication on date (...)/2014 of both news items in the mentioned digital newspapers. On the other hand, through the electronic headquarters of the City Council, a document containing the plenary motions was accessed municipal held on (...)/2014, which contained the following in the agreements section, approved unanimously:

"3.- Place in a visible place at the entrance or in the Plenary Hall, the record record certificate issued by "(...)", and that (...) delivered to the City Council in the hands of of Mr. Mayor."

With the result obtained, the corresponding due diligence was carried out.

Fundamentals of law

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

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.

Firstly, the internet dissemination of the mayor's decree of 11/01/2019 which contained the response to the two instances presented by the complainant to the council will be analysed, and secondly the rest of the reasons for the complaint.

2.1. About the publication on the internet of the mayor's decree.

In the decree of 11/01/2019 that the City Council published on the internet, the name and surname of the person concerned - here the complainant - was omitted. This could lead to consider that the decree did not contain personal data, a matter which, if true, would lead to the non-application of the data protection regulations.

This, however, is not the case in the present case, since, although it is true that the person who had brought the cases - the complainant - was not identified, he was easily identifiable, both by the people living in the municipality -who know, due to the fact that it has been published in the press, on social networks and in municipal meetings, that the person making the complaint is the legal representative of the (...)-, as well as by non-neighbors -who could identify- the through press news related to (...), as well as through other unrelated news disseminated in the digital press and social networks, where the opinions of the person reporting as a representative of the (...)-.

In this regard, it should be noted that the concept of personal data contained in article 4.1) 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 thereof (hereinafter, RGPD), includes: *"any information about an identified or identifiable natural person (the interested party). An identifiable natural person must be considered any person whose identity can be determined, directly or indirectly (...)"*. Given that the decree published by the City Council contained personal data, it is necessary to analyze whether the dissemination of the personal data it contained conformed to the data protection regulations, and in particular whether a legal basis of those provided for in the article 6.1 of the RGPD, taking into account the reasons for publication given by the City Council.

The City Council has referred, on the one hand, to the public interest of the information disseminated; and, on the other hand, to comply with the legal obligation to publish the decree, given its public relevance.

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

The reasons given by the City Council allude to or are framed in the legal basis provided for in article 6.1.e) RGPD, which establishes that the treatment will be lawful if it: *"is necessary to fulfill a mission carried out in public interest or in the exercise of public powers conferred on the data controller"*.

On the other hand, Article 8.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) establishes in section 2 that: *"The treatment of personal data can only be considered based on the fulfillment of a mission carried out 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"*.

The City Council has indicated that it published the decree in compliance with the legal obligation provided for in article 10.1.h) of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC), which establishes that the Administration must make public: *"administrative resolutions...that may have public relevance..."*. Adding that it was the will of the City Council to present its position *"on the facts, in relation to the certificate delivered by (...) to the City Council (...), for the record of storms in the municipality achieved in 2014 , matter dealt with in the Ordinary Plenary session (...)"*. On this, the Authority has noted that this matter was discussed in that session of the municipal plenum, and that the digital press echoed it. Apart from that, the information published by the City Council - about the reasons that led it to withdraw the above-mentioned certificate from the council meeting room - referred to a question of indisputable public relevance.

With regard to the rest of the information disseminated contained in the decree, it is necessary to take into account the provision in article 7.a) of Law 19/2013, of December 9, on transparency, access to public information and good government, which establishes that public administrations, within the scope of their competences hereafter, LT), will publish: *"the...answers to queries raised by individuals...to the extent that they involve an interpretation of the Law or have legal effects"*.

This publication must be respectful of the principle of data minimization (art. 5.1.

RGPD), and therefore it is necessary to limit the personal data published to those essential to fulfill the purpose pursued. In the present case, the City Council omitted the name and surname of the complainant, which were certainly unnecessary data to fulfill the informational purpose pursued, referring the City Council to a query formulated by the (...). And while it is true that residents of the municipality know that the person making the complaint is the one who acts on behalf of this association, it is also true that the identification of the representative of an entity is something inherent in the position, so that his link to the association is something inevitable, which cannot be attributed to the City Council.

It is worth noting that the last two mentioned precepts refer to the publication of information on the electronic headquarters and websites of public administrations and other obliged subjects (art. 5.1 LTC and art. 5.4 LT), and not on social networks . With regard to the publication on the networks, it should be borne in mind that the information disseminated in response to the request that the reporting person

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

formulated in a private capacity, it referred to issues that were debated in a municipal plenum, whose sessions are public, in accordance with articles 70.1 of Law 7/1985, of April 2, regulating the bases of the local regime (LBRL) and 141.1 of Law 8/1987, of April 15, municipal and local regime of Catalonia (LMRLC). Likewise, it should be borne in mind that local corporations must provide the most extensive information about their activity (art. 69.1 LBRL and 139.1 LMRLC).

The exposition so far leads to the conclusion that the City Council made public information that it could certainly be linked to the person making the complaint, and therefore constituted a communication of personal data, but this publication obeyed or was carried out to comply with the obligation of transparency of municipal action and information to citizens about the matters of public relevance, which provide for the aforementioned rules with the rank of law, a circumstance that leads us to consider the possible application of the legal basis provided for in article 6.1.e) RGPD, given the public interest of the information disseminated.

In this regard, in order for the communication protected in the public interest to be legitimate, it must be respectful, as far as it is concerned, with the principle of data minimization (art. 5.1.c RGPD), in accordance with the which, personal data must be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed. In the present case, the dissemination of information relating to the reasons why the City Council withdrew the certificate from the council chamber - which constitutes the main reason for the complainant's disagreement - is in the public interest, and is also considered appropriate, relevant and limited to the purpose pursued, which was to inform the public of the reasons why the City Council had withdrawn the certificate from the public exhibition against the decision that had been taken in a session of the municipal plenum. In this last consideration, it is taken into account that the certificate and its withdrawal were not information that was part of the personal life of the person affected -here the complainant-, so that the dissemination of this information would exceed the judgment of proportionality that is inherent in the principle of data minimization. Therefore, the dissemination of the information relating to the reporting person disseminated on the occasion of the communication of the reasons for withdrawal of the certificate from the public exhibition, would be covered by the legal basis pro RGPD

On the other hand, the disclosure, although indirect, of the identity of the person who requested the explanations about the public withdrawal of the certificate - the complainant - does not seem to be entirely respectful of the principle of data minimization. In this regard, it is sufficient to warn that the City Council could well have disseminated the same information about the withdrawal of the certificate, without the need to identify the person who presented the request (the representative of the (...)). However, all the facts analyzed so far lead us to consider that this revelation does not deserve a degree of reprehensibility such that it entails the initiation of a sanctioning procedure. Especially if we take into account that in the publication of the response decree, the City Council omitted the name and surname of the person who had submitted the request - the complainant - with the intention of not revealing his identity, a circumstance that must be related - it with the principle of guilt, applicable in the assessment of the illegality of the conduct (art. 28 Law 40/2015).

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

2.2. About the rest of the reasons for the complaint.

The complainant also complained about the fact that the City Council attributed to the (...) the instance that the complainant presented in a private capacity.

This is certainly considered an error, and therefore it would be inaccurate data, which could be due to several reasons: 1) to the fact that usually the reporting person is the one who presents documents on behalf of the (...) before the City Council, the media and the judicial bodies, as it recognizes in part in your complaint and it is also reported to this Authority for the processing of previous procedures; 2) to the fact that the telephone number and private address indicated in the instance coincide with those of said Association; 3) to the fact that in the body of the instance the complainant used the 1st plural verb form (*"I explain: "We want to know how the organization of the events of the (...) of 2019..."*, and *"I'm asking: we're digging how it is..."*), and that on the same day he presented to the City Council another instance in which he did indicate the status of representative of the (...). All of these facts could well have led to confusion in the City Council.

The reasons indicated raise doubts about whether the reported City Council would have behaved negligently, because while it is true that the link is reasonable and would obey the reasons indicated, it is also true that in the instance presented in a private capacity the person reporting only state his name and surname, unlike in the second instance that he presented on the same day, where he also stated the name of the association ((...)) and his status as legal representative.

In any case, it is considered that the indicated inaccuracy would not cover the entity sufficiently to consider such fact as constituting an infringement of the data protection regulations.

Lastly, regarding the reason for the complaint regarding the fact that the City Council made the response decree public before notifying the person making the complaint, it is clear from the documentation provided by the City Council to the Authority that, certainly, the mayor's decree of 11/01/2019 in response to the two instances presented by the person making the complaint, came out of the City Council on 14/01/2019, and was notified to the person making the complaint on 18/01/2019, while it was published on the City Council's website and on Facebook on 15/01/2019. However, the fact that the personal notification was anticipated by three days does not infer any violation of data protection regulations.

It is appropriate, however, to point out the statement that has just been made. The publication on the internet - three days before - of the information relating to the reporting person disseminated on the occasion of the communication of the reasons for withdrawing the certificate from the public exhibition, would be protected by the legal basis provided for in article 6.1.e) RGPD, for the reasons indicated above. And with regard to the revelation - three days before - of the identity of the person who presented the instance, it is not considered that such

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

circumstance has the entity sufficient to initiate a sanctioning procedure, for the reasons indicated.

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. Archive the actions of prior information number IP 14/2019, relating to the City Council (...).
2. Notify this resolution to the City Council (...) 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,