

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

File identification

Archive resolution of the previous information no. IP 27/2019, referring to the Catalan Water Agency

Background

1.- On 01/27/2019, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Catalan Water Agency (hereafter, the ACA), due to an alleged breach of the regulations on the protection of personal data.

In particular, the complainant explained that on 24/01/2018 he made a complaint to the ACA (with ID number (...)) in which he denounced a resident of the town of Riber (municipality of Torrefeta and Florejacs, where the complainant here resided) due to a problem of excessive water consumption, and who had subsequently become aware that a worker from the Lleida Territorial Demarcation of the ACA, specifically Mr. (...), would have "leaked my name to the town hall of my municipality (Torrefeta and Florejacs) and that there is a document that proves it". The complainant provided as documentation a printout of the letter of complaint that he submitted to the ACA on 01/24/2018.

2.- The Authority opened a preliminary information phase (no. IP 27/2019), 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 (hereafter, LPAC), in order to determine whether 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 concurrent with each other.

3.- As part of this information phase, by means of an official document dated 02/01/2019, the reported entity was required to report on the processing followed by the ACA in the actions and / or procedures initiated as a result of a complaint or complaint, and specifically, if, as part of the actions carried out during the processing of the procedure, the data of the person making the complaint is communicated to the City Council of the place of the facts and/or third parties. Likewise, it was asked about how natural persons who make a complaint or report are informed, about the ends provided for in article 13 of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/EC (General Data Protection Regulation, hereinafter RGPD), and if information was provided about the recipient entities and/or persons to whom the personal data of the person making the complaint was planned to be sent. Finally, he was required to report on the processing of the actions carried out by the ACA following the aforementioned complaint, and in particular, on the bodies

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

and/or people from the ACA who would have had access to the data contained in the letter of complaint, and finally, if (...) from the Territorial Demarcation of Lleida of the ACA communicated to the town hall of Torrefeta and Florejacs the data relating to the person who had made the reference complaint, and in this case, on the reasons that would have justified such communication of data.

4.- On 08/02/2019, the ACA responded to the previous request in writing in which it stated the following:

- That "the ACA has established a different internal processing protocol in the event that the complaints come from individuals or they are forces and security forces and agents of the authority. In the first case, the appropriate inspection is carried out to verify the facts reported and at the same time the complainant is informed that the facts will be verified. In the event that the complaint or denunciation is submitted using the web form of the Generalitat's corporate application for the submission of complaints, inquiries and suggestions (CQS), the person responsible for this processing transfers it electronically to the unit that has to verify the facts, in this case the Territorial Demarcation of the ACA of Lleida. Once the appropriate verification actions have been carried out, the information is transferred to the person in charge of the CQS processing who responds to the citizen through the means he has chosen, in this case, e-mail."
- That "during the period of prior information with the purpose of knowing the circumstances of the specific case and the convenience or not of starting the procedure, the identity of the complainant is not generally revealed. In accordance with this protocol, in the event that the content of the complaint is fully or partially the responsibility of another administration, it will be transferred to it."
- That "the web form contains the basic information on data protection required by article 13 RGPD, identifying the treatment (..), the person responsible for the treatment (..), the purpose of the treatment (...), the legitimation (mission carried out in the public interest or exercise of public powers and consent of the person concerned), the recipients (communications of different data are foreseen to the departments of the Generalitat and related entities that depend on them for the management of the different public services of the their competence), and the rights of the persons concerned (..)."
- That "the ACA website has several means available to citizens to make complaints, in particular, a link to the application for inquiries, complaints and suggestions, and another link to a specific complaint form. This specific form is being implemented to adapt the content of the information given to the citizen to the provisions of article 13 of the RGPD and in relation to the communication of the complainant's data, given the relevance of the issue for the purposes who is ready to file a complaint, an express mention has been added to the possibility that eventually

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

the existence of the complaint and the identity of the complainant come to the attention of the person complained of."

- That "the unit responsible for processing the application of "consultations, complaints and suggestions" followed the internal complaint protocol, transferring the complaint to the territorial demarcation with the corporate application in order to carry out the appropriate inspection to verify the facts. Based on this same corporate application gencat procedures by which queries are processed, the interested party was answered by means of the e-mail she provided.
- That "Mr. (...), responsible for territorial demarcation, through the inspection carried out at the Town Hall of Torrefeta and Florejacs and at the Soil Service and Environmental Management of Agricultural Production of the Department of Agriculture. In the two shipments it is indicated that the inspection was carried out following a complaint presented by Ms. (...)in the ACA suggestion box, which is why the name of the person who went submit the complaint when it was already established that the facts reported did not justify the initiation of a sanctioning procedure."
- That "The sending of inspections to the competent administrations due to the matter is part of the protocol of actions and internal procedure for complaints. The reason that justifies the communication of this data is the principle of collaboration between the AAPPs contained in article 3 of Law 40/2015, of October 1, on the legal regime of the public sector, this as the principle of transparency contained in Law 19/2014, on Transparency, access to public information and good governance."
- That "in the response given in the complaint procedure, the interested party was expressly informed that the inspection carried out following her complaint would be transferred to the town hall."

The reported entity provided with its letter, among other things, the following documentation:

- copy of the email addressed on 09/03/2018 to the person making the complaint, by which they informed him that "from the Inspection Unit of the Demarcation of Lleida the (...) has been carried out, and it is pending sending for information to the Town Council of Torrefeta and Florejacs and the Land Service and environmental management of agricultural production of the Department of Agriculture".
- copy of the information clause of the form to submit complaints, queries or suggestions (CQS) on the ACA website, "Basic information on data protection", which contains the following information: "the identification of the treatment (..), responsible for the treatment (...), purpose of the treatment (...), legitimization (...), recipients: data communications are foreseen to the departments of the Generalitat and related entities that depend on them for the management of the different public services of his

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

competition The data will also be communicated to the data processors who provide ICT services on behalf of the data controller, rights of interested parties (...), additional units-responsible/transmission- individuals (legislations/gateways) cataloca/20_04/05/2019/

5. On 02/13/2019, also during this preliminary information phase and once the response to the first request was analyzed, the Authority's Inspection Area in order to obtain more information required to the inspected entity to report on the date and the channel in which the Torrefeta i Florejacs City Council would have been notified that the person reporting here had made the complaint, and to specify the date on which the ACA sent the response email to the person who had submitted the aforementioned complaint.

7. On 02/20/2019, the ACA complied with this requirement by means of a letter stating the following:

ÿ That "On 09/03/2018, the inspection carried out following the reference complaint and the transmission office where it is indicated that the inspection was carried out as a result of said complaint"
- That "On 09/03/2018 the person who had made the complaint was answered by email."

The reported entity provided the following documentation with its letter:

- copy of the ACA transmission to Torrefeta i Florejacs City Council of the reference complaint, and copy of the evidence of the receipt of electronic records issued by EACAT, in which it is stated that the City Council received the office on 03/09/2018 at 1:45 p.m.
- screen printout of the monitoring of the processing of said complaint, in which it is observed that the ACA sent the response email to the person who submitted the complaint, on 03/09/2018 at 4:08 p.m. h.

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 facts to which the complaint referred, relating to the communication of their personal data from

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

the complainant here, on the part of the ACA to the aforementioned City Council. Previously, however, the issue related to whether the complainant's right to information will be violated, with respect to the communication of his data to the City Council.

2.1. On the alleged breach of the duty of information

The complainant states that on 24/01/2018 he made a complaint, through the generic instance available on the ACA website, with which he communicated facts allegedly committed by a resident of the town of Ribes (municipality of Torrefeta and Florejacs) and that could constitute illegal conduct. As a result of this complaint, the ACA carried out inspection actions, and once completed, informed the Torrefeta and Florejacs City Council of these actions, with an indication of the identity of the person making the complaint. From the content of the complaint made before this Authority, the complaint is inferred for not having been informed by the ACA of the communication of its data to the aforementioned City Council, before carrying out such communication.

Certainly, as a result of the actions taken in the previous information phase it has been established that the ACA collected on 01/24/2018, through the general instance form to send CQS, the personal data (name and surname, NIF number, email, address, telephone number) of the person who presented a complaint for an alleged administrative infraction in matters of water committed by a resident of the town of Ribes. In said generic form, information was provided on the different ends provided for in article 5 of the previous LOPD – which was the regulation in force on the date of the events -, but this information was offered in generic terms, given that it was the model that the Generalitat de Catalunya makes available to citizens to send CQS on any of the services it offers. Thus, as for the recipients of the personal data collected with the form, it was informed that "data communications are foreseen to the departments of the Generalitat and entities linked companies that depend on it for the management of the different public services under their jurisdiction. The data will also be communicated to the data processors who provide ICT services on behalf of the data controller".

That is to say, at the time of submitting the complaint form to the ACA, the complainant was informed of the communication of his data to "departments of the Generalitat and related entities", but he would not have been informed of the possibility that the ACA communicates your personal data to Local Government entities. It must be recognized, however, that it is difficult to report in an express, precise and unequivocal manner on the specific recipients of the data in the case of generic instances, which may refer to an indeterminate plurality of matters. In any case, it should be emphasized that the ACA has certified that on 03/09/2018, it finally sent an email to the person reporting in which he was informed that "it is pending to send knowledge to the "Torrefeta and Florejacs Town Council and the Soil Service and Environmental Management of Agricultural Production of the Department of Agriculture". Therefore, it can be considered that the reporting person would have finally been informed of the transfer of their personal data to said council, as well as the

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

Department of Agriculture, the latter communication of which you would have already been informed initially, having expressly referred to departments of the Generalitat.

In the last one, it is necessary to refer to the time that has passed since that data processing, given that having exceeded the period of one year, the eventual responsibility of the ACA for the hypothetical violation of the right to information (art. 44.2.c LOPD) would have prescribed, as provided for in article 47 of the LOPD for minor infractions. And it is worth saying that such prescription would have already occurred when the person making the complaint presented his complaint to this Authority, on 01/27/2019.

2.2. About data communication

It then proceeds to address the specific fact reported regarding the transfer of the data of the reporting person by the ACA to the City Council where the reported person resided, and determine whether or not such communication was lawful.

In this regard, it is recorded that on 09/03/2018 the ACA sent through the extranet of the Catalan administrations (EACAT) to the Town Council of Torrefeta and Florejacs, a communication in which it was informed that the person Here, the complainant had filed a complaint with the ACA regarding continuous reference, a communication that would have been made without the consent of the affected person, apart from not having previously informed them. With regard to the conduct described here relating to the communication of the personal data of the person reporting to said council without the prior consent of the person affected, the precept that could be considered potentially violated would be article 11 of the LOPD, which established the following:

- "1. The personal data subject to treatment can only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the assignor and the assignee with the prior consent of the interested party.
2. The consent required by the previous section is not necessary:
 - a) When the assignment is authorized in a law.(...)"

The transcribed article establishes as a general principle that the communication of personal data will require the prior consent of the affected person, unless some of the exceptions expressly contemplated in the second section of the same precept apply, among which it is necessary highlight the collection in section a), relating to the case in which the communication of data is authorized by law.

Likewise, it should be borne in mind that article 21 of the same legal text provided that:

- "1. Personal data collected or prepared by public administrations for the exercise of their powers must not be communicated to others

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

public administrations for the exercise of different powers or powers that deal with different matters (...)

4. In the cases provided for in sections 1 and 2 of this article, the consent of the affected person referred to in article 11 of this Law is not necessary.

In accordance with this precept, it follows that the communication of data between administrations was authorized by art. 21 of the LOPD, without the prior consent of the affected person, as long as two requirements were met cumulatively, which in the present case certainly occurred, given that 1) the communication of data would have been carried out in exercise of functions attributed to both administrations; and 2) the transfer took place in the exercise of the same powers or powers over the same matter.

Thus, it should be borne in mind that the subject matter of the complaint/complaint was about an alleged excess of water consumption by a resident of the municipality of Torrefeta i Florejacs, and it was presented to the ACA as a body competent in water matters.

Well, it should be indicated that, in accordance with Law 7/1985, of April 2, Regulating the Bases of the Local Government (LBRL), this matter would also be part of the municipality's jurisdiction, since according to established in article 25.2 of the LBRL, the municipality will exercise as its own powers "c) supply of potable water to homes and evacuation and treatment of waste water". In turn, the revised Text of the Municipal and Local Government Law of Catalonia, approved by Legislative Decree 2/2003, of April 28, determines in its article 66.3 that the municipality has its own powers in the following matters: l) water supply and public lighting, road cleaning, waste collection and treatment services, sewers and waste water treatment".

In short, in accordance with everything that has been set out, it is considered that in the case at hand, the communication of the personal data mentioned by the ACA to the City Council would be protected by article 21 of the LOPD, applicable on the date of the events reported.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been proven that there are rational indications that allow any fact to be imputed that may constitute any of the offenses provided for in the applicable legislation, it is necessary to agree on the archive of these performances

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 highlighted in the instruction of the procedure: "c) When the proven facts do not manifestly constitute an administrative offense (...)
e) When it is concluded, at any time, that the offense has expired".

resolution

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

Therefore, I resolve:

1. File the actions of prior information number IP 27/2019, relating to the Catalan Water Agency.
2. Notify this resolution to the Catalan Water Agency and communicate it to the person making the complaint.
3. Order the publication of the resolution on the Authority's website (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.

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

The director,