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File identification

Archive resolution of the previous information no. IP 35/2019, referring to Palafolls Town Council

Background

1. On 02/05/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Palafolls Town Council, on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the complainant stated that Palafolls City Council had communicated to the Barcelona Provincial Council's Tax Management Organization (hereafter, ORGT), an email address ((...)) that the complainant would have created for the sole purpose of communicating with Palafolls City Council in relation to the various files processed by this City Council and of which he is an interested party. The complainant adds that this communication of the email address to the ORGT would have been made "without my authorization and on top of that trying to make me believe that I was the one who gave them" and the reason for such communication would have been "the sole intention of collecting an irregular sanction that is reported in the contentious administrative courts", a fact for which, he provided his email address to the ORGT "THRES meses más tarde, cuando tenía conocimiento del RCA presentado".

The complainant provided various documentation relating to the facts reported, in particular: a copy of the contentious administrative appeal filed by his representative against the Palafolls Town Council and a copy of the corresponding document "Received request for judicial matter", from date 11/20/2018, issued by the Department of Justice; and two screenshots of the notice "Registration of the system of notices of new communications or electronic notifications of the ORGT", which states that you have registered as an email address to receive notices of new communications or electronic notifications the email address "(...)" referenced

2. The Authority opened a preliminary information phase (no. IP 35/2019), 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 the 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 concurred.

3. In this information phase, on 02/15/2019 the reported entity was required because report on whether the City Council provided the email address of the person here reporting "(...)" to the ORGT; and in case of an affirmative answer, to specify the date and the content of the communication and to justify this communication and the legal basis that would legitimize this treatment.

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4. On 02/25/2019, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That *"Indeed, the City Council communicated this data to the ORGT" referring to the data relating to the e-mail address of the complainant here.*

- That *"This data was communicated to the ORGT on November 8, 2018".*

- That *"The complainant had indicated how he wanted to be notified (electronically), which is why the City Council communicated to the ORGT the electronic address provided by him."*

- That *"The City Council has delegated powers to the ORGT in matters of tax management, collection and sanctioning procedures. The communication of the data was carried out in order for the ORGT to carry out the actions typical of a sanctioning procedure. In terms of the data protection regulations, the ORGT acts as the data controller, following the definition of article 4.8 of the General Data Protection Regulation and within the meaning and scope of its article 28. The legal basis of the treatment for part of the City Council is established in the following rules:*

· *Law 58/2003, of December 17, General Taxation*

· *Royal Legislative Decree 2/2004, of March 5, approving the revised text of the Local Haciendas Regulatory Law.*

· *Legislative Decree 2/2003, of April 28, approving the revised text of the Municipal and Local Regime Law of Catalonia.*

Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations"

The reported entity attached various documents to the letter, specifically the following documents:

- Office dated 08/11/2018 from the City Council to the ORGT informing that the complainant wanted to be notified *"in Spanish and electronically to the address (...)"*;

- Generic instance, dated 09/18/2018, of the person making the complaint addressed to the Palafolls Town Council, through which he files an appeal against the (...)dicted by the Consistory. In the instance, the interested party states the aforementioned email address as a means of receiving communications;

- Copy of the certificate of agreement of the Plenary meeting of Palafolls City Council dated 31/05/2013, by which the *"Expansion of the delegation of functions in the Provincial Council of Barcelona and at the same time confirming and clarifying the scope"* is agreed of previous delegation agreements".

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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 events that has been set out in the antecedents section, it is necessary to analyze the events reported, and specifically, whether the communication from the City Council to the ORGT of the Diputació de Barcelona of the e-mail address of the complainant here, in order to be able to process the payment of an administrative penalty imposed by the City Council, is data processing that would be covered by one of the authorizations provided for in article 6 of the 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).

In this respect, it should first be noted that article 5.1.a) of the RGPD provides that all processing of personal data must be lawful: "1. *Personal data will be: treated in a lawful, fair and transparent manner in relationship with the interested party ("lawfulness, loyalty and transparency")*". Similarly, article 4.2 of the RGPD defines the concept of treatment as: "*any operation or set of operations carried out on personal data or sets of personal data, already whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction*".

Therefore, the data processing that gave rise to the complaint that is analyzed here, in accordance with article 4.2 of the RGPD constitutes a processing of personal data, which must be subject to the principle of legality enshrined in article 5.1.a) of the RGPD. And in the event that this principle is violated, it could lead to the commission of an offense provided for in article 83.5.a) of the RGPD, a provision that typifies as an offense the violation of "*the basic principles for the treatment (...)*".

In the case we are dealing with, first of all it should be noted that it was the person making the complaint who communicated his email to the City Council so that this electronic means was the one used by the council when communicating - him the notifications and notices about the different matters and procedures he has open before the council. In this regard, the complainant here states in his written complaint that "*a special email address was prepared within my internet domain number angelbadia.com with the number (...) for, which due to the multiple cases que tengo abiertos con estos, pudiera ser easily identificada cualquier stratagema illegal (...)*" and "*as declared in this writing, my common generic email address*

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and the one that is declared in the DEH system is the same one with which this document is signed and is the one that is taken care of for these needs". Likewise, the City Council, in response to this Authority's request, provided a copy of the generic request presented by the complainant before the local body on 09/18/2019, through which he filed an appeal of replacement against the act by which the administrative sanction was imposed on him - the collection of which the city council would have delegated to the ORGT, where he indicated the relating to the matter. In this respect, it is understood that with this action the complainant consented to the City Council's use of the controversial address of email to receive notices about communications or electronic notifications pending reading at the electronic headquarters. In this case, the consent of the affected person constitutes the legitimate basis (Article 6.1.a of the RGPD) for the City Council's processing of the data relating to the e-mail address of the complainant here.

Now, the object of the complaint by the person making the complaint is the communication of this data from the City Council to an autonomous body of the Diputació de Barcelona, the ORGT. Regarding this, the first thing to say is that the local regime legislation attributes to the councils the powers for the management, liquidation, inspection and collection of their own taxes and other revenues under public law that correspond to them. These powers, in accordance with article 106.3 of Law 7/1985, of April 2, on Local Government Bases (hereafter, LBRL), can be exercised by councils, either with their own means or through collaboration formulas with other entities, or be subject to delegation in favor of other local entities or the autonomous community. In line with this precept, article 7 of the revised text of the Local Finances Regulatory Law (hereafter TRLHL), approved by Royal Legislative Decree 2/2004, of March 5, regulates the delegation of the powers of the faculties management, liquidation, inspection and collection of taxes and other revenues under public law in the following terms:

"1 (...) Likewise, the local entities may delegate to the autonomous community or to other local entities in whose territory they are integrated, the powers of management, liquidation, inspection and collection of the remaining revenues of public law that correspond to them.

2. The agreement adopted by the Plenary of the corporation must set the scope and content of the aforementioned delegation and will be published, once accepted by the corresponding government body, always referred to the Plenary, in the case of Local Entities in whose territory are included in the "Official Bulletins of the Province and of the Autonomous Community", for general knowledge."

Therefore, the City Council, which holds the powers related to the management, settlement and inspection of its own taxes and revenues under public law, can decide to exercise this power directly through its own resources or commission another, in the case we are dealing with an autonomous body of the Provincial Council, which carries them out through the corresponding delegation, and can decide, in addition, the terms and scope of this delegation. In this context, the City Council has provided a copy of the agreement adopted by the Plenary, held on 31/05/2013, by which it was agreed the *"Expansion of the delegation of functions in the Provincial Council of Barcelona and at the same time confirm and clarify the scope of previous delegation agreements"*

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By means of said agreement, *"the powers of management, liquidation and collection of public law revenues that are enumerated in the operative part of these opinions are delegated to the Diputació de Barcelona"*, including:

"XI.- Various sanctions.

- Notification of settlements carried out by the City Council.*
- Dicta the constraint provision.*
- Debt collection, both in the voluntary and executive period.*
- Liquidation of late interest.*
- Resolution of the files for the return of undue income.*
- Resolution of the appeals brought against the previous acts.*
- Any other necessary for the effectiveness of the above."*

In accordance with the above, article 5 of the statutes of the ORGT of the Diputació de Barcelona, regulates the competences and purposes of the body, and among these, the following:

"a. The exercise of functions and powers of management, inspection and collection of taxes and other revenues under public law by delegation or management assignment of the public administrations of Catalonia and the public bodies that depend on them.

(...)

d. The collection in a voluntary period and by way of constraint of all kinds of taxes, in addition to other revenues under public law.

(...)"

At this point, it is necessary to determine the condition in which the ORGT is placed in this legal relationship established with the City Council, and specifically if it is able to process personal data related to the provision of the service that has been entrusted to it through the agreement of the Plenary of the City Council. In this regard, it is necessary to take into account what this Authority indicated in Opinion CNS 28/2019, precisely in relation to the query formulated by a town council on whether an autonomous body of a deputation is considered to be in charge or responsible for treatments that the city council has delegated to him. This Authority argued the following: *"To this delegation, in addition to the regulation provided for in the aforementioned article 7 of the TRLRHL, what is established in article 9 of Law 40/2015, of 1 of October, on the legal regime of the public sector (LRJSP) and article 8 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, which regulate the figure of the delegation of powers as a mechanism that allows altering the exercise of power.*

(...)

So, in view of the regulations analyzed, we can advance that, from the point of view of the data protection regulations (...), in the delegation by the town councils of the powers relating to the powers of management, liquidation, inspection and collection of their own taxes and other revenues under public law that correspond to them, the administration on which this delegation is carried out will be considered to be in charge of the treatment in relation to

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the processing of personal data to which you have access as a result of the provision of this service."

In this regard, it should be noted that article 4.8 of the RGDPR defines the data controller as *"the natural or legal person, public authority, service or any other body that processes personal data on behalf of the data controller"*, in the how does the ORGT fit in with respect to its position vis-a-vis the City Council, which is responsible for the treatment. Having said that, it is necessary to discard the ORGT's third party condition in the terms in which article 4.10 of the RGDPR defines this condition: *"physical or legal person, public authority, service or organism distinct from the interested party, from the person responsible for the treatment, of the person in charge of the treatment and of the persons authorized to treat personal data under the direct authority of the person in charge or the person in charge"*.

Therefore, the ORGT, as the person in charge of the treatment, for the exercise of the delegated functions, had to know the data relating to the electronic address of the complainant here, in order to carry out the task, in specifically the sending to the e-mail address of the complainant here of the communications about the notifications or notices relating to the liquidation of the administrative penalty imposed by the local entity.

Therefore, for all the above, for the purposes of Article 6.1 of the RGDPR, it is considered that the processing of the data of the complainant here was lawful, and that the ORGT had access to the data relating to the e-mail address of the complainant here, in his capacity as data controller in relation to the provision of the service delegated to him by the City Council under the terms specified in the City Council Plenary Agreement, dated 31/05/2013.

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 which may constitute one of the offenses provided for in the applicable legislation, it is necessary to agree on the archiving 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"*.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 35/2019, relating to Palafolls Town Council.
2. Notify this resolution to the Palafolls Town Council and the complainant.

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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 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,