

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

Archive resolution of the previous information no. IP 42/2019, referring to Sabadell City Council

## Background

1. On 11/02/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Sabadell City Council, on the grounds of an alleged breach of the regulations on personal data protection.

First of all, the complainant stated that he made two requests to Sabadell City Council, on dates (...), through which he requested information relating to a property located in this municipality, of which the children of person reporting here owns it in equal parts with another person with whom they maintain a conflict regarding the property. The complainant stated that *"it turns out that the response was sent to Ms. (...). In the claims I clearly put my number, address and telephone number"*. In this regard, the complainant's complaint was directed at the actions of the City Council that would have sent the response to their requests to the person (Mrs. (...)) with whom their children have a conflict around the ownership of the property, and which holds the ownership of 50% of the referenced property.

The complainant provided various documentation relating to the facts reported, in particular, copies of the two applications submitted by the complainant to the City Council on dates (...).

2. The Authority opened a preliminary information phase (no. IP 42/2019), 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 02/20/2019 the reported entity was required because report on whether the City Council notified the person here claiming the response to their requests presented to the Consistory, and confirm in relation to these requests whether the City Council sent a "response" letter to the Council other person who owns the referenced property. In case of an affirmative answer, it was required to provide a copy of this office addressed to a person other than the applicant, and explain the reasons why the City Council would have acted in this way, and identify the legal basis that in his opinion it legitimized this treatment. Finally, the City Council was required to report on the security measures it has implemented in order to ensure that the notifications of its communications are sent to the person who is effectively the recipient.

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4. On 27/02/2019, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That *"the Sabadell City Council has a collaboration agreement with the General Directorate of the Cadastre, through the Catalonia-Barcelona Regional Cadastre Management (signed on 07/11/2018 and published in the BOE on 26/11 /2018) which replaces the agreement signed on October 27, 2005, valid until then. Within the framework of this agreement, the functions of processing legal, physical and economic alteration files relating to urban and rural real estate in the municipality are attributed to the Sabadell Town Council under a management order regime ."*
- That *"the Cadastre Management, however, reserves the final assessment and the issuance of cadastral alteration agreements"*
- That *"the Town Council of Sabadell does assume the tasks of postal notification to the interested parties of the requirements, hearings and cadastral alteration agreements adopted by the Cadastre Management, that the holders are not downloaded electronically from the Electronic Office of the Cadastre by means of the agreed key that the Cadastre Management sends them."*
- That *"the notifications referred to by Mr. (...)they were not issued by Sabadell City Council but by the Catalonia-Barcelona Regional Registry Office"*
- That *"the requests referred to by Mr. (...)they were processed by the citizen service (SAC) of the Sabadell City Council, a fact that is contemplated in the current collaboration agreement."*
- That *"the complainant Mr. (...) is not the owner of the property. The two requests are presented in the name of their children, (...), without presenting any document certifying this representation."*
- That *"the resolution of the case was notified to the owners of the two properties of the estate, as regulated in article 9.5 of Royal Legislative Decree 1/2004, of March 5, by which the consolidated text of the Law on the Land Registry (...)"*
- That *"the real estate, to which the complaint refers (identified in the horizontal division as: UNO.- Housing, single door, on the ground floor), is owned by Mr. (...) and Ms. (...)by 25% for each and from Ms. (...)by 50%(...)"*
- That *"the resolutions are sent to the owners of the properties, or to the representatives who certify the representation. In this case it was sent to Ms. (...)as owner of 50% of the property."*
- That given that *"the Registry Management was requested to issue notifications in the name of the other holders (...), which was done on 02/04/2019 and that one of the holders already received on 02/15/2019 (copy of the resolutions and proof of receipt are attached)."*

The denounced entity attached various documents to the letter, in particular, the two notifications of the agreements to alter the cadastral description of the *"Subsanación de discrepancias"* procedure issued by the Regional Management of the Cadastre of Catalonia, one addressed to Mrs. . (...), and the other to Mr. (...), son of the person making the complaint here, and in relation to the latter, a copy of the acknowledgment of receipt of the notification by appearance.

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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 facts that has been set out in the antecedents section, it is necessary to analyze the reported facts that are the subject of this archive resolution, and specifically, if the response to the requests presented by the person reporting to the City Council on the dates (...), relating to the payment of the IBI of the immovable property shared ownership by the children of the person reporting here and a third person, had notified this third person with whom the children of the person making the complaint have a conflict regarding the ownership of the terrace of said property.

In this regard, first of all it should be noted that the controversial notification addressed to the third party owner of the real estate was issued by the Regional Management of the Cadastre of Catalonia of the Ministry of Finance, and not by Sabadell City Council, and this because the ownership of the competence in matters of cadastral management does not correspond to the local Administration, but to the State Administration. In this regard, it should be noted that although the person making the complaint here certainly referred to the IBI in his letters of complaint to the City Council, the content of the complaint must be limited to a matter located within the scope of the real estate cadastre, given that what the complainant wanted to know was who owned the terrace of the disputed property, and whether the surface area of this element had also been taken into account for the purposes of calculating the amount to be paid for the corresponding IBI for their children.

In relation to this, it is appropriate to cite article 60 of Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Local Finance Regulatory Law (LRHL), which defines the IBI as "*direct tax of a real nature that taxes the value of immovable property*". The taxable event of the IBI is the ownership of rights on rural and urban immovable property (art. 61.1. LRHL) and the natural and legal persons and the entities that hold the ownership of the right are liable subjects, as taxpayers, in each case, and under the terms of Law 58/2003, of December 17, general tax (LGT), is constitutive of the taxable event of this tax (art. 63 LRHL).

The management of the IBI is based on the information contained in the cadastre as well as the other documents on the variations drawn up for this purpose by the General Directorate of the Cadastre (art. 77.5 LRHL), and it is with the incorporation of real estate in the Real Estate Register that a cadastral value is assigned (taxable basis of the IBI). In this way, the Real Estate Registry is

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configured as a database, at the service of cadastral holders and public administrations, in which real estate is described by means of a set of attributes or characteristics, and it is from the data contained in the Real Estate Registry that a cadastral value is given to an immovable asset, which in turn will determine the taxable base of the IBI. Therefore, any information that implies a variation in the cadastral description of the real estate must be incorporated in the cadastral register.

Article 4 of the revised text of the Real Estate Registry Law, approved by Royal Legislative Decree 1/2004, of March 5 (hereinafter, LC), establishes that the formation and maintenance of the real estate registry and the dissemination of cadastral information is the exclusive competence of the State and that said functions will be exercised by the General Directorate of the Cadastre, directly or through the different collaboration formulas that are established with the different administrations, entities and public corporations. This is the assumption of the case that concerns us, as the reported entity makes clear in its written response to the request. As things stand, the City Council's intervention in matters of cadastral management is regulated in the agreement formalized by both administrations entitled "*Agreement between the Secretary of State for Finance (Directorate General of the Cadastre) and the Sabadell City Council for collaboration in matters of cadastral management*" (published in the BOE of 26/11/20018, and which replaces the previous Agreement signed on 27/10/2005), on the basis of which the General Directorate of Cadastre makes a management assignment to the City Council for different actions in the processing of domain alteration files, physical and economic change files, and collaboration actions in maintenance actions. The agreement also provides for the collaboration of the City Council in the postal notification to the interested parties, and a reception and attention service for complaints and suggestions presented by citizens to the City Council.

In relation to the actions that are the object of a management assignment, it should be highlighted that in accordance with article 11.2 of Law 40/2015, of October 1 (hereafter, LRJSP), the assignment of management does not imply the transfer of the ownership of the competence or the substantives of its exercise, and it is the responsibility of the body in charge - the General Directorate of the Cadastre of the Secretary of State of Finance - to dictate all acts or resolutions of a legal nature that support or integrate the specific material activity that is the object of the order. In any case, the entrusted entity - the City Council - has the status of being in charge of the processing of personal data to which it may have access in the execution of the management assignment, and the provisions of the personal data protection regulations.

With regard to the provision included in the text of the agreement in relation to the collaboration of the City Council in the notification, it should be noted that clause 6a of the aforementioned agreement provides that the City Council commits to "*postal notification to those interested in the draft declarations, requirements, hearings and cadastral alteration agreements adopted by the Management*", and in the last section it is provided that "*the collaboration system provided for in sections 1 and 2 above will not apply to the distribution of communications of agreed key, which will be carried out by the Directorate General of the Land Registry.*" In this regard, it should be emphasized that the City Council's collaboration is limited to postal notifications, to the postal delivery system, but the Directorate General of the Cadastre is the body responsible for issuing the notification

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of the agreements or resolutions that it has issued under the sphere of its jurisdiction, and therefore, it is said body that issued the controversial notification addressed to the other person who owns the property, the reason for the person's complaint here reporting. At this point, it should be noted that according to the statements of the denounced entity *"the resolution of the file was notified to the owners of the two immovable properties of the farm, as regulated in article 9.5 of the LC"*, a fact that can be seen from the documentation provided.

Clause 8a of the agreement regulates the action of the City Council before a relative instance in matters of the cadastre, which establishes the following in relation to the City Council: *"(..) In particular, it must establish a Reception Service and attention to the complaints and suggestions that could be presented by the citizens to the City Council due to the commitments assumed in this Agreement, having to transfer them to the Management for informational purposes."* In this regard, article 18 of the LC, relating to the *"procedimiento de subsanación de discrepancias y de rectificación"*, which is the procedure processed by the Directorate General of Cadastre of the Ministry of Finance following the request presented by the person here reporting to the City Council, establishes that this procedure *"will be initiated by the decision of the competent body, either by its own initiative or as a result of a higher order, when the Administration becomes aware, by any means, of the lack of agreement between the description cadastral of real estate and real estate and its origin is not due to the failure to comply with the obligation to declare or communicate referred to in articles 13 and 14. The initiation of the procedure will be communicated to the interested parties, granting them a period of 15 days for them to formulate the allegations they deem convenient."*

In accordance with these considerations, it is clear that the ownership of the competence in the field of actions relating to the registration of the real estate cadastre corresponds to the General Directorate of the Cadastre of the Ministry of Finance, and therefore, the action of the City Council to refer the request made by the person making the complaint to the competent state body for the management of this matter, was the correct one in accordance with the provisions of the collaboration agreement drawn up in accordance with the legal provisions of the LC. Likewise, in relation to the notification of the agreement to alter the cadastral description that was addressed to an owner of the real estate different from the one who presented the initial letter of complaint, it is inferred from all the above that the one who issued such notification was not the City Council, but the General Directorate of the Cadastre within the framework of its powers and in compliance with the provisions established in article 9.5 of the LC. In this regard, it must be agreed that it is not up to this Authority to analyze the actions carried out by the Directorate General of the Cadastre, given that the actions of this state body are outside the scope of competence of this Authority, without prejudice that the person making the complaint here, if he deems it appropriate, can file a complaint in relation to these facts before the Spanish Data Protection Agency.

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

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infractions provided for in the applicable legislation, and which this Authority is responsible for knowing, its archive should be agreed upon.

#### resolution

Therefore, I resolve:

1. File the actions of prior information number IP 42/2019, relating to Sabadell City Council.
2. Notify this resolution to Sabadell City Council and 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. 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,