

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

File identification

Archive resolution of the previous information no. IP 89/2019, referring to Masquefa Town Council

Background

1. On 03/23/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Masquefa City Council, on the grounds of an alleged breach of the regulations on Protection of personal information. Specifically, the complainant (Mr. (...), resident of the municipality) complained that the City Council "sent to the residents" a copy of Decree no. (...) of (...)/2018, issued in relation to the file for the protection of urban legality initiated on the property located at c. (...), in which he is identified by name and surname as the person who asked the City Council for information about the works carried out on the aforementioned property, adjacent to his own.

In order to substantiate the facts reported, the reporting person provided the following documentation:

- Copy of three instances (dated 28/07/2017, 21/02/2018 and 05/05/2018) that the person reporting here had submitted to the City Council in relation to the property located in C. (...), in which, in essence, he brought to the attention of the City Council the carrying out of works on said property.

The three instances were formulated using a standardized model which contained the following informative clause: *"In compliance with article 5 of Organic Law 15/1999, on the protection of personal data and article 18 of its Deployment Regulation approved by Royal Decree 1720/2007, the data provided will be included in the "Register" file responsibility of the Masquefa City Council for the purpose of management, control and guarantee of the constancy of the entry of documents that have addressed to the City Council in accordance with the City Council's Data Protection Policy. The rights of opposition, access, rectification and cancellation can be exercised in front of the City Council".*

- Copy of Decree no. (...) of (...)/2018, by which it is decided to initiate a procedure for the protection of planning legality in relation to the carrying out of works on the aforementioned property. In this Decree, in the explanatory part, there is the name and surname of the person making the complaint in the following terms:

"Facts:

1.- On July 28, 2017, Mr. (name and surname of the person reporting here) requests information on the works that have been carried out in the neighboring house consisting of an extension of (...).

Considerations:

1.- The owner of the neighboring house requested on (...) a building permit for (...), a permit that was granted on (...)

2.- Subsequently, following the visit of Mr. (name and surname of the person reporting here) to the technical services, it was observed that the works being carried out did not conform to the license requested.(...)

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- Notification that should have been sent to the person who owns the property indicated, in which the Decree is transcribed in full (with the identification of the complainant here) (...).

2. The Authority opened a preliminary information phase (no. IP 89/2019), 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 04/17/2019 the City Council was required to report on the following:

- Specify the nature that the City Council had given to the three letters formulated by the person making the complaint here (if generic instance, complaint, consultation, etc.) in which he reported on the works carried out on the property located at c. (...).
- Indicate whether the City Council had provided the person making the complaint with more information regarding the processing/transfer of their personal data, apart from what was stated at the foot of the three instances referred to.
- Indicate the legal basis that would enable the inclusion in the Decree of the data of the person reporting here and its subsequent full notification to the person who owns the property of c. (...).
- Report if it was communicated or notified to other people, apart from the person who owns the property located in c. (...), the Decree referred to which contained the name and surname of the person making the complaint. If so, indicate the legal basis that would protect this communication.

4. On 05/03/2019, the Masquefa City Council responded to the aforementioned request in writing in which it stated the following:

- That the writings of the person reporting here *"were not given a nature or character specific, given that no express answer was given"*.
- That *"the writings of Mr. (name of the reporting person) had double consideration. On the one hand, they brought to the attention of the City Council the execution of works carried out on a property opposite theirs; and on the other hand, to consult on the legality or otherwise of the mentioned works given the intention of Mr. (name of the person making the complaint) to carry out similar works on his own property"*.
- That it was not reported here denouncing other extremes relating to the treatment/transfer of your data, apart from what was contained in the standardized models.
- That, with regard to the legal basis that would enable the processing of the data of the person reporting to the Decree and its subsequent full notification to the owner of the property for which a procedure for the protection of urban legality was initiated, *"file reviewed"*

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administratively, it must be said that there is no enabling legal basis, despite the fact that de facto the situation between the neighbors was more than known due to their own condition of confrontational neighbors, and in itself a question that had been discussed between all neighbors of the estates (...)"

- That, *"there is no notification of the Mayor's Decree (...) previously referred to other people who to the reported person himself, a resident of Carrer (...)"*.

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 that are the subject of this file resolution.

The person making the complaint complained that his identity (name and surname), as the person who had informed the City Council about works carried out on a property adjacent to his, had been revealed by the Consistory to several people.

In this respect, as part of the actions carried out by this Authority, it has been established that this information, relating to the complainant here, was included in Mayor's Decree no. (...) of (...)/2018, through which a procedure was initiated to protect urban legality for the performance of works on the aforementioned property.

On the other hand, the City Council has stated that it has no evidence that the Decree had been notified indiscriminately to various people - as the complainant seems to indicate - and there is no evidence or indication to infer the opposite. The only communication from the Decree that is accredited is the one that the City Council made to the person promoting the works in relation to which the procedure for the protection of urban legality was initiated, that is, the owner of the adjacent property to that of the person here reporting.

Starting from this, it is therefore necessary to elucidate whether the disclosure of the data of the person making the complaint to the person promoting the works in relation to which the City Council initiated a procedure for the protection of urban legality is an action in accordance with data protection regulations. In this regard, the following considerations must be made:

- a) First of all, it should be noted that the legal system recognizes the right of access - under certain conditions and always respecting the data protection regulations - to the information contained in the administrative files, either by interested persons

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or not interested in the corresponding administrative procedure. In the specific case of urban planning information - as is 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 to have extensive information on this matter (article 12.1 of the Revised Text of the Urbanism Law, approved by Legislative Decree 1/2010, of August 3). Leaving aside the specific case of urban planning, the right to access and obtain a copy of the documents contained in the procedures in which they have this condition is also generally recognized to interested persons (art. 53.1.a of Law 39/2015, of October 1, on the common administrative procedure of the public administrations and Article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia -LRJPCat-).

In the case that concerns us here, it is necessary to demonstrate the privileged position that, as an interested person, the promoter of the works in relation to which the City Council had instituted a procedure for the protection of urban planning legality, and that, precisely in order to hold such condition, could fully access the entire file and the personal data contained therein, respecting, of course, the principle of data minimization enshrined in Article 5 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 movement thereof (hereafter, RGPD). In this sense, it must be said that in the controversial Decree the person making the complaint is identified only with his name and surname, thus omitting any other identifying information that could be considered excessive (such as the number of IDENTITY CARD).

In accordance with the above, the treatment of the data of the person reporting here, in the specific case analyzed here, would have its legal basis in article 6.1.e) of the RGPD (*"the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment"*), in relation to the regulations above mentioned

b) It should be added to the above that it is not recorded that the person making the complaint exercised his right of opposition to the processing of his data, as it could have been, for example, to have requested from the City Council the non-disclosure of the your data to certain people. In this regard, it should be noted that the City Council duly informed the person making the complaint about the possibility of exercising this right, since this information was included in the three forms standardized that this person used to formulate his complaints to the City Council (1st background).

It is for all the above that it is considered that the delivery of a complete copy of the controversial Decree to the promoter of the work in relation to which a procedure for the protection of urban legality has been initiated does not violate the regulations for the protection of data

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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 infractions provided for in the applicable legislation, should be archived.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 89/2019, relating to Masquefa City Council.
2. Notify this resolution to Masquefa City Council and the person making the complaint.
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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,