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File identification

Archive resolution of the previous information no. IP 93/2019, referring to the Department of Justice.

Background

1. On 27/03/2019, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against the Secretary of Penal Measures, Reintegration and Victim Support of the Department of Justice (hereinafter, Department of Justice), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant (employee of the Penitentiary Center (...) -hereinafter, CP-), explained that on 07/18/2018 (although the correct date would be 07/29/2018 according with the documentation that works in the file) a certain inmate told him that he knew that the Department of Justice had instituted a disciplinary file against him in the past, information that the intern said had been provided to him by another CP employee.

The complainant added that, on 10/18/2018, CP staff located a document (the internal statement-taking minutes of 10/04/2018 in the framework of information diligence no. (...)) in the cell of that same inmate, in which she was identified by her first and last name, instead of her personal identification number (hereinafter, NIP).

The complainant provided various documentation.

2. The Authority opened a preliminary information phase (no. IP 93/2019), 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 04/04/2019 the reported entity was required to report, among others, on the reasons that would justify a certain inmate being aware of the initiation of a disciplinary file against the person here reporting; as well as the reasons why the person reporting here was not identified in that document through his NIP in the document that was located in that inmate's cell.

4. On 04/16/2019, the Department of Justice responded to the aforementioned request through a letter in which it stated, among others, the following:

- That information procedures no. (...) were opened as a result of the complaint made by the complainant, who stated that during an interview with a certain

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- inmate, he would have revealed certain personal and confidential information about him to which no inmate could have access, nor any other professional at the center.
- That the person reporting here declared before the person instructing the said proceedings, that that inmate knew the fact that he had been filed and that this information had been provided to the inmate by a CP professional (of which the inmate did not want to give him the name).
 - That as a result of this statement, a statement was made to the intern in order to find out if the facts were true and, in their case, to try to find out the source of the personal information that the intern had.
 - That the statement made by the intern faithfully reflected what he declared before the person instructing and the secretary of those proceedings and in which he provided the name and surname of the person reporting.
 - That the intern stated in that statement that the information had been provided to him by a certain CP educator (whom he identified only through his name).
 - That at the end of that statement, the intern asked for a copy of the statement he had carried out.
 - That after consulting with the management of the CP the identity of the educator to whom the intern could refer, this educator was summoned. This person denied that she was the one who provided any confidential information of the whistleblower to the intern, as well as that the intern had told her that the author of this leak had been someone else.
 - That given the lack of sufficient evidence to attribute to that educational person the leakage of the personal data of the person here denouncing the intern, no proposal was made to initiate a disciplinary file against that person.
 - That it was agreed to file the information proceedings when it was not possible to verify the authorship of the person who allegedly informed the intern about data that only corresponded to the privacy of the reporting person.
 - That after the filing of the information proceedings, a statement of facts issued by a certain psychologist from the CP was received. In this statement it was reported that during an interview with the intern, the psychologist asked the intern to read the copy of the statement he had made as part of the previously identified information proceedings.
 - That the statement indicated that the name and surname of the person making the complaint appeared in that document.
 - That the inmate's cell was searched, during which the controversial document was found. This document was ordered returned to the intern.
 - That the intern has the right to obtain a copy of what he has specifically declared.
 - That the intern had knowledge of confidential information of the person reporting here (having been filed), which would most likely have been obtained through some CP professional, whose identity could not be determined.
 - That the intern would most likely have obtained information from the person reporting here through some professional at the center, whose identity could not be determined.

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- That the communications between the Inspection Service and those included in the disciplinary files are always done in a sealed envelope, so if any professional is aware of the existence of a disciplinary file filed against another professional, he can most likely be because the same person filed, due to an excess of trust or imprudence, at some point had discussed it with someone and finally it came to the attention of an inmate.

The reported entity attached various documentation to the letter.

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.

2.1. On the principle of confidentiality.

The complainant stated that a certain intern of the CP (...) was aware that the Department of Justice had instituted a disciplinary case against him. The complainant became aware of these facts during an interview with that inmate on 07/29/2018.

Subsequently, in the statement given by the intern on 04/10/2018 as part of the information proceedings no. (...), he confirmed that he had access to that information through CP staff. In that statement, the intern was able to identify the person here reporting through his first and last name.

So things are, although as the Department of Justice states in its written response to the request made by this Authority, it cannot be ruled out that some CP professional had revealed to the intern personal data of the complainant here, in the framework of the present actions of prior information, as well as in the course of the preliminary proceedings that the Department of Justice opened for these facts, it has not been possible to verify that, indeed, the origin of this disclosure of data had been a professional of the CP.

Consequently, in relation to the reported conduct consisting of the alleged violation of the principle of confidentiality, the principle of presumption of innocence is applicable here, given that it has not been possible to prove the existence of any infringement. This principle or right that governs in the matter of sanctions is contained in article 53.2.b) of the LPAC, which recognizes the right

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the presumption of non-existence of administrative responsibility while contrary". no is prove the

2.2. About the report of the intern.

The complainant stated that a certain inmate had a copy of the minutes of the statement provided in the framework of preliminary proceedings no. (...) on 04/10/2018, in which the complainant was identified by first and last name.

Certainly, as stated by the complainant, the staff of the penitentiary services, for security reasons, must see their identity preserved. This is why Order JUS/177/2004, of May 27, which approves the TIP model for staff attached to the units and centers that depend on the Secretariat of Penitentiary Services, Rehabilitation and Juvenile Justice, determines that penitentiary services staff must not be identified through their first and last name or ID, but through the TIP of the penitentiary services staff. Therefore, it is necessary to recognize the group of penitentiary officials as a special singularity, comparable to that of other groups, as would be the case of the members of the Police of the Generalitat -

Mossos d'Esquadra.

In the present case, however, the Department of Justice has stated that the record of the inmate's statement contained verbatim what he had declared. That is to say, that in that act the intern would have identified the reporting person through his first and last name.

In this case, no reproach could be made to the Department of Justice for the fact that the minutes accurately recorded the statements made by the intern, who did not use the NIP to identify the reporting person, but his first and last name. At the same time, there is also no breach of the regulations on data protection as a reason for the delivery of a copy to the internal of your statement, which would be covered by the right of access.

Given the Department of Justice's statements that the disputed minutes faithfully recorded what the inmate had stated, the principle of presumption of innocence is also applicable here

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:

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1. File the actions of prior information number IP 93/2019, relating to the Department of Justice.
2. Notify this resolution to the Department of Justice and the complainant.
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,