

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

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that if the name of the affected population is disclosed, the physical persons affected could also be identified

File identification

Archive resolution of the previous information no. IP 139/2019, referring to the City Council of (...)

Background

1. On 05/03/2019, the Catalan Data Protection Authority received a letter from a person who lodged a complaint against the City Council of (...), on the grounds of an alleged non-compliance with the regulations on personal data protection.

The complainant explained that in the framework of inspection actions carried out by the City Council on the use of a ford during the year 2018, the City Council's inspection service would have accessed its personal data relating to "the road tax of a motorcycle, without my consent", which, in his opinion, "may influence the perception of the facts by the inspectors, moreover, because it has nothing to do ". Regarding this, the complainant argues that being the owner of one's own vehicle does not necessarily imply the use of a ford, and vice versa. The person making the complaint submitted with his writing an audio document in which part of a conversation is recorded, which the person making the complaint states is from 10/24/2018, in which the inspector asks the person making the complaint and there denounced "since when have you had this motorcycle? ".

This question infers prior knowledge on the part of the person who issues the question of the ownership of a motorcycle by the person to whom the question is directed.

2. The Authority opened a preliminary information phase (no. IP 139/2019), 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 20/05/2019 the reported entity was required to report on the reasons that would justify the need for access by the City Council's inspection service to personal data of the person making the complaint here relating to the tax on mechanical traction vehicles (IVTM), and specifically, on the connection of access to this information with the facts investigated by the inspection service. Also, to report on the specific date on which the conversation took place between a person from the City Council's inspection service and the person making the complaint, and a copy of the documentation that would justify the reported data processing was required.

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4. On 05/27/2019, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That the information to answer the request was taken from "file no. WELL-(...) in which the now complainant appears as an interested party, and in the report issued to that effect by the Head of the Tax Management and Collection Services Inspection Service on May 23, 2019."
- That "There is no evidence in the inspection file referred to, of any access by the inspection service to the personal data of the reporting person relating to the tax on mechanical traction vehicles. However, specifically, the head of the service has reported that no query was made to any database of the taxpayer, and that the knowledge that he was the owner of the motorcycle registration (---- (...)) , it appears in the file by virtue of the letter submitted by the interested party on October 5, 2018, in which he requested "to know the reason why this file has been assigned to me, and the annulment of the file to all its effects", and in the expository part it indicated ".... that currently the motorcycle, with license plate ----(...), is the only vehicle in my use and ownership."
- That "According to the report issued by the Head of the Management Services Inspection Service Taxation and Collection, the conversation that the interested party had was with herself, the Head of the Service, on October 24, 2018, and the interesting question since when did she have the motorcycle, was motivated with the object to analyze whether it was appropriate to prorate the share of the tax".

5. On 07/10/2020, also during this preliminary information phase, the Authority's Inspection Area required the inspected entity to provide a copy of the report issued by the head of the Tax Management and Collection Services Inspection Service, on 05/23/2019, to which the entity referred in its response letter to the request, and a copy of the letter submitted by the interested party in date 5/10/2018, in which he would have reported himself that he was the owner of a motorcycle.

6. On 20/10/2020, the City Council complied with this requirement, providing the documentation that had been required.

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 Act, and article 15 of Decree 48/2003, of February 20, which approves

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the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority is competent to issue this resolution.

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 archive resolution, and specifically, if when the City Council acceded to the information relating to the ownership of a motorcycle of the person reporting here and reported there, carried out any action that can be considered to violate data protection regulations.

Well, the first thing that needs to be said is that the City Council points out that there is no document in the administrative file linked to the tax inspection carried out against the person making the complaint, to check whether the requirements to be considered a taxable subject of the fee for vehicle access from the public road, that the entity has accessed its data relating to the tax on mechanical traction vehicles (IVTM). In this sense, he explains that the knowledge of the information about the ownership of a motorcycle by the complainant here, is obtained from the same statements made in the statement of allegations presented by the complainant here in the yes of the referenced procedure

administrative, and registered at the City Council on 10/05/2018. In other words, days before the conversation between the head of the Inspection Service of the Tax Management and Collection Services of the City Council and the person making the complaint, held on 10/24/2018. In this regard, it should be noted that, indeed, among the documentation provided by the City Council, there is the document dated 10/05/2018, in which the person making the complaint here identifies himself and states that "currently the motorcycle, with license plate ----(...), is the only vehicle in my use and ownership.". And, the subject of the question (since when have you had this motorcycle?) would be motivated by the fact of knowing the exact date that the person reporting here was the owner of the vehicle, in order to prorate the fee payable for the tax, depending on the period in which the complainant would effectively have been using the ford.

That being the case, it is evident that the person reporting here and the person reported there was the one who gave the information about the ownership of a motorcycle, specifically, with the presentation of the registered letter of allegations of entrance to the City Hall on 05/10/2018. In this respect, there is no indication that the City Council had access to the data relating to the IVTM of the person making the complaint.

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 violations provided for in the legislation on data protection, it is necessary to agree on its file

resolution

Therefore, I resolve:

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1. File the actions of prior information number IP 139/2019, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) and to 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, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,