

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

## File identification

Archive resolution of the previous information opened following complaints no. IP 161/2019 and IP 173/2019, referring to the Barcelona Municipal Finance Institute, of Barcelona City Council.

## Background

1. On 05/17/2019, the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, complainant A), for which he filed a complaint against the Municipal Institute of Finance of Barcelona, of the Barcelona City Council (hereinafter, IMHB), on the grounds of an alleged non-compliance of the regulations on personal data protection.

The complainant, with address in Valladolid, stated that on 03/25/2019 one of his brothers had received an email, sent by Mr. (...) through the address (...)@icab.cat, through which he forwarded, in turn, a second email sent from the address of the IMHB imhad@bcn.cat, which would contain five self-assessments carried out in the name of the complainant and four of his siblings, relating to the tax on the increase in the value of land of an urban nature (capital gain, hereinafter IIVTNU) of a property located in Barcelona, which it was part of a family inheritance, but which, according to him, had been inherited by only one person, who was not the person making the complaint. The complainant stated that neither she nor her siblings had carried out these self-assessments, nor had they authorized any person to issue them on their behalf. And he provided various documentation relating to the events reported. This complaint was assigned the number IP 161/2019.

2. The Authority opened a preliminary information phase, in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (from now on, 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 involved.

3. In this information phase, on 22/05/2019 the IMHB was required to report on several issues relating to the events reported.

4. On 12/06/2019, the IMHB responded to the aforementioned request through a letter in which it set out the following:

1.- Regarding the origin of the self-assessments mentioned by the reporting person:

On 18.03.2019 Mr. (...) he visited the IMH by appointment in order to be assisted in preparing the self-assessment of the tax on the corresponding increase in the value of urban land (IIVTNU).

in the property of the c(...) inherited by Mrs. (...), represented by him and also a relative his

Mr. (...) contributed to this effect the deed of manifestation and inheritance award with no. of protocol (...) dated 11.02.2019 of the Notary (...) and the authorization of his representative. (Documents 1 and 2)

The official who served him checking that this documentation was not complete, that it was a complex inheritance, since it was not recorded the IIVTNU self-assessment of the acquisition of the property by the plaintiff, also by way of inheritance, indicated that the completed deeds of the acceptance of the inheritances of the marriage formed by (...) and (...), causing the latter of the inheritance of Mrs. (...).

On 19/03/2019 Mr. (...) by email facilitated the two completed deeds cited, granted by the death of the

his relatives (he states that they are his uncles in this email): (...) and (...).

(Document no. 3 email from Mr. (...) and document no. 4 Deed of acceptance of the inheritance of the plaintiff Mrs. (...).)

As a result of the examination of the deeds, it was determined that with respect to this property located on the street (...) owned by (...) the following self-assessments were made by the IIVTNU:

- Self-assessments in the name of Messrs. (...), (...), (...), (...) and (...), as universal heirs of Mr. (...), which had not self-assessed the tax for the acceptance of the inheritance of his wife Mrs. (...), deceased on 10/01/2018.
- Self-assessment in the name of (...)(...) for the acceptance of the legacy instituted in the inheritance of Mr. (...), deceased on 10/10/2018.

At the request of Mr. (...), as a relative of the deceased and of the legatee, and as he had provided the public documents, the self-assessments of the aforementioned tax were handed over to him in order to facilitate the taxable subjects, who resided outside of Barcelona, to comply with the your pending tax obligations with Barcelona City Council.

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2. As regards whether we are aware of Mr. (...)(...) with the person making the complaint here or with his siblings, and of the eventual authorization of this person to issue and present before the IMHB the self-assessments mentioned in the name of the reporting person or theirs Brothers, we inform you that we are not aware of Mr. (...) with the person here reporting or with his siblings.

But it must be clarified that this Institute only delivered the forms of the assisted self-assessments of the IIVTNU, in accordance with the data contained in the public documents provided by Mr. (...)(...), at no time will it go away provide or communicate any personal data that is not included in the aforementioned scriptures  
It must also be indicated that self-assessments are not considered to have been submitted the Administration until payment is made.

3.- (...) In the Real Estate Tax databases it appears that the current owner of the property, as owner of the full domain, since 10/10/2018, is Ms. (...).

(Document No. 5)"

The IMHB attached various documentation to the letter.

5. Subsequently, on 06/06/2019, it was submitted to the Catalan Authority for the Protection of Given a letter from Mr. (...) (hereinafter, complainant B), for which he filed a complaint against the Municipal Institute of Finance of Barcelona, of Barcelona City Council (hereinafter, IMHB), on the grounds of an alleged non-compliance of the regulations on personal data protection.

Complainant B based his complaint on the same facts and grounds as Complainant A, the only difference being the self-assessment of the IIVTNU carried out by the IMHB in respect of each of them. This complaint was assigned the number IP 173/2019 and was added to the previous information that had been opened as a result of the first complaint.

#### 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.

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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 gave rise to the opening of the previous information that is closed here, which referred to the two complaints indicated in the antecedents, which will be addressed jointly, given the identity of the events reported and the reasons for complaint put forward by the two people making the complaint.

The complainants state that the IMHB has issued IIVTNU self-assessments in their name, and has sent them to a third person (Mr. (...)(...)) without their authorization, and consequently would have disclosed the complainants' personal data without their consent.

For its part, the IMHB has acknowledged having delivered the self-assessments of said tax to Mr. (...), for the reasons set out in point 4 of the antecedents section.

It goes ahead that the review of the action of the IMHB that is carried out here is limited to verifying the facts reported, with regard to the eventual violation of the data protection regulations, and therefore the possible divergence that the complainants may have on the determination of the subject liable for the said tax would be a question that would exceed the object of these actions, which do, however, start from the IMHB's statements about the fact that it issued the five self-assessments of the said tax based on the consideration that the complainants were universal heirs of Mr. (...), and that for this reason it was up to them to satisfy the tax that this person had not satisfied by accepting the inheritance of his wife, Mrs. (...). So that in this point relating to the origin or not of the self-assessments issued, we would be faced with a question relating to a judgment of value or qualification issued by the tax administration in the exercise of its powers, which does not correspond to this authority. Indeed, the specific complaint of the complainants regarding the fact that it would not be up to them to deal with the self-assessment received, would be an issue that would go beyond the analysis of compliance with the legislation on the protection of personal data, and specifically of the principle of accuracy of the data enshrined in article 5.1.d of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of this data and which repeals Directive 95/46/CE (General Data Protection Regulation - hereafter, RGPD-).

In relation to the analysis of the data treatments carried out by the IMHB to which the complainants also refer, relating to having provided their personal data to a third person, on the one hand, it is necessary to take into account the article 77 of Royal Decree 1065/2007, of July 27, which approves the General Regulations for actions and procedures for tax management and inspection and for the development of the common rules for tax application procedures, which determine the following:

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"1. The tax assistance will consist of the set of actions that the Tax Administration makes available to those liable to facilitate the exercise of their rights and the fulfillment of their obligations. Among other actions, tax assistance may consist of the preparation of declarations, self-assessments and data communications, as well as the preparation of a draft declaration.

2. When the assistance materializes in the preparation of declarations, self-assessments and communications of data at the request of the taxpayer, the action of the Tax Administration will consist of the transcription of the data provided by the applicant and the realization of the corresponding calculations. Once completed, the model will be handed over for review and for verification of the correct transcription of the data and its signature by the obligee, if he deems it appropriate.

3. (...)

4. The data, amounts or qualifications contained in the declarations, self-assessments or communications of data prepared by the Administration or in the drafts that have been communicated to the taxpayer will not bind the Administration in the exercise of verification or investigation actions that may develop later."

From the precept transcribed it is inferred that the IMHB would have incorporated ("transcribed") in a computer application - or other equivalent medium - the data of the complainants that Mr. (...) - who would have requested the IMHB to generate the self-assessments referred to the persons reporting here- and would have made the calculations corresponding to the settlement of the tax related to the capital gain.

On the other hand, the delivery to Mr. (...) of the self-assessments carried out certainly constitutes a processing of personal data, specifically a communication of data to a third party, which therefore had to have a sufficient legal basis in order to be able to consider it lawful. In this respect, it is necessary to start from the consideration that the IMHB attributes the status of passive subjects of the IIVTNU to the persons reporting here. This is clear from the controversial self-assessments, and this is also what the IMHB has stated in its written response to the Authority's request for information, in line with the self-assessments carried out.

In accordance with this, the reporting persons would be the tax payers who could request tax assistance from the IMHB to carry out the self-assessment of the said tax. It is true that article 46 of the LGT provides that taxpayers can act before the Tax Administration through a legal representative, but the complainants have pointed out that they did not authorize Mr. (...) to act on their behalf, claims they have not

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been contradicted by the IMHB in its written response to the Authority's request, in which it pointed out that: "we are not aware of Mr. (...)(...) with the person making the complaint here or with his siblings", and also that: "at the request of Mr. (...)(...), as a relative of the deceased and of the legatee, and as he had provided the public documents, the self-assessments of the mentioned tax were handed over to him in order to facilitate the taxable subjects, who resided outside of Barcelona, the fulfillment of their pending tax obligations with Barcelona City Council".

To this we must add that art. 95 of the LGT establishes the reserved nature of data with tax implications, noting in section 1 that:

"1. The data, reports or records obtained by the Tax Administration in the fulfillment of their functions are reserved in nature and can only be used for the effective application of the taxes or resources whose management is entrusted to them and for the imposition of the appropriate sanctions, without being transferred or communicated to third parties (...)."

Despite what has been pointed out so far, no signs of infringement can be observed in the conduct of the IMHB, and this for the reasons indicated below.

2.1. With regard to the IMHB carrying out the assisted self-assessments referred to the complainants, without their consent.

With respect to this treatment, it must be taken into account, on the one hand, that in accordance with art. 117 of the LGT are tax management functions specific to this body, among others, the following: "e) carrying out actions to control compliance with the obligation to submit tax returns and other formal obligations", and "i) the practice of tax settlements derived from the verification and verification actions carried out".

On the other hand, the personal data of the complainants that the IMHB transcribed in order to carry out the assisted self-assessments, he obtained them from the public deeds given to him by Mr. (...) in order for the IMHB to carry out the assisted self-assessment referred to its representative. So that access to said personal data of the complainants would be protected by article 77.2 of RD 1065/2007, of July 27. And in any case, this is documentation that the IMHB could have required of them within the framework of its powers and functions of verification and investigation, as provided for in article 115 of the LGT, which establishes in the section 1st that:

"1. The tax administration can verify and investigate the facts, acts, elements, activities, holdings, values and other circumstances determining the tax obligation to verify the correct compliance with the rules applicable to the purpose".

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This documentation that, in the case of being required of the reporting persons, they should have delivered to the IMHB, in accordance with what is provided for in article 29.2.f) ig) of the LGT, where it is determined that:

"2. In addition to the rest that can be legally established, taxpayers must fulfill the following obligations:

"f) The obligation to provide the Tax Administration with books, records, documents or information that the taxpayer must keep in relation to the fulfillment of their own tax obligations or those of third parties, as well as any data, report, background and justification with tax significance, at the request of the Administration or in periodic declarations. When the required information is stored in a computer medium, it must be supplied in the aforementioned medium when required.

g) The obligation to facilitate the practice of inspections and administrative checks."

Therefore, the processing of personal data carried out by the IMHB to complete the self-assessments of the persons reporting here, was carried out in the exercise of public powers conferred on the person responsible for the processing, so that there was a legal basis that legitimized the processing (art. 6.1.e of the RGPD).

2.2. Regarding the communication to Mr. (...) of the information on the self-assessments carried out, referring to the reporting persons, as well as those referring to the other persons in respect of whom the self-assessments were made.

In relation to the communication of reported data, it should be noted that the person to whom the IMHB sent the self-assessments carried out, Mr. (...), acted on behalf of Mrs. (...)(...), in respect of whom the IMHB has certified that "she is the holder of 100% of the property by way of inheritance since 10/10/2018 of the property located at (...)", referring to the property in respect of which the disputed self-assessments were carried out. With regard to the factual circumstances in which the communication of data took place, the statements made by the IMHB to the Authority show the following:

Access to these self-assessments occurred following an in-person appointment on 03/18/2019 by Mr. (...) in front of the municipal offices, for the purpose of being assisted in the preparation of the self-assessment of the IIVTNU corresponding to the aforementioned property, with respect to its representative, Mrs. (...). During this appointment, the official person who assisted him found that the documentation provided was incomplete and expressed the need complete deeds of acceptance of the inheritances of the marriage formed by (...) and (...), causing the latter from the inheritance of Ms. (...), to whom Mr. (...) represented On 19/03/2019 Mr. (...) sent to the IMHB a copy of the two documents indicated. Based on this documentation, the IMHB determined which



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they were the people who were considered taxable subjects of the IIVTNU, and therefore obliged to settle the tax, among which were the two complainants. And that's when Mr. (...)he requested the IMHB to facilitate all the self-assessments corresponding to this tax referring to the property that his representative had inherited. And the IMHB forwarded him a copy of the self-assessments made by this institute, taking into account that Mr. (...)he was a relative of the deceased and of the legatee he represented, and who had provided a copy of the public deeds. And Mr. (...) forwarded the self-assessments made by the IMHB to the indicated tax payers, so that they proceed to pay the tax.

It follows from the above that the IMHB did not disclose any personal data to the representative of the legatee - or to her - since it was this same person who, with the delivery of the acceptance deeds to the IMHB of inheritance, provided the IMHB with the personal data of, among others, the persons reporting here, which the IMHB then entered into the corresponding application to generate the assisted self-assessments that it then sent to the said representative, referred to these people. The disclosure of data would be the necessary presupposition to impute to the IMHB an illegitimate communication of data, as would be the case if the IMHB had indeed disclosed some personal data without the prior consent of the affected persons. But in the present case the recipients of the assisted self-assessments carried out by the IMHB did not have knowledge of more personal data than that which appeared in the deeds of acceptance of inheritance that they themselves possessed and handed over to the IMHB.

(...)(...)(...)Finally, and without prejudice to the foregoing, it is appropriate to highlight the limited scope of the controversial self-assessments, since the self-assessments carried out by the IMHB they do not produce the intended effects until these are duly signed by the persons listed as liable to pay tax and do not appear before the IMHB offices. This is clear from article 77.2 of RD 1065/2007, of July 27, and from the statements of the IMHB when it points out in its letter that: "self-assessments are not considered submitted to the Administration until that your payment is made". And in addition, the amounts they contain do not bind the Administration "in the exercise of verification or investigation actions that may be carried out subsequently", as indicated in article 77.4 of RD 1065/2007, of 27 of July

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 that may constitute any of the offenses provided for in the applicable legislation, it is necessary to agree on the archive of these performances

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 in the instruction of the procedure



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state the following: "a) The non-existence of the facts that could constitute the infringement;  
c) When the proven facts do not manifestly constitute an administrative infraction".

resolution

Therefore, I resolve:

1. File the preliminary information actions opened following complaints no. IP 161/2019 and no. IP 173/2019, relating to the Barcelona Municipal Finance Institute, of Barcelona City Council.
2. Notify this resolution to the Municipal Tax Institute of Barcelona and communicate it to the complainants.
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 denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for article 123 et seq. of Law 39/2015. You can also directly file an administrative contentious appeal 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, regulating the administrative contentious jurisdiction.

Likewise, the reported entity can file any other appeal it deems appropriate to defend its interests.

The director,