

## File identification

Archive resolution of the previous information no. IP 190/2019, referring to Tortellà Town Council

## Background

1. On 06/21/2020, the Catalan Data Protection Authority received a letter from a person for which he filed a complaint against Tortellà City Council, on the grounds of an alleged breach of the regulations on protection of personal data.

Specifically, the complainant stated that the City Council communicated the personal data of his minor son to a company external to the City Council *"for the collection of the swimming pool fee without prior and express authorization from the minor's representatives"*. In this regard, he complained about the lack of information about *"the change in procedure of which they were never informed"* and the fact that *"(...) the City Council outsources the payment and they do NOT notify us in any way"*, invoking helplessness. The complainant added that the notification of constraint addressed to his minor child required the payment of the municipal swimming pool fee with surcharge and interest corresponding to the year (...), and expressed his dissatisfaction with the treatment of the minor's data for this purpose, given that since the year (...) the family has not lived in the municipality of Tortellà, and their son had not used the municipal swimming pool during the year (...).

2. The Authority opened a preliminary information phase (no. IP 190/2019), 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, and in accordance with article 37.2 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (LOPDGDD), this Authority forwarded the complaint to the City Council's data protection delegate so that within one month he would give an answer to the person making the claim, an answer that he also had to communicate to this Authority.

4. On 07/19/2019, the City Council responded to the person concerned and this also communicated to the Authority. The content of the response referred exclusively to the legitimacy of the autonomous body, in charge of collecting during the executive period the fee for the provision of services at the municipal swimming pool of Tortellà Town Hall, in the following terms:

- That article 8 of the LOPDGDD *"establishes that the processing of personal data can only be considered based on the fulfillment of a legal obligation payable to the person responsible, in the terms provided for in article 6.1.c) of the Regulation (EU) (...) /679, when so provided by a rule of European Union Law or a rule with the rank of law, which may determine the general conditions of the treatment and the types of data subject to it as well as the transfers that are due as a consequence of the fulfillment of the legal obligation."*
- That article 95 of Law 58/2003, of December 17, general taxation *"establishes that the data obtained by the tax administration in the performance of its functions are reserved and may only be used by the effective application of the taxes or resources which management is entrusted with and for the imposition of the penalties that apply, without them being transferred or communicated to third parties, except that the purpose of the transfer is, among others, collaboration with others Tax administrations for the purposes of fulfilling tax obligations within the scope of their powers."*
- That *"Xaloc-Xarxa Local de Municipis, an autonomous body of the Diputació de Girona, carries out the collection during the executive period, among others, of the fee for the provision of services to the municipal swimming pool that the Tortellà Town Council has delegate, as stated in the delegation agreement signed on September 28, 2009."*

5. On 15/10/2019 the reported entity was required to provide a copy of the administrative documentation that governs the existing contractual relationship between the City Council, as data controller, and the entity Xaloc - Local Network of Municipalities, as responsible for the treatment. Also, among others, it was required to report whether the City Council had a form informing about the conditions for registering and unsubscribing from the municipal swimming pool service, and specifically, if this information was facilitate when the son of the person reporting here was registered as a member of the municipal swimming pool service. Finally, he was required to report on the procedure that the City Council has implemented in order to make effective the payment corresponding to the municipal fee for access to the municipal swimming pool, and specifically, if there are forms of payment differentiated depending on whether the user of the service is a member or member of the municipal swimming pool.

6. On 10/25/2019, the City Council responded to the above-mentioned request in writing, in which it stated, among others, the following:

- That *"the City Council has a form in relation to the registration, cancellation and change of the membership fee of the swimming pool service which is attached in electronic format. This document was provided to the reporting person."*

- That in *"the corresponding municipal fiscal ordinance"*, with reference to the ordinance relating to the fee for the provision of services to the municipal swimming pool, it establishes that:

*"The fees that are due will be effective before the municipal facility is used. This fee will be effective through self-assessment and may be used in the form of tickets or other supporting documents for users. The payment of tickets for users who do not have a subscription will be made at the time of entry into the venue.*

*The payment of the fee in the case of a season pass will be made at the time of formulating the request."*

- That *"the practice of the service leads to the payment for people who do not have the pass being made in cash when they access the municipal facilities."*

The denounced entity attached various documents to the letter, including the agreement between the Diputació de Girona and the Ajuntament de Tortellà through which the delegation of management, liquidation and revenue collection powers is regulated in favor of the Province of Girona, accepted by the Plenum of the Provincial Council on September 22, 2009 and formalized in an agreement signed on September 28, 2009. Also, copy of the agreement of the Municipal Plenum, dated February 19, 2019, which extends the aforementioned agreement and the executive collection of the fee for the provision of services to the municipal swimming pool is delegated. Also, a copy of the registration form for the municipal swimming pool in the name of the son of the complainant here, from the year (...).

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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 background section, it is necessary to analyze the reported facts that are the subject of this file resolution, and specifically, if the fact that the City Council had delegated the executive collection of fees for the use of the municipal swimming pool to an autonomous body of the Diputació de Girona, is data processing that would find coverage in one of the authorizations provided for in article 6 of Regulation (EU) 2016 /679 of the European Parliament and 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 advance, it should be noted that the complainant here bases part of his complaint on the inadmissibility of the claim by executive means of the fee corresponding to the season pass to the municipal swimming pool of his minor son, this issue which does not correspond to analysis as it does not fall within the scope of this Authority's competences, focused exclusively on possible violations of the regulations on the protection of personal data. In this case, then, what needs to be determined is whether the local autonomous body "Local Network of Municipalities of the Diputació de Girona" (hereinafter, Xaloc), could carry out the controversial data processing, in order to have a legal basis other than the consent of the person concerned, which would allow the processing of the data necessary to manage the payment by executive means of said municipal tax to be considered lawful. In particular, it is necessary to determine whether the data processing reported here could be covered by article 6.1.e) of the RGPD, which enables the processing that is necessary for the fulfillment of a mission carried out in the public interest or the exercise of public powers by the data controller.

Having said that, the reported data processing derives from competences attributed to municipal cultural and sports activities and facilities by law-level rules to the Public Administration, and the consequent competence to manage the collection of fees and income held by the local bodies in the field of the subjects of their competence. According to article 25 of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL), the Town Councils have powers, among others, in the following matters:

*"1. The Municipality, for the management of its interests and within the scope of its competences, can promote activities and provide public services that contribute to satisfying the needs and aspirations of the neighborhood community in the terms provided for in this article.*

*2. The Municipality will in any case exercise its own powers, in the terms of the legislation of the State and of the Autonomous Communities, in the following matters:*

*(...)*

*1) Promotion of sport and sports facilities and leisure activities."*

Likewise, article 66 of Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal and Local Government Law of Catalonia, provides the following:

*"1. The municipality, for the management of its interests and within the scope of its competences, can promote all kinds of activities and provide all public services that contribute to meeting the needs and aspirations of the community of residents.*

*2. Local bodies have powers in the areas of citizen participation, self-organization, (...), and the management of economic resources, with the scope set by this Law and the respective sectoral legislation*

3. *The municipality has its own powers in the following matters:*

(...)

n) *Cultural and sports activities and facilities, leisure activities, tourism."*

It is also necessary to cite here article 2 of the revised Text of the Law regulating Local Finances, approved by Royal Legislative Decree 2/2004, of March 5 (hereafter, TRLHL), according to which the resources of local entities are , among others: "*b) The own taxes classified as rates, special contributions and taxes and the surcharges payable on the taxes of the autonomous communities or other local entities.*" Likewise, article 57 of the TRLHL determines that "*The councils may establish and demand fees for the provision of services or the performance of activities within their competence and for the private use or special use of the goods of the municipal public domain, ( ..).*"

Thus, for the purposes of the provisions of the cited articles, the fees relating to the subscription for the use of the municipal swimming pool, are economic resources of the local entity and managed by the local body. Now, with regard to the action of Xaloc as in charge of the management of the executive collection of the municipal tax, this is a situation that is provided for and regulated by article 7 of the TRLHL, in accordance with article 106.3 LBRL, in the following terms:

*"1. In accordance with the provisions of article 106.3 of Law 7/1985, of April 2, Regulating the Bases of Local Government, local entities may delegate to the autonomous community or to other local entities in whose territory they are integrated, the powers of management, liquidation, inspection and tax collection that this law attributes to them.*

*Likewise, local entities may delegate to the autonomous community or to other local entities in whose territory they are integrated, the powers of management, liquidation, inspection and collection of the remaining revenues of public law that correspond to them."*

In this regard, it should be noted that the delegation of management, liquidation, inspection and revenue collection powers from the City Council to Xaloc was formalized, on 09/28/2009, through the "*Agreement between the Provincial Council of Girona and the Town Council of Tortellà through which the delegation of management, liquidation and revenue collection powers is regulated in favor of the Diputació de Girona*", which was extended by the agreement of the Municipal Plenum, of date 02/19/2019, which delegates, among others, the executive collection of the fee for the provision of services at the municipal swimming pool. This is why, for the purposes of Article 6.1.e) of the RGPD, it is considered that Xaloc's processing of the data of the reporting person's son was lawful, and that said processing had sufficient legal basis as it is provided for in the rules of law.

Lastly, regarding the non-communication to the complainant, which Xaloc was responsible for carry out the processing of the data of the users of the service of the municipal swimming pool, in order to carry out the purpose that would have been entrusted to it through an agreement between the City Council and the Deputation, it should be noted that in accordance with article 33 of the LOPDGDD, the access of the person in charge of the treatment to the personal data is not considered as a communication of data, if they have

meet the requirements established by the RGPD. In this sense, it would not be required of the person in charge of the treatment (Town Council) to provide the affected person with information about the existence and identity of those in charge of the treatment.

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, should be archived.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 190/2019, relating to Tortellà Town Council.
2. Notify this resolution to Tortellà City Council and the person making the complaint.
3. Order the publication of the resolution on the Authority's website ([apdcat.gencat.cat](http://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,