

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

File identification

Archive resolution of the previous information no. IP 206/2019, referring to the Department of Business and Knowledge of the Generalitat de Catalunya.

Background

1. On 15/07/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Department of Business and Knowledge of the Generalitat of Catalonia, on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the person making the complaint explained that *"All the information relating to the health data of the Department's staff, temporary incapacities due to their own health or that of their family members works on the tables and is visible to everyone."* And he added that the people who were in charge of receiving and managing these documents openly asked the affected person or their relatives why they were on leave, in front of the other colleagues with whom they shared an office or area; and that these managers then discussed this information with other colleagues. On the other hand, the complainant indicated that when *"personal matters need to be dealt with, Human Resources managers refuse to close the doors."*

2. The Authority opened a preliminary information phase (no. IP 206/2019), 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 25/07/2019, the Authority carried out an inspection at the headquarters of the Department of Business and Knowledge, to verify certain aspects related to the events reported. In that face-to-face inspection, the representatives of the Department stated, among others, the following:

- That in the Department's Personnel Service, paper documentation related to personnel (such as temporary incapacity for health reasons) is kept in order to prevent access by unauthorized third parties, depositing the documentation in files for part of the people in charge of payroll (on the 6th floor). The personnel file is also stored in locked devices (on the 5th floor).
- That, once the person responsible for its processing ends the working day, the staff documentation is kept in these cabinets.
- That when a person employed by the Department hands over the notice of resignation to the Personnel Service, the person concerned is not asked the reason for it.

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

- That there is no record that employees of the Personnel Service had ever asked the family members of the employee on leave, the reason for this.
- That there is no record that the colleagues of the affected person were asked, the reason of the leave
- That there is no evidence that the staff of the Personnel Service has disclosed to third parties outside the said service, the reason for the termination of any employee.
- That when an employee requests to treat a matter confidentially, es guarantees privacy by closing the office where the matter is dealt with.
- That a person made a suggestion to modify the circuit for presenting documents supporting terminations, as this person considered it unsafe to leave the document on the desk of the person managing the unit (other than human resources) in terms of to hourly control. This person was informed that he could deliver the documentation directly to the human resources unit.
- That in this last sense, there is no instruction to leave that documentation on the table of the person managing the unit, when he is not present. The documentation must be delivered by hand.

Also, on this same date, the Authority's inspection staff verified, among others, the following:

- That in the office where personnel files are kept (floor 5a) there was a filing cabinet equipped with a locking mechanism. The people who provided services in that department stated that, once the working day was over, that filing cabinet was closed.
- In the same office, there was another cupboard where proof of absence, such as medical visits, was stored. This cabinet had a locking mechanism, but the people who provided services there stated that it was never locked since the key was not available.
- That in the offices where termination notices were processed (floor 6a), there was a shelf where the people who provided services there stated that termination notices were stored. This shelf did not contain any elements that prevented access to its contents. In turn, the same people stated that the office was not locked either.

4. Based on the antecedents that have been related and the result of the investigative actions carried out in the framework of the previous information, on today's date an agreement is also issued to initiate disciplinary proceedings regarding the conduct reported related to the security of the data contained in the proofs of absence (such as due to medical visits) and in the termination notices.

The rest of the behaviors reported are addressed in this file resolution.

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

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. Specifically, the person making the complaint stated that the Department staff who, for the performance of their duties, received and managed temporary disabilities for health reasons asked the affected person or their relatives the reason that had caused the leave, which he later claimed was discussed among the staff. Likewise, the complainant also stated that Human Resources managers refused to deal with personal matters behind closed doors.

In this sense, the representatives of the Department of Business and Knowledge present at the face-to-face inspection carried out on 07/25/2019, denied that the affected person was asked for the reason for the termination, as well as that there was no evidence that this information had been requested from the relatives or colleagues of the affected employee; nor was there evidence that any of the employees of the Department's Personnel Service had disclosed to third parties outside the said service the reason for the termination of any employee.

On the other hand, with respect to the eventual lack of confidentiality regarding matters that an employee can discuss with Human Resources managers, the Department's representatives asserted that confidentiality was guaranteed by closing the office door.

So, in the present case, there are two conflicting versions in relation to the events reported. Well, the reporting person has not provided evidence to confirm his version and the actions carried out by this Authority have also not been able to prove the facts reported and addressed here. Consequently, the principle of presumption of innocence is applicable, given that the existence of evidence of infringement could not be proven and, therefore, administrative responsibility cannot be demanded. This principle, which is contained in article 53.2.b of the LPAC, recognizes the right *"To the presumption of non-existence of administrative responsibility until the contrary is proven"*.

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 regulations on data protection, should be archived.

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

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 206/2019, relating to the Department of Business and Knowledge of the Generalitat of Catalonia, regarding the collection of the reason for the termination of employees and regarding the 'eventual lack of confidentiality regarding the matters that an employee can discuss with Human Resources managers.
2. Notify this resolution to the Department of Business and Knowledge and to the complainant.
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,