

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 in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 211/2019, referring to the City Council of (...).

Background

1. On 07/17/2019, the Catalan Data Protection Authority received a letter from a person filing a complaint against the City Council of (...), on the grounds of an alleged non-compliance of the regulations on personal data protection.

Specifically, the complainant (Mr. (...)) stated the following in his letter: a) that he had filed a complaint against the municipal architects and two councilors of the City Council for trespass and urban planning crime, and that in the said complaint, to accredit

urban irregularities (...) yes citó, modo de ejemplo, ten constructions of the municipality" a ;
b) that the City Council initiated disciplinary proceedings against some of the property owners who had been cited in the complaint by way of example; c) that within each file,
the City Council had drawn up a report in which it included as an antecedent the filing of the aforementioned complaint, identifying the complainant here by name and surname; and, d) that each of these reports was notified, respectively, to each of the property owners.

The reporting person considered that the inclusion of his name and surname in the above reports is information absolutely irrelevant for the processing resolution of y los facilitas" that is the files in and that, in any case, he considered it completely unjustified to provide it to the sanctioned owners through the respective notification of the reports in their entirety (without anonymizing their data).

The complainant, together with his letter, provided various documents:

- a) Copy of the relative to the no. (...), by means of which proceedings are initiated against the owners of the property located in c. (...) of the municipality of (...),
one "file (...), of residence of the (...) and (...) and (...) of the (...) building (...) and (...) qualified in ; and how a

This Agreement contains the following text:

"Background:

- On October 17, 2017, the Court of Inquiry (...), admits the complaint filed by the complainant and the (...) against the (...) (name)

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City Council and two councilors one alleged crime of prevarication and failure to prosecute due to urban irregularities, including those allegedly committed in Carrer Arran following (...).

- this request, preliminary actions are initiated to find out if there are urban irregularities there is a reason street plot on the (...).

- b) Copy of five titled documents "Report initiation of proceedings for the restoration of the altered physical reality and violated legal order and initiation of sanctioning proceedings", corresponding to different estates (five estates, one of them, c. (...)). In all these reports, a paragraph identical to the one transcribed above is included as an antecedent - in which the complainant is identified by name and surname -, with the only variation of the farm to which it refers.

2. The Authority opened a preliminary information phase (no. IP 211/2019), 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 26/07/2019 the City Council was required to report on the following:

- Indicate the legal basis that would enable the inclusion in the reports drawn up by the City Council of the data of the person reporting here and its subsequent full notification to the people owners of the farms.

4. On 02/08/2019, the City Council of (...) responded to the aforementioned request in writing in which it stated the following:

- That there would be various legal bases that would enable the processing of the data of the person reporting here in the reports drawn up in relation to each of the farms and their subsequent notification to the owners:

- a) "Exercise of public powers, the confessed that the initiation by necessity the exercise of in by sanctioning power that 7/1985, see a in of the Law of April 2 Regulatory Local Government of the Principality of Catalonia Bases of Government of the Principality of Catalonia (...). We understand that this treatment is necessary when the documents are notified to the extent which they those who have been involved had the status of interested party that could be for the purposes of being able to exercise rights that the regulations have established a

Nor can we forget that the complaint a investigation and drive the initiation of sanctioning procedures. that goes for criminal trespass and investigation and drive

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- Certification issued by the City Council Secretariat in which the report dated 09/20/2019 issued by the head of the Urban Planning department is transcribed verbatim. In this report it is indicated: a) that, in relation to the estate of c. (...), the initial approval and the corresponding notification of the agreement to start the file of the altered physical restoration had been processed; and, b) that, in relation to the rest of the estates (four) for which the reports indicated in the complaint were drawn up, "it is found that only previous actions that were not notified to the interested parties are recorded".
- Correos certificate of notification dated 02/10/2018, corresponding to the property of c. (...).

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.

The complainant complained that the City Council had disclosed to several people - through the transfer of a report drawn up by the City Council - which the complainant here (identified with first and last name) had filed a complaint against the municipal architects and two councilors of the City Council for prevarication and urban crime, a complaint in which he cited as an example of irregularities, among others, the properties they owned these people.

In this regard, as part of the actions carried out by this Authority, it has been established that this information, relating to the complainant here, was included, both in the Local Government Board Agreement of the initiation of the file no. (...) "of restoration of the altered and key physical reality (...)" en sanctioning (...) the violated legal order (...) in order to demolish (...) located by those responsible for the shared planning (space) as in local planning systems a

, referred to the estate of c. (...) as in the five reports issued by the City Council provided by the person making the complaint here, referring to various properties (letters a and b of the 1st antecedent). This information about the person reporting here was collected in these documents (Agreement and reports) with the following wording:

"On October 17, 2017, the Court of Inquiry (...), accepted the complaint by the complainant against the person architects of this City Council and irregularities, in which it is alleged, among others, prevarication and failure to one

(...):

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On the other hand, the City Council has stated that it was only notified on 02/10/2018 to the owners of one of the farms, as interested parties, of the Agreement of the Local Government Board of initiation of file no. (...) -and the corresponding report-; and that, as regards the rest of the reports referred to by the complainant here, . So things are, the only disclosure of the data of the complainant here that is accredited only, the previous made to the records of one of the notified to interested parties" farms, among all those mentioned in the complaint, without any indication that no other communication takes place.

Based on this, it is therefore necessary to clarify whether the disclosure of the data of the person reporting - in the terms indicated above - to the owners of the property in relation to which the City Council initiated the file no. (...) of restoration of the altered physical reality and the violated legal order. In this regard, the following considerations must be made:

First of all, it should be noted that the legal system recognizes the right of access - under certain conditions and always respecting the data protection regulations - to the information contained in the administrative files, either by interested or non-interested persons in the corresponding administrative procedure. In the specific case of urban planning information - as is the case analyzed here - all persons have the status of interested parties without the need to prove special legitimacy, given the recognition in the sectoral regulations of public action, which justifies the need to have extensive information on this matter (article 12.1 of the Revised Text of the Urbanism Law, approved by Legislative Decree 1/2010, of August 3). Leaving aside the specific case of urban planning, in general,

interested persons are also granted the right to access and obtain a copy of the documents contained in the procedures in which they have this condition (art. 53.1.a of Law 39/2015, of October 1, on the common administrative procedure of the public administrations and article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia -LRJPCat-).

In the case that concerns us here, it is necessary to demonstrate the privileged position that, as an interested person, occupies the person who owns the property in relation to which the City Council had initiated a file for the restoration of the altered physical reality, and that, precisely because hold such status, could fully access the entire file and the personal data contained therein, respecting, of course, the principle of data minimization enshrined in Article 5 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD). In this sense, it must be said that in the Local Government Board Agreement - and in the corresponding report of the estate - which was the subject of notification

the person reporting here is identified only with their first and last name, thus omitting any other identifying information that could be considered excessive (such as the DNI number or their address).

In accordance with the above, the processing of the data of the person reporting here, in the specific case analyzed here, would have its legal basis in article 6.1.e) of the RGPD ("the treatment

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is necessary for the fulfillment of a mission carried out in public powers public interest in the exercise of or
conferred on the person responsible for the treatment") in relation to the regulations above
mentioned

That being the case, it is estimated that the delivery to the interested parties of a full copy of the Agreement of the Local
Government Board in which file no. (...) "of restoring the altered
physical reality and the violated principles" (the act of building (coll) in and located by (...) local urban planning system by
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as well as the corresponding report, does not violate the
data protection regulations.

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:

1. File the actions of prior information number IP 211/2019, 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,