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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

#### File identification

Archive resolution of the previous information no. IP 232/2019, referring to the City Council of (...).

#### Background

1. On 22/08/2019 the Catalan Data Protection Authority received a letter by which Mr. (...) (hereinafter, complainant) filed a complaint against the City Council of (...), on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the person making the complaint stated that a worker from the service of this City Council, which manages the municipality's Register of Residents, had revealed to a third person, a stranger to the City Council and also a resident of the municipality, that the person making the complaint and his family would not have been able to register in the municipality at the end of November 2018 for not gathering the required documentation for that purpose, and that the National Police would have ordered their expulsion from Spanish territory. Specifically, he stated that in July 2019 the aforementioned neighbor told him the following: *"and you are here in Spain if you are wanted by the Police because (me) said the woman who registers at the Torrelles City Council that you they didn't have the documentation to live here"*.

2. The Authority opened a preliminary information phase (no. IP 232/2019), 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, by means of a letter dated 08/22/2019, the complainant was asked to identify the person who lives in the municipality who told him that an employee of the City Council had told him that his family he did not have the corresponding documentation to reside in Spain. And he was also asked to identify, as far as possible, the identity of this City Council employee.

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4. On 3/09/2019, the complainant sent an email to the Authority, stating, among other issues, that the neighbor of the municipality was called Isabel, but that he did not know her last name, and that the employee of the City Council was the only woman of the two people from the City Council who served in the registration service. As an attached document, he provided, among others, what appeared to be a form provided by the City Council, entitled "*Responsible declaration of the applicant and members of the cohabitation unit*", which included his name and surnames as the main applicant, and a signature, without, however, appearing on this form any date or any seal or logo of the City Council.

5. On 09/04/2019, a second email was received from the complainant, in which he pointed out that the City Council employee's name was (...).

6. On 10/30/2019, the City Council was required to state: (1) whether the aforementioned City Council employee - or another person who worked in the service that manages the municipality's Population Register - had revealed to a resident of the municipality - named Isabel - information about the complainant and his family, both regarding the reason why they could not be registered in the municipality, and regarding the police procedure for expulsion from Spanish territory; i in the case of an affirmative answer, report on (2) whether the data relating to the aforementioned expulsion order were contained in the City Council's files, explain the circumstances in which the communication of personal data of the person making the complaint had taken place and his family to the neighbor of the municipality (named Isabel), and pointed out the legal basis that in his opinion would protect this communication of data.

7. On 11/13/2019, the City Council's letter was entered in the Authority's register, in response to the request for information, which indicated the following:

*"After consulting with the different services of the City Council, we inform you of the following:*

*1.- On the one hand, the police procedure indicated is only accessible to police officers, therefore the reported worker cannot access this information or have a record of it, since it is processed through a specific application called SIP of Mossos d'Esquadra of the Generalitat de Catalunya. On the other hand, the City Council worker assures that she did not leak said information and does not know the person named (Isabel).*

*2.- The answer to the previous question is negative.*

*3.- We don't have any more information to help clarify the facts indicated."*

#### 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 background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

The person making the complaint has formulated his complaint in terms that, as of now, they lack the necessary evidentiary support that requires the opening of a disciplinary procedure against the reported entity, in this case the City Council of (...), in the face of reported facts that refer to an alleged illegitimate communication of data or illegal on the part of a municipal employee, or in any case to a violation of the duty of confidentiality.

The City Council has denied the facts that are the subject of the complaint. In particular, he has denied that the employee attached to the management service of the Resident Register, has accessed the police information referring to the complainant and his family. In particular, the council has stated that this employee does not have access to this police information, since with respect to the information on *"the police procedure indicated only the police officers have access"*, referring to the officers of the Local Police. She has also stated that this employee *"has no record of this"* information, therefore denying not only access to this information, but also the fact of having knowledge of it - as it could be through access by third parties people-.

He has also denied having disclosed this information, a matter that is already clear from the previous denial. And in the last one, he has denied knowing the neighbor named Isabel.

In order to substantiate the facts reported, the reporting person provided a copy of what appears to be the form that the City Council would have given him when he applied to be registered in the municipality, and which would constitute the origin from what the reported events would have happened. This form does not contain a stamp or annotation from the City Council indicating its submission to the municipal register, nor a logo of this City Council, which would contribute to giving credibility to the story of the events. It is worth saying that, despite these observations made about the form, these do not alter the conclusion reached about the lack of circumstantial evidence of the facts reported, since, even if it were considered true that the complainant requested registration before this City Council and for that purpose presented the mentioned form before the council, this does not allow it to be maintained, not even circumstantial evidence, that the aforementioned employee disclosed the aforementioned police information to a neighbor of the Town hall. And this because the aforementioned form does not contain the police data in question, but only the name and surname and the identification number of the person making the complaint and of the other members of the cohabitation unit (who would be his wife and the three common children), and the City Council has denied that the mentioned employee has access to this police information, to appear in a police database with access restricted to members of the police force. So her contribution alone does not allow us to maintain that the employee who would have processed this request, would have accessed the police data mentioned by the complainant.

As things stand, there is no factual element that leads to consider that this employee of the City Council communicated personal data of the complainant and his family to a neighbor named Isabel, which would appear in police files. To all this it must be added that the controversial police information would appear in a file (SIP) that is responsible for the treatment at the

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Police of the Generalitat-Mossos d'Esquadra (PG-MMEE). This makes it even more difficult to impute the facts reported to the City Council, since, even if it were true that the neighbor named Isabel had access to this police information, it would be difficult to impute this communication or violation of the duty of confidentiality to the City Council, since it cannot be ruled out that the communication was made by a member of this other police force (PG-MMEE), which belongs to the Administration of the Generalitat. In fact, the complainant refers in his complaint to an expulsion file that would be processed by the National Police of Cornellà, so that the eventual disclosure of information could also have occurred from this other police force. In short, any natural or legal person of any of these police forces who could have had authorized access to said information, could be responsible for any illegal communication or breach of the principle of confidentiality. Article 28.1 of Law 40/2015, of October 1, on the legal regime of the public sector establishes that only persons who are responsible for negligence or fault can be sanctioned for acts constituting an administrative infraction, is that is to say, the person who committed the infraction, a circumstance that in any case could not be determined, given the impossibility of obtaining other relevant elements tending to corroborate the version of the reporting person, refuted by the person to whom it was attributed illegal conduct.

Consequently, the principle of presumption of innocence is applicable here 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 forth in legal basis 2, and given that during the previous information has not been proven that there are rational indications that allow to impute to the City Council of (...) no event that could constitute any of the violations provided for in the applicable legislation, should agree to archive these actions. 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 the following is highlighted in the instruction of the procedure: *"b) When the facts are not accredited"*.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 232/2019, 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.

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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 may the interested persons may file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within a period of one month from the day after its notification, d in accordance with the provisions of 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,