

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

In this resolution, the mentions of the affected entity have been hidden in order to comply in art. 17.2 of Law 32/2010, given that in the event of revealing the name of the affected entity, they could also identify the physical persons affected.

#### File identification

Archive resolution of the previous information no. IP 243/2019, referring to the City Council of (...).

#### Background

1. On 06/09/2019, the Catalan Data Protection Authority received a letter of complaint against the City Council of (...) (hereafter, City Council) and against the Catalan National Assembly (ANC (...)), of a councilor of the City Council on the grounds of an alleged breach of the regulations on the protection of personal data.

The person making the complaint explained that he submitted an instance to the City Council in order to request certain information regarding the permits and authorizations granted by the City Council to private entities and political parties for the installation of elements on public roads, and he claimed that, for this reason, the City Council would have revealed his surname to the ANC (...), and the latter would have published it on its Facebook account.

Specifically, the following information was published *"the party of Mr. (...) has presented several instances complaining about the banners of the ANC and asking for the removal of the stars"*, and it was also stated that *"we never accuse without grounds. Mr. (...) has presented instances complaining about the banners and the stars"*.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 243/2019), 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 were capable of motivating the initiation of a sanctioning procedure.

3. En data 15/10/2020, per remissió de l'Agencia Española de Protección de Datos, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, una denuncia, de data 06/09/2019, presentada per la mateixa complainant (Mr. (...)), and that it was a duplicate of the complaint submitted to this Authority on the same date.

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

4. During the preliminary information phase, on 21/10/2020 the reported City Council was requested to identify the bodies and/or positions that, by reason of their functions, had access to the instance presented by the person making the complaint before the City Council, prior to the dissemination of the said person's last name data through internet, and report on what would be the legal basis that would have enabled the City Council to reveal to the ANC (...) that the person making the complaint presented an instance to the City Council and his data. In this request it was also indicated that the Authority was only competent to know the ends of the complaint related to the treatments and disclosure of data that could have been carried out the City Council of (...), and not the ANC (...) because this entity was excluded from its area of competence.

5. On 22/10/2020, the City Council responded to the request, dated 21/10/2020, made by the Authority and stated that *"Mr. who has submitted the complaint, has also submitted a very high number of instances to the City Council, it is impossible for me to know which instance he is specifically referring to. It would be very useful for us if you could indicate the registration number of the instance to which it refers in order to determine who had access to it as well as to clarify the facts."*

6. By official letter dated 10/22/2020, received on 10/29/2020, the Authority requested the reporting person to identify the registration number of the instance or instances referred to in your complaint, and that in the case of not having said number, indicate the date on which the said instance or instances would have been presented to the City Council. However, the deadline granted to give a response was exceeded by far without the reporting person having provided the information requested by this Authority.

7. On 11/06/2020, the City Council responded to this Authority's request of 10/21/2020 indicating that *"it is not possible for us to identify the instance to which this matter refers, to the extent of possible we proceed to respond to the request made"* stating the following:

- With respect to the bodies and offices that, due to their functions, could have access *"in a generic way, the Comptroller Secretary, the Mayor, the Councilor responsible for the area to which the instance refers, have access to the instances, as well such as the technical and administrative staff of the specific area",* and also *"the administrative staff of the Citizen Service Office that practices the registration of instances"*.

- That it is unknown what would be the legal basis that would enable the City Council in this specific case, due to the fact that it is not known to which instance the person making the complaint is referring to in his complaint.

8. On 04/12/2020, the Authority sent a request for more information to the City Council in order to inform it about whether *"on any occasion it would have communicated to the ANC (...)"*

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

*any information related to any of the instances presented by Mr. (...)", and if so, indicate "what would be the legal basis that would have empowered the City Council to do so".*

On 01/25/2021, the Authority reiterated the previous request for more information and the City Council submitted its, written response on 02/01/2021 stating that: *"The City Council of (...), prior to the publication on Facebook that is the subject of the complaint, has not disclosed to the ANC (...), information relating to any of the instances presented by Mr. (...) in relation to the banners that the ANC hung in the municipality".*

#### 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.

The Authority, as has been advanced in the antecedents, is only competent to know the ends of the complaint related to the treatments that the City Council of (...) could have carried out regarding the disclosure of the data of the person making the complaint, but not with respect to the subsequent publication of this data by the ANC (...) on the Facebook platform "(...) a debat", given that this entity falls outside the Authority's jurisdiction, in accordance with articles 156 of the Statute of Autonomy of Catalonia of 2006, and 3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2. Based on what has been set out in the antecedents section, it is necessary to analyze the reported facts, which focus on the possible disclosure of the surname of the councilor of the City Council by this entity to the 'ANC (...), on the occasion of an instance presented by the complainant to the City Council.

On 10/22/2020, the City Council, in response to the Authority's request of 10/21/2020, stated, basically, that in order to comply with said request, it needed to specify to which instance the complainant when he complained that the City Council had revealed his surname to the ANC (...), given that said person had presented "a very high number of instances to the City Council" and that from the content of the complaint, it was not inferred which instance it referred to. On the other hand, the Authority also made a request for information

to clarify this circumstance to the reporting person on 10/29/2020, but the period of 10 working days granted to him passed without him providing the information requested

Later, specifically, on 06/11/2020, the City Council responded to the Authority, that *"it is not possible for us to identify the instance to which this matter refers (...)"*.

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

Lastly, and given the possibility that the City Council could have communicated to the ANC on some occasion (...) some information relating not to a specific instance, but to any of the instances presented by Mr. (...), the Authority made a new request to the City Council in this sense on 04/12/2020. The City Council responded on 01/02/2021, stating categorically that *"The City Council of (...), prior to the publication on Facebook subject to complaint, has NOT disclosed to the ANC (...), information relating to any of the instances presented by Mr. (...) in relation to the banners that the ANC hung in the municipality"*.

It should be borne in mind that the information published by the ANC of (...) was of a general nature, a fact that gives reason to think that the source of the information did not necessarily have to be the City Council, given that it has not been published nor the specific content of any instance, nor dates, nor other data that allow to confirm the supposition of the complainant, also taking into account that when the Authority has requested from the person making the complaint more information on these ends, neither the has provided

Therefore, from the previous information actions carried out by this Authority, no indication has been observed that allows us to infer that the City Council had revealed to the ANC (...) the last name of the person here reporting in relation with the presentation of instances before the City Council, without, on the other hand, any indication regarding the veracity of the facts reported.

Consequently, the principle of presumption of innocence is applicable here given that it has not been possible to prove the existence of evidence of infringement 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 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 which may constitute one of the offenses provided for in the applicable legislation, it is necessary to agree on the archiving of 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 proven"*.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 243/2019, relating to the City Council of (...).

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

2. Notify this resolution to the City Council of (...) and communicate it to the person making the complaint.

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,