

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

File identification

Archive resolution of the previous information no. IP 259/2019, referring to Vallromanes Town Council.

Background

1. On 28/09/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Vallromanes City Council (hereinafter, the City Council), on the grounds of an alleged breach of the regulations on personal data protection.

The complainant stated that as part of the municipality's fiesta, the City Council published the activity "(...)" in the 2019 Festa Major program . For registrations to the activity, an email and a mobile phone number were indicated which the reporting person stated was his personal mobile number.

In the letter of complaint, the complainant stated that he had not consented to the publication of his personal mobile number in the Festa Major programme. In addition, he added that the program had been distributed among the residents of the town, and had been disseminated through social networks and on the website of the City Council.

The complainant provided a link to the City Council's website from where the Festa Major program corresponding to the year 2019 could be downloaded.

2. The Authority opened a preliminary information phase (no. IP 259/2019), 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 preliminary information phase, on 14/10/2019 the reported entity was required to report on several issues related to the reported facts, among others, on whether the mobile phone number subject to the complaint was provided to the City Council by the person making the complaint and, assuming that it had not been obtained from the complainant, indicate the source of origin. It was also requested to indicate the legal basis of the treatment that would justify the publication of the mobile number in the 2019 Festa Major programme.

4. On 25/10/2019, the City Council responded to the request through a letter in which stated the following:

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

- That the activity "(...)" had indeed been published in the Festa Major 2019 programme, a series of information relating to registration for the activity, which included an email and a mobile number of contact
- That the data published in the Festa Major program came from the 2019 Guide of sports, cultural and social organizations of Vallromanes, which contained the same data as in the 2019 Festa Major program, including the mobile number that is the subject of the complaint
- That the data that appeared in the aforementioned Sports, Cultural and Social Organizations Guide had been provided by the same sports organization on 2/27/2019 for publication in the aforementioned Guide, by email from address of the entity.
- That the data published by the City Council were the same as those contained in the posters that the sports organization distributed around the town announcing the sports activities.
- That the 2018 Festa Major program, in relation to the same sporting activity, contained exactly the same data, including the mobile phone number.

The reported entity attached various documentation to the letter to prove the previous statements.

5. On 01/10/2019, also during this preliminary information phase, the Authority carried out a series of checks via the Internet on the facts subject to the complaint, from which it lifted the due diligence

Thus, the website of the Vallromanes Town Council (www.vallromanes.cat) was accessed, at the top of the website an image relating to the 2019 Sant Miquel Festival was displayed from where the program could be downloaded Major Festival Once the file was downloaded, it was possible to verify that, along with the scheduled sports activity, it contained the email address and a mobile phone number that corresponded to the mobile phone that was the subject of the complaint.

Likewise, the Facebook and Twitter accounts of the City Council were accessed, and although photographs of part of the Festa Major 2019 program were found, none of them appeared published the complainant's mobile phone number.

6. On 13/10/2020, also within the framework of this preliminary information phase, the Authority carried out new checks via the Internet, of which it lifted the corresponding due diligence.

Thus, in this new search, the website of the sports organization was accessed (...) and the existence of several publications (photographs of posters and blog entries) corresponding to the years 2018 and 2019 where the same appeared mobile phone number next to the entity's email address. It was also observed that in all the posts the mobile number it was associated with the entity's email address, both of which were provided for registration purposes in the activity being advertised. It was also found that the mobile number never appeared linked to the name of a natural person.

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 antecedents, it is necessary to analyze the reported events that are the subject of this archive resolution, which focus on the publication and subsequent dissemination of the mobile number owned by the complainant by the City Council without having obtained the consent of the owner of the data.

In relation to the events, it should be noted that the City Council has admitted to having published, in the Festa Major 2019 program, the information that the sports organization provided so that it could be included in the Municipality's Sports Organizations Guide, including a mobile phone number

On the concept of personal data, art. 4 of the RGPD establishes that *for the purposes of this Regulation, it is understood by:*

1) Personal data: any information about an identified or identifiable natural person (the interested party). An identifiable natural person is any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier or a or various elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of this person.

In accordance with the concept of personal data established by the RGPD, there is no doubt that the A natural person's mobile phone is personal data that allows the person to be identified. However, the problem here lies in determining whether the City Council knew or had evidence to determine that the mobile phone provided by the sports organization was not actually owned by the organization, but by a natural person. Well, from the previous actions carried out by this Authority, no indication has been observed that allows us to infer that the City Council knew or could deduce that the mobile phone number was, in reality, owned by the complainant. In fact, from the circumstances surrounding the case, rather, one could think that it was owned by the sports entity.

On the one hand, the entity provided the City Council with the information it wanted published in the Vallromanes Entity Guide, without making any reference to the ownership of the mobile number. In addition, in the e-mails exchanged between the sports entity and the City Council, the disputed mobile number was included among the following information: the corporate object of the entity, the place and

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

the weekly meeting schedule and the information to sign up for the activities, which could be done via WhatsApp (on the mobile number mentioned) or on the organization's email, finally there were three proper names (without surnames). It should be added that it is stated in the signature of the entity's e-mails the following information: "Board (...) Vallromanes, two mobile numbers, one of them corresponds to that of the complainant, the web address and the logo of the entity". Considering the form and content of the e-mail, everything suggests that the data, including the telephone number, correspond to the sports entity. Certainly, these data refer to the entity and in no case are they attributed to any natural person. It should also be noted that the City Council published in the Festa Major program the contact details contained in the Guide of Entities. From the moment that the sports entity provided the complainant's mobile number as the entity's contact telephone number, it is considered a contact data of a natural person who provides his services in a legal entity (the entity sports). And in accordance with the provisions of art. 19 of the LOPDGDD, the processing of these contact details is possible, as long as they are used in relation to the professional location and for matters relating to the functions that the person performs in the entity.

On the other hand, the City Council stated in its statement of allegations that, in relation to the same sports activity, in the 2018 Festa Major program, exactly the same data was published. He adds that these data were identical to those published by the organization on the posters of the activities it carried out. This Authority accessed the website of the sports organization (...) and was able to verify that, at least in two entries (1/7/2019 and 18/9/2018), WhatsApp appeared with the controversial mobile phone number together with the entity's email (it is certified in diligence dated 13/10/2020).

However, there is no complaint from the complainant about the publication of his mobile phone number corresponding to the 2018 Festa Major program, nor is there any indication that could make the City Council think that the mobile phone number provided by the sports entity not owned by a natural person.

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, it is not possible to demand administrative responsibility. The principle of responsibility contained in art. 28 of Law 40/2015, of October 1, on the legal regime of the public sector, provides:

1. Only physical and legal persons can be sanctioned for acts constituting an administrative infraction, as well as, when a law recognizes them as having the capacity to act, affected groups, unions and entities without legal personality and independent estates or self-employed persons who are responsible for those by way of fault or fault.

In the same vein, article 53.2.b) of Law 39/2015, of October 2, 2015, recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise".

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

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 259/2019, relating to Vallromanes Town Council.
2. Notify this resolution to Vallromanes City Council and 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,