

File identification

Archive resolution of the previous information no. IP 292/2019, referring to Barcelona City Council and the National Institute of Statistics.

Background

1. On 25/10/2019, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the National Institute of Statistics (hereinafter, INE), on the grounds of an alleged breach of the regulations on the protection of personal data.

The complainant (Mr. (...)) states that for years he has been receiving correspondence from public and private entities - such as electoral propaganda from political parties, Vodafone invoices and commercial mail from the ISGF entity Commercial reports, SL- at his address (located at Carrer (...) de Barcelona), addressed to another person (Mr. (...)), regarding whom he states that he has never lived at this address and that he does not know You are welcome.

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

2. The Authority opened a preliminary information phase (no. IP 292/2019), 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. Although the complainant complained about the processing of personal data carried out by the INE, in the yes of this phase information was required from Barcelona City Council, taking into account that in agreement with article 35 of Organic Law 5/1985, of June 19, of the general electoral regime (hereafter, LOREG), the update of the electoral census takes place based on the data that the town councils send to the provincial delegations of the Electoral Census Office and that the INE is not an entity contemplated within the jurisdiction of this Authority. Therefore, by means of official document dated 11/14/2019, the Barcelona City Council was requested to identified the people who were registered at the address located on Carrer (...) in Barcelona. The City Council was also required to verify whether Mr. (...) was registered at the same address, and lastly, in the event that he was not registered there, the City Council was required to point out the actions carried out or planned to correct said inaccuracy.



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4. On 27/11/2019, the City Council responded to the aforementioned request through a letter in which it set out the following:

- That the reporting person, (...), "*is registered, without any cohabitant, at the street address (...)*".
- That Mr. (...) "*is registered in an attic of the same estate with his family (street (...))*".
- That in the electoral roll it appears as the address of the person making the complaint (...)), while the address of Mr (...) is (C (...)). The City Council refers that "A is Attic and the INE does not have double numbers" and that "Other components of the Attic's family appear in the electoral roll as AT (...), as in the Population Register".
- That on the one hand, it is a problem of "*Codification of the address of the electoral census by the Office of the Electoral Census*", regarding which the City Council has sent "*an ex officio census claim for the correction of the address*" to the INE, and another, it is a problem of "*Interpretation of the address of the electoral roll by the postal services, by not correctly interpreting the A of the address*".
- That "At no time have there been any mixed registrations, neither in the Population Register nor in the electoral census".

Barcelona City Council attached various documentation to the letter.

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. As a preliminary consideration, it should be noted that this Authority will not analyze the possible responsibilities that could have been incurred by any private entity that the person making the complaint refers to in their complaint, given that said entities would be outside the scope competence of the Authority (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).

3. Based on the account of facts that has been set out in the background section, it is necessary to analyze the facts reported, specifically, the alleged violation of the principle of accuracy by the City Council with respect to the data of the reporting person listed in the Register of Inhabitants.

In relation to the facts that are the subject of the complaint and the documentation provided, it is certified that the person making the complaint is registered at *street (...)*, and that Mr. (...), is registered at the address corresponding to *the street (...)*. As stated by the City Council, in response to the Authority's request of 14/11/2019, it consulted the Electoral Census Office, in order to verify the addresses of the complainant and the gentleman (...), verifying that the address of the complainant fully coincided with the one listed in the Register, while Mr. (...)’s address did not due to a coding issue. In this regard, it is certified that the City Council made a claim dated 11/25/2019 to the Electoral Census Office, so that it would correct this coding problem. In short, according to what the Barcelona City Council stated by means of a letter of 27/11/2019, it is inferred that there is no inaccuracy in the personal data relating to the address of the person making the complaint that appears in the electoral census managed by the INE, given that the information contained in the Register and the INE is the same. Likewise, it should be noted that the inaccuracy of the personal data relating to Mr. the INE in accordance with what is established in article 35.1 of the LOREG.

Therefore, with regard to the principle of data accuracy, it is necessary to refer to article 6.1.d) of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/EC (RGPD), which considers that personal data shall be accurate and, if necessary, updated; reasonable measures must be taken so that personal data that are inaccurate in terms of the purposes for which they are processed are deleted or rectified without delay, as is the case of Barcelona City Council. In this same sense, article 4.1 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD) specifies that "In accordance with article 5.1.d) of the Regulation (EU) 2016/679 the data must be accurate and, if necessary, updated", as is the case.

In short, no infringement has been established in relation to the treatment object of complaint by the Barcelona City Council.

Otherwise, in the event that the principle of accuracy contained in article 5.1.d) of the RGPD could have been violated at the time when the disputed data was incorporated into the INE files, it is necessary to put it is clear that the determination of any responsibilities that the INE - and any private entity - could have incurred would fall outside the scope of the Authority's competence (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).

In this respect, article 141.1.a) of Law 40/2015, of October 1, on the legal regime of the public sector, provides that public administrations must "Respect the legitimate exercise by the other administrations of their powers." For this reason, it is considered appropriate to transfer the present previous actions to the Spanish Data Protection Agency (AEPD) for the purpose of elucidating any responsibilities that the INE - or any other private entity - may have incurred. refers to the subject of this complaint.

4. In accordance with everything that has been set out in legal basis 3, and given that during the previous information it has not been proven that there are rational indications that allow Barcelona City Council to be charged with any fact that could be constitutive of any of the infractions 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; "c) When the proven facts do not manifestly constitute an administrative infraction."

resolution

Therefore, I resolve:

1. File the actions of prior information no. 292/2019, relating to Barcelona City Council, and transfer them to the Spanish Data Protection Agency in relation to the National Institute of Statistics - and any private entity - to which the object of this complaint.

2. Notify this resolution to Barcelona City Council and communicate it to the person making the complaint.

3. Order the publication of the resolution on the Authority's website (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 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.



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Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,

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