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## File identification

Archive resolution of the previous information no. IP 305/2019, referring to the Pere Mitjans Foundation

## Background

1. On 12/11/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Pere Mitjans Foundation, on the grounds of an alleged breach of the regulations on protection of personal data.

In particular, the complainant states that his thread is a user of the home-residence service (...) for people with disabilities, managed by the Pere Mitjans Foundation, and it is there that his son receives postal communications addressed to the his person In this regard, the complainant complains in general terms that the communications addressed to his son "are kept in different places to which people other than his tutors could have access, proceeding to disseminate it incorrectly". The complainant presents the specific case of the electoral census card to participate in the elections of 10/11/2019, in relation to which he complains that "they proceeded to save the same in my son's backpack, without prior notice nor communication of any kind".

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

2. The Authority opened a preliminary information phase (no. IP 305/2019), 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 12/10/2019 the reported entity was required to report on whether the transfer to the reporting person of the electoral roll card addressed to their child was deposited in the inside the latter's backpack, and if this happened before leaving class and heading home, thus preventing a third person other than their guardian from accessing it, and in case of a negative answer, that explain what the center's security measures are to prevent third parties from accessing the postal mail or documentation that is deposited inside the residents' backpacks. In the last one, the entity was required to report whether postal communications addressed to the residents of the center are kept, until the moment they are delivered to their recipients, in places accessible to third parties.

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4. On 20/12/2019, the Pere Mitjans Foundation responded to the aforementioned request through a letter in which it stated the following:

- What " the services of the Pere Mitjans Foundation Homes-residence and Residencies, postmen of the Post Office service or others, with similar characteristics, deposit the postal mail in the mailboxes that are there for these needs.
- That "in the case of home-residence services (...), the people in charge of the postal mail empty the mailbox and deliver the postal mail in individual spaces of each user, such as the inside of the backpack, if to the family home, or deliver it by hand to the user, according to each person's capabilities, without opening the postal mail or other intermediaries."

#### Fundamentals of law

1. The reported data processing falls within the competence of the Authority under the provisions of article 156.b) of the Statute of Autonomy of Catalonia (EAC) and article 3.h) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, to the extent that this treatment would have been carried out within the framework of the provision of a specialized social service, specifically, of the temporary or permanent residence service for people with intellectual disabilities, provided by the Foundation on behalf of the Department of Labour, Social Affairs and Family, and therefore within the competences attributed to the Administration of the Generalitat in subject of social affairs.

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, and article 15 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the director of the Catalan Data Protection Authority is competent to issue this resolution.

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.

First of all, the complainant makes a complaint in general terms about the way the entity communicates and delivers that postal correspondence addressed to his child, user of the home-residence service (...). Regarding this, the person making the complaint here states that "it is not being handed over to me, but it is being stored in different places to which it could be accessed by people other than its guardians, proceeding to distribute it incorrectly." Next, the complainant presents the specific case, relating to the lack of communication to the family of the reception center of the electoral roll card addressed to their child to participate in the elections of 11/10/2019, and that "proceeded to keep it in my son's backpack, without prior notice or communication of any kind".

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In relation to the first part of the complaint, about an alleged lack of measures on the part of the center to guarantee the delivery and confidentiality of correspondence received by users of the home-residence service, it should be noted that, among all the documentation provided, although there is evidence of certain communication problems between the entity and the person reporting here to deal with different aspects related to the provision of the home-residence service, there is no evidence that the entity from the moment who receives the letter until delivery to the addressee violates data protection legislation. Likewise, the Pere Mitjans Foundation, in its response to this Authority's request, denies the facts reported, and in this sense informs of the system followed by the center to deliver the letters to their recipients or legal guardians. In this respect, the person who is responsible for emptying the mailbox of received postal mail, is the same one who deposits "the postal mail in individual spaces of each user, such as the inside of the backpack, if it goes to the family home, or deliver it by hand to the user, according to each person's capabilities, without opening the postal mail or other intermediaries". Therefore, to deposit users' correspondence, a private space is sought or it is delivered by hand, and in this sense, the system followed, under the prism of data protection regulations, is considered correct. That being the case, it must be taken into account that the sanctioning administrative procedure is particularly guarantor because of the consequences that can be derived from it. That is why it is necessary, for its initiation, the existence of evidentiary elements or sufficient rational indications that allow the commission of an infringement to be imputed, elements that are not present in the case under examination. Therefore, based on the right to the presumption of non-existence of administrative responsibility until the contrary is proven (art. 53.2.b LPAC), it is not appropriate to impute the commission of an infringement to the entity denounced for the facts referenced here.

On the other hand, in relation to the more specific complaint regarding the fact that the census card of the child of the person making the complaint was kept in his backpack without notifying the parents of this action, it is relevant to indicate that the complaint is directed, specifically, against the said lack of notice on the part of those responsible, which seems to derive from a lack of fluency in communications between both parties. That being the case, it should be noted that this fact alone does not constitute the commission of an infringement of the data protection regulations, taking into account that from the letter of complaint it is inferred that the census card was deposited unopened inside the backpack of the child of the person reporting here, and that is where the parents found it, without any indication of improper access, or any other treatment that could violate the right to data protection.

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, it is necessary to agree on its file

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## resolution

Therefore, I resolve:

1. File the actions of prior information number IP 305/2019, relating to the Foundation Pere Mitjans
2. Notify this resolution to the Pere Mitjans Foundation 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,