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File identification

Archive resolution of the previous information no. IP 321/2019, referring to Sitges City Council.

Background

1. On 27/11/2019, the Catalan Data Protection Authority received a letter by which Mr. (...) and Ms. (...) filed a complaint against Sitges City Council on the grounds of an alleged breach of the regulations on the protection of personal data.

Specifically, the complainants stated that the City Council of Sitges provided third parties, without their consent, with information regarding the works that were being carried out in their home and evidenced that *"In no case were these people authorized by the owners of the housing affected by said works nor by the President of the Community who (...) is the one who has the capacity and legitimacy to represent the community (...) there is no authorization from the Community to appear before the City Council in carry out such management (...)"*

In order to substantiate the facts reported, they provided a copy of the document *"History of interventions in reference to the building permit file (...) (...)",* drawn up by the City Council on date (...)2019, in response to the request made by one of the complainants here. This document includes, among others, the following actions:

- *On August 2, 2018, a municipal license is requested for (...) REFORM AND EXPANSION OF HOUSING IN A MULTI-FAMILY BUILDING located at (...).*
- (...)
- *Unfavorable report on February 11, 2019 with response to receipt of notification on February 21, 2019 via e-notum. Among the documentation are photographs that confirm that the works have started.*
- *On February 19, a visual inspection of the exterior of the property is carried out and it is evident that the works have started, based on the project provided with deficiencies and that in part are not legalizable. The ceramic lattice in the laundry room has been demolished. A technical-legal report is drawn up dated February 28, 2019, in which it is proposed to initiate a file for the protection of legality and it is transferred to the urban discipline department. Given that another inspection was subsequently carried out (April 1, 2019), a resolution proposal is pending.*
- (...)
- *On March 1, 2019, a neighbor of the estate (...) contacted the municipal architect via e-mail requesting a copy of the works project, in order to be the owner of the estate affected by the works below, REQUESTS CONFIDENTIALITY AND ANONYMITY WITH RESPECT. says to work on behalf of the community.*

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- *The administration service of the department sends him a statement of deficiencies on the 7th of March; of 2019 via e-mail.*
- *On March 11; of 2019, 2 neighbors of the estate appear in the municipal offices (...) as representatives of the community and as interested parties, identify themselves and ask for CONFIDENTIALITY in this regard. They consult the construction project and are informed of the license status. Els attended (...) as the technician leading the project. They asked for a copy of the Notice of Deficiencies report and were refused due to data protection for the owners, but were told that we would provide the estate manager with an extract of the deficiencies, attending to their request and considering that they are an interested party since the deficiencies observed required authorization from the community to complete the proposed works in part. NO COPYING OF ANYTHING IS ALLOWED*

- (...)"

2. The Authority opened a preliminary information phase (no. IP 321/2019), 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.

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 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.

As explained in the background, the complainants complained that the City Council of Sitges had provided certain information to third parties related to the file opened by the City Council following the completion of works on their home, and in relation with which certain deficiencies had been detected. Specifically, the complainants indicated that, on the one hand, an "extract" of the deficiencies detected in the work had been provided; and, on the other hand, the works project had been seen.

The legal system recognizes the right of access - with certain conditions and always respecting data protection regulations - to the information contained in the files

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administrative, whether by persons interested or not interested in the corresponding administrative procedure. In the specific case of urban planning information - as is the case analyzed here - all persons have the status of interested parties without the need to prove special legitimacy, given the recognition in the sectoral regulations of public action, which justifies the need to have extensive information on this matter (article 12.1 of the Revised Text of the Urbanism Law, approved by Legislative Decree 1/2010, of August 3). Leaving aside the specific case of urban planning, in general the right of access to public information is also recognized, on the one hand in the administrative procedure legislation (art. 53 of the Law 39/2015, of October 1, of the common administrative procedure of public administrations - LPAC-; and article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia -LRJPCat-); and on the other hand, in articles 18 et seq. of Law 19/2014, of December 29, on transparency, access to public information and good governance.

With regard to access to urban planning information, this Authority has issued statements in several reports, among others, IAI 5/2017 and IAI 30/2016, the latter concluding that: *"The personal data protection regulations do not prevent deliver to the person making the claim the information relating to the administrative titles enabling the buildings in respect of which access is requested, as well as the technical project and the rest of the necessary documentation for the purposes of control of urban planning legality, without prejudice to omit those personal data of applicants or holders of licenses that are not necessary to achieve the purpose pursued"*.

In accordance with the above, the delivery by the City Council of an "extract" on the deficiencies detected, as well as giving a view of the works project to the interested persons, especially in a case such as the one here occupations in which there were proven serious deficiencies (as indicated by the City Council in a report dated (...)2019 -antecedent 1st *in fine*-), would have its legal basis in article 6.1.e) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these (RGPD) (*"the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the person responsible for the treatment"*), in relation to the regulations above mentioned

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.

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resolution

Therefore, I resolve:

1. File the actions of prior information number IP 321/2019, relating to Sitges City Council.
2. Notify this resolution to Sitges City Council and to the complainants.
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,