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File identification

Archive and warning resolution of the previous information no. IP 325/2019, referring to the Ametlla del Vallès Town Council

Background

1. On 04/12/2019, the Catalan Data Protection Authority received a letter from a person filing a complaint against the Ametlla del Vallès City Council, on the grounds of an alleged non-compliance of the regulations on personal data protection. The complainant, an officer of the Local Police of the said City Council, explained that another local police officer with a TIP number (...), had "access to my personal and work information illegally", and on this, he added that said information would have been provided "for (...) of the local police".

In this regard, the complainant provided various documentation, including a copy of the notification of the Mayor's Decree (no.(...)), issued on (...)by the Secretary of the City Council , in which it is stated that, in accordance with the technical report dated (...) issued by (...) of the Local Police, the work folder of the agent (...) located the Prefecture's computer contains documentation that it "shouldn't have". Specifically, the following:

"(...): Folder containing three (3) documents in PDF format and which are as follows:

(...): Consisting of a complete photocopy (of what would be a book bound with plastic tape) of the RESERVED INFORMATION included in the HR file (...), related to the interested party, (...) [initials that refer to the name of the person making the complaint]. It is therefore considered that this information SHOULD NOT BE IN THE POSSESSION of the agent (...), not knowing how it may have reached his hands.

(...)-2: Consisting of a copy similar to the previous one, which includes documents related to the same reserved information, among other things a literal copy of a court ruling that affects the interested party (...)

In the same way, it is considered that this information SHOULD NOT BE IN THE POSSESSION OF THE AGENT (...).

A Word document called (...), created on (...), at 03:12 a.m., consisting of an appeal before the City Council of (...) for a traffic violation. Considering that the aforementioned document contains personal data of an unknown person, it is considered that it SHOULD NOT BE IN THE POSSESSION of the Agent (...)

(...) escanner (3) complaint (...): document scanned on (...) (PDF), at 02:39 a.m. which corresponds to the original of the municipal complaint form number (. ..) of date (...), at

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08:50 a.m. In which the agent of the Corps with TIP (...) denounced an infringement of article 144.2.2 of the RGC during school protection. Please note that, apart from the fact that the document is original, it has already been supervised and entered into the WTP by the sergeant on duty, in this case the undersigned (see mark on the right side). These complaints, once processed, are kept in the sergeants' office temporarily, and then go on file final in a closed cabinet at the OAC. It is considered that this document **SHOULD NOT BE IN THE POSSESSION** of the agent (...)"

2. The Authority opened a preliminary information phase (no. IP 325/2019), 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 09/01/2020 the reported entity was required to inform the City Council of how the agent with TIP number (...) of the Police Local would have had access to the documentation relating to the person making the complaint, and in particular, if this information was obtained through another City Council employee, as the person making the complaint stated. In case of an affirmative answer, it was required to identify the employee who would have provided the disputed documentation, and the reasons that would explain why this person had this information. And, in case of a negative answer to the previous question, that the reasons that would explain why the TIP agent (...) kept, among other things, the personal information of the person making the complaint in his digital folder should be indicated.

4. On 01/23/2020, the Ametlla del Vallès City Council responded to the above-mentioned request in a letter stating the following:

- That "The Ametlla del Vallès City Council has no record of how the Local Police officer with TIP number (...), has had access to the documentation relating to the reporting person contained in the folder of the agent's work (...)".
- That "The City Council required the agent with TIP number (...), Mr. XXX, to state, among others, in relation to the digital folder "...", in which they contained the documents "...", "...-2", how he had accessed the documentation, who had provided it to him, who had provided him with a full copy of the Judgment and the reasons for keeping them in your digital folder."
- That the response of the TIP agent (...) to said request was: "I inform you that all the documentation mentioned in the Decree (...), from the agent's (...) computer session is of

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employment, which has become known and is related to my function as a local police officer".

- That "considering the answer incomplete" the agent was required on several occasions "to appear in the HR department in order to complete the information, without the agent (...) having appeared".

Finally, the local entity informed that the agent had been summoned (...), on (...), to appear before the "HR" department, and that once the appearance had taken place, the result to the Authority.

5. On 10/03/2020, the Catalan Data Protection Authority received two more letters of complaint from the complainant against the Ametlla del Vallès City Council.

In the first letter, the complainant complained that on (...) he submitted a form to the City Council (Register ID: (...), through which he requested the exercise of his right of opposition in relation to the images recorded by the video surveillance cameras installed in the municipality since July 2018, as well as the number plate tracking system, invoking that the images were controlled and viewed by "Mr (...)", with whom the person reporting here would have an open legal matter. Regarding this, he added that on 28/11/2019 he received a response from the City Council in which he was informed of the following: "(...) to date, there is no recording or image from the video surveillance cameras nor has access to the same been enabled to any person from the City Council or any external company."

The complainant here expressed his dissatisfaction with the entity's response, and provided various documentation, including the request to exercise the right of opposition presented to the City Council and the response obtained, and documentation announcing the project to install surveillance cameras in the municipality.

In the second letter, the complainant complained that on (...) he presented an instance (no. (...)) before the City Council requesting access to certain information relating to the video surveillance cameras installed sides within the municipality and its recording system, as well as the "ambient cameras", and those of the number plate readers to control the entry and exit of vehicles from the municipality, and that he would not have obtained an answer in this regard. The complainant provided a copy of the request submitted to the City Council.

6. On 06/30/2020, he received a letter from the City Council regarding the appearance of the local police officer (...), dated (...), before the HR department .

The appearance document states, among others, the following:

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"What is being asked in relation to the folder entitled (...):

- How did you access the documentation: Answer that you don't remember
- Who facilitated it? He replies that he doesn't remember
- That he wants to add that what is on the computer is for work.
- Who provided you with a copy of the sentence? He replies that he doesn't know, it's been a long time
- What are the reasons why you kept this documentation on the computer?

Answer that because it's work. That everything that is work is saved on the computer.

What you are asked about the folder (...):

- What are the reasons why you keep the documentation: Answer that you don't know, that it's a service
- He had authorization from the same to keep the documentation: He answered that he did not remember

What is being asked in relation to the folder scanner (...):

- What are the reasons why you keep an original ticket of a traffic complaint from the agent (...) scanned? He responds by asking if he can't have it, and states that it's for work since it's a complaint from a colleague
- How did you get the ticket? He answers that he does not remember."

7. On 11/12/2020, still in the midst of this preliminary information phase, a new request was made to the reported entity to report, among other issues, whether on the date on which the The City Council responded to the person here denouncing his request to exercise the right of opposition (28/11/2019), the municipality's video surveillance cameras were not in operation, as was inferred from his letter of answer

8. On 12/28/2020, the Ametlla del Vallès City Council responded to the above-mentioned request in a letter stating the following:

That "in relation to the exercise of the right of opposition, we inform you that the City Council gave an answer to the interested person indicating that on that date there was no recording or any image from the video surveillance cameras, as well as had enabled access to the same to any person from the City Council or any external company. The cameras were put into operation between December 15 and December 18, 2019."

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.

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2. Based on the account of facts that has been presented in the background section, it is necessary to analyze the reported facts that are the subject of the present file resolution, starting first with those that refer to the sole requests to exercise the rights of access and opposition presented by the reporting person

The complainant states that, on (...), he presented to the City Council an instance in which he requested the exercise of the right of opposition in relation to the images recorded by the video surveillance cameras installed given to the municipality, as well as the registration plate tracking system, invoking that the images were controlled and viewed by a (...) of the local police with whom the person making the complaint would have an open court case.

In accordance with the documentation provided, the City Council responded to your request on 28/11/2019, stating verbatim: "(...) to date, there is no recording or image of the video surveillance cameras, nor has access to them been granted to any person from the City Council or any external company." For his part, the person reporting here maintained that the cameras had been installed since July 2018, although, from the documentation he provided, it was only inferred that there was a project to install video surveillance cameras in the municipality, however, not that these were in operation on that date.

In this regard, the Authority required the City Council to specify whether the controversial data processing was being carried out on the date the person making the complaint requested the exercise of the right of opposition. The local body supplemented the information it had previously given by adding that the cameras were put into operation between December 15 and December 18, 2019.

Therefore, and in the absence of other elements that indicate the existence of the aforementioned processing of images, everything indicates that the processing of personal data to which the interested party requested to oppose, the recording of personal images by the video surveillance cameras municipalities, had not yet started. That being the case, the response that the City Council gave to the opposition request was adequate, therefore, the main premise for resolving to accept the request was missing, the processing of personal data subject to the request for the right to opposition

Secondly, regarding the instance, dated 11/05/2019, requesting access to certain information relating to the video surveillance cameras installed within the municipality ("video surveillance, "ambient" cameras and license plate readers"), you must remember that, on that date, the right of access requested could not be exercised by applying the data protection regulations because the video surveillance cameras were not yet working, and because thus, they did not record images, and for this purpose, no personal data was processed. For this reason, said request for access should be conveyed through the regime provided for in the law

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of transparency, and specifically, the right to access public information. That being the case, it would be outside the competence of this Authority to resolve the City Council's lack of response in relation to the referenced request.

All this without prejudice to the fact that, taking into account that, according to the City Council, the municipal video surveillance cameras began recording images during the month of December 2019, the person making the complaint here can request again, before the local entity, the 'exercise the right of access to information about the processing of your personal data, and the exercise of your right to oppose this data processing, provided for in articles 15 and 21 of Regulation (EU) 2016/679 of 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 movement of such data (hereafter RGPD), respectively.

Likewise, and with regard to the right of access to one's own images or voices, reference should be made to Instruction 1/2009, of February 10, on the processing of personal data through video surveillance cameras, issued by this Authority. In this regard, in article 13 of this Instruction it is foreseen that, in the event that the exercise of the right also affects images or voices of third parties, unless their consent is obtained, access requires dissociation prior to the images and their voices by any means that prevents their identification. Also, when the dissociation requires disproportionate efforts in attention to the time lapse recorded or the high number of third parties affected, the responsible person can request that the recording period to which it is intended to have access be reduced.

In accordance with everything that has been set out, and given that during the actions carried out within the framework of the previous information, no fact has been proven, in relation to the facts that have been addressed in this section, that could be constitutive of any of the violations provided for in the legislation on data protection, it is necessary to agree on its archive.

3. Secondly, it is necessary to address here the other fact reported, relating to the documentation filed in the electronic folder of the agent TIP number (...) of the local police, which contained personal data of the complainant here and third parties, without the City Council having been able to prove that there is any legal basis that legitimizes said treatment.

In relation to this, it should be noted that this documentation was filed in the folder electronic file of the said agent from an undetermined date, but which, in any case, included the date of (...) when the report of (...) of the Local Police is issued, verifying the electronic file of the disputed documentation in the agent's work folder.

Well, in relation to this, it is necessary to go to article 5.1.a) of the RGPD), which provides that all processing of personal data must be lawful, and, in relation to this, establishes a system of legitimation of the data processing that is based on the need for one of the legal bases established in its article 6.1 to apply. In this regard, it is necessary to indicate

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that the data processing carried out by the local police officer, referring to the electronic archive of documents containing personal data of third parties, did not have the consent of the affected persons, nor could it be justified on the basis of the exercise of the functions carried out by the agent in his workplace. Also, it would not be covered by any of the other authorizations provided for in article 6 of the RGPD, which, in turn, have not been invoked by the reported entity.

So things are, the facts described in this section could constitute an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as such the violation of "the basic principles for the treatment (...)". Also, article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), includes the conduct described as a very serious infringement in relation to the principle of legality established in article 5.1.a) of the same RGPD.

Having established the above, it is necessary, however, to take into account a series of circumstances that come together in the present case. First of all, it is necessary to point out that the material author of the facts here described is a local police officer, who would not have acted under the instructions of the controller (the City Council), but on the contrary, would have carried out the conduct constituting an infringement of the data protection regulations, behind the back of the responsible for the treatment. Also, it should be emphasized that the City Council has shown full cooperation when trying to find out where the agent had obtained the controversial documentation, and in this sense, we refer to the legal precedents 4rt and 6th of this resolution, which describes how the City Council, faced with the agent's vague or uncertain answers, requires new appearances from him in order to clarify the facts.

Having said that, it is considered that, although on the one hand, the facts reported in this section constitute an infringement of the data protection regulations, and that the applicable legal framework attributes responsibility to the person in charge of the treatment, it cannot be leaving aside the fact that, in this case, it is difficult to attribute responsibility for the events to the City Council justified by a possible lack of diligence.

It is considered, therefore, that in the circumstances presented, imputing to the City Council the responsibility for the illegal treatment carried out by the local police officer, would entail demanding a degree of diligence that is difficult or almost impossible to comply with, and even inappropriate, as it would imply requiring him to have knowledge of the updated contents of each of the electronic folders of the local police officers.

That is why, in this specific case, it is considered appropriate to apply the form of the warning, regulated in article 58.2.a) of the RGPD, which empowers the control authorities, in the exercise of their powers corrective measures, in order to issue a warning to the person in charge, if the planned treatment operations may infringe the provisions of this Regulation. In turn, article 8.2.c) of Law 32/2010 empowers the Director of the Authority to require the persons responsible and those in charge of the treatment to adopt

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the necessary measures for the adaptation of the treatment of personal data subject to investigation to the legislation in force and order, where appropriate, the cessation of the treatments and the cancellation of the files. And, finally, it is necessary to point out article 77.3 of the LOPDGDD, which provides that the data protection authority can also propose the initiation of disciplinary actions when there are sufficient indications to do so.

It is by virtue of these powers that it is considered appropriate to issue a warning to the City Council, and to require it to amend the breach of this data processing by removing all the documentation that was improperly contained in the electronic folder of the local police officer no. TYPE (...). Also, it is proposed to the City Council to initiate disciplinary proceedings against the said local police officer with regard to the electronic file of the controversial documentation.

Once the corrective measure described has been adopted, within the specified period, the City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to carry out the corresponding checks. Likewise, with regard to the proposal to initiate disciplinary proceedings against the referenced local police officer, the City Council must inform the Authority within the same period, and, in the event that it has been chosen in order not to initiate any disciplinary action, properly motivate and justify the causes of such decision.

Therefore, I resolve:

1. File the actions of prior information number IP325/2019, relating to the Ametlla del Vallès City Council, in everything related to the exercise of the right of opposition and the right of access to the processing of data personal information of the complainant.
2. Warn the Ametlla del Vallès City Council about the facts set out in the 3rd legal basis.
3. Request the City Council to adopt the corrective measures and actions in the disciplinary field indicated in the 3rd legal basis and accredit before this Authority the actions taken to comply with them.
4. Notify this resolution to the Ametlla del Vallès Town Council and the person making the complaint.
5. 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 February 20, which approves the Statute of the Catalan Agency of

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Data Protection, the interested parties can file, on an optional basis, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after notification, in accordance with the provisions of 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,