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File identification

Prior information no. IP 329/2019, referring to the Parets del Vallès Town Council

Background

- 1.-On 09/12/2019, the Catalan Data Protection Authority received a letter from a person in which he filed a complaint against the Parets del Vallès Town Council, on the grounds of an alleged non-compliance of the regulations on personal data protection.

Specifically, the complainant stated that in the month of August 2019, he made, through electronic means, a complaint to the Parets del Vallès City Council, the object of which was focused on " the poor management of polluting waste from (...)(...) the company (...)". In this regard, the complainant complained that he did not get a response from the City Council, and that after submitting the complaint, the person who owned the company complained about began harassing him, showing that he was aware of the content of the complaint "and with verbatim words he confirmed to me during his harassment, that the information about the complaint I had made came from contacts he has in the City Council of that locality".

2. The Authority opened a preliminary information phase (no. IP 329/2019), 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 12/23/2019, the reported entity was required to report on whether the City Council had an entry in its electronic register, the complaint made by the person making the complaint against the company "...", and in such case, provide the corresponding documentary evidence and report whether a response was given to the referenced complaint. Also, he was required to report if any employee of the City Council had disclosed the content or delivered a copy of the controversial complaint to the person who owns the company "...", and if so, what would be the legal basis that would legitimize this processing of personal data. Finally, in the case of a negative answer to the previous question, the entity was required to indicate the reasons that would explain the access by the person who owns the company "... to the complaint presented by the person reporting here.

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4. On 09/01/2020, the City Council responded to the aforementioned request through a written in which, among others, he stated the following:

- That "in the Incidents Box on the municipal website it is stated that the complainant submitted two complaints, on August 5, 2019 (incident number (...)) and August 6, 2019 (incident number (...)). The City Council has not yet responded to these complaints presented in August and no phone calls or meetings have been held with any of the parties involved.
- That "on December 19, 2019, there was an entry in the Electronic Register of the Parets del Vallès Town Council (registry number (...)) a letter from the Regional Council of Vallès Oriental, transferring a complaint submitted by the complainant. This record was assigned to the Technical Incident Resolution Office, which opened file number (...) and, on December 20, 2019, transferred it to the Urban Discipline and Activities Service this City Council."
- That "The Ajuntament de Parets del Vallès has no evidence that any employee has disclosed the content or delivered a copy of the complaint to the holders of (...)(...), or to any other person."
- That "The City Council of Parets del Vallès is not aware of the reasons that would explain the knowledge, by the person who owns this company, of the complaints presented by the complainant to the City Council or the Regional Council of Vallès Occidental".
- That "Workers are provided with a document stating the obligation to observe the strictest professional secrecy with respect to the information contained in the City Council's information systems to which they have access due to the functions assigned to the your workplace."

The reported entity attached various documentation to the letter.

5. On 01/29/2020, through the submission of documentation by the Spanish Data Protection Agency (hereinafter, AEPD), the Authority received a new letter of complaint from the complainant here which reproduced the same facts reported in the first letter presented to the Authority on 09/12/2019.
6. On 25/11/2020 and still within the framework of this preliminary information phase, the Authority required testimony from the person who owns the company "...", in relation to the facts reported .

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7. On 23/12/2020, the person who owns the company "(...)" responded to the Authority's request, denying knowledge that his company had been reported by a neighbor to the City Council, nor that this information had been disclosed to him.
8. On 04/01/2021, the Authority requested the City Council so that the secretary of the City Council certified that at the time when the first request of this Authority was answered (09 /01/2020), the City Council had not taken any action that involved the communication of said complaints to the reported company or to persons external to the City Council.
9. On 19/01/2021, the City Council responded to the request by providing a certification from the accidental secretary who certifies that, in relation to the claims presented by the person making the complaint, no response has been given to the claim presented by the complainant here, and according to the information provided by the employees of the Services involved, no phone calls or meetings have been held with any of the parties involved, nor is it known that any employee has disclosed the content or delivered a copy of the complaint to holders of (...)(...) or to any other person.

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.

Specifically, the complainant complains that the owner of the company "(...)", to whom he had complained, knew about the complaint submitted because a City Council employee had revealed this information to him. These facts could potentially constitute an infringement in terms of data protection, due to the violation of the principle of confidentiality (art. 5.1.f. RGPD).

For its part, the City Council, in the response to the first request made by this Authority, denied the reported facts and stated that it did not know the reasons that would explain why the owner of "(...)" was aware of the complaints presented by the complainant, on August 5 and 6, 2019, before the City Council.

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It also reported on the entry into the City Council of a letter, sent on 12/19/2019 by Regional Council of Vallès Oriental (hereinafter, CCVO), in which three documents were attached, presented, on 07/12/2019, by the complainant here before the CCVO. The three documents are the following: a) two complaints against "...", the subject of which coincides with the two complaints presented by the same complainant on August 5 and 6 before the City Council ; b) a complaint for the same facts as those reported to this Authority (09/12/2019), relating to the alleged disclosure by a City Council employee of the content of said complaints to the owner of the company denounced

In other words, when the complainant presents his documents before the CCVO, the events reported here would have already happened, because the complaint for the alleged violation of the principle of confidentiality by the City Council is already presented in the last of the three documents presented. This would rule out that the eventual disclosure of data to the holder of (...), had been carried out by a CCVO employee. In relation to this last document, it should also be noted that these same facts are also reported by the complainant here, on 29/01/2020, to the AEPD, as mentioned in the antecedents of this resolution (5th antecedent). That being the case, and in view of the fact that the complainant submitted three written documents, close in time, to three different entities (Apdcat, Consell Comarcal del Vallès Oriental and the AEPD), it cannot be questioned that the complainant not so it only does not contradict itself but remains firm in the account of the events here denounced

Faced with these circumstances, and within the framework of this preliminary information phase, in order to obtain sufficient elements of judgment on the facts reported to be able to determine the origin of initiating a sanctioning file and, in such case, to discharge any responsibilities, the Authority requested written testimony from the person who owns the company "...", and required the City Council to certify the statements made in its response to this request the Authority, in which it denied the facts reported.

That's how things are, the person who owns the company "...", categorically denied knowing the existence of any complaint submitted by a neighbor to the City Council against (...), and stated that he did not know because the person making the complaint would have stated that he was aware of a complaint filed in August 2019.

On the other hand, the City Council provided a certificate from the Accidental Secretary who certifies that they are not aware that any worker had disclosed the content or given a copy to the owners of the reported company, or to any other person, of the complaints that the person reporting here presented, on August 5 and 6, 2019, through the incident box of the local body. It also specifies that they have not responded to the referenced complaints, and according to the information provided by the workers of the municipal services involved, there have also been no phone calls or meetings with any of the parties involved.

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Having reached this point, 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.

In this respect, it is necessary to take into account the certification issued by the Accidental Secretary of the local entity denying that such disclosure of data was actually carried out, and also that the complaint is not accompanied by any other data that allows it to be inferred that the information could only have been revealed by the City Council, nor does it provide any other evidence that would give rise to further investigations in order to determine the reality of the facts reported.

At this point, it cannot be ignored that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, resulting in the full virtuality of the principles of presumption of innocence and in doubt pro reo in the area of sanctioning authority, which shifts the burden of proving the facts and their authorship to the accuser. In short, the presumption of innocence must always rule without exception in the penal system and must be respected in the imposition of any penalty.

Therefore, based on the right to the presumption of non-existence of administrative responsibility, until the contrary is proven (art. 53.2.b LPAC), the filing of the present proceedings proceeds.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been possible to accredit, in relation to the facts that have 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 329/2019, relating to the Parets del Vallès Town Council.
2. Notify this resolution to the Parets del Vallès City Council and the complainant.
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.

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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,