

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

File identification

Archive resolution of the previous information no. IP 333/2019, referring to the General Directorate of Police of the Department of the Interior.

Background

1. On 11/12/2019, the Catalan Data Protection Authority received a letter from a person who lodged a complaint against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia (from now on, DGP), due to an alleged breach of the regulations on personal data protection.

Specifically, the complainant stated that he was a member of the police force on leave and that he is currently a member of the Urban Guard of (...). That on 07/13/2017, he presented an instance before the DGP, providing a copy, in which he communicated his TIP number as a member of the urban guard, for the purposes of *"judicial summons or my interest in to a matter of my work in the police force"*.

The complainant explained that in January 2019, a *"Notice of police request"* was found in the letterbox of his private address. It also stated that the police request was related to a court summons, specifically it was a criminal proceeding. According to the complainant, she was being subpoenaed as a witness on a matter in which she participated when she was active in the police force. In relation to this, the person complained that the court summons was left *"in the private mailbox at home, instead of through my professional number and my administration as they should have done"*. In addition, he added that the fact that the subpoena was personal, instead of as an active agent, would have caused the accused in the criminal procedure to have access to his personal data *"putting my family and my safety in danger staff"*. In short, he considered that the communication of his personal data to the Court (...) by the DGP breached the regulations on the protection of his personal data.

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

2. The Authority opened a preliminary information phase (no. IP 333/2019), 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

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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 report on what was the procedure for communicating court notifications and subpoenas as court witnesses to members of the police force squad on leave, and specifically, in cases where the agent had communicated his new TIP number as an urban guard agent for the purposes of judicial communications and notifications.

4. On 02/03/2020, the Data Protection Delegate of the DGP responded to the aforementioned request through a letter in which he set out the following:

- That the communication of judicial notifications and subpoenas as judicial witnesses to members of the body of police officers on voluntary or forced leave is treated as a judicial requirement.
- That on 06/11/2018 the disputed court summons was received. The DGP informed the court that it was not possible to make the notification through the usual police conduct, given that the officer to whom it was summoned was on voluntary leave. Likewise, the court was informed that the agent was active in the Guardia Urbana (...) and the TIP number was provided so that they could summon him.
- That on 20/11/2019 a court order was received requesting that they provide the personal data of the agent in question. Given that the administration staff cannot provide the personal data of the police officers, the court was requested to proceed with a telematic request through the GRP computer system.
- On 26/11/2019, through the GRP system, the aforementioned judicial request was received requesting the personal data of the agent in question, including the DNI in order to be able to subpoena him. The DGP provided the required data (address, ID and telephone number).
- Subsequently, a judicial request was received requesting the subpoena from Mossos d'esquadra of the person at his address.

The denounced entity attached to the letter the documentation attesting to the facts exposed.

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 set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

Specifically, it is necessary to determine whether the data processing consists of the communication of the agent's personal data by the DGP to the Court (...), taking into account that the agent was in a situation of voluntary leave of absence from the police force, is lawful because it is covered by one of the assumptions of art. 6 of the GDPR.

In this regard, it is necessary to refer to the concept of personal data processing established in the article 4.2) of the RGPD, which considers as such *"any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as (...) communication by transmission, (...)"*. Also, article 4.9) of the RGPD establishes that the recipient is *"the natural or legal person, public authority, service or any other body to which personal data is communicated, whether it is a third party or not. However, public authorities that may receive personal data in the context of a specific investigation, in accordance with the law of the Union or the Member States, should not be considered as recipients. The processing of these data carried out by these public authorities is in accordance with the rules on data protection that are applicable to the purposes of the processing"*.

With regard to the legality of the treatment, article 5.1 a) of the RGPD provides that *"Personal data: a) Must be treated in a lawful, fair and transparent manner in relation to the interested party (lawfulness, loyalty and transparency)"*. In accordance with the above, in this specific case it is necessary to consider article 6.1 c) of the RGPD which establishes that *"the treatment will be lawful when it is necessary to fulfill a legal obligation applicable to the person responsible for the treatment"*. On the other hand, section 3 of the same article requires that the legal obligation must be established *"by the law of the Union, or b) The law of the member states to which the data controller is subject"*. In accordance with this, Organic Law 6/1985, of July 1, of the judiciary (from now on, LOPJ) establishes in its article 17 the obligation of all public and private persons and entities *"to offer the collaboration required by the judges and the courts during the process and in the execution of what is decided, with the exceptions established by the Constitution and the laws"*.

In this case, the police officer was on voluntary leave and, therefore, when the DGP received the summons from the Court (...) he could not notify him of the summons due to the usual hierarchical police conduct, given that the agent was active in another police force, specifically in the urban guard force (...). The DGP informed the Court (...) about these circumstances and provided the professional information of the agent, including the TIP number, so that he could be summoned through the urban police. However, the Court (...) sent an office to the DGP to facilitate the personal data of the agent by proxy

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quote him personally. The DGP replied to the office by requesting the Court (...) that the judicial request be processed through the corresponding electronic register. Finally, once the DGP received the judicial request through the appropriate channel, it proceeded to provide the agent's personal data.

It is necessary to take into account article 236 quater of the LOPJ "(...), *the consent of the interested party is not required for the courts to process the data in the exercise of jurisdictional authority, whether these have been provided by the parties or collected at the request of the Court itself (...)*".

In accordance with what has been explained so far, the personal data of the reporting person were requested in the exercise of the jurisdictional function within the framework of a criminal procedure, which obliged the DGP to communicate the data in court. In short, the communication of data that the DGP made to the Court (...) is covered by article 6.1 c) of the RGPD, specifically in the legal obligation applicable to the data controller established in the article 17 of the LOPJ, which obliges all public and private persons and entities to offer the "*collaboration required by judges and courts during the process*".

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

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 333/2019, relating to the Directorate General of the Police of the Department of the Interior.
2. Notify this resolution to the General Directorate of the Police of the Department of the Interior and the reporting person.
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, on an optional basis, file an appeal for reinstatement before the director of the Catalan Data Protection Authority,

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within one month from the day after its 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,

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