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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 342/2019, referring to the City Council of (...).

Background

1. On 19/12/2019, the Catalan Data Protection Authority received a letter from a person (an agent of the Urban Guard of (...)) in which he filed a complaint against the City Council of (...), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that the chief inspector of the Urban Guard of (...) had accessed the vehicle database of the General Directorate of Traffic (hereinafter, DGT) to consult the data of a certain vehicle and its owner (his wife) in the framework of a sanctioning procedure for a traffic violation, as would be inferred from the report drawn up by the chief inspector on 06/05/2019 in relation to the discharge sheet presented by the complainant on 30/03/2019. The complainant provided various documentation relating to the facts reported.
2. The Authority opened a preliminary information phase (No. IP 342/2019), 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 01/14/2020 the reported entity was required because report, among others, on whether the chief inspector of the Urban Guard of (...) had access to the administrative file subject to the complaint or only to the discharge form formulated by the person making the complaint on date 30 /03/2019; the reasons that would justify said access; as well as if, to prepare the report of 06/05/2019, the data of the vehicle owned by the wife of the person making the complaint was consulted through the DGT database.
4. On 04/02/2020, the City Council of (...) responded to the aforementioned request through a letter in which it stated, among others, the following:

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- That there was no evidence that the chief inspector had had access to the administrative file, so it was inferred that he had only accessed the discharge form presented by the complainant on 03/30/2019.
- That the reasons for said access are unknown, and in their case, the legal basis would be found in article 27.a) of Law 16/1991, of July 10, on the local police (hereinafter, Law 16/1991).
- That the person instructing the sanctioning procedure did not request any report from the chief inspector of the Urban Guard.
- That it was unknown whether the DGT database was consulted to prepare said report.

The reported entity provided a copy of the letter of 03/30/2019 presented by the person reporting to the City Council.

5. On 02/06/2020, also during this preliminary information phase, the City Council of (...) was once again requested to provide the chief inspector's testimony of the Urban Guard of (...), among others, in relation to whether he had consulted through the DGT database the data of the vehicle owned by the wife of the person making the complaint.

6. On 18/02/2020, the City Council of (...) provided the testimony of 11/02/2020 of the required chief inspector of the Urban Guard, in which he set out (between others) the following:

- That he had not had access to the administrative file. He had only had access to the package of discharge
- That as chief inspector of the Urban Guard, he is the most responsible for the organization and operation of the police force, including the human resources assigned to the force.
- That its function is to monitor the correct operation of the service, which is why any request, complaint, suggestion, etc., related to the Urban Guard is referred to it for its knowledge and corresponding legal effects.
- That the discharge document presented by the reporting agent reached him through the regulatory process, given that it referred to an officer of the force and an internal problem arising with another officer of the force who allegedly took his private keys .
- That following the internal audit in relation to access to the police information system (SIP), it was found that the reporting agent had consulted on several occasions (between 2017 and 2018) the vehicle owned by his wife
- That the complainant designated his wife as the contact person in the event of a professional accident.
- That at the end of February 2019 he received a complaint from the staff attached to the controlled parking service, given that the reporting agent had reprimanded them for having reported the vehicle owned by his wife.
- That he also had knowledge of the ownership of the vehicle, given that the reporting officer himself explained it to him on 01/01/2018, the date on which they patrolled together due to lack of personnel.
- That the DGT database was not accessed through the SIP.

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- That he does not have access to the SIP, given that on 07/12/2018 he requested the cancellation of his personal access code to the SIP.

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 has been advanced, the person making the complaint stated that the chief inspector of the Urban Guard of (...) would have accessed the vehicle database of the DGT to consult the data of the vehicle owned by his wife .

In the present case, it is certified that the chief inspector of the Urban Guard of (...) accessed the letter of 03/30/2019 that the person making the complaint (an officer of the same police force) presented to the City Council to request the withdrawal of a blue zone complaint related to said vehicle.

By means of testimony of 11/02/2020, the inspector of the Urban Guard of (...) justified said access as being necessary for the exercise of his functions. Specifically, for the function of monitoring the correct operation of the service. And he added that for this reason, any writing related to the Urban Guard is referred to him for his knowledge.

For its part, through a letter dated 04/02/2020, the City Council of (...) considered that this access would be covered by article 27.a) of Law 16/1991 which establishes that it corresponds to the head of the local police force *"Direct, coordinate and supervise the operations of the force, as well as administrative activities, to ensure their effectiveness."*

Well, certainly, it must be admitted that the chief inspector of the Guardia Urbana is a person authorized to access any documentation required for the exercise of his duties. In this regard, it should be borne in mind that the control of the regulated parking service would be linked to the Guardia Urbana as inferred from the Regulation governing the controlled parking of vehicles on public roads approved by the City Council on 12 /05/2005 and in article 11.a of Law 16/1991 (which attributes to the local police the competence to order, signal and direct traffic in the urban core). In turn, it must also be borne in mind that in the letter of 03/30/2019, by which the person making the complaint here requested the withdrawal of the fine, he invoked his status as a police officer, the circumstances that would have prevented him from removing the vehicle from the blue zone after the end of his shift and the fact that he had

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requested a certain agent to inform the people employed in the blue zone that the *"vehicle could not be moved due to impossibility."*

In accordance with the above, at the discretion of this Authority, the access to said document by the chief inspector of the Urban Guard of (...) was motivated in the exercise of his duties.

Having established the above, it is appropriate to decide whether the chief inspector of the Urban Guard accessed the database of the DGT (through the SIP) to consult information linked to the vehicle owned by the wife of the person making the complaint.

In this sense, the chief inspector of the Urban Guard explained in his testimony dated 02/11/2020 that he had not accessed the said database. And he added that since 07/12/2018 he did not have the SIP user code.

Although the chief inspector of the Guardia Urbana has denied having accessed the SIP for the reasons stated, it should be borne in mind that if you have a user code in the SIP, access to the data linked to the vehicle subject to complaint, should also be considered justified in the exercise of his functions in accordance with article 27.a) of Law 16/1991 and given the circumstances previously stated.

Without prejudice to the above, the chief inspector of the Urban Guard has also given, through his testimony, a plausible explanation as to how he would have known that the reported vehicle was owned by his wife.

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.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 342/2019, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) and to 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.

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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,