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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, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 52/2020, referring to the City Council of (...).

Background

1. On 07/02/2020, the Catalan Data Protection Authority received a letter from a person filing a complaint against the City Council of (...), on the grounds of an alleged non-compliance with the regulations on personal data protection.

Specifically, the complainant (an agent of the Urban Guard of (...)) set out the following facts:

- ÿ That, even though the head of the Urban Guard of (...) was on leave, this police chief requested on 12/12/2018 to the Police of the Generalitat-Mossos d'Esquadra an audit on the accesses that the complainant had made through the SIP. He added that, in the same situation of leave, the head of the Urban Guard processed personal data and that he would also have accessed the images captured by the video surveillance system installed in the police stations.
- ÿ That the City Council of (...) forwarded to him (the person making the complaint) the reserved report of 27/12/2018 on the "Request for disciplinary file instruction to two officials of the Urban Guard Corps of (...), to access the databases of the Police Information System (SIP), for purposes unrelated to the service itself" (reference: GUÀRDIA URBANA/(...)/28des2018), which contained the data personal information that another agent would have consulted through the SIP, to which a disciplinary procedure was also initiated.
- ÿ That at the time of the initiation of a disciplinary file against two officers, the City Council would have communicated the allegedly illicit access to the SIP to the affected persons, such as the members of the Candidature d'Unitat Popular (CUP). To this end, the reporting person provided the news published on the CUP website on date (...)/2019 in relation to these events.
- That he requested from the City Council information on the connection of the cameras, on access to the images recorded by the cameras, to which terminals and ports the cameras were connected, as well as the audits on the computers in the room operator. This information would not have been provided to you.
- That the head of the Urban Guard would have requested several agents to carry out consultations with the SIP, which would not be linked to any police intervention, but to the purchase and sale of vehicles.

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- That the head of the Urban Guard used the police headquarters for the purchase and sale of vehicles. In particular, the complainant pointed out that the police offices were constantly receiving packages addressed to the head of the Urban Guard from companies buying and selling vehicles. The complainant added that the head of the Guardia Urbana would also use the corporate telephone number of the Guardia Urbana as a contact phone number on various vehicle buying and selling websites.
- ÿ That an audit of the NIP-SIP queries of those vehicles that had been checked in the name of the head of the Urban Guard was requested from the City Council, but that he did not receive a response to said request.
- ÿ That in the report drawn up by the Civil Guard on access to the SIP to consult certain license plates, it is established that the head of the Urban Guard carried out the activity of buying and selling (specifically, 23 vehicles). Likewise, according to the complainant, it would also be proven that several vehicle registration numbers were consulted through the SIP by agents of the Urban Guard, at the request of the head of the Urban Guard, who then acquired the head of the Urban Guard or a member of your family.
- ÿ That a complaint was made to the labor inspectorate about the use of the Urban Guard's offices and computer equipment, for the preparation of reports, requests for audits and the processing of personal data.
- ÿ That the councilor for Citizen Security and Civil Protection of the City Council of (...) attached a traffic complaint to his personal email, which he shared with his wife.

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

2. The Authority opened a preliminary information phase (no. IP 52/2020), 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 02/21/2020 the reported entity was required to report, among others, on whether the head of the Urban Guard of (...) was on sick leave when he requested the audit of the accesses to the SIP carried out by the agents subsequently filed (on 12/12/2018) and if, being in this situation of leave, he also accessed the images captured by the video surveillance system; if the people affected by access to the SIP were informed that two agents of the Urban Guard carried out these events, as requested by the head of the Urban Guard in point 4 of the dispositive part of his report of 27 /12/2018; and on the reasons for which the reporting person was provided with the report of 12/27/2018, which also contained the

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accesses to the SIP made by another agent in the SIP in relation to third parties, who were identified.

In the request, it was also indicated that the person making the complaint stated that the head of the Urban Guard would have requested several officers to carry out inquiries in the SIP of certain vehicles, which would not be linked to any police intervention. Specifically, it was pointed out that the complainant was referring, among others, to the following inquiries carried out at the request of the chief of police which would appear in the "historical police intervention" application:

- or Notice no. (...)/2018, dated 09/04/2018, in which the registration (...) and the ID number (...) were consulted in the SIP.
- or Notice no. (...), dated 09/17/2018, in which the SIP was consulted license plates (...), (...) and (...).

On the other hand, the request also specified that the reporting person also provided a copy of the report issued by the Civil Guard on 04/04/2019 as part of police proceedings no. 2019(...). From this report, it could be deduced that the head of the Urban Guard of (...), would have accessed the SIP (through his user – no. PL(...)) for reasons unrelated to the exercise of their functions, in order to consult the following registrations:

- or (...), on 04/12/2018.
- or (...), on 04/13/2018.
- or (...), on 02/05/2018.

Likewise, in said proceedings, the Civil Guard also found that the agent with SIP user code no. PL(...), consulted the following license plate corresponding to a vehicle that it was later acquired by the daughter of the head of the Urban Guard:

- or (...), on 09/19/2018.

Well, in the same office, the City Council of (...) was also required to report on whether each of the inquiries to the SIP of the indicated license plates and IDs were linked to a police action.

This requirement will be reiterated on 08/06/2020, once the suspension of the administrative deadlines has been lifted following the declaration of the state of alarm.

4. On 23/06/2020, the City Council of (...) responded to the aforementioned request through a letter in which it explained that the head of the Urban Guard had been on leave from 19/02/2018 to 03/23/2018, and from 12/13/2018 to 12/31/2018 (this suspension continued on 01/01/2019).

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In turn, the City Council provided a letter from the head of the Urban Guard of (...), in which he stated, among others, the following:

- That the complaint to the Authority was part of a situation of workplace harassment ascending
- That notice no. (...)/2018 was a police intervention in which he intervened together with another officer. It consisted of a traffic identification in the exercise of his functions [the license plate (...) and the ID number (...) were consulted in the SIP.
- That notice no. (...), it was also a police intervention in which he intervened together with two other officers. It consisted of a traffic identification in the exercise of his duties [the registration plates (...), (...) and (...) were consulted in the SIP.
- That also in relation to notice no. (...), the computer application contains the annotation "Modification carried out by: (...)" (one of the agents investigated for illicit access to the SIP). This annotation is part of an internal security mechanism to be able to identify if any official accesses the file and makes any modification to its content.
- That, in relation to access to the SIP to consult vehicles with registration (...), (...) and (...) [accesses included in the report issued by the Civil Guard on 04/04/2019 as part of police proceedings no. 2019(...)], the head of the Urban Guard stated the following:
 - That during the month of April 2018, the Mossos d'Esquadra Corps discharged him as a SIP user.
 - That he had never before carried out any type of training on the use of the SIP platform, which is why he asked a certain agent to instruct him on this application.
- ÿ That in the initial learning process, and in order not to violate the data protection regulations, nor make inquiries about vehicles or people that had no relation to the daily work of the police service, he consulted the vehicles of the your property
 - That on 04/12/2018 he carried out a first practice by accessing the vehicle with registration (...) (acquired on 06/25/2002), of which he was the owner together with his wife.
 - That on 04/13/2018 he carried out a second practice accessing the data of the vehicle with registration (...), acquired on 03/23/2018.
 - That on 02/05/2018 he carried out a third practice accessing the data of the vehicle with registration (...), acquired on 30/03/2018.
- That in relation to SIP user person no. PL(...) which, according to the proceedings of the Civil Guard, on 09/19/2018 consulted the SIP for the vehicle with registration (...), the head of the Urban Guard stated the following:
 - That the user code PL(...) corresponds to a certain agent of the Urban Guard, who at the time of answering the request was in a situation of long-term incapacity for work.

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- That the vehicle with registration (...) was acquired by his daughter on 09/14/2018 (before the SIP was consulted).
- That on 12/19/2018 his daughter parked said vehicle ((...)) in the police reserve at the entrance to the Urban Guard building in order to show her the vehicle he had purchased.
- That he inferred that the agent who made the inquiry at the SIP, upon seeing the vehicle parked in front of the police stations, checked the ownership of the vehicle before reporting it and removing it with the crane.

The reported entity attached various documents to the letter, including the police intervention notices corresponding to notices nos. (...) /2018 and (...).

5. Given that in its response, the City Council did not provide the information that had been requested on 02/21/2020, regarding whether it communicated to the people affected by the access to the SIP that they carried out two agents of the Urban Guard these facts; as well as on the reasons for which the reporting person was provided with the report of 12/27/2018, which also contained the SIP accesses made by another SIP agent in relation to third parties, the Authority reiterate said request on 06/26/2020.

6. On 07/07/2020, the City Council of (...) responded to the previous request through a letter stating the following:

- That the report dated 12/27/2018 was forwarded to the person reporting the initiated a disciplinary case.
- That the Office of Personnel and Organization did not have the information relating to which specific data was provided to the people affected by access to the SIP.

7. Given that the City Council did not provide the information required by this Authority, as to whether it had been communicated to the people affected by access to the SIP that these events were carried out by two agents of the Urban Guard, it was reiterated said request on 07/22/2020.

8. On 07/29/2020, the City Council of (...) responded to the previous request through a letter stating the following:

- That "after the checks that have been carried out with the data and the current staff, the information on what is raised in point 1 [whether the allegedly illicit accesses to the SIP had been communicated to the affected persons] is works with the acting head of the Personnel and Organization Department, as the report mentioned in the letter and dated 12/27/2018 is part of a file that initiates the negotiation of Personnel and Organization, which at the same time specifies that it does not have information about the

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second part of the question. The city council repeats itself in its response, without being able to provide more information."

- That the CUP was part of the government team "on those dates" [it is inferred that it refers to the date on which the head of the Urban Guard issued his report in which he requested to inform the people affected by improper access to their data through the SIP -27/12/2018-].

9. Based on the antecedents that have been related and the result of the investigative actions carried out within the framework of the previous information, on today's date an agreement is also issued to initiate disciplinary proceedings regarding the conduct related complaints with the referral to the reporting person of the reserved report of 27/12/2018 on the "Request for disciplinary file instruction to two officials of the Urban Guard Corps of (...), to access the databases of the Police Information System (SIP), for purposes unrelated to the service itself" which contained the personal data that another officer would have consulted through the SIP; with the disclosure to the people affected by the illicit access to their personal data through the SIP of the identity of the agents who would have carried it out; and with access to the SIP to check the vehicle with registration (...) on 09/17/2018.

The rest of the behaviors reported are addressed in this file resolution.

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.

2.1. About the situation of leave of the head of the Urban Guard.

Firstly, the complainant stated that, while the head of the Urban Guard of (...) was on leave, he requested an audit on 12/12/2018 from the Police of the Generalitat Mossos d'Esquadra about the accesses he had made through the SIP; he accessed the images captured by the video surveillance system installed in the police stations and which had also processed personal data. The complainant added that he brought these facts to the attention of the labor inspectorate.

In accordance with article 27 of Law 16/1991, of July 10, on the local police, the head of the Local Police is responsible for:

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- "a) Direct, coordinate and supervise the operations of the body, and also the administrative activities, the effectiveness. for make sure
- b) Assess the needs of human and material resources and formulate the relevant ones. proposals
- c) Transform into concrete orders the guidelines for the objectives to be achieved, received from the mayor or the office to which he delegates.
- d) Inform the mayor, or the position to which he delegates, of the operation of the service.

- e) Fulfill any other function attributed to him by the body's municipal regulations."

In the exercise of these functions, it is logical to infer that the head of the Guardia Urbana is the person to whom it corresponds to request an audit of access to the SIP. In fact, in the agreement on the connections to the Police Information Systems signed between the Directorate

General of the Police of the Department of the Interior (hereinafter, DGP) and the City Council of (...) (which was provided together with the complaint that gave rise to the sanctioning procedure no. PS (...)/2019), it is specified that the IT interlocutor in the local area of SIP management is the head of the Guard Urbana or another police officer that he designates (in the present case, there is no evidence that the head of the Urban Guard had delegated these functions to another officer). As specified in the said agreement, the IT contact person at the local level must ensure the security of the system in accordance with the criteria established by the security manager of the SIP and must perform the functions that are included in the safety manual. In particular, it must ensure that the other users of the Local Police use it correctly. To this end, the aforementioned interlocutor must notify the head of the Information Technology Security Area of the DGP immediately of any incident, that is, any anomaly that affects or may affect the security of SIP data, in accordance with what is established in the security manual.

As things stand, the head of the Guardia Urbana is the person authorized to request an audit of SIP access to the DGP. All this, without prejudice to the fact that the head of the Urban Guard was not on leave on 12/12/2018 (the date on which said audit was requested), as reported by the City Council of (...) in framework of the present actions of prior information.

On the other hand, with regard to the video surveillance system, as revealed in sanctioning procedure no. PS (...)/2019, the head of the Urban Guard was the person authorized to access real-time or recorded images.

It is worth noting that the complainant was not referring to any specific access to the images captured by the video surveillance cameras installed in the premises of the Urban Guard in (...), but was limited to invoking the initiation of the procedure sanctioner no. PS (...)/2019 by this Authority.

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In this sense, it should be indicated that the infractions imputed in the said disciplinary procedure (PS (...)/2019) are not related to the facts that are the subject of this file, given that there the City Council was charged with the violation of principle of minimization (because the camera installed in the operator's room made it possible to capture images of the work table, without referring to any specific treatment of images through said cameras while the head of the Urban Guard was on leave); as well as not having carried out a risk analysis.

In turn, the complainant also pointed out that the head of the Urban Guard would have carried out other processing of personal data. In this regard, although the complainant did not specify in his written complaint any specific treatment of personal data carried out by the head of the Urban Guard, it is inferred that he could refer to the issuance of the report of 27/12 /2018 in which he requested the initiation of disciplinary proceedings against two agents of the Urban Guard in relation to the allegedly illicit access to the SIP (one of which, the person making the complaint).

Well, although it is certainly proven that on the date of issuance of said report the head of the Urban Guard was on leave, it must be borne in mind that the facts highlighted in said report referred to alleged access illegal acts in the SIP carried out by the person making the complaint here and by the sergeant who had been appointed accidental head of the Urban Guard.

So, these circumstances and the seriousness of the facts (which the head of the Urban Guard considered could constitute a criminal offense) would justify that, despite being on leave, the head of the Urban Guard issued said report for some facts linked to the SIP, of which he had been aware because he was the local IT interlocutor with the DGP. Likewise, the issuance of this report would fall within the duties of the head of the Local Police provided for in articles 26 and 27 of Law 16/1991.

2.2. About requests for information.

Next, the complainant stated that he requested information from the City Council about the connection of the cameras, about access to the images recorded by the cameras, to which terminals and ports the cameras were connected, and the audits on the computers from the operator's room.

Well, it should be pointed out that the reporting person did not exercise the right of access provided for by the regulations on data protection, which is regulated in article 15 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 movement thereof (hereafter, RGPD).

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In the present case, the complainant exercised the right of access to public information contemplated by Law 19/2014, of December 29, on transparency, access to public information and good governance, and the protection of this right it does not fall within the scope of powers of this Authority, but corresponds to the Guarantee Commission for the Right of Access to Public Information (GAIP).

2.3.- About the request for an audit.

In his letter of complaint, the complainant also stated that he requested from the City Council an audit of the consultations carried out by the head of the Urban Guard through the SIP, a request that did not receive a response from the City Council .

The fact that the City Council had not responded to this request does not constitute a breach of data protection regulations.

All this, without prejudice to the inactivity of the City Council, and in the case of having reasonable indications of improper access to the SIP, these facts could be brought to the attention of the person responsible for the SIP files (the DGP) or of this authority

2.4.- On the use of police facilities and the corporate mobile for the purchase and sale of vehicles.

The person making the complaint pointed out that the head of the Guardia Urbana was using the police headquarters for the purchase and sale of vehicles. In particular, the person making the complaint indicated that the police offices were constantly receiving packages addressed to the head of the Urban Guard from companies buying and selling vehicles. The complainant added that the head of the Guardia Urbana would also use the corporate telephone number of the Guardia Urbana as a contact phone number on various vehicle buying and selling websites.

In this regard, it should also be noted that none of these behaviors constitute an infringement from the perspective of data protection regulations.

2.5.- About SIP accesses.

The person making the complaint considered that several accesses made by the head of the Urban Guard to the SIP and other police officers (at the request of the head of the Urban Guard, according to the person making the complaint) to consult certain vehicle registrations, would not be justified in the exercise of his functions, but in the alleged activity of buying and selling vehicles that the head of the Urban Guard would carry out.

To this end, the reporting person provided 11 inquiries that would appear in the "historical police intervention" application between 07/20/2016 and 09/17/2018; as well as the report issued by the Civil Guard on 04/04/2019 in relation to the police proceedings

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no. 2019(...), which referred to various accesses to the SIP by users of the Urban Guard of (...) to consult various vehicles between December 2016 and 29/11/2018.

Having said that, it should be pointed out that the accesses to the SIP to consult certain vehicles until 24/05/2018 (including the accesses to the SIP linked to notice no. (...)/2018) were carried out while it was still Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter LOPD) is in force, which is why they are subject to this rule. On the other hand, inquiries made after 05/25/2018 are subject to the provisions of the RPGD (RGPD is applicable from 05/25/2018).

2.5.1.- Access to the SIP until 05/24/2018.

With respect to the accesses carried out while the LOPD was in force, it must be taken into account that the facts reported could constitute the serious infringement provided for in article 44.3.b) of the LOPD, which typified as an infringement "Treating data of a personnel without seeking the consent of the affected persons, when this is necessary in accordance with the provisions of this Law and its implementing provisions."

On the other hand, article 47.1 of the LOPD provided that serious infractions became statute-barred after two years. This limitation period begins to count from the day on which the offense was committed (art. 47.2 LOPD).

That being the case, any infringement linked to SIP access to consult the data linked to certain vehicles before 05/25/2020 is time-barred. The prescription of the infringement causes the extinction of the responsibility that could be derived from the eventual infringing conduct, which in turn would prevent the initiation of the corresponding sanctioning procedure, since no action could be taken to pursue the alleged infringement .

2.5.2.- Access to the SIP to consult the license plates (...) and (...) on 09/17/2018.

In relation to accessing the SIP on 17/09/2018 to consult the registrations (...) and (...) (linked to notice no. (...), the head of the Urban Guard of the City Council of (...) has stated that the inquiry was linked to a police intervention in which he intervened together with two more agents. In particular, the head of the Urban Guard specified that said police action consisted of an identification in traffic matters in the exercise of its functions.

It is worth saying that according to the report issued by the Civil Guard on 04/04/2019, the vehicle (...) was not consulted in the SIP. Regarding the vehicle with registration (...), it should be noted that it is not among the 23 vehicles subject to investigation by the Civil Guard and which were owned by the head of the Urban Guard of (...), the his wife or his daughter.

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Therefore, there is no indication to infer that said accesses are illegal.

In addition to the above, in the framework of this police intervention (notice no. (...)) the SIP was also consulted for the vehicle with registration (...), vehicle that according to the the aforementioned Civil Guard report would have been owned by the head of the Urban Guard, his wife or his daughter. This access to the SIP is the subject of imputation in the sanctioning procedure that begins today at the City Council of (...).

2.5.3.- Access to the SIP to consult the registration (...) on 09/19/2018.

According to the report of the Civil Guard of 04/04/2019, a certain agent of the Urban Guard consulted the vehicle with registration (...) on 09/19/2018.

In this sense, the head of the Urban Guard has informed that the vehicle with registration (...) it was acquired by his daughter on 09/14/2018 (before the consultation was carried out on 09/19/2018). He adds that on 09/19/2018 his daughter parked said vehicle in the police reserve at the entrance to the Urban Guard building in order to show him the vehicle she had purchased.

Given the above, it infers that the agent who made the SIP query (who was on leave when information about it was required from the City Council), when he saw the vehicle parked in front of the police stations, he checked the ownership of the vehicle before reporting it and removing it with the crane.

Well, from the previous information actions carried out by this Authority, it has not been possible to verify that access to the SIP to consult said registration, was not linked to the exercise of the functions assigned to the agent who I acceded to it. Consequently, the principle of presumption of innocence is applicable here given that it has not been possible to prove the existence of evidence of infringement and therefore administrative responsibility cannot be demanded.

This principle, which is included in article 53.2.b) of the LPAC, recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise".

2.5.4.- On other accesses to the SIP.

Next, it is appropriate to address the accesses to the SIP that, according to the report of the Civil Guard, were carried out between 09/28/2018 and 11/29/2018 and that had as their object consult the vehicles with license plates (...), (...), (...), (...) (accessed on 11/21/2018) and (...).

Well, this set of accesses to the SIP made by the complainant and another agent of the Urban Guard, were already administratively sanctioned by this Authority (sanctioning procedure no. PS (...)/2019).

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Therefore, the "non bis in idem" principle found in article 31.1 of Law 40/2015, of October 1, on the legal regime of the public sector, is applicable here. This precept that "Facts that have been criminal or administrative cannot be sanctioned, in cases where the subject's identity, fact and basis are appreciated."

2.6.- About sending a complaint to the private email address.

Finally, the complainant stated that the councilor for Citizen Security and Civil Protection of the City Council of (...) sent him an email in which he attached a traffic complaint. The complainant indicated that this message was sent to his personal email address, which he shared with his wife.

From the documentation provided by the person making the complaint, it can be seen that the facts reported refer to an email sent on 02/20/2018.

So, the events reported took place when the LOPD was still in force. This fact reported could constitute the serious infraction provided for in article 44.3.b) of the LOPD previously transcribed (for having treated the complainant's personal email address) or even the serious infraction provided for in the article 44.3.d) of the LOPD ("d) The violation of the duty to keep secret about the processing of personal data referred to in article 10 of this Law."), since the reporting person claimed that his wife could also access said address.

As it has been advanced, in accordance with article 47.1 of the LOPD, serious infringements are prescribed 2 years from the day on which the infringement was committed.

That being the case, any infringement committed by sending the email subject to the complaint would be time-barred.

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 52/2020, relating to the City Council of (...), regarding the dismissal of the head of the Urban Guard; with the requests for various information to the City Council; with the request for an audit to the City Council on access to the SIP; with the use of police facilities and the corporate mobile for the

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purchase and sale of vehicles by the head of the Urban Guard; with the rest of the reported SIP accesses that are not subject to the present sanctioning procedure; and with the sending of a traffic complaint by a City Council member to the personal email address of the person making the complaint.

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.

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,