

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

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 66/2020, referring to the City Council of (...)

#### Background

1. On 02/17/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the City Council of (...), on the grounds of an alleged non-compliance with the regulations on personal data protection.

Specifically, the person reporting stated that on 05/02/2020, one of his neighbors with whom he has a neighborhood conflict, specifically the neighbor "...", scolded him in the middle of the street and state that "I know that you have denounced me for (...) and you have sent it to the municipal architect opposite, because I have friends in the City Council and they have told me so".

In relation to this, the person reporting here added that he had certainly reported a second neighbor by (...), and that the two reported neighbors were friends.

2. The Authority opened a preliminary information phase (no. IP 66/2020), 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 were capable of motivating the initiation of a sanctioning procedure.

3. In this information phase, on 02/24/2020, the reported entity was required to report, among others, if the person reporting here filed two complaints with the City Council against two of the its neighbors, by (...) and by (...), as well as the date of their presentation. He was also required to report if any employee of the City Council had disclosed the content of the two complaints to the neighbor (...), or to people close to him. Finally, to identify the employees of the City Council who would have accessed the information contained in the two referenced complaints, in the period between the day the person making the complaint filed the complaint against their neighbor for the dispute from (...) until 5/02/2020.

4. On 06/03/2020, the City Council responded to the aforementioned request through a letter in which it set out the following:

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- That "The complainant lodged two complaints with the City Council of (...), which are the following:
  - a) On October 7, 2019 ((...)), which says: "The neighbor (...) hace unos días ha (...),(...)"
  - b) On October 23, 2019 ((...)), which says: "The neighbor (...)has been doing (...)since 2015"
- That "In relation to the letter with entry registration (...), no answer has been given or taken carry out no action on the part of the city council."
- That "In relation to the letter with entry registration (...), proceedings were initiated prior to the file for the protection of urban legality, a summons was sent at the place to be inspected to the neighbor of the street ( ...)and the town hall architect was appointed, who issued a report on November 25, 2019. Subsequently, on February 21, 2020, this neighbor presented a notice of works".
- That "The City Council of (...) has on record that the municipal architect, when he went to the home of the neighbor of (...), to questions from this neighbor, commented that the previous proceedings they had been initiated by a neighborhood complaint (the usual way for the town hall to start proceedings for the protection of planning legality), but without indicating who the person making the complaint had been."
- That "There is no record that any worker has disclosed the content or delivered a copy of complaints to the neighbor (...), or to any other person in his environment."

In the last one, the entity identified the City Council workers who were aware of the two complaints presented by the person making the complaint, which are: two people who hold jobs as administrative assistants at the entry register of the entity, two people who hold jobs in administrative tasks and who go

to process each of the letters of complaint, the intervening secretary of the City Council and the municipal architect.

#### 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, the complainant complains that the neighbor (...), to whom he had complained, was aware of the complaint submitted because a City Council worker would have revealed this information to him, and also of the presentation of a second complaint against the neighbor (...)

For its part, the City Council denies the facts reported, that is to say that no worker revealed the content or delivered a copy of the complaints to the neighbor (...), or to any other person in his environment. He also adds that, in relation to the letter of complaint presented by the complainant against this neighbor, the City Council did not take any action. Likewise, with regard to the second complaint filed by the person here reporting against the neighbor (...),

for carrying out works without the corresponding license, the City Council declares that in the framework of the proceedings prior to the file for the protection of urban legality, the municipal architect went to the house of the denounced neighbor, and in response to the latter's questions, informed him that the preliminary proceedings were 'had started from a "neighborly complaint", but without indicating who had been the person making the complaint. Therefore, he denies that he disclosed the details of the complainant here in this second case as well.

These circumstances do not allow us to rule out that the City Council had revealed to the neighbor (...) that the person reporting here would have filed a complaint against him and the neighbor (...), but certainly they also do not prevent maintaining the opposite, and maintaining the imputation on the basis of which such disclosure of data was effectively carried out.

At this point it is not superfluous to add that the legal system recognizes the right of access - with certain conditions and always respecting the data protection regulations - to the information contained in the administrative files. What's more, in the specific case of urban planning legality procedures - such as the case of the neighbor (...) - any person has recognized this right of access and can access all the documentation in the file, without the need to prove special legitimacy, based on the provision of public action in this matter (article 12.1 of the revised text of the Law urban planning, approved by Legislative Decree 1/2010, of August 3). That being the case, it is important to highlight that in the event that both the neighbor (...) and the neighbor (...) had asked the City Council for access to the file for the protection of urban legality, would have been able to know the name and surname of the reporting person, since this treatment of the data of the reporting person would find its legal basis in article 6.1.e) of the RGPD in relation to the regulations mentioned above. In this same sense, it cannot be ruled out that the complaint against the neighbor (...) for (...) in a residential area or on urban land, could be considered, due to its link with territorial planning, also a matter of urban legality.

However, from the account of the events of the two opposing parties, it does not seem that this request for access to the file for the protection of urban legality had been carried out by neither of the two reported neighbors.

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That being the case, it is unknown how the neighbor (...) obtained the information regarding the complaints presented by the complainant against him and the neighbor (...), but it cannot be ruled out that the knowledge of this information he had obtained from other sources outside the City Council. Or, even, taking into account that said manifestations took place in the context of a neighborhood discussion between the complainant here and the referenced neighbor, and therefore, outside the context of a conversation between two friendly people or confidants, it could be that the said manifestations did not start from certain and concrete information, but from a speculation originating from what the neighbor could know (...) from the information obtained from the neighbor (...), with whom he maintained a friendly relationship, and who, in turn, was known to have been inspected following a "neighborly complaint". Be that as it may, once this point has been reached, it must be taken into account that the sanctioning administrative procedure is particularly warranted 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 cannot be ignored that the penal administrative law is applied, 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 dubio pro reo in the area of sanctioning authority, which shifts to the accuser the burden of proving the facts and their authorship. 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, it is necessary to take into account, on the one hand, that the data that the person reporting here states that the City Council would have improperly disclosed, in the case of information on urban planning matters, they could be known by any person who requests access to this information, and on the other hand, that the City Council has denied the reported facts, without any other element being available to infer improper disclosure of this data by the City Council. That is why, based on the right to the presumption of non-existence of administrative responsibility, until the contrary is proven (art. 53.2.b LPAC), the archive of the present proceedings proceeds.

**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.

Therefore, I resolve:

1. File the actions of prior information number IP 66/2020, relating to the City Council of (...).

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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,