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In this resolution, the mentions of the affected entity 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 entity, the physical persons affected could also be identified

File identification

Archive resolution of the previous information no. IP 98/2020, referring to the City Council of (...)

Background

1. On 03/23/2020, 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.

In particular, the complainant stated that he held the position of (...) at the municipal school, and affirmed that "in different instances and other types of contacts made before the City Council of (...) (Barcelona) I have given my permission for them to contact me at my personal email address", but that he had never authorized "the dissemination to third parties, such as other employees, of said email address nor for their treatment." In this regard, he complained that the City Council's human resources technician, on 03/17/2020, sent him a message to his private email address, the subject of which was "Liquidation", with open copy to 4 corporate e-mail addresses of the City Council, in whose body a matter related to his workplace was discussed. The complainant added that on 03/20/2020, the human resources technician sent a second message, with the subject "Medical Discharge", to his private email address, which also contained a copy opened a corporate e-mail address of the City Council.

The reporting person provided various documentation relating to the events reported, specifically:

- the two e-mails received in the inbox of your private e-mail, both sent by the same sender from a corporate e-mail address of the local body ((...)).
 - a) The first has the subject "Liquidation" (17/03/2020) and is sent with a copy open to 4 corporate email addresses:
(...)
 - b) The second has the subject "Medical discharge" (20/03/2020), and is sent with an open copy to 1 corporate email address: (...)

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- copy of the generic request submitted by the complainant, on 03/18/2020, through the City Council's generic processor, in which, among others, he complains that the email of 03/17 /2020 was sent with an open copy to the entity's corporate mail. In said instance, the reporting person authorizes the use of notifications and electronic communications and for this purpose indicates the private email address and their mobile phone number.
2. The Authority opened a preliminary information phase (no. IP 98/2020), 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 06/04/2020 the reported entity was required to report, in relation to the two emails sent by the City Council's human resources technician to the reporting person, in the dates 03/17/2020 and 03/20/2020, of the specific identification of the holders of the City Council's corporate email addresses that were listed in the open copy section, and, specifically, about the position they held within the organization and the exercise of its functions within the local entity. Likewise, it was required to indicate the legal basis that would legitimize the sending of emails with a copy to said corporate email addresses, and to report on whether the City Council had the form in which the person making the complaint authorized the use of the email private email for the purposes of notifications or communications.
4. On 12/06/2020, the City Council responded to the aforementioned request through a letter in which it stated the following:
- That "the interested party who filed the complaint worked for (...) a public school since September 2019, as a temporary employee of this City Council. On 06/03 he presented an instance in which he requested his voluntary resignation from the City Council with an effective date of 23/03. Considering that he had vacation days to enjoy, he asked to enjoy them during the last week of work and was authorized and accepted by Decree, all the requests made."
 - That "Given the health crisis situation, the internal organization and the commitments made by this entity, maximum speed and speed was given to inform you of the decisions taken and all requests were duly informed, for your responsible and/or, as the case may be, by the superior technique of special administration of general services, who has reporting functions regarding human resources matters, among others."

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- That "since the presentation of his voluntary termination, the interested party has presented 9 instances that have generated 7 different files", and in relation to said instances, he adds that "the instances, presented through the website and the e-tram module, contained the following express instructions, noted by the interested party: (...)

- That "the entity already resolved the request through the notification of Mayor's Decree number 441 of (...) in which it was indicated the positions of the persons holding the addresses of the e-mails indicated and involved, the which are part of the municipal organization and hold jobs for the development of which require knowledge of the information contained in the indicated emails, namely:
 - o Mrs (...), secretary of the Corporation and Head of the General Services area (...)As secretary she is aware of the entity's affairs in accordance with the regulations and as head of the General Services area, is the hierarchical superior of the human resources staff and coordinates the other areas of the municipal entity.

 - o The lady (...), hierarchical superior of the person concerned, Coordinator of the service i Head of the People Services area (...)

 - o The human resources staff, whose duties are to manage and process all matters related to the municipal staff, Mrs (...), who informs the present, senior technician of special administration of General Services and Mr (...), human resources technicians (...) and (...) sender of the mails, respectively).

 - o Ms (...), economic services administrator, with temporary assignment of human resources technician functions, who prepares the payroll and manages the medical leave and discharge of the municipal staff, in coordination with the human resources technician, between of other functions ((...))."

- That "the e-mails indicated by the interested party contain, solely, information advanced via e-mail so that the interested party was aware of the meaning of the decision of the entity acting, for no other purpose than to inform him immediately and of prior to the receipt of the formal notification, speed up the procedures, and transfer, to the people involved, the knowledge of the facts, who otherwise could consult the files because they have access to them as authorized persons."

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- That "the legal basis for the processing of your data is the free and express consent and the purpose of the same, and with respect to the sending of e-mails between the personnel involved, it is necessary to identify that in accordance with the quality principle of the data, the information that is included in the emails are adequate data, relevant for the purpose to which they correspond and not excessive for the fulfillment of this purpose, especially because the authorized personnel have access to the data necessary for the exercise of their functions."
- That "in the email of 03/17/20, the interested party is only given the answer that he will later receive via notification of the decree (regarding his request made on 03/16, since the decree rejected his request that was on the way to signature, on that date)
- That "in the mail of 03/20/20, the sending of a claim for a release notice to the interested party is taken advantage of to warn the economic services administration to take it into account for that month's payroll, given that ordinary payroll management is closed every 20th of the month. The existence of a discharge or dismissal affected the preparation of salary settlements for the month of March."

The denounced entity attached various documents to the letter, including a copy of the Mayor's Decree of (...) which sets out the details of the events that took place and, specifically, that the person concerned in his writing accepts electronic communications and notifications, and also identifies the jobs held by the people holding the email addresses that appear in the controversial responses from the City Council, with open copy.

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.

In this regard, the first thing to indicate is that the person making the complaint here does not complain that the City Council sent the answers to their requests through two emails, which had the subject "Liquidation" (17/03/2020) and "Medical discharge" (20/03/2020), to your private email address, but that these answers

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had been sent with an open copy to other recipients, all of them holders of a corporate email address linked to the City Council, disseminating in this way the personal data relating to their private email, as well as the personal data contained in the body of the email.

Having said that, it is necessary to start from the premise that, as pointed out by the complainant himself and inferred from the documentation provided by both the complainant and the City Council, the electronic address to which the controversial emails are sent is the that the complainant had indicated in his requests presented to the City Council, in which he also agreed to receive communications and electronic notifications related to the subject matter of the request, and for this purpose, indicated a mobile phone number and private email address. In this sense, it is also worth remembering article 14.2 of the LPAC, which when it lists the groups that would be obliged to relate electronically with the public administrations, includes "employees of the public administrations for the procedures and actions that carry out with them by reason of their status as public employees, as determined by the regulations of each Administration.", and although in this case, it is not known that the City Council has determined it by regulations, if the public employee facilitated an e-mail address to communicate with the City Council, nothing prevents it from sending you communications through this channel, giving you an advance on what it would later notify you through another channel.

That being the case, it is evident that the person reporting here gave his consent for the communications to be made in relation to the matter of the resignation from his job at the municipal school linked to his situation of medical leave, could be done through electronic means, which involved the processing of the personal data of the email.

Having established the above, about the fact that the City Council sent the controversial emails with open copy to other corporate email addresses, that is, about the eventual access to the private email address and the content of the electronic responses sent by the City Council, by working people who are part of the City Council, it must be said that such access cannot be qualified as a communication or transfer of data, as there is no third party figure as defined by article 4.10 of the RGPD. This does not mean, however, that all workers who depend on the same person in charge of treatment, as is the case with public employees of the City Council, can access without limits the personal data processed by the person in charge in the exercise of the functions assigned to him they are their own, as is the case with the management and processing of all those matters relating to the entity's human resources field. In this regard, it should be borne in mind that users must only access the personal data necessary for the performance of their duties, a matter that is decisive in the analysis of the facts reported here.

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Well, according to the City Council, the "Liquidation" e-mail which is the entity's response to the complainant's request to temporarily leave his resignation from his job without effect and also on his notice of medical leave for IT, is sent with an open copy to 4 City Council employees, who hold the following jobs: (1) the secretary of the Corporation and also head of the General Services area, who is the hierarchical superior of the human resources staff and coordinates the other areas of the municipal entity; (2) the Coordinator of the service and head of the People Services area and hierarchical superior of the herein complainant; (3) the superior technique of special administration of General Services who has the functions of reporting on matters in the field of human resources; (4) and the economic services administration, with temporary assignment of human resources technical functions, who is in charge of drawing up the payrolls and manages the medical leave and discharge of the municipal staff, in coordination with the human resources technician of the City Council (which is the sender of the two emails). This last worker is also the person who states that the email with the subject "Medical discharge" was sent, with the open copy option, in which the City Council only requests the complainant here that send them the medical discharge, and for that purpose indicates

a corporate email address to send it to. In this regard, and taking into account the functions entrusted to the referenced public workers within the City Council, all of which are directly linked to the matter that was discussed there, it is considered that the access of these public workers to the content of the controversial e-mails would be justified by reason of the exercise of the public functions they carry out in their respective jobs within the City Council (article 6.1.e RGPD).

Therefore, the data processing that is the subject of a complaint does not violate the personal data protection regulations, as it is considered that the City Council carried out lawful data processing when it sent the two e-mails to the private address of complainant, with open copy to other corporate email addresses.

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 98/2020, relating to the City Council of (...)
2. Notify this resolution to the City Council of (...) and to the person making the complaint.

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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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,