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08008 Barcelona

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 128/2020, referring to the City Council of (...)

Background

1. On 05/05/2020, 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 of the regulations on personal data protection.

In particular, the complainant explained that he is a fixed-term employee of the City Council since she acquired the position "due to the competitions held in July of (...)", and every year the City Council calls on the Catalan Employment Service (SOC) to hire her as a janitor of culture during the months of May to October. In relation to this, the complainant complained that after the local government board approved in April 2020 the agreement to call the SOC and hire her as the entity's cultural caretaker, " the photograph of the call for the SOC of my contract began to circulate on WhatsApp, in which data such as my full name, the position I occupy, the hours I work, the positions and the months of the contract duration appear. In this regard, she explained that she knew about the facts because her (...) is a councilor of the City Council and is part of the WhatsApp group called "Government Team (...)", through which the mayoress report this leak. In the last one, the complainant indicated the suspicion that said information would have been disseminated by "one of the councilors" in order to accuse the local government board of nepotism in the adoption of the agreement relating to his recruitment as to the organization's cultural concierge.

The complainant provided the image of a screenshot of a mobile phone, in which a series of messages forwarded by the mayoress of the council, Mrs. (...), to a whatsapp group named "Equip de Government (...)". In the first forwarded message, there is an image showing part of the agreement of the local government board agreeing to hire the person making the complaint, and showing the following information: the person's first and last name complainant, the category, date of registration and date of termination, weekly hours and reason for hiring. The following messages, also forwarded by the mayoress to the WhatsApp group, refer to the fact that this information is being disseminated through WhatsApp messages among the residents of the municipality ("This is happening in the town" "I'm done of sending" "They are dedicated to making this happen. You mean that there would be no need for clarification").

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2. The Authority opened a preliminary information phase (no. IP 128/2020), 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 06/23/2020 the reported entity was required to report on the date on which the local government board agreed to approve the hiring of the person reporting here as cultural caretaker during the months of May to October of the year 2020, and identify the people who had access to the controversial agreement due to the functions entrusted to them or the positions they hold within the Consistory. Likewise, he was required to report the reasons they would explain, as inferred from the body of the messages forwarded by the mayoress to the WhatsApp group "Government Team (...)", which had been disseminated to third parties not authorized the act approved by the governing board, through whatsapp messages. In the last one, it was required that the testimony of the Mayor of the City Council be provided on the date on which she forwarded the controversial messages to the WhatsApp group "Government Team (...)", and if the the person who had sent him the messages was or was not a person authorized to access said information.

4. On 08/07/2020, the City Council responded to the above-mentioned request in writing in which it stated the following:

- That "the recruitment was approved at the JGL of April 28, 2020 (File (...))"
- That "thirteen councilors (government and opposition team) and five workers, of which four are attached to the Secretariat and one to Human Resources, have had access to the file."
- That "we do not know the reason for the dissemination of this document through this channel", in reference to the dissemination of the controversial agreement of the Local Government Board through the WhatsApp application.
- That according to the testimony of the mayoress, it was on 05/01/2020 that she sent the message to the WhatsApp group "Government Team (...)", informing them that she had received a message for this application with the image of an extract from the agreement of the local government board and that this was being disseminated through whatsapp among the residents of the village.
- That the person who sent the mayoress the WhatsApp message containing the image of the extract from the referenced agreement, "was not a person authorized to have access to the document".

5. On 26/04/2021, also in the context of this preliminary information phase, a second request was made to the reported entity to report on which councilors of the opposition acceded to the controversial agreement of the Local government board, and that the date on which such access was granted, and the supporting documentation of the request for access by an opposition councilor, as well as the response issued by the City Council.

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6. On 06/05/2020, the City Council complied with this requirement by means of a letter stating the following:

- That "The agenda and minutes of the Local Government Board are made available weekly to all councilors, including those who are not part of the government team. Specifically, the minutes of the JGL of the day (...), which contained the agreement relating to the hiring of the complainant as a cultural caretaker during the months of May to October 2020, were made available to all the councilors on the day

April 30, 2020.

The list of councilors of this City Council can be consulted on the Municat platform."

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.

Specifically, the complainant complains that an extract from the local government board agreement dated (...), by which it was agreed to call the SOC and hire her as a cultural caretaker during the months from May to October of the year 2020, and in which your personal data was included (name and surname, category, date of registration and date of termination, weekly hours and reason for hiring), had spread among the residents of the municipality through a WhatsApp message.

In this regard, it should be noted that this fact could potentially constitute an infringement in terms of data protection, due to the violation of the principle of confidentiality (art. 5.1.f. RGPD).

Having said that, it is necessary to analyze the facts, and in particular whether, in view of the circumstances involved in the present case, the responsibility of the City Council for the leakage of the document can be sustained.

First, it is necessary to indicate that, the local government board, in accordance with the established in article 54 of Legislative Decree 2/2003, of April 28, approving the revised text of the Law

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Municipal and Local Government Council of Catalonia (TRLMC), in accordance with the provisions of Article 23 of Law 7/1985, of April 2, regulating the bases of local government (LBRL), is a body that forms part of the municipal organization of all town councils with more than 5,000 inhabitants and those with less that so establish. It is his responsibility to assist the mayor in the exercise of his powers, and the powers delegated to him by the mayor or another municipal body, without prejudice to those attributed to him by law (art. 54 TRLMC). In the case of the City Council of (...) it is made up of the mayoress and seven councilors who make up the municipal government, appointed and removed freely by the mayoress.

The sessions of the local government board are not public, therefore, their deliberations are secret, unless it is about agreements in which the board of government acts by delegation of the Plenum, but, in the present case, the board of government acted by delegation of the mayoress of the municipality, and therefore, their deliberations would not have been debated in a public event.

Having said that, it is an unquestionable fact that the members of the local government board had access to the body's agreement adopted on (...), and, according to the City Council, a few days later, they also to have access to the thirteen councilors of the City Council, both those who were in the government team and in the opposition. Now, in this case, it is not appropriate to clear responsibility for the origin of the eventual leak, so, while it is true that the acts of the local government board are not public, it is also necessary to highlight that the information that disseminated through the WhatsApp mobile phone application is information that, in accordance with the provisions of article 9.1.e) of Law 19/2014, of December 29, on transparency, access to information public and good governance (hereinafter, LTC), the City Council should have published in application of the principle of transparency, and therefore, the eventual leakage does not constitute the commission of any infringement from the prism of the protection of personal data .

Article 9.1.e) of the LTC obliges to publish on the transparency portal "the calls for proposals and the results of the selective processes of provision and professional promotion", in line with what is provided for in the civil service legislation, which provides that the procedures staff selection must be governed by the principles of equality, merit and ability, publicity of their bases and transparency. In this respect, it should be noted that, in relation to the personal data of people who have been suitable and selected for the job that is the object of the selection process in which they have participated, they must be identified by means of first and last names and four digits of the DNI (Additional provision 7a LOPDGDD).

That being the case, it must be borne in mind that, as the complainant himself states in his written complaint, he has been a permanent employee of the City Council since he acquired the position "due to the competitions that took place in July de (...)", which is why every year the City Council calls on the SOC to hire her as cultural caretaker during the months of May to October. Well, starting from this premise, it is considered that the information contained in the extract of the agreement of the local government board dated (...) which is

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disseminated through WhatsApp among the residents of the municipality, this is information that the City Council itself would have been obliged to publish on the day, as part of the results of the selection process for the provision of the permanent staff position -discontinuance of cultural caretaker of the entity, in which the person making the complaint was selected.

Finally, just indicate that the dissemination of the controversial information would not violate the principle of limiting the data retention period either. Here, it must be taken into account that the selection process to occupy a fixed-discontinuous job as a cultural caretaker, in which the person making the complaint here was selected, was carried out during the year (...). Well, on this point it should be noted that, although due to the time when the events took place it was not yet applicable, the recent Decree 8/2021, of February 9, on transparency and the right of access to public information, has already established as a general rule that information of public interest must remain published for a minimum of five years from the time of its dissemination. Therefore, taking into account that the dissemination of data

object of complaint was made during the year 2020, nor can it be considered that from the prism of the principle of limiting the term of data conservation, the action has constituted a violation of the data protection regulations.

In accordance with all the above, it is considered that the processing of data subject to a complaint does not violate the regulations for the protection of personal data, as the eventual dissemination of the personal data of the person making the complaint contained in the agreement of the governing board were data that, in the framework of the selective process of provision of a position as the council's cultural caretaker, should have been the subject of active publicity by the City Council, in accordance with the established in article 9.1.e) of the LTC, and therefore accessible to the general public.

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 128/2020, 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,