

Carrer Rosselló, 214, esc. A, 1st 1st
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File identification

Archive resolution of the previous information no. IP 159/2020, referring to the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1. On 11/06/2020 the Catalan Data Protection Authority received a letter (registered on 02/06/2020 (...)) by which a complaint was made against the General Directorate of the Police (hereinafter, DGP), due to an alleged breach of data protection regulations.

Specifically, the complainant - who stated that he had separated two years ago from his partner, an agent of the PG-ME - stated that a few days ago, when accessing his personal computer, he had discovered

"a folder with numerous photographs taken by him of attestations, of señor (...) of vehicles, interventions (...), they are images of the environment that should have been disclosed" professional, who no . Along with his letter, the complainant provided a copy of the photographs he referred to in his letter, which included information such as that detailed below: images of several vehicles (some of them involved in accidents) with the no. of visible registration; image of a balcony of a house with a hashish plantation; images of documents containing names, surnames and ID numbers of people linked to police actions; images of people who appear to be taken from police files, images of various screenshots taken from the database of the General Directorate of Traffic that contain data linked to different vehicles and their owners (name and surname, ID, address, technical inspections, insurance, etc); computer screen images that show various files contained in the "Police Information System" database, referring to different people, in which the no. of SIP file, first and last name, ID, nationality, date of birth, address, etc.

2. The Authority opened a preliminary information phase (no. IP 159/2020), 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 phase of information by means of office of 09/04/2020 - notified that same day - the DGP required that, , is within 10 working days from the day after the notification, respond to the following issues related to the police information contained in

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most of the photographs provided by the person reporting (which were accompanied with the office):

- a) Indicate whether the agent of the PG-ME (identified in the office) has permission, given the functions entrusted to him, to access the police proceedings linked to the content of the controversial photographs.
 - b) Report if the aforementioned agent has permits to carry out the following actions:
 - b.1) The capture of images of police actions. If so, indicate whether it was the PG-ME that provided the device to perform them and whether it had an access password.
 - b.2) The electronic output of information containing personal data included in PG-ME files.
 - b.3) The storage of police information on hardware located outside the premises of the PG-ME. If so, indicate whether the PG-ME has provided you with this hardware and whether it has an access password.
4. In view of the fact that the reported entity did not respond within the indicated period, it was requested again by means of an office dated 13/10/2020 (notified on the same day), without having responded to the information either tendered
5. Also in the context of this prior information, by means of an official letter dated 11/18/2020 - notified on 11/27/2020 - the complainant was requested to provide this Authority with the photographs that accompanied his complaint in digital format.
6. On 12/23/2020, the complainant provided a CD that contained, among others, a copy in digital format of the photographs that accompanied his complaint, in addition to documents in word format.
7. Based on the antecedents that have been related, the present file resolution is issued.

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. It is an uncontroversial fact that the person making the complaint, unrelated to the police field, had in his possession information - in the form of photographs - taken from police files, a fact that shows that, on the part of the DGP, he was violated the principle of data security that obliges the person in charge

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of the treatment to establish the appropriate measures in order to avoid its loss, destruction, alteration, treatment or unauthorized access.

Having said that, it must be said that, with the information available, it is not possible to determine without a doubt on which specific date this violation of the security of the data included in the files of the DGP occurred, although from the analysis of the content of the photographs, and the CD provided by the complainant, it can be inferred that would have occurred at the latest in March 2017, and this because, first of all, in those photographs in which a date appears (e.g. because a dated document appears in the photograph), this corresponds at the latest to the year 2015; and secondly, because, after analyzing the properties of the documents and photographs contained in the CD provided, the latest creation date is 12/03/2017.

In this same sense, it is also necessary to demonstrate that the complainant stated in his letter that he had separated from the PG-ME agent 2 years ago, which considering the date on which the complaint was submitted (02/06/2020), places the separation in the month of May 2018; circumstance that in turn would place the violation of the security principle at a time prior to this last date; which is consistent with what has been said in the previous paragraph.

That being the case, it can be affirmed that the violation of the security principle would have occurred when Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, LOPD) was still in force; violation that was constitutive of a serious infraction provided for in article 44.3.h)

("Maintaining files, locations, programs, personal or teams that contain data without the proper security conditions that is determine for regulatory way" of) in relation to article 9 ("The person in charge of the file and, where applicable, the treatment must adopt the guarantee the security of the if they are exposed to human action, the technology, and made of the treatment having authorized access

stored data and the risks of the physical environment or natural"), both from the LOPD.

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), commission which, in the case at hand and as has been said, it would most likely have occurred by March 2017 at the latest.

That being the case, the breach committed relating to data security must be considered 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 .

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3. Article 89 of the LPAC provides that proceedings are archived when the following is made clear in the instruction of the procedure: "e) When is it conclude, in anyone moment, that the offense has prescribed".

4. As has been explained in a reasoned manner in the basis of law 2, the filing of the present actions obeys the fact that the statute of limitations for the reported facts has been concluded, which can be inferred from the documentation provided by the same reporting person. So, even though the answer that the DGP could have given to the information requirements, this Authority would have been irrelevant for the purposes of determining a possible breach of the data protection regulations and in such case, the initiation of a sanctioning file, the DGP imposed by the current regulations respond to the requirements of the Authority

(article 19 of Law 32/2010), and that, in the event of failure to do so, could incur a breach of data protection regulations (article 83.5.e/ RGPD).

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 159/2020, relating to the Directorate General of the Police.
2. Notify this resolution to the General Directorate of the Police and communicate it 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 denounced entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the which provides for 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 reported entity can file any other appeal it deems appropriate to defend its interests.

The director,