

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

## File identification

Archive resolution of the previous information no. IP 179/2021, referring to Barcelona City Council.

## Background

1. En data 25/06/2020 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, provinent de l'Agència Espanyola de Protecció de Dades, un escrit pel qual una persona formulava una denúncia contra l'Ajuntament de Barcelona, amb reason for an alleged breach of the regulations on the protection of personal data.

The complainant complained about a communication of his data and documentation of a administrative file, which the Barcelona City Council allegedly carried out to a private entity, without its consent. Specifically, the complainant explained that on 02/19/2020 she received by certified mail at her address in Barcelona, a letter from the SOS International entity (SOS Seguros y Reaseguros, SA), by which she was required to a tree located in the private yard of a property he owns. In this letter, dated 14/12/2020, the complainant was identified by name and surname, together with his private address, and the following was noted, among others:

*"We are contacting you with the aim of filing an extrajudicial claim in the number of (...) through your SANTALUCIA Policy, for the damages and losses caused as a result of the incident whose data are contained in this communication. Specifically, we hereby require you to cut down the tree indicated in the administrative report, which we have attached a copy of, as well as a photograph, within a maximum period of 30 days, because it does not only cause material damage to the property of our insured but it also poses a clear danger to him and his family because its branches not only invade his property, but also pressing a gas pipe, with the risk that it entails for the safety not only of our insured and his family, but even for you. If you were the holder of an insurance that covers the risks caused, please contact your company and let us know the details of the same in order to resolve this claim (...)"*

The letter sent was accompanied by an annex 1, which contained several letters issued by the Barcelona City Council, corresponding to the file with reference AUT-05-2018-(...) for the protection of urban planning legality, which according to the complainant the City Council had not notified her. Specifically, it was the following documents:

1. A report dated 02/15/2019, issued by an inspector from the Department of Licensing and Inspection following an ocular inspection carried out on 02/14/2019 in the yard of the home of

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the reporting person, where the tree that was the object of the inspection was planted; as well as several photographs of the tree.

2. A Resolution dated 02/22/2019, of the district manager, initiating a file for the protection of urban legality formulated against the person making the complaint here, by the alleged commission of the offense provided for in article 74.1 of the Barcelona Environmental Ordinance (OMA).
3. An office dated 02/22/2019, notifying the aforementioned resolution.
4. A report dated 02/22/2019 from the Head of Legal Services of the district, reiterating the report issued by the inspector on 02/15/2019.

In the last one, the complainant also complained about an alleged communication of his private telephone number, without his consent. Specifically, the complainant stated that the City Council could have also communicated her telephone number, and based her suspicions on a call she stated she received in November 2019, from a person who would have identified herself as official of the Municipal Institute of Parks and Gardens of this City Council, without being one, in which he would have requested him to send him various documentation.

2. The Authority opened a preliminary information phase (no. IP 179/2020), 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 08/02/2021 Barcelona City Council was required to indicate whether he had provided the International SOS entity with a copy of the documentation of the file AUT-05-2018-(...) referring to the person reporting, or other people, as well as if, in the framework of this file or other related ones, he had communicated his private telephone number .

4. On 18/02/2021, Barcelona City Council responded to the aforementioned request through a letter, accompanied by two reports issued by the Department of Licensing and Inspection of the District of (...), and by the 'Municipal Institute of Parks and Gardens on dates 02/12/2021 and 11/02/2021, respectively.

According to these two reports, the City Council would have processed 6 files for the protection of urban legality during the years 2015 to 2020, following the complaints presented to the City Council, for the same reason: the danger of the tree that was located within the skate of the

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property that was owned by the person making the complaint, for being inclined to one side that would affect a neighboring property, right where a gas pipe passed, with the consequent risk to the people and goods affected.

In the report issued by the Department of Licensing and Inspection of the District of (...), the following was pointed out, for what is now of interest:

- *"No copy or phone number of the files has been given to any insurance company"; "the inspection technician who has brought the latest AUT files states that (...) he has never given the phone number of the accused".*
- *"(...) it is stated in the file 05-2018-(...) that as a natural person (...) he requested and was provided a copy of the files 05-2017(...); 05-2018-(...) on 11/15/2019."*

In the report of the Municipal Institute of Parks and Gardens (hereafter, IMPJ), the following was pointed out, for what is now of interest:

- *"In 2019, a request was received from the district for the removal of a pine tree in (...) attaching a letter of authority describing the risk of the tree. A report is issued claiming that the tree does not pose a danger and that if the property wants to remove it, the OMA must be enforced. At all times the communication of the documentation is done with the property and the district. No outsider (neighbor or insurance company) contacts this Department asking for any documentation. Nor has the property been called, from the Department of Green Protection, asking for any file."*

This last report was accompanied by various documentation, among which was the one corresponding to the file with reference AUT-05-2018-(...), where it was stated that the City Council had notified the person denouncing the agreement of initiation of said file.

#### 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.

As explained in the background, the complainant complained that the City Council had communicated his data from an administrative file to the insurance company SOS International,

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as well as your private telephone number, without your consent, in reference to an alleged illegitimate or unlawful communication of data.

However, the City Council has denied all the facts that are the subject of the complaint. Specifically, the Department of Licensing and Inspection of the District of (...) - as the administrative body or area responsible for processing the controversial file - has stated in its report dated 02/12/2021 that: *"No copy or phone number of the files has been given to any insurance company"; "the inspection technician who has brought the latest AUT files states that (...) he has never given the phone number of the accused".* And in the same sense the IMPJ has pronounced in its report dated 11/02/2021, noting that: *"At all times the communication of the documentation is done with the property and the district. No outsider (neighbor or insurance company) contacts this Department asking for any documentation. Nor has the property been called, from the Department of Green Protection, asking for any file."*

In order to substantiate the facts reported, the reporting person has provided a copy of the administrative documents that the International SOS entity sent him on 02/19/2020, together with a letter in which this entity expressly referred to the documentation administrative. In this respect, it should be pointed out that this would be indicative of the fact that the aforementioned entity had this documentation referring to the complainant, but it does not allow to maintain that it was Barcelona City Council that provided this documentation to the insurance entity.

Firstly, the aforementioned letter referred to an extrajudicial claim that the insurance company sent to the person making the complaint here, on behalf of another person (Mr. (...)), under the insurance policy Santa Lucia that this person would have contracted, and as a result of the damage to their property that the complainant's tree allegedly caused on 02/14/2019. So, at the outset, it can be noted that the name and surname of the person reporting here, as well as the address of their home - which coincides with the address of the farm where the tree that was the subject of the incident was planted - they were data available to the insured person and, therefore, it was not necessary for the City Council to bring them to the attention of the insurance company in order to process the claim. It must be borne in mind that the person who suffered the damage that is the subject of this incident could have accessed the disputed administrative file and know this data, not only because of his status as an interested person, but also, being a file for the protection of urban planning legality, en virtue or for the exercise of public action.

Secondly, the Department of Licensing and Inspection of the Sarrià-Sant Gervasi District of the Barcelona City Council has stated in its report, that on 11/15/2019 (and therefore, prior to the events reported, of date 02/19/2020) delivered a copy of the disputed administrative file to a natural person. This Authority does not know whether or not this person had the status of an interested person, and whether or not he has any relationship with the person insured or with the insurance entity, but in any case, and as has already been said, in the specific case of urban planning information all people can have access to it without the need to prove special legitimacy, given the recognition in the sectoral regulations of public action, which

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it justifies the need to have extensive information on this matter (article 12.1 of the Revised Text of the Urbanism Law, approved by Legislative Decree 1/2010, of August 3).

On the other hand, with regard to the part of the complaint referring to the possible communication of the private telephone number of the person making the complaint, the City Council has also denied having made such communication, as transcribed in a paragraph previous. The Authority does not have a record of the telephone number from which the call was made, or any other information that allows identify the person or entity from which the call was made. And it is necessary to record the fact that the administrative documentation that the SOS International entity sends to the person making the complaint does not contain this personal data.

In summary, there is no factual element to consider that Barcelona City Council provided a copy of the administrative documents indicated to the SOS International entity. And the fact that a third person had a copy of these administrative documents, to which he would have legitimately accessed, means that it cannot be ruled out that the communication of data to the insurance entity was carried out by this third person, another to whom this person had communicated it to him, or the insured person himself.

Article 28.1 of Law 40/2015, of October 1, on the legal regime of the public sector establishes that only persons who are responsible for negligence or fault can be sanctioned for acts constituting an administrative infraction, is that is to say, the person who committed the infraction, a circumstance that in any case could not be determined, given the impossibility of obtaining other relevant elements that would corroborate the version of the person making the complaint and that has been refuted by the City Council, to whom the unlawful conduct was attributed.

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 the contrary is proven"*.

Therefore, I resolve:

1. File the actions of prior information number IP 179/2020, relating to Barcelona City Council.
2. Notify this resolution to Barcelona City Council and 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 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, interested parties can file any other appeal they consider convenient to defend their interests.

The director,