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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 208/2020, referring to the City Council of (...).

Background

1. On 07/14/2020, 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 of the regulations on personal data protection. Specifically, the person making the complaint stated that the City Council had not guaranteed the confidentiality of their data during the action procedure in case of psychosocial risk, which the City Council initiated at their request, following an alleged case of moral or psychological harassment by their boss. In particular, the reporting person considered that confidentiality had been violated in the following cases:

- 1.1. On 16/10/2019, when information that she had provided as part of said procedure was shown to 4 people who have been identified. Subsequently, by means of a letter dated 10/08/2020, the person making the complaint specified that in 4 interviews, the people interviewed (employees of the Urbanism Service, where the person making the complaint was also assigned) were asked if they recognized a message of WhatsApp that had been provided by the person reporting here in the course of the procedure. The complainant added that the people interviewed were also informed that he had provided several emails.
- 1.2. Between 28/11/2019 and 03/12/2019, when a copy of the resolution of 08/11/2019 on the investigation of the possible case of psychosocial risk that she had requested to initiate, and of the report drawn up on 07/11/2019 by two members of the Occupational Risk Prevention Service of the City Council, which contained your personal data (name and surname, ID and the reason for the intervention request). The complainant also indicated that this documentation contained data relating to his health.

Subsequently, by means of a letter dated 10/08/2020, the complainant explained that in the framework of the processing of a claim that he presented to the Commission for the Guarantee of the Right of Access to Public Information (file 2020/ (...), the City Council of (...) had indicated that, since on 28/11/2019 the person making the complaint had been provided with a copy of the resolution and the resulting report of the investigation, which "contradicts what the corresponding procedure indicates, was agreed with the

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Delegates/from PRL" provide a copy to "all the staff of the two requests for action included in the same file."

1.3. On 31/12/2019, when the report was made available to the same 12 people in relation to the investigation of an alleged case of moral harassment at the Urban Planning Service (initiated following the joint request of these 12 people), issued on 29/11/2019 by two members of the City Council's Occupational Risk Prevention Service, which contained personal data relating to them. Subsequently, by means of a letter dated 08/10/2020, the complainant specified that this report would contain information about the emails he sent to the Commission of Investigation, about the emails he provided to the City Council in the framework of the procedure initiated and statements made by third parties about his person. In turn, the person making the claim pointed out that, in accordance with the procedure (page 10), the Psychosocial Working Group may be convened to discuss general issues of psychosocial risks "but without going into the application and actions derived from this procedure."

The complainant provided various documentation, including the action procedure for cases of psychosocial risk. It should be noted that the following is included in said procedure:

- That the "information generated and provided by the actions in the application of this procedure will be confidential and will only be accessible to the personnel directly involved in its processing" (paragraph 1 of the procedure).
- That "The file of the case will be of the utmost confidentiality, and access to all the information collected will be limited to the Occupational Risk Prevention Technician who is assigned the functions of Psychosociology (when he/she has participated in the investigation process), the Occupational Risk Prevention Technicians who have intervened in the specific case, the Director of Human Resources and Head of the Occupational Risk Prevention Service and the Health and Labor Authorities" (section 6.1.6 of the procedure).

ÿ That research actions could be carried out, such as interviews or tests (section 6.2).

- That in said procedure confidentiality (in the terms provided for in the law) and anonymity (section 6.3 of the procedure) are considered as one of the critical factors to be ensured.

2. The Authority opened a preliminary information phase (no. IP 208/2020), 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.

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3. In this information phase, on 07/27/2020, the reporting person was requested to provide the "evidential documentation" that he claimed to have on the facts reported.

4. On 08/10/2020, the reporting person responded to the previous request for information and, apart from referring to the facts reported on 07/14/2020 (in the terms set out in the antecedent 1), stated that the City Council of (...) had informed him, through an email dated 05/25/2020, "that the notifications made are in an application that is accessible by more people and there is no security measure preventing access to this information."

5. On 09/28/2020 the reported entity was required to report, among others, on the reasons why, as part of the interviews, the confidentiality of the documentation provided by the person was not guaranteed here reporting (emails and WhatsApp messages); the reasons for which 12 people were notified of the resolution of 08/11/2019, the report of 07/11/2019 (both documents relating to the request made by the person reporting here to start the procedure), as well as the 'report of 29/11/2019 (relating to the request made by these 12 people to start the procedure). With respect to these facts, the City Council was also required to report on what would be the legal basis that would legitimize these treatments and the circumstance provided for in article 9.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 d April, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (hereafter, RGPD) which, in their case, would allow the processing of special categories of data.

Apart from the above, the City Council was also required to (...) in order to indicate which users or user profiles were authorized to access the program used by the City Council for electronic notifications (GTM) .

6. On 13/10/2020, the City Council of (...) responded to the aforementioned request through a letter in which it set out, among others, the following:

- ÿ That in the processing of the action procedure for cases of psychosocial risk, the anonymity of the person who submitted the request was guaranteed. At no time was her identity revealed, nor was she directly asked about it.
- That any reference to him came from the answers of the people interviewed about the atmosphere or existing conflicts in the Urbanism Service.
- That the person reporting here presented with the request, a PDF document of 21 pages with WhatsApp messages from different conversations, individual and group. During the interviews carried out with the Urbanism Service workers, the Commission Internal Investigation decided to corroborate these WhatsApp messages by showing some of these messages in the interviews carried out, to the people sending or receiving them, eliminating if necessary the rest of the messages from the sheet that had been presented and that did not correspond to the interlocutor interviewed.

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- That the person making the complaint was informed that, in order to give full legal validity for later purposes, the most suitable thing was for him to present them through a notarial act in order to certify that these messages were the ones found on his mobile phone. The City Council indicated that this fact is included in the reports of the Internal Commission of Investigation.
- In relation to the reasons for which 12 people were notified of the resolution dated 08/11/2019 and the reports dated 07/11/2019 and 29/11/2019, it is indicated that the person reporting here is alone apply on 19/11/2019 for access to the confidential file created following your request for the procedure (...) and also to the report of the Commission of Investigation Internal, both what was closed within the period indicated in the procedure, and what was done at the end of the actions.
- ÿ That the procedure states that this documentation is only accessible by the staff of the Own Occupational Risk Prevention Service who intervene in its processing and the Health and Labor Authorities that require it.
- ÿ That since his request for access did not follow the procedure established (restricted access), the Internal Commission of investigation consulted the representatives of the staff in matters of health and safety at work , Occupational Risk Prevention Delegates, within the Psychosocial Risks Working Group of the Health Safety Committee, and it was resolved to attend to the access request of the person reporting here, but giving the same treatment to all the people who had submitted a request for action.
- That for this reason copies of the reports were given to all applicants.
- That this decision, in addition, was carried out given that the rest of the Urban Planning Service workers had also initiated a psychosocial risk action procedure against the person reporting here and the Internal Commission accumulated the actions carried out in a single procedure.
- That the reports of the Internal Commission of investigation do not contain data on the health of the person making the complaint. Only the description of periods of absence from work due to incapacity benefits and the results of the assessments of fitness for the workplace in recent years carried out by Health Surveillance. Neither diagnoses nor medical data of diseases or medical history are cited.
- ÿ That in relation to which users or user profiles are authorized to access the program used by the City Council for electronic notifications (GTM), the City Council indicated that in this program, when an electronic file is created, assigns the file to a Service and to a specific public employee of the City Council who has access to the documentation it contains and is also in charge of making the appropriate notifications.
- That in the specific case of confidential files, such as the psychosocial risk action procedure, the Occupational Risk Prevention unit, the unit that created the said file, is the user who can practice the notifications that are required of that file, unless the assigned worker himself designates another employee to be able to practice them.

7. On 19/10/2020, also during this preliminary information phase, the City Council of (...) was once again required to, among others, specify the legal bases which legitimized the treatments complained of. Also, respect the notifications

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electronic records of the disputed file, the City Council was required to report whether, apart from the people who make up the Occupational Risk Prevention unit, there were other users of the City Council who could access the notifications created by said unit.

8. On 30/10/2020, the City Council of (...) responded to the previous request through a letter in which it stated, among others, the following:

- That in relation to the 1st reported situation (showing information that the reporting person had provided as part of the procedure to 4 people), only 4 interviewees were shown messages in which the recipient of that message was the interviewee himself. They were asked if they acknowledged having had that conversation with the sender of the messages.
 - That it is considered that the treatment referred to personal data that the reporting person himself had made public to the recipients of those messages and, in accordance with article 9.2.e) of the RGPD, that circumstance allowed them to be shown.
 - That the rest of the messages on the sheet that had been presented and that did not correspond to the interlocutor interviewed were deleted.
 - That in relation to the WhatsApp messages that contained health data shown to a certain employee, it was also the reporting person himself who addressed and made them public to this person.
 - That with respect to the 2nd reported situation (giving 12 people a copy of the resolution of the investigation into a possible case of psychosocial risk dated 08/11/2019 and the report of 07/11/2019), in that resolution and report annex did not contain particularly protected health data, only a description of periods of absence from work due to disability benefits (but in no case information related to the worker's health or medical history) and the results of the evaluations of the 'fitness for the workplace carried out by Health Surveillance, that is to say, only the information that was suitable to carry out his workplace (but in no case the result of the medical tests carried out).
 - That neither diagnoses nor medical data of diseases were cited, nor the worker's medical history.
 - That the people who received this resolution were also considered interested parties in that process, since they had submitted a request for psychosocial risk action in the same area as that of the reporting person and the Internal Commission assessed group the two requests in the same procedure.
- ÿ That in relation to the 3rd situation reported (making available to 12 people the report in relation to the investigation of an alleged case of moral harassment issued on 29/11/2019), this was also motivated by the fact that the 12 people from the Urbanism service had the status of interested party in that process.
- That with respect to the electronic notifications of the controversial file, the only people who could access them were the members of the Occupational Risk Prevention unit, with the exception that the person working in the assigned unit himself, designated another employee to be able to practice them or to be able to visualize them.

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9. On 12/01/2021, an email was received from the complainant. In this email, the complainant provided a copy of the extraordinary review appeal that he had presented to the City Council of (...) on 09/21/2020 and the resolution to said appeal issued by the City Council on 12/24/ 2020

10. Based on the antecedents that have been related and the result of the investigation actions carried out in the framework of the previous information, on today's date an agreement is also issued to initiate disciplinary proceedings regarding the conducts denounced described in points 1.2 and 1.3 of the antecedent of fact 1, which is considered could violate the principle of loyalty.

On the other hand, this archive resolution addresses the conduct described in fact precedent 1.1, regarding the confidentiality of the messages provided by the reporting person within the framework of the action procedure for cases of psychosocial risk; as well as the reported conduct described in factual background 4, related to access to notifications made through the GTM application.

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.

2.1.- About the messages provided by the reporting person.

In his letter of complaint, the person making the complaint stated that in the framework of the interviews carried out with 4 specific people from the Urbanism Service (where the person making the complaint was also attached) as part of the action procedure for cases of psychosocial risk, the people interviewed were asked if they recognized a WhatsApp message that the person reporting here had provided. The complainant added that the people interviewed were also informed that he had provided several emails.

It should be said in this regard that to activate the action procedure for cases of psychosocial risk, the affected person must sign a form (annex B), through which he declares that he is aware of "the content of the Action Procedure for Cases of Psychosocial risk, in relation to the rights and duties that derive from it and the effects of its application."

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Certainly, in this procedure the City Council established that the "information generated and provided by the actions in the application of this procedure will have a confidential nature and will only be accessible to the personnel who intervene directly in its processing" (paragraph 1 of the procedure). However, in said procedure it was also pointed out that investigative actions such as interviews or tests could be carried out, as was done.

In turn, it should be taken into account that in accordance with the provisions of articles 14 and 22 of Law 31/1995, of November 8, on the prevention of occupational risks (which oblige the City Council to guarantee the protection of workers faced with the risks inherent in his work), the actions carried out by the City Council of (...) to investigate the facts that the person making the complaint had brought to light and to verify the integrity and authenticity of the documentation that this one had contributed, they must be considered to have been protected in compliance with a legal obligation imposed on the City Council by Law 31/1995 (Article 6.1.c of the RGD). On the other hand, the circumstances of article 9.2 of the RGD which allowed the processing of health data that incorporated some of the messages provided were the following:

- "e) the treatment refers to personal data that the interested party has made manifestly public; (...)
- h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of the Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3".

Apart from section h) of article 9.2 of the RGD, section e) is also considered applicable given that the controversial messages (those shown by the City Council to the interviewees and those that ask them to check the chains of messages exchanged with the person reporting here) were those that the person reporting here had previously sent to the people who were interviewed. Therefore, the people interviewed already knew the content of said messages (from WhatsApp or e-mail).

In short, the treatment object of the complaint is considered to be lawful and that it also does not contravene the principle of confidentiality. And the latter, because the content of the messages was not revealed to anyone other than their interlocutors.

On the other hand, in the letter submitted by the complainant on 10/08/2020, he explained that there were other ways to check the authenticity of the messages, such as directly checking the original device (specifically, his mobile or your computer).

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Well, taking into account that WhatsApp or email messages can be deleted or that the message chains provided could be incomplete (in fact in the report of 11/29/2019 drawn up by the Occupational Risk Prevention Service of the City Council made it clear that the e-mails provided by the person making the complaint "were not complete, comments had been added and style changes had been made" and that "the previous e-mails of each were not accompanied"), the system used by the City Council to verify the integrity and authenticity of the messages provided by the reporting person (showing the messages to the recipients or requiring them to provide the email chains) is considered adequate.

2.2.- About the persons authorized to access the electronic notifications.

As advanced in factual precedent 4, the person reporting stated that through an email dated 05/25/2020, the City Council of (...) had informed him "that the notifications carried out are in an application that is accessible to more people and there is no security measure that prevents access to this information."

In the message of 25/05/2020 to which the complainant alludes (and which she provided on 10/08/2020), a certain person employed by the City Council of (...) stated the following in relation to the application used by the Consistory for electronic notifications (GTM): "Regarding the copy of the notifications made, since it is known that the attached Resolution and Report was delivered "extending it to the whole personal": these are done through the GTM program, which is why the notifications are included in the program".

This demonstration was carried out in response to the request previously made by the person here denouncing through an email message of 05/21/2019, where he explained that he had not been provided with the "copy of the notifications made, given that it is that the attached Resolution and Report was delivered 'extending it to all staff'".

Well, as part of the prior information phase, the City Council of (...) has confirmed that the electronic notifications generated in confidential files, as happened in the present case, are only accessed by members of the Prevention of Occupational Risks, unless the employed person designates another employee to be able to practice them.

Therefore, while it is true that the person employed by the City Council of (...) in said email message of 05/25/2020 stated that each of the electronic notifications had been made to "all staff ", the research actions carried out on this basis lead to the understanding that it actually referred to the notifications made to the rest of the employees who had also submitted a request for action in cases of psychosocial risk, in apart from the person reporting here,

that were generated through a specific application (GTM) and that were kept there, which is why they were not listed on paper.

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This being the case, it must be concluded that access to the electronic notifications generated through the GTM program in files classified as confidential is only accessible to the authorized staff of the City Council.

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 in relation to the people who can access the electronic notifications, should be archived.

4. In addition to what has been explained so far, it is considered pertinent to make some considerations in relation to an email that the complainant sent on 12/01/2021 to this Authority. In this email, the complainant stated that in the extraordinary review appeal that he presented to the City Council on 09/21/2020, he "communicated the issue of Confidentiality to the City Council (...) requesting a amendment/rectification." The complainant added that the City Council rejected said appeal, refusing to make the ex officio amendment "against the reports drawn up by the Head of Labor Services and the Head of Prevention" in which the importance of maintaining confidentiality.

Well, this email was presented as additional information (as stated by the reporting person) to the facts already reported and described in the antecedent of fact 1, which are the subject of this resolution (legal basis 2.1), to effects of influencing the alleged violations of the duty of confidentiality reported.

Along with his email of 12/01/2021, the complainant submitted the written submission of the extraordinary review appeal before the City Council on 21/09/2020, where he also stated that he exercised the rights of rectification and deletion provided for in the RGPD with respect to "all data relating to my person, presented both in this letter and in the letters dated 12/30/2019 and 02/10/2020, that are incorrect, incomplete, inaccurate or erroneous".

Although the person reporting here has not submitted a claim in relation to the exercise of these rights, what is inferred from this request is his disagreement with the resolutions and reports issued by the City Council in relation to the action procedure for cases of psychosocial risk.

In this regard, it should be noted that if you do not agree with the content of the resolutions or reports issued, the appropriate thing to do is challenge them administratively or judicially. And in any case, it should also be noted that it is not the responsibility of this Authority to review the administrative acts issued by the City Council within the framework of the aforementioned procedure.

In addition to the above, it is worth saying that in the same letter of appeal, the complainant here also requested the "Deletion and rectification of all the information

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erroneous or not accredited, both in the reports drawn up by the Commission, and in both Resolutions [of 22/04/2020 and of 08/11/2019]" and the "Correction of the notifications made, recognizing the non- proceeding of send information to third parties about" she, although she based these requests on the rectification of errors provided for in article 109 of the LPAC, a request that does not belong to this Authority to protect either.

Therefore, I resolve:

1. File the actions of prior information number IP 208/2020, relating to the City Council of (...) in relation to the confidentiality of the messages provided by the reporting person as part of the action procedure in cases of psychosocial risk; and the people who can access the electronic notifications.
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,