

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

File identification

Archive resolution of the previous information no. IP 230/2020, referring to Sabadell City Council.

Background

1. On 05/08/2020, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against Sabadell City Council (hereinafter, City Council), on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant stated that, on 07/26/2019, the City Council sent him the resolution of an appeal that he presented, and stated that "(...) *in the expository part they indicate my data correctly but in the resolution section the data of the appeal of a third party are shown indicating name, NIF, vehicle registration number and penalty file number(...)*". Likewise, the complainant expressed his concern in relation to the possibility that the City Council could also have transferred his data - name, ID, registration number and disciplinary file number - to a third party without his consent.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 230/2020), 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 09/21/2020 the reported entity was required to report the reasons why the reporting person received the resolution of an appeal that he presented, where in the dispositive part, specifically in the solution section, the data was recorded - name, NIF, vehicle registration number and penalty file number - of a third party. Likewise, information was also requested regarding what would have been the legal basis that would have enabled the City Council to carry out the communication of the said third party's data to the reporting person, and whether the reporting person's data could have been facilitate to another third party.

4. On 01/10/2020, the City Council responded to the aforementioned request through a letter in which it explained, basically, that given the large number of sanctioning files for which notifications were made, it was impossible to locate the notification object of complaint. For the purposes of being able to respond to the Authority's request dated 09/21/2020, the City Council requested "*to know the details of the person making the complaint in order to locate his file and verify the correctness of the content of the notification made and be able to issue the corresponding report*".

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5. On 21/12/2020, the Authority reiterated the request of 21/09/2020 sent to the City Council, also providing the name and surname of the person reporting and the number of the disciplinary file corresponding to the resolution of the appeal referred to by the complainant in his complaint.

6. On 01/07/2021, the City Council responded to the Authority, by means of a letter dated 12/31/2020, which set out the following:

- That *"On February 27, 2020, the deputy mayor of (...) issued the Decree (...), by which it is decided to dismiss the appeal filed by Mr. (...) against the sanction imposed in traffic matters according to the sanctioning file followed by the number (...)"*.
- That in the notification of the Decree (...) to the complainant *"a material error is observed in the first resolution apparatus"*.
- That *"The material error occurs because the administrative staff in charge of the management of the transfer of the Decree of a specific software that allows obtaining the transfers to be notified automatically, but it is necessary to treat them individually, so that the case at hand was avoided replacing the text of a transfer worked with precedence"*.
- That *the data erroneously notified to the reporting person during the transfer, "correspond to a legal entity, and in no case have personal data been notified"*.
- That *"The material error has only occurred in the notification received by Mr. (...)"*. And he adds that, *"NO personal data of Mr. (...) to any outsider"*.

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 relation to the facts that are the object of the complaint and the documentation provided in the procedure, it is proven that the City Council notified the person making the complaint of the decision to dismiss his appeal for a refund against a penalty that was imposed on him in traffic matters, and also that in the first section of said resolution reference was made to the dismissal of the reinstatement appeal of a legal entity, which had no relationship with the complainant.

As stated by the City Council in its letter dated 12/31/2020, in response to the Authority's request dated 12/21/2020, the fact that the data of a third party was included in the first section of the resolution, specifically, of a legal entity, it was a human error, due to the fact that the staff of

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the City Council does not have a *"specific software that allows obtaining transfers to be notified automatically"*.

While it is true that, in the present case, the City Council treated the data of a legal entity by mistakenly including them in the resolution of the person making the complaint, it should be borne in mind that the data protection regulations only grants protection to natural persons, and expressly excludes legal persons, as provided for in Recital 14 of the Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereinafter, RGPD), which establishes that:

"The protection granted by this Regulation must apply to natural persons, regardless of their nationality or place of residence, in relation to the processing of their personal data. This Regulation does not regulate the processing of personal data relating to legal entities and in particular to companies established as legal entities, including the number and form of the legal entity and its contact details."

In turn, article 1.2 of the RGPD determines that:

"2. This Regulation protects the fundamental rights and freedoms of natural persons and, in particular, their right to the protection of personal data."

Therefore, with regard to the processing of data of the legal entity that concerns us here, the regulations on the protection of personal data do not apply.

Finally, with regard to the possibility that the City Council could have provided the data of the person here reporting to a third party, the City Council in its letter dated 12/31/2020, responded to the request of this Authority dated 12/21/2020, stating categorically that "NO personal data of Mr. (...) to any foreign person", without there being, on the other hand, any indication that supports the concern expressed by the person reporting on this issue.

3. In accordance with everything that has been set out in the previous legal basis, and given that during the actions carried out in this phase of prior information no breach of the regulations on data protection in relation to with the treatment carried out by the City Council, object of complaint, or any other fact that may constitute any of the infractions provided for in the applicable legislation, it is necessary to agree on the archive of these actions.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when in the instruction of the procedure the

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Next; "c) When the proven facts do not manifestly constitute an administrative infraction."

Therefore, I resolve:

1. File the actions of prior information number IP 230/2020, relating to Sabadell City Council.
2. Notify this resolution to Sabadell 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.

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,