

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

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 251/2020, referring to the City Council of (...)

Background

1. On 31/08/2020, 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 breach of the regulations on personal data protection.

In particular, the complainant stated that he received harassment and threats from a third party, and that as a result he contacted the City Council, specifically the mayor of the municipality, to "request mediation" in said neighborhood conflict. In this respect, he adds that during the conversation he has with the mayor on the matter, he asks him to identify the perpetrators of the harassing behavior and threats, a request to which he accedes "begging for confidentiality". Regarding this, the complainant complains that a few days later "one of the harassers declares to the police that the Mayor himself calls him personally to offer him support and discredit me", and that as a result, he tried to in contact with the mayor of the Consistory in order for him to confirm this action, without this having been possible. The complainant added that he had the recordings of the conversation with the mayor and of the alleged harasser with the police.

2. The Authority opened a preliminary information phase (no. IP 251/2020), 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 28/10/2020 the reported entity was required to report on the procedure followed by the City Council regarding possible requests for mediation of conflicts made by the residents of the municipality, and in concrete, on which actions were carried out following the telephone conversation carried out by the person here denouncing with the mayor of the City Council. Also, the entity was required to confirm whether the mayor called the person allegedly the author of the harassment to "offer support" and "discredit" the person making the complaint, and if so, on what date produce this telephone conversation, and the legal basis that would legitimize this

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data processing In the event of a negative answer, the reasons should be set out that would explain why one of the alleged perpetrators of the harassment had claimed to the police to have had this conversation.

4. On 13/11/2020, the City Council responded to the aforementioned request through a letter in which, among others, it stated the following:

- That "The procedure followed by the City Council in the face of possible requests from mediation of conflicts formulated by the residents of the municipality, does not constitute a protocol that has been approved by the City Council, but is an act of good faith carried out by the mayor, as well as other councils, as well as the Local Police and the Social Services to preserve citizen coexistence".
- That in a meeting with the mayor, the complainant "informed the mayor about the existence of problems between her and some neighbours, in the farm where she lives".
- That "According to the information provided by the City Council, the mayor has no record that during the conversation Ms. (...) specifically identify these neighbors".
- That "It was not as a result of the conversation but later when the mayor became aware of the possible identity of the neighbors of Ms. (...)since they also contacted the mayor on several occasions through social networks to report the assaults by their neighbor".
- That "it was as a result of the various cross-denunciations that kept happening, that the mayor came to the conclusion that the neighborhood problem could presumably be between them."
- That in a subsequent telephone call between the complainant and the mayor "she blames the mayor for revealing the names of her alleged harassing neighbors and the mayor informs her that he has not done what she attributes to him. It is during this conversation that Ms. (...)who ends up identifying his alleged assailants."
- That "The reasons that could explain that one of the alleged perpetrators of the harassment of Ms. (...), has affirmed to the police that he had this conversation with the mayor, it is due to the offer that the mayor made to the denounced neighbors, who also made several complaints and denunciations about this problem to the mayor."
- That "The mayor, in the same way as he did with Mrs. (...) was offered by hold a meeting, as well as in order to mediate in the conflict".

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- That "despite the various accusations that were sent to him in parallel both parties, the mayor has never revealed the identity of the people involved."

5. On 22/06/2021, also during this preliminary information phase, a second request for information was made to the City Council, so that it could provide the documentation that would certify that the neighbors with whom the person reporting here maintained a conflict they contacted the City Council "via social networks", as well as the "various cross-complaints" referred to in the response to this Authority's request.

6. On 01/07/2021, the City Council complied with this requirement by means of a letter stating the following:

- That "The neighbors with whom the reporting person had a conflict got into contact the mayor through the personal account of the mayor of the application from Instagram. Therefore, these conversations were always private and never occurred through corporate and public social media accounts. For this reason, it is not possible to provide the supporting documentation that the neighbors with whom the complainant had a conflict contacted the City Council through social networks."
- That "Regarding the complaints made by Ms. (...), these occurred during the meetings and telephone calls held with the mayor (...). With regard to the complaints made by neighbors with whom the complainant had a conflict, these occurred in the midst of private conversations, through the mayor's personal account on the Instagram application. Therefore, it is not possible to provide the various cross-denunciations to which reference was made".

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 background story, it is necessary to analyze the facts reported that are the subject of this file resolution.

As a premise for the legal analysis of the reported facts, it is necessary to frame the object of the complaint, and in this sense, indicate that it starts from the fact that the person making the complaint here requested a mediation service from the City Council in relation to a neighborhood conflict, and that the complaint is specified in the fact that, according to the complainant, the mayor of

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municipality, which acted as mediator in the conflict, would have contacted the other party, despite having asked him for confidentiality in relation to this end.

In this respect, first of all, it should be noted that article 66.2 of the Consolidated Text of the Municipal and Local Regime Law of Catalonia (TRLMRLC), establishes the different areas in which local bodies have jurisdiction, among these, the area of "social cohesion", in which mediation actions that promote good relations between the residents of the municipality are essential. Therefore, the eventual actions carried out by the City Council in the framework of a mediation procedure, would be a treatment of data carried out in the development of the exercise of functions related to a matter on which the City Council has powers established by law, and consequently, in accordance with the legality principle of the RGPD.

Having said that, it is necessary to analyze whether the facts reported involve a violation of the principle of confidentiality, provided for in article 5.1.f) of the RGPD, as the person complaining here complains.

First of all, reference must be made to the concept of mediation. In this sense, Law 15/2009, of July 22, on mediation in the field of private law, establishes that "mediation is understood as the non-judicial procedure of a voluntary and confidential nature that aims to facilitate communication between people, so that they manage by themselves a solution to the conflicts that affect them, with the assistance of a mediator who acts in an impartial and neutral way" (art. 1 Law 15/2009). From the definition it can be inferred that one of the main characteristics of a mediation process is communication and dialogue between the parties involved in the conflict, who voluntarily try to reach a satisfactory agreement with the guidance of a mediating person. Regarding this, it should be noted that the characteristic of confidentiality must necessarily be understood as made in the procedure itself, that is to say, that the people involved in the procedure do not reveal the information they know as a result of this mediation or the content of the minutes, that the procedure is not disseminated beyond the parties participating in the procedure.

However, a mediation procedure, a method based on dialogue, could hardly prosper if one of the elements necessary to maintain a dialogue is missing, such as that both parties know the identity of the other and the main object of the conflict. Therefore, taking into account that the very nature of a mediation procedure implies that both parties dialogue about the subject of the dispute that has led them to request mediation, it is obvious that the parties involved must know the identity of the one and the other and the matter of controversy.

On the other hand, the City Council in the responses to the requirements made by it Authority acknowledges that it contacted the other party in conflict with the reporting person, following the complaints that this party had also made to it regarding the same matter, which is why it held talks with both parties to try to mediate in the conflict, although it states that at no time did it identify the identity of a party a

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the other Therefore, he denies that he had disclosed the details of the person here reporting to the other party involved in the neighborhood conflict. At this point then, and considering that both parties were immersed in a neighborhood conflict that had led them to report each other to the entity, it cannot be ruled out that the other party could easily deduce which person was the one would have requested mediation from the mayor, without the need for him to reveal this information.

Therefore, it is necessary to take into account, on the one hand, what has been said about the nature of the mediation procedure - a procedure requested by the person making the complaint before the City Council - which involves a dialogue between the parties, and therefore , to know the identity of those involved in the controversy and the object of the conflict to be dealt with, which would legitimize the action of the mediator to be able to contact all the parties to place them in dialogue. And, on the other hand, that the mayor has denied having revealed the identity of the person making the complaint, offering only to mediate on the conflict between the parties, but without revealing any other information, and in this sense, the right would operate to the presumption of non-existence of administrative responsibility, as long as the contrary is not proven (art. 53.2.b LPAC). For all this, it is considered that the archive of the present proceedings is proceeding.

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.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure: "c) When the proven facts do not constitute, in a manifest manner, an administrative infraction."

Therefore, I resolve:

1. File the actions of prior information number IP 251/2020, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) 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 persons interested parties may file, on an optional basis, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in

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the period of one month from the day after its notification, in accordance with the provisions of 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,

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