

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

File identification

Archive resolution of the previous information no. IP 258/2020, referring to the Tax Management Body of the Provincial Council of Barcelona.

Background

1. On 05/09/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Management Body Tax office of the Diputació de Barcelona (hereinafter, ORGT), due to an alleged breach of the regulations on personal data protection. Specifically, the complainant stated that he was the owner of the property located in the street (...) of Olesa de Montserrat and that on 11/10/2019 the ORGT declared the seizure of the amounts that, according to this entity, he had to pay Mr. (...) (lessee, according to the ORGT) as rent.

However, the complainant (tax debtor and lessor, according to the ORGT) specified that the lease signed with this lessee (Mr. (...)) ended on 05/03/2013, as stated in a document he signed on 05/03/2008 with this person. Given the above, he considered that the ORGT had unlawfully communicated his data to the person who had been the lessee of that property until 2013 (Mr. (...)).

On the other hand, the complainant added that the ORGT had also called the said tenant "threatening that if he did not enter, they would make him responsible for the debt."

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

2. The Authority opened a preliminary information phase (no. IP 258/2020), 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 on whether it had any information or evidence that would allow it to be inferred that the lease agreement signed between the reporting person (lessor) and Mr. (...) (lessee), was still in force on the date on which the seizure order was issued; if the ORGT also contacted Mr. (...) in relation to the income to the ORGT of the rental of the previously identified property; as well as on the basis

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juridical would legitimize the notification of said embargo process to Mr. (...), and in his case, the telephone contact with this person.

4. On 06/10/2020, the ORGT responded to the aforementioned request through a letter in which it stated, among others, the following:

- That the indications of the existence of the rental contract appearing in the file are the next:
 - That among the pending tribes included in the enforcement procedure was the Real Estate Tax relating to the property owned by the debtor (the person making the complaint) located in Carrer (...) in Olesa de Montserrat. In this regard, it was verified that Mr. (...) (tenant), who had applied a reducing coefficient in the Domestic Garbage Rate.
 - That according to Fiscal Ordinance number 18, regulating the fees for the collection, treatment and disposal of solid urban waste of the Olesa de Montserrat City Council, the holder of the fee receipts is the reporting person (landlord), in his condition as a substitute liable subject owner, but the subjective conditions provided for the granting of tax benefits or the application of the different types of rates refer to the occupant of the property -tenant- (art. 3 of the ordinance).
 - That from 2009 to 2018, Mr. (...), as the occupier of the building, has submitted every year a request for the application of a reducing coefficient of the Household Waste Tax, for habitual residences of large families and for habitual residences of families with lower incomes twice the public indicator of income of multiple effects (IPREM). This has led to the application of a reduced rate in settlements issued in the name of the person reporting (owner and lessor). The application of the reducing coefficient has been reflected in the complainant's receipts, which include the rate type and the identification of the occupant of the home, facts that show that the complainant was aware of who lived there without has formulated any objection in this respect.
 - That on 03/03/2015, Mr. (...) made a request for the aforementioned tax benefits, in which he attached a copy of the rental contract for the house located on street (...), dated 05/03/2003.
 - That in the 2019 financial year, the reducing coefficient of the Waste Tax per large family was maintained, but not the income one for not having requested it.
- ÿ That in the exercise of the powers delegated by the City Council, it was verified whether the conditions for applying the reducing coefficient of the Garbage Tax were maintained, verifying that Mr. (...) (lessee) was registered in the house located on Carrer (...) d'Olesa de Montserrat.
- That once the garnishment notice has been received, the occupant (Mr. (...)) has verified the existence of the contract and has submitted a letter providing a bank account where payment of the garnished monthly income can be made.

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- That article 105 of Law 58/2003, of December 17, general taxation (hereafter, LGT), relating to the burden of proof, provides the following:
 - "1. In the tax enforcement procedures, whoever asserts his right must prove the constitutive facts of the same.
 - 2. Taxpayers will fulfill their duty to prove if they designate in a concrete way the elements of evidence held by the Tax Administration."
- That although this is an issue that exceeds the scope of personal data protection, it is considered that the existence of a legal relationship that gives rise to the seizure of the income received remains proven.
- That the complainant (property owner) "has not adequately justified the non-existence of the contract, bearing in mind that it is not a matter of proving that something does not exist, the well-known diabolical proof, but of proving the circumstances in that the occupation takes place, if it is based on a different title, or that the rental contract has ended, without either a contract settlement document or the return of the deposit that should have been provided have deposited in the Catalan Institute of the Sun, in accordance with article 3 of Law 13/1996, of July 29, of the Registry and the deposit of bonds for rental contracts of urban estates which provides for the obligation of deposit the bond at the Catalan Soil Institute."
- That on 12/20/2019, the person reporting filed an appeal against the embargo proceedings alleging the non-existence of the contract, without providing any evidence in this regard.
- That the circumstances in which the telephone conversation took place with Mr. (...) they do not coincide with those expressed by the reporting person. In this regard, in the report issued on 09/29/2020 by the head of the Olesa de Montserrat Office, the following was stated:
 - That on 16/12/2019, Mr. (...) (tenant) requests that the monthly amount of rent receipts be charged to a current account, which is why an instrumental installment was made. In the letter he provided his telephone number as contact information.
 - That given the age of the rental contract, Mr. (...) to the telephone that was included in the request submitted by the tenant, with the purpose of indicating the updated amount of the rent, communicating that they were paying the amount of 415 euros per month. This was the only call from the ORGT to this person.
- That the call to Mr. (...) was made with the intention of providing assistance and facilitating the fulfillment of their obligations derived from the legal-tax relationship established in the terms of article 17 of the LGT and in accordance with its article 99 .
- That the ORGT exercises the powers of management, inspection and collection of public law revenues by delegation of the Olesa de Montserrat City Council, in accordance with the provisions of articles 7 and 106.3 of Law 7/1985, of April 2, regulating the bases of the local regime (hereafter, LBRL), and articles 7 and 12 of the revised text of the Law regulating Local Finances, approved by Royal Legislative Decree 2/2004, of March 5 (hereinafter, TRHL), among others.

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- That the content and scope of the purpose relating to the application of taxes is defined in article 83 of the LGT, which includes as part of the application of taxes the collection activity. Likewise, the art. 162 of the LGT defines the powers of tax collection.
- That the treatment is necessary for the fulfillment of a legal obligation imposed on the person responsible for the treatment. The competences are determined by the LGT and the TRLHL and their exercise is mandatory as they are public law revenues, which in accordance with article 18 of the LGT are unavailable.
- That the treatment is also necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers, in accordance with articles 7 and 106.3 of the LBRL and articles 7 and 12 of the TRHL.
- That article 170 of the LGT does not provide for the issuance of different diligences, but rather the issuance of a diligence that will notify with whom the action is taken. Given that Mr. (...) was the payer of the seized income, the notification of the diligence was made in accordance with the law.
- That the notification of the embargo process to Mr. (...) complies with all the legal requirements, in the sense expressed by the opinion CNS 16/2018 of the APDCA, which although it refers to a real estate seizure and is prior to the entry into force of the RGPD, discusses the same substantive rules that apply to rental income garnishment diligence.
- That article 162.3 of the LGT empowers officials to carry out "the material actions that are necessary in the course of the coercion procedure", which would include the telephone call, motivated by the letter presented.

The ORGT provided various documentation.

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 (tax debtor) was the owner of the previously identified property. The complainant considers that through the notification of the embargo proceedings that the ORGT had agreed against him, Mr. (...) (tenant of said property, according to the ORGT), this circumstance (the seizure) would have been unlawfully disclosed to a third person (Mr. (...)). In this regard, the complainant (property owner) alleged that the property's lease

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located in the street (...) of Olesa de Montserrat that he had signed with Mr. (...) (tenant) ended on 05/03/2013.

In the diligence subject to complaint, the ORGT informed Mr. (...) that an embargo had been decreed against the person making the complaint (property owner). And it was added that given that it was aware of the existence of a lease agreement for the aforementioned property, between Mr. (...) (as lessee) and the reporting person (as lessor), the incomes corresponding to amounts due and not yet satisfied, as well as those generated in future due dates (to cover the amount total debt), all of them in terms of leasing the previously identified property.

In advance, it must be made clear that the circumstance relating to whether Mr. (...) whether or not he was the lessee of that property at the time when the seizure process subject to complaint was issued, it is not up to this Authority to determine it.

Nevertheless, it is up to this Authority to determine if there was a minimum of indications that allowed it to be inferred that Mr. (...) could be the lessee of said property (and that, therefore, the rental income that this person would have to pay to the person making the complaint, were subject to seizure), because otherwise it could have been violated the regulations on data protection to reveal information about the reporting person to a third party.

As has been collected in the 4th factual background, at the discretion of this Authority, the ORGT has revealed several indications that would allow to infer that Mr. (...) could continue to be the lessee of the property owned by the person making the complaint, even though in appearance the lease would have already ended.

That being the case, it is necessary to determine whether the notification of the embargo process to Mr. (...) (tenant) was a lawful treatment.

In the present case, the complainant (property owner) did not pay the tax debt contracted with the Olesa de Montserrat City Council during the voluntary period, which is why it was appropriate to collect it during the executive period through the coercion procedure regulated in articles 167 et seq. of the LGT.

The ORGT exercises the competence to manage, collect and inspect the taxes of the Olesa de Montserrat City Council by delegation, in accordance with article 106.3 of the LBRL.

Among the powers of delegates to the ORGT is that of tax collection, which is referred to in article 162 of the LGT in the following terms:

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"1. To ensure or carry out the collection of the tax debt, the officials who carry out collection functions may check and investigate the existence and situation of the goods or rights of the taxpayers, they will have the powers that are recognized to the Tax Administration in article 142 of this law, with the requirements established therein, and may adopt precautionary measures in the terms provided for in article 146 of this law.

Every taxpayer must notify the Administration, when it so requires, of a list of goods and rights that are part of its patrimony in an amount sufficient to cover the amount of the tax debt, according to what is provided in section 2 of the article 169 of this law.

2. The officials who carry out collection functions will develop the material actions that are necessary in the course of the pressing procedure Taxpayers must attend to them in their actions and will provide them with the necessary collaboration in the development of their functions.

If the taxpayer does not comply with the resolutions or requirements that have been dictated to that effect, it may be agreed, prior notice, the subsidiary execution of said resolutions or requirements, by agreement of the competent body."

In the exercise of this faculty, which in turn also entails the exercise of the powers of inspection provided for in article 142 of the LGT, the ORGT considered that there were sufficient indications that allowed it to be inferred that Mr. (...) still maintained the status of lessee of the property owned by the complainant and, therefore, that the amounts to be satisfied by Mr. (...) as a lease they were liable to be seized.

In turn, article 170.1 of the LGT, relating to seizure diligence and preventive recording, determines that:

"1. Each action of embargo will be documented in diligence, which will be notified to the person with whom said action is understood. Once the goods or rights have been seized, the duty will be notified to the taxpayer and, as the case may be, to the third party owner, holder or depositary of the goods if the proceedings had not been carried out with them, as well as to the spouse of the obliged tributary when the seized goods are profitable and the owners or co-owners thereof."

For its part, article 81.a) of Royal Decree 939/2005, of July 29, which approves the General Collection Regulations, in relation to the seizure of other credits, effects and rights realizable immediately or in the short term, states that:

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"When it comes to credits, effects and rights realizable in the act or in short term not regulated in the previous article, proceed as follows:

a) If it is unsecured credits, effects and rights, the embargo process will be notified to the person or entity that owes the obligee to pay, noting that, from that moment on, the payment made to the obligee will not have a liberating character. When the embargoed credit or right has expired, the person or entity that owes the person obliged to pay must pay the amount to the Treasury until the debt is covered. In another case, the credit will be affected by said debt until its due date, if it is not settled before then. If the credit or right entails the making of successive payments, the payer will be ordered to enter the respective amounts in the Treasury up to the limit of the amount owed, unless he receives notification to the contrary by the collection body. (...)"

In accordance with the above, the ORGT had to notify Mr. (...) the garnishment proceedings regarding the complainant, to the extent that the garnishment of the credits (the income) that Mr. (...) (lessee) had to pay this person for rent.

In short, article 170 of the LGT enabled the communication of the complainant's personal information contained in the seizure process to Mr. (...), treatment that was necessary for the fulfillment of a mission in the public interest or the exercise of public powers (art. 6.1.e RGPD) in the terms provided for in the LGT and which, therefore, is lawful

Regarding the ORGT's call to Mr. (...), it must be taken into account that this took place once this person had already been notified of the seizure process; which was motivated by an instance that it had previously submitted to the ORGT (on 16/12/2019); and that it would have been necessary to determine the updated amount of the rent that the ORGT had charged to Mr. (...) and that he had not specified in the instance he had submitted to the ORGT. That being the case, it should also be considered that in any case this treatment is enabled in the fulfillment of a mission in the public interest or the exercise of public powers in accordance with article 6.1.e) of the RGPD.

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.

Therefore, I resolve:

1. File the previous information actions number IP 258/2020, relating to the Tax Management Body of the Diputació de Barcelona.

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2. Notify this resolution to the ORGT 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 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,