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File identification

Archive resolution of the previous information no. IP 268/2020, referring to the Vilafranca del Penedès Town Council

Background

1. On 01/22/2020, the Catalan Data Protection Authority received a letter from Mr. (...), dated 18/01/2020, for which he made a complaint against the Vilafranca del Penedès Town Council, on the grounds of an alleged breach of the regulations on personal data protection.

In this respect, from the body of the letter, it was inferred that the main object of the complaint was the alleged neglect of the right of access in relation to his personal data entered in the municipal register, and specifically, in relation to with two documents that the complainant here identified as "Documento de fecha (...)/1992" and "Documento de fecha (...)/1996", which would have entailed modifications with respect to the last data relating to his registration, in 1991. In relation to these two documents, the complainant complained that the person in charge of the treatment had not provided him with the information provided for in article 14 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27/04/2016, relating to the protection of natural persons with regard to the treatment of personal data and the free movement of such data (hereafter, RGPD), and which he would have requested in writing dated 11/30/2019, with an entry date of 12/05/2019. Your request for information was specified with the following text: "All the mandatory according to Art.14.1 in its sections a) af), and according to Art.14.2 in its sections a) ag) with respect to said two Documents A) and B) dated (...)/1992 and (...)/1996." Finally, he closed the claim by complaining about the "omission of the duty to inform the affected person about the treatment of his personal data in accordance with article 14 of Regulation (EU) 2016/679."

The claimant provided various documentation, including, and for the purposes that are of interest here, the letter dated 11/30/2019 addressed to the mayor of Vilafranca del Penedès City Council. In this letter, the claimant complained, among other issues, that of the documents dated (...)/1992 and (...)/1996, he only had two "certificados justificativos de los mismos", not the originals. From there, he demanded information with the text previously indicated and pointed to these two documents as the origin of the erroneous registration in the municipal register and, by extension, in the electoral roll, of a "change of address" and a "leave for undue inclusion".

2. On 29/01/2020, Mr. (...) presents a second letter, dated 01/27/2020. In said letter, he sets out, among others, the damages caused by the fact that certain entries linked to the two documents dated (...)/1992 and (...)/1996 are recorded in the City Council's municipal register, and indicates the mayor of the City Council as responsible for

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the violation of the "omission of the duty to inform" on the personal data not obtained from the same interested party.

3. On 01/29/2020, this Authority sends a letter to Mr. (...), in which he is informed that from the two documents presented it is inferred that his claim falls within the scope of the protection of the exercise of a right of access, regulated in article 15 of the RGPD, and which has given rise to the rights protection procedure no. PT 5/2020. However, in the event that you consider that the object of the claim is not a request for protection of the exercise of the right of access, submit a new request in concise and clear language, specifying the terms of the request, so that the Authority can process the corresponding procedure.

4. On 05/02/2021 the claimant submits a new letter, in which, in summary, complains about possible computer manipulation of the municipal register files, and that the referenced request for information dated 11/30/2019 has not been answered. In the last one, he requests that disciplinary proceedings be taken against the mayor of the entity, "for persisting in violation of art.14 and 16 RGPD regarding my request for information and rectification of data from my registration in the municipal register."

5. On 02/25/2021, the claimant submitted a letter of response to the office of this Authority dated 01/29/2020, in which it is inferred that he does not want the letter dated 01/18 /2020 be treated as a guardianship claim, but as a letter in which he denounces the mayor of the City Council as being responsible for the violation of article 14 of the RGPD.

6. On 18/08/2020 the Authority received a new letter from the complainant in which he reiterates the arguments of the previous letters, and complains again of a "failure to inform" in relation to the request dated 11/30/2019, and focuses on obtaining information on the origin of the data that have led to changes in the municipal register ("Documento de fecha (...)/1992, remitido por el City Council dated 15/06/1996 regarding "Change of domicile"; Document dated (...)1996 sent by the City Council dated 23/01/2003 regarding "Removal due to improper inclusion").

7. By letter dated 10/21/2020, this Authority informs Mr. (...)that in view of the claim dated 22/01/2020 as well as all the documentation presented in a complementary way, your claim will be processed with the procedure that corresponds to it as a complaint.

8. The Authority opened a preliminary information phase (no. IP 268/2020), 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.

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9. In this information phase, on 10/30/2020, the reported entity was required to report on whether the person reporting here was registered in the municipality, and on the last registered changes related to their address and the dates in which they occurred.

Also, if they had responded to the letter of the person making the complaint, dated 11/30/2019, and if they had been informed about the processing of their personal data in the area of the municipal register not obtained from self interested

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

- That "It is reported that the complainant is not registered in the municipality of Vilafranca del Penedès. In a registry review in 1996, Mr. (...) did not make the appropriate declaration to make the registry entry."
- That "A general renewal of the municipal register of inhabitants was carried out with effect from May 1, 1996 in accordance with the provisions of Royal Decree 1690/1986 of July 11 (Population Regulation and Territorial Demarcation of the local entities). All people resident in Vilafranca had the legal duty to declare their residence using the corresponding register. Mr. (...) did not present the accrediting register sheet, which is why it was not included in the register."
- That "Mr. (...) (...) has presented a multitude of letters in relation to the population register data, already for several years, addressed to this Corporation in relation to this matter, and an answer has been given to all requests for information, both from the area of personal data protection and from access to public information."
- That "Regarding the complaint dated November 30, 2019, in which he states that no response has been given to his requests, it must be taken into account that a response to the request was already given beforehand. On August 12, 2019, Mr. (...) sent a request via e-mail regarding the contact details of the City Council's data protection officer in order to be able to make a claim on the register data. The request was answered on September 3, 2019, providing the data."
- That "On July 31, 2020, Mr. (...) (...), submitted a request for access to public information with entry registration number (...). The information requested was the following:

or "Document dated (...)/1992, sent on date 06/15/1996 regarding
"Change of address"

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or "Document dated (...)1996 sent on date 01/23/2003 regarding "Dismissal due to improper inclusion"

- That "On September 1, 2020, a Resolution was issued by the Central Services and Treasury department in which the request for access to public information submitted on July 31, 2020 by Mr. (...) (...), and the requested data was provided."
- That "Against the resolution dated September 1, 2020, Mr. (...) (...) filed an optional appeal for reinstatement. Given that the request for public information presented was accepted and access to the requested public information was granted, the appeal for reinstatement has been dismissed."

The reported entity attached various documents to the letter, among others, the following:

- The request for access to information submitted by the complainant on 07/31/2020, in which, as an antecedent, he refers to his request of 11/30/2019, and requests access to "the said two Documents of mandatory conservation: Document dated (...) / 1992 regarding "change of domicile" and Document dated (...)1996 regarding "Removal due to improper inclusion"
- The notification of the resolution issued by the Deputy Mayor of the City Council, dated 01/09/2020, by which it is decided to admit the request for access and provide the requested data.
- The resolution dated 04/11/2020 dismissing the appeal filed by the herein complainant against the resolution on access to public information. The resolution of said appeal rejects the allegations of the appellant that the information provided has been manipulated computerically and is not what was requested, and declares that the "documentation contained in this administration, regarding the movements of the period requested is the requested information".

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.

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First of all, it should be noted that, as explained in the antecedents of this resolution, from the first claim presented by the complainant to his last letter, there have been different interpretations of the nature of the main object of the complaint filed.

At first, based on the first documents submitted by the claimant, it was considered that it was a claim for protection of the exercise of the right of access, regulated in article 15 of the RGPD, since the complaint was linked to the lack of response to a request for information, dated 30/11/2019, made before the City Council regarding two documents from the years 1992 and 1996 that contained personal data of the person concerned, and which he pointed out as the origin of the changes to his status as a neighbor in the municipal register. Regarding this, it must be said that the said guardianship procedure is what this Authority initially goes through process but did not continue, since the person making the claim indicated that his claim was not to protect the exercise of a right of access, but to report to the mayor of the City Council, as responsible for the processing of your personal data, for the commission of an infringement of the "omission of the duty to inform" in relation to article 14 of the RGPD. In any case, it should be noted that, as reported by the City Council, the person reporting here would have finally had access to said information, therefore, on 07/31/2020, he submitted a request for access to the information in relation to the referenced documents from 1992 and 1996, which was resolved by providing the requested data.

Having said that, it should be noted that from the various documents presented, it can be inferred that the complaint against the City Council (which the complainant here personalizes with the figure of his mayor), has as its origin the fact that since 1991 the person complainant would not be registered in the municipality, and by extension, in the electoral roll. From here, the complainant (who identifies himself as a homeless person), complains that the data recorded in the municipal register have been manipulated, and points to the "Documento de fecha (...)/1992" and "Documento de fecha (...)1996" as the documents that would have involved modifications regarding the last data that he considers certain regarding his registration, in 1991. In relation to this, he complains that the City Council would not have complied with the right to information on the referenced documents, specifically "All the mandatory according to Art.14.1 in its sections a) af), and according to Art.14.2 in its sections a) g) with respect to said two Documents A) and B) dated (...)/1992 and (...)1996."

Well, the first thing to say, in relation to the complaint for breach of the obligation established in article 14 of the RGPD - to provide a series of information to the interested parties about the personal data when these have not been obtained from the interested party himself - is that taking into account that the two documents where the personal data that would have led to the registration of changes in the municipal register are from the years 1992 and 1996, the regulations in force at that time were not RGPD, otherwise Organic Law 5/1992, of October 29, regulating the automated processing of personal data (hereinafter, LORTAD). That being the case, it should be noted that the duty was not included in the LORTAD

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of information when the data was collected from a third party, since this obligation was foreseen for the first time with the subsequent Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), which at the same time already provided for an exception when the law provided for the communication of data. On the other hand, it should be indicated that in the event that the RGPD was the applicable regulation or the one in force at that time, it would also not be up to the City Council to report on each of the items provided for in article 14 of the RGPD, given that they are data that the entity would have in the exercise of its powers in the matter of the municipal register, provided for in Royal Decree 1690/1986, of July 11, which approves the regulation of population and territorial demarcation of the local entities, and therefore, the exception provided for in article 14.5.c) of the RGPD would apply, which exempts the fulfillment of the duty to inform when "the obtaining or the communication is expressly established by the Law of the Union or the Member States that applies to the person responsible for the treatment and that establishes adequate measures to protect the legitimate interests of the interested party." As things stand, it is considered that the City Council would not have infringed any obligation relating to the right to information provided for in Article 14 of the RGPD in relation to the processing of personal data of the complainant here collected in the referenced documents of the years 1992 and 1996.

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 line 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 "a) The non-existence of facts that could constitute the infringement".

Therefore, I resolve:

1. File the actions of prior information number IP 268/2020, relating to the Vilafranca del Penedès Town Council
2. Notify this resolution to Vilafranca del Penedès 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 February 20, by which the Statute of the Catalan Data Protection Agency is approved, the interested persons can file, as an option, 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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