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File identification

Archive resolution of the previous information no. IP 270/2020, referring to the Sant Vicenç dels Horts Town Council

Background

1. On 09/10/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Sant Vicenç dels Horts City Council, on the grounds of an alleged non-compliance of the regulations on personal data protection.

Specifically, the complainant stated that he is a member of the local police the Sant Vicenç dels Horts City Council, and that on (...) /2020, following a police action, an arrest occurred and criminal proceedings were opened. Regarding this, he complained that the following days, on the weekend of (...), while he was off duty, a police patrol went to his home to notify him of a court summons for to testify on Monday (...) /2020, at 10:00 a.m., "in front of court no. 5 of Sant Feliu de Llobregat, in relation to the proceedings carried out the previous Friday (a summons that could have been received on the same day as the demonstration, since I started work at 06:00 in the morning)". The complainant complained that said notification linked to his professional duties as a police officer, had been made at his private address, and in relation to this, he pointed to what (...) of the Local Police of the Sant Vicenç dels Horts Council would be the one who would have accessed the details of his private address and communicated them in order to practice the notification of the court summons.

The complainant provided as documentation a copy of the request he presented to the City Council, dated (...) /2020, in which he stated that "during the Saturday weekend (...), that no I had a service, they were contacted at least 2 times, at my home a police patrol, according to what my neighbors informed me afterwards and some colleagues confirmed", and he complained that "my personal data is being used, to proceed to me citation."

2. The Authority opened a preliminary information phase (no. IP 270/2020), 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 03/11/2020 the reported entity was required to report, among others, on the notification communication procedure and

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

subpoenas as court witnesses to members of the local police of the City Council, and specifically, on the legal basis that would justify the notification of the subpoena to the person here denouncing at his private address and how this would have been accessed given staff

4. On 11/17/2021, given that the deadline granted to the entity had been far exceeded without it having provided the required information, this Authority reiterated the requirement with the express warning that if it was not complied with could incur an infringement of the regulations on personal data protection.

5. On 18/11/2021, the City Council responded to the aforementioned request through a letter in which, among others, it stated the following:

- That "when the summons is urgent, which usually happens in the actions carried out during the weekends, the summons of the agents is done, either through a telephone call, or through messenger applications, without as of today there has been no incident in this regard."
- That "The Local Police of Sant Vicenç dels Horts instructed the police proceedings number (...) for an alleged crime of resistance and disobedience to the officers of the Authority in which a person resident in Sant Vicenç dels Horts is registered, as an investigated person, and the agents (...) of the Local Police of Sant Vicenç dels Horts as witnesses."
- That "Following these proceedings, the person under investigation and the witnesses to the facts were summoned for the holding of the speedy trial at 10:00 a.m. on the day (...) of 2020 in the Court of First Instance and Instruction number 5 of Sant Feliu de Llobregat."
- That "The agents of the Authority involved were called as witnesses during the weekend with the exception of the agent with (...), which corresponds to Mr. (...)"
- That "The (...) responsible for the service during the weekend, with TIP (...)4, made numerous attempts to notify the agent by telephone of the summons (...) that went be unsuccessful given that the agent (...) did not answer either the phone calls or the messages through the Whatsapp application."
- That "In the distribution of jurisdiction in Sant Vicenç dels Horts, the Police of the Generalitat Mossos d'Esquadra is entrusted with the responsibility of presenting before the judicial authority the police proceedings instructed by the Local Police of Sant Vicenç dels Horts. In particular, in order for the police proceedings number (...) to be presented to the court in guard duties, it was necessary to practice all the summonses of the people involved, including the witnesses."

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

- That "For this reason, the sergeant of the Police of the Generalitat-Mossos d'Esquadra with (...)requests the data to practice the summons of the agent (...) at his home, attentive to the the fact that it has been impossible to summon him by telephone and that the speedy trial must be held early the next day."
- That "the judicial summons was materially carried out by a patrol of the Police of the Generalitat-Mossos d'Esquadra at the residence of Mr. (...)"
- That "The consultation of the personal data of Mr. (...), as will be seen in the section accordingly, it was carried out by the agent (...) following the instructions of (...)."
- That "it is necessary to comply with Organic Law 6/1985, of July 1, of the Judiciary which highlights the obligation of the security forces and bodies to carry out the necessary diligence in relation to the criminal process.", and invokes article 282 of said Law.
- That "according to Law 16/1991, of July 10, on the local police, the police function of these police forces is determined as follows:
 - Article 11
The following functions correspond to the local police, in their scope of action:
[...]
e) Act as judicial police, in accordance with article 12 and current regulations.
 - Article 12
1. The judicial police functions referred to in article 11.e) are the following:
 - a) Assist the judges, the courts and the prosecutor's office in the investigation of crimes and in the discovery and arrest of criminals, when they are required to do so.
 - b) Practice, on own initiative or at the request of the judicial authority, of the ministry prosecutor or hierarchical superiors, the first steps of prevention and custody of detainees and the prevention and custody of objects originating from a crime or related to the execution of this, of which actions must be accounted for, in the legally established terms, to the judicial authority or the fiscal ministry, in agreement with current regulations.
 - 2 The functions indicated by paragraph 1 must be fulfilled in accordance with the principles of mutual cooperation and reciprocal collaboration with the rest of the security forces and bodies."
- That "the content of the Royal Decree of September 14, 1882, which approves the Criminal Procedure Law that regulates the prosecution procedure in the criminal field, must be taken into account."

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

- The entity invokes article 430 of the LECr, which states: "Witnesses may be cited personally where they were(...)"
- That "the connection of the Local Police of Sant Vicenç dels Horts to the Police Information Systems (SIP) and the transfer of access to the personal data of certain police files owned by the Department of the Interior is based on the Agreement signed between the City Council of Sant Vicenç dels Horts and the Department of the Interior signed for that purpose."
- That "The purpose of access to the personal data of certain police files that are owned by the Department of the Interior protected by this Agreement is the consultation, diligence and other procedures in execution of the own police services."
- That "the local police in Catalonia are authorized to carry out summonses to judicial proceedings. (...).This subpoena includes, in case of necessity and urgency, the practice at the witness's home."
- That "The accesses of the user (...)(...), which corresponds to the agent (...) of the Local Police of Sant Vicenç dels Horts, would be legitimate and justified, on the one hand because they are temporarily circumscribed to the days prior to the summoning of the agent (...) to the speedy trial that had to be held on the day (...) of 2020 and because this consultation is justified by the need to summon, in compliance of the exercise of judicial police functions, to Mr. (...) at his address due to the impossibility of summoning him by telephone."

The reported entity included in the letter a table with the inquiries made by the local police staff on the personal data of the complainant. For the purposes of the events reported here, it should be indicated that, between the days (...), weekend in which the notification of the controversial court summons is attempted and practiced at the private address of the complainant here, it is registered that the user "(...)(...)" accessed the personal data of the complainant here, both on (...)/2020 (from 08.35 a.m. to 08.42 a.m.) and on (...)/2020 (from 09.09 a.m. to 09.10 a.m.).

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.

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

Specifically, it is necessary to determine whether the access by a member of the local police (agent (...)) to the data of the person making the complaint, and in particular to the data of his address particular, with the purpose of communicating it to the police officers so that they could notify him of a court summons as a witness, it was in accordance with the data protection regulations.

First of all, it must be taken into account that the framework in which the controversial access is carried out to the data of the address of the person reporting here and subsequent communication to the police, is in the framework of the practice of the proceedings prior to the holding of a speedy trial, instituted by virtue of the police report, extended the day (...)/2020, by the complainant here and two other local police officers. That being the case, it is necessary to circumscribe the actions carried out by the local police of the City Council, during the days (...)/2020 and (...)/2020, as well as the notification of the summons practiced by the police to the person here reporting as a witness linked to the said police report, in the field of actions carried out by the security forces and bodies as judicial police.

At this point, it is necessary to point out that both the local police and the police officers enjoy the status of judicial police. In this respect, article 547 of Organic Law 6/1985, of July 1, of the Judicial Power (LOPJ) provides that the function of judicial police "will compete, when they are required to provide it to all members of the Forces and Cuerpos de Seguridad, whether they depend on the central government or the Autonomous Communities or local authorities, within the scope of their respective competences. In this sense, Organic Law 2/1986, of March 13, on Security Forces and Bodies (LOFFCCS), regulates in its article 53 the functions that the local police must exercise, among which "e) Participate in the functions of Judicial Police, in the manner established in article 29.2 of this Law." Likewise, Law 16/1991, of July 10, on local police forces, also establishes the function of judicial police to this police force (art. 11), and describes the specific functions that correspond to this force, among these, carry out the first steps of prevention and give an account of the actions to the judicial authority, and establishes the principle of mutual cooperation and reciprocal collaboration with the rest of the security forces and bodies (art.12). On the other hand, Law 10/1994, of 11 July, on the police of the Generalitat - Mossos d'esquadra, foresees that this police force has judicial police functions, in accordance with article 13.5 of the Statute of Autonomy and which are established by article 126 of the Constitution, articles 443 and 445 of the LOPJ and the rest of the procedural legislation in force, without prejudice to those corresponding to the local police (art. 12).

Likewise, according to Royal Decree 769/1987, of June 19, on the regulation of the judicial police (RDPJ), the general functions of the judicial police correspond to all members of the Forces and Security Forces (FFCCS), in the insofar as they must provide the collaboration required by the judicial authority or the Public Prosecutor's Office in actions aimed at investigating crimes or discovering or securing criminals, with strict subjection to the scope of their respective powers (art.1). It is added that FFCCS members develop

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

the function of judicial police at the request of the judicial authority, the Prosecutor's Office or their police superiors, or on their own initiative through the latter, in the terms provided for in the following articles of the RDPJ (art. 2).

On the other hand, taking into account that the actions that the judicial police carried out were within the framework of the proceedings prior to the holding of a speedy trial, it is necessary to refer to article 796 of the Royal Decree of September 14, 1882, approval of the Law of Criminal Procedure (LECr), which regulates the actions to be carried out by the judicial police in this type of criminal procedure. Of all of them, it is necessary to highlight those foreseen in section 1st point 4rt ("Citará también a los testigos so that they appear in the guard court on the day and time that they are indicated, aperebiéndole of the consequences of not appearing at the police subpoena in the guard court.(...)"), section 2on ("For the execution of the subpoenas referred to in the previous section, the Judicial Police will fix the day and time of the appearance in coordination with the Court de guarda. (...)") and section 3 ("If the urgency requires it, the subpoenas may be made by any means of communication, including verbally, without prejudice to record its content in the relevant minutes.").

Regarding witness statements, article 430 of the LECr determines that "Witnesses may be summoned personally where they were", and article 166 establishes that notifications and summons must be carried out in the manner provided for in Law 1/2000, of January 7, on civil proceedings (LEC).

Article 149 of the LEC establishes that "notifications, when their purpose is to give notice of a resolution or action" are procedural acts of communication, specifying in article 152.3.3a that one of the forms through which notifications can be made by "delivering to the addressee a literal copy of the resolution that must be notified, of the request addressed to him by the court or the court clerk, or of the summons or summons in due course". And article 161 of the LEC regulates in detail the "communication by means of a copy of the resolution or certificate", establishing the following: "1. The delivery to the addressee of the communication of the copy of the resolution or certificate must be made at the seat of the court or at the domicile of the person who must be notified, required, summoned or within the deadline, without prejudice to what foresees the scope of execution.(...)"

Therefore, and for the purposes that are of interest here, the previous legal provisions can be considered to constitute a sufficient legal basis so that the local police, following the principle of mutual cooperation and reciprocal collaboration with the rest of the forces and security bodies, could access the data of the private address of the complainant here and communicate it to the judicial police unit of the police officers in charge of carrying out the controversial summons in the framework of the proceedings prior to a speedy trial. At this point, indicate that the City Council explains that, in the distribution of municipal competences in police matters, the police force has been given the responsibility of presenting before the judicial authority the police proceedings instructed by the local police, and is

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

that's why this police force was in charge of summoning all the people involved, including the witnesses.

Finally, indicate that, according to the complainant himself, the police unit went to his private address on several occasions during that weekend, a fact that would also explain that in the log of access to the files containing the personal details of the complainant and addressee of the controversial summons are contained therein two accesses, carried out by local police officer no. TIP (...), in two consecutive days. Regarding the fact that the notification of the summons was carried out at the private address of the witness, it is necessary to take into account the specific circumstances of the case, therefore, to the extent that the addressee of the summons did not work in the days before the day of the trial, prevent the local police from being able to summon him through the usual channel - as it was possible to do in the case of the other two officers summoned as witnesses - and, that is why the police officers, in their capacity as judicial police, they proceeded to practice the controversial summons at their private address, provision that, as has been advanced, is included in the LECr and the LEC.

To the last, add that, beyond the fact that the regulatory framework protects the actions of the local police of the City Council, this does not imply that the local police can carry out any processing in relation to the personal data of the complainant here, without meeting the requirements of article 22.2 of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD).

On this matter, it should be borne in mind that according to article 2.2 d) of the RGPD, this regulation is not applicable to the treatments carried out by the security forces and bodies in the police field and criminal court. In this area, it is necessary to take into account Directive (EU) 2016/680 of the Parliament and of the Council, of 27 April 2016, relating to the protection of natural persons with regard to data processing personal data by the competent authorities for purposes of prevention, research, detection or prosecution of criminal offenses or execution of criminal sanctions, and at liberty circulation of this data, transposed to our internal law through LO 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of sanctions penalties, which entered into force on 06/16/2021. Given, however, that the aforementioned LO 7/2021 was not applicable at the time of the events reported, are applicable, in accordance with the fourth transitional provision of the LOPDGDD, the provisions of the LOPD, and in particular article 22 and the deployment provisions.

Article 22.2 of the LOPD enables the collection and processing of personal data for police purposes by the Forces and Security Forces without the consent of the affected persons, in those cases and categories of data that are necessary for the prevention of a real danger to public safety or for the repression of criminal offences. That being the case, it is considered that the data processing carried out by the police

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

local, linked to the development of judicial police functions, met the requirements of article 22.2. of the LOPD.

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 manifestly constitute an administrative infraction".

Therefore, I resolve:

1. File the actions of prior information number IP 270/2020, relating to the Sant Vicenç dels Horts City Council.
2. Notify this resolution to the City Council of Sant Vicenç dels Horts and the complainant.
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,