

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

File identification

Archive resolution of the previous information no. IP 320/2020, referring to Barcelona City Council.

Background

1. On 19/10/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Barcelona City Council, on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the complainant stated that the Municipal Institute of Finance of the Barcelona City Council (hereafter, IMH) notified him of a traffic violation complaint (file number (...)), without make effective the right of information in a complete way.

The complainant claimed that the IMH had not informed him about the legal basis of the treatment, the purpose, nor about the origin of his data. In this last sense, the complainant inferred that the IMH would have obtained his first and last name and postal address, based on the query of his vehicle registration ((...)) in the database of another organism.

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

2. The Authority opened a preliminary information phase (no. IP 320/2020), 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 27/10/2020 the Barcelona City Council was required to certify the information that was provided to the reporting person in relation to the processing of their personal data; as well as in order to specify whether the name and surname and/or postal address of the reporting person were obtained from another body.

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

- That the information provided to the affected person in relation to the processing of their personal data, included in the notification of the traffic violation complaint, is as follows:

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"In accordance with the data protection regulations, we inform you that your data will be processed by the Barcelona City Council in order to process the sanctioning procedures (treatment 0346-Sanctioning procedure for infringements of the traffic regulations and the ordinance of use of Barcelona's roads and public spaces) and collection (treatment 0072-Revenue collection procedures under public law). Except for legal obligation, your data will not be transferred to third parties. You have the right to access, rectify and delete your data, as well as other rights regarding it. You can consult additional information about this treatment and data protection at www.bcn.cat/ajuntament/protecciodades. Your data will be deleted once the legal obligations arising from the management of the activity have been fulfilled. Likewise, in compliance with the Information Society Services Law 34/2002 of July 11, we inform you that by informing the e-mail or mobile phone field you authorize us to use these means to carry out communications directly related to the stated purpose."

- That in the present case, since the arrest of the vehicle did not take place because the infringement was known through a means of capturing and reproducing images, the complaint was addressed to the person driving habitually, is that is, the reporting person. To do this, the Register of Drivers and Offenders of the General Directorate of Traffic (hereinafter, DGT) was accessed.
- That article 90.1 of Royal Legislative Decree 6/2015, of October 30, approving the revised text of the Law on Transit, Circulation of Motor Vehicles and Road Safety (hereafter, RDL 6/2015) provides, in relation to the practice of reporting traffic complaints, the following:

"1. The administrations with sanctioning powers in traffic matters must notify the complaints that are not delivered to the act and the other notifications that result in the sanctioning procedure to the road electronic address (DEV).

In the event that the accused does not have it, the notification must be made at the address that has been expressly indicated for the procedure and, if there is a lack, at the address that appears in the records of the autonomous body Prefecture Central Traffic."

- That in the present case, and in all those cases in which it is not possible to notify the denunciation on the spot, to know the identity of the infringing person and his address for notification purposes, the systems must be used of the DGT.
- That this treatment is covered by a legal obligation applicable to the person responsible for the treatment in accordance with article 6.1.c) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of physical persons

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- with regard to the processing of personal data and the free circulation thereof (hereafter, RGPD).
- That article 14 RGPD, which regulates the right of information of the interested parties in cases where the personal data processed is not obtained directly by them, establishes a series of exceptions to this obligation to inform, among which, that the obtaining or communication is expressly established by the law of the Union or of the member states to which the data controller is subject and that establishes appropriate measures to protect the legitimate interests of the interested party (art. 14.5.c RGPD).
 - That the notifications of the complaints imposed by the traffic infringements commission, in those cases where this cannot be done at the same time, must be done imperatively at the address stated in the registry of the autonomous body Central Traffic Prefecture. The obtaining of the mentioned personal data necessary from the information systems of the DGT, for the preparation and notification of the complaint, is provided for in RDL 6/2015, and therefore, the exception of right to inform established in article 14.5.c) of the RGPD.
 - That the website "bcn.cat/ajuntament/protecciodades" provides the information required by the data protection regulations, in relation to the controversial data processing.

The reported entity attached various documentation to the letter.

5. On 10/26/2020 and 11/17/2020, also during this preliminary information phase, the Authority's Inspection Area accessed the website to which the information clause referred incorporated in the notification of the traffic violation complaint (www.bcn.cat/ajuntament/protecciodades), which led to the section of the City Council's electronic headquarters on data protection (<https://seuelectronica.ajuntament.barcelona.cat/ca/proteccio-de-dades>). In turn, the following was verified:

- That if you accessed the City Council's "Register of treatments" (<https://seuelectronica.ajuntament.barcelona.cat/ca/proteccio-de-dades/consulta-el-registre-de-tractaments>), you could consult the record of treatment activities (hereinafter, RAT), which contained the treatment activities called "Sanction procedure for violations of the Traffic and Road Traffic Act and the Pedestrian and Vehicle Traffic Ordinance (OCVV)" (code 0346); and "Procedure for management, collection, inspection and revision of public law revenues" (code 0619).
- That through the RAT the identity of the person in charge of the treatment, the purpose, the recipients of the data, the people affected by the treatment, the identification, the international transfers, the type of data affected, the retention period and security measures.
- What in the section "What do I have on rights data?" (<https://seuelectronica.ajuntament.barcelona.cat/ca/proteccio-de-dades/quins-drets-tinc>

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about-my-data), informed about the rights of the affected people and the ways to exercise them.

- What in the section "Who can I turn to if I am not satisfied with the response from Barcelona City Council?" (<https://seuelectronica.ajuntament.barcelona.cat/ca/proteccio-de-dades/a-qui-m'he-recorreguer>), was informed about the right to submit a claim to the Catalan Data Protection Authority, between others
- That in the section "Contact with the data protection delegate" (<https://seuelectronica.ajuntament.barcelona.cat/ca/proteccio-de-dades/contacteu-amb-delegat-proteccio-dades>), information was provided on how to contact the data protection delegate. Specifically, a link to the electronic form to contact them was included (https://w10.bcn.cat/StpQueixesWEB/serveisIris.do?cbDetail=4845&consulta=1&directo=1&i=c&origen=DELEGAT_PROTECCIO_TUTELA_DRETS).

6. On 06/29/2021 and still within the framework of this prior information phase, the Barcelona City Council was again required to indicate whether it had modified the information clause incorporated in the notification of denunciation by traffic violation, since, following the resolution issued by the Authority in sanctioning procedure no. PS 44/2020, the IMH had been required to modify the information clause of the model entitled "complaint and proof of payment", a request based on which the IMH provided the Authority with various documentation for the purpose of accredit the modification, not only of the aforementioned model, but also of the set of forms and notifications made following the sanctioning procedures processed by this institute.

7. On 09/07/2021, the IMH provided the new informative clause incorporated in the notification of traffic violation complaints, both when the data is obtained solely from the affected person, and when the data is they obtain in whole or in part through a third party (such as the DGT). By way of example, he provided a copy of a completed form - duly anonymized - corresponding to the model entitled "traffic violation notification" which is the subject of this complaint.

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.

2.1. About the information related to the legal basis and the purpose.

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The complainant considered that the Barcelona City Council had not informed him of the legal basis and the purpose of the treatment, when he was notified of a traffic violation complaint.

In the present case, the Barcelona City Council made use of the possibility of making effective the right to information by layers in the terms provided for in article 11 of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD).

As has been explained in the background, in the informative clause incorporated in the notification of the traffic violation complaint (basic information or first layer), the Barcelona City Council informed about the purpose of the treatment (to process the penalty procedure and the collection of the penalty).

With regard to the legal basis, the Authority's inspection staff found that in the second layer (the electronic address www.bcn.cat/ajuntament/protecciodades, to which the basic information was sent) information was provided on the legitimacy or legal basis, information that must not necessarily be included when providing the basic information in accordance with article 11 of the LOPDGDD.

That being the case, it can be concluded that the Barcelona City Council did provide information on the purpose and legal basis or legitimacy of the treatment in question.

2.2. About the information that must be provided when the data is not collected from the person affected

The complainant also stated that in the notification of the complaint for a traffic violation, the Barcelona City Council did not inform him of the origin of his data either.

Well, certainly when the data of the interested person is not collected, as in the present case, the person responsible for the treatment must give effect to the right of information to the affected persons in accordance with article 14 of the RGPD . And in the event that this information is provided in layers, the basic information must include the ends provided for in article 11.2 of the LOPDGDD (the identity of the person in charge, the purpose of the treatment and the possibility of exercising the rights established in the articles 15 to 22 RGPD), but also those determined by article 11.3 of the same rule. In other words, the basic information must also include the categories of data subject to treatment (art. 11.3.a LOPDGDD) and the sources from which the data come (art. 11.3.b LOPDGDD).

Having said that, it has become clear that the basic information that included the notification of the traffic violation complaint that the City Council addressed to the person making the complaint did not contain

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the information required by article 11.3 of the LOPDGDD, specifically, the categories of data subject to treatment and the sources from which the data come.

However, in the course of the present actions of prior information, it has been possible to verify that in the notification model for a traffic violation complaint, Barcelona City Council currently provides this information.

It should be said in this regard that this complies with the resolution of the Director of the Authority of 23/02/2021 (PS 44/2020), which sanctioned the Barcelona City Council precisely for not providing all the information provided for in the Article 11.3 of the LOPDGDD in a model used by the IMH ("Complaint and proof of payment" model), different from the one we are dealing with, and also imposing corrective measures on the City Council in order to complete the information on protection of data it provided to the affected people in its models.

In compliance with this requirement for corrective measures, the City Council modified the informative clauses on data protection included in the various notification models made by the IMH and thus accredited it to the APDCAT. That is to say, this modification of the informative clauses was not limited solely to the "Complaint and proof of payment" model (object of sanctioning procedure no. PS 44/2020), but which also included other models used by the IMH, and among these, that of "Notification of a complaint for a traffic violation", and which is the subject of the complaint that concerns us now. In short, as part of the present actions, the Authority has been able to verify that the Barcelona City Council had already modified the basic information of the notification model for traffic violations, incorporating the information required by article 11.3 of the LOPDGDD.

Given the above, it is considered disproportionate to initiate a new sanctioning procedure at the Barcelona City Council, taking into account that during the present previous actions it has amended the information provided through the notification model for a traffic violation in the terms set out, following the corrective measures required in sanctioning procedure no. PS 44/2020.

On the other hand, in compliance with the same requirement for corrective measures, the Barcelona City Council has also proven to have modified the way in which the additional or second layer information was provided, so that currently the additional information provided is accessible and complies the provisions of article 12.1 of the RGPD.

3. In accordance with everything that has been set forth in the 2nd legal basis, and given that the actions carried out within the framework of the present preliminary information phase do not justify, for the reasons set forth, the initiation of a sanctioning procedure for the facts analyzed in this resolution, its archive should be agreed.

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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 320/2020, relating to Barcelona City Council.
2. Notify this resolution to Barcelona 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 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,