

File identification

Resolution of inadmissibility of the complaint linked to the previous information no. IP 335/2020, referring to the Town Council of Molins de Rei

Background

1. On 03/11/2020, the Catalan Data Protection Authority received a letter from the Antifraud Office of Catalonia (hereafter, the OAC), sending a copy of an anonymous complaint submitted on 12/07/2020, against the Molins de Rei Town Council, for an alleged usurpation of functions and an alleged breach of the personal data protection regulations.

Through said letter of complaint, the OAC was notified of the temporary suspension of electronic access to the various digital folders of the City Council's negotiator of (...) (" *corporate digital folders in the area of (. ..), including those relating to the implemented Quality System*), during the week of May 18 to 22, 2020. Also, that the suspension of permission to access said electronic folders coincided in time with the approval of municipal decrees for the restructuring of the municipal organization, and that the person affected by said temporary suspension requested on different occasions, through e-mails and requests presented to the City Council, the re-establishment of his immediate access to said folders, and that it was not until 05/22/2020 that he regained permission to access said folders.

From the documentation that was attached to the letter of complaint, it is inferred that the withdrawal of permission to access said digital folders would have affected the person who at that time held the job of (...) (...).

In any case, it must be indicated that the complainant, in the written complaint submitted to the OAC, does not identify the specific fact that would constitute a breach of the personal data protection regulations.

The OAC accompanies the denunciation letter with various documentation relating to the facts denounced, in particular, Mayor's Decree no. 855, of 06/05/2020, on provisional and temporary administrative reorganization of Molins de Rei Town Council.

2. The Authority opened a preliminary information phase (no. IP 335/2020), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations (henceforth, LPAC).

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 Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

3. First of all, it is necessary to refer to a relevant issue that determines the meaning of this resolution.

Thus, it should be made clear that, in accordance with article 21 of Law 32/2010, of October 1, of the Catalan Data Protection Authority (hereinafter, APDCAT), any complaint by an alleged breach of the data protection regulations that corresponds to processing at the APDACT must be duly signed, and the reporting person identified.

Likewise, Law 39/2015, of October 1, on the common administrative procedure of public administrations, also provides that complaints that give rise to an ex officio sanctioning procedure by the Administration must express the identity of the person or persons presenting them and the account of the facts brought to the attention of the Administration.

In relation to this, it should be noted that in this case, the lack of identification of the person making the complaint also means that this Authority cannot address the person making the complaint to require him to amend his letter of complaint, in order to meet the legally required requirements in order to be able to process the complaint.

This is how things are, given that the facts reported have been presented through an anonymous complaint that was made through the OAC's anonymous mailbox channel, it is considered that this Authority cannot admit said complaint to proceedings, as no meet one of the legal requirements necessary for its admission, such as that the person submitting a complaint has identified himself and signed it.

4. However, in view of the documentation accompanying the complaint, this Authority considers it pertinent to also point out that, in any case, a breach of the data protection regulations cannot be inferred from the account of the events reported.

In this regard, it should be noted that the City Council holds the position of responsible for the treatment, and therefore, it is up to them to determine the persons who must be authorized to access certain personal data for the exercise of their functions.

As things stand, the City Council decided that the person who held the position of (...) of (...), during the week of 18 to 22/05/2020, did not need access to the documentation contained in the digital folders linked to said negotiation, as a result of the organizational change that had started months before, as can be seen from the mayor's decrees provided with the complaint, and which particularly affected the area related to the negotiation of (...). In this regard, taking into account that this decision would affect the scope of attribution of access permissions to certain digital folders of a certain person, this matter that falls within the scope of decision of the City Council as responsible of the treatment, which is responsible for determining the persons who must be authorized to access certain personal data for the exercise of their functions, it is considered that the facts reported, from the perspective of the right to data protection, they would not be considered a violation of data protection regulations.

5. In accordance with everything that has been set out in the 3rd legal basis, and given that the formulation of the complaint presented does not meet the necessary requirements to be admitted to the procedure, it is necessary to agree on its inadmissibility.

For all this, I resolve:

1. Dismiss the complaint against Molins de Rei Council sent by the Antifraud Office of Catalonia.
2. Communicate this resolution to the Antifraud Office of Catalonia.
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.

The director,

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