

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

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 336/2020, referring to the City Council (...)

Background

1. On 28/10/2020, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the City Council (...) (hereinafter the City Council) , due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant stated that for years he had been an official of the City Council. That on 06/19/2020, the Court of (...) notified him of a legal proceeding against him, urged by a City Council employee (identified by first and last name), in relation to a personal matter . The court summons contained his personal details, name and surname, ID and his private address. The complainant stated that the City Council would have allowed or communicated to said municipal employee access to his personal data. In addition, he added that the access would not have occurred in the exercise of the proper functions attributed to the aforementioned municipal employee, but with the purpose of instigating legal proceedings against him.

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

2. The Authority opened a preliminary information phase (no. IP 336/2020), 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 11/27/2020 the reported entity was required to report on the following issues:

- Indicate whether, during the years 2019 and 2020, there was any access to the complainant's data in the log of access to the databases managed by the City Council and, if so, to provide a copy and specify the database legal that would legitimize access.

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- In the event that there were no registered accesses, to report whether the City Council communicated the complainant's data to the aforementioned municipal employee and, if so, to specify the legal basis that would legitimize the communication.
- In the event that there is no record of access to the complainant's data nor has the data been communicated to the municipal employee, it was required that the witness of the municipal employee in which he indicated how he would have obtained the complainant's personal data

4. On 12/15/2020, the City Council responded to the aforementioned request through a letter in which it set out the following:

- That having checked the databases managed by the City Council, which include the Municipal Register, the file manager Genesys, and the police management software Eurocop, it does not appear that during the years 2019 and 2020 the municipal employee have accessed the personal data of the reporting person. The City Council attached a Certificate from the Secretary of the City Council certifying that the following reports had been issued: 1) Report dated 11/12/2020 of the Corporal responsible for the Technical Area which records the result of the internal audit in Eurocop management program, the report concludes that no access to the file of the reporting person was found during the years 2019 and 2020 by any member of the local police; 2) Report dated 12/14/2020 from the Head of the Citizens' Service Office which informs that it is not feasible to check the register of inhabitants, given that the person making the complaint has never been registered in the municipality; 3) Report dated 11/12/2020 by the Technical Organization and Processes person who requested a report from the company that manages the Genesys software and it certified that there were no accesses to the data of the reporting person during the years 2019 and 2020.
- On the other hand, the City Council denies having communicated the person's data here reporting to the municipal employee.
- Among the documentation provided, he attached the testimony of the municipal employee in which he indicates how he obtained the complainant's data. In summary, the witness states the following: as for the complainant's private address, he is aware of it because they have been work colleagues for thirteen years and have done many fun activities outside of working hours. As for the DNI, he is aware of it because the person making the complaint presented himself as a candidate in the 2019 trade union elections (he provides a copy), which shows his first and last name and DNI. The list was posted on the bulletin board.

The reported entity attached various documentation to the letter.

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 Act, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Agency

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Catalan Data Protection Authority, the director of the Catalan Data Protection Authority is competent to issue this resolution.

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.

The facts reported focus on the possible access to the data of the reporting person held by the City Council by a municipal employee. Specifically, the complainant, who in the past had also been employed by the City Council, considered that the municipal employee in question, which he identifies by name and surname, would have accessed his personal data, either because the City Council would have consented to it, or because the City Council would have communicated them. He inferred this from the fact that the municipal employee had initiated legal proceedings against him and considered that the personal data contained in the court summons, his address and ID, could only have been obtained from the City Council.

About the alleged access to the data of the reporting person. The Authority opened a preliminary information phase in order to determine whether during the years 2019 and 2020, through access to any of the databases managed by the City Council, there had been access to the data of the reporting person by the municipal employee. Regarding this, the City Council has certified that during the years 2019 and 2020 there was no access to the personal data of the person reporting. To this end, the City Council has provided a Certificate from the Secretary of the City Council who certifies that during the aforementioned years there were no accesses to the personal data of the complainant by said municipal employee, in accordance with the following reports : 1) Report dated 11/12/2020 of the Corporal in charge of the Technical Area that records the result of the internal audit of the Eurocop management program, the report concludes that no access has been found to the file of the reporting person during the years 2019 and 2020 by any member of the local police; 2) Report dated 14/12/2020 of the Head of the Attention Office

Citizen who informs that it is not feasible to check the register of inhabitants, given that the person making the complaint has never been registered in the municipality; 3) Report dated 11/12/2020 of the Technical Organization and Processes person who requested a report from the company that manages the Genesys software and it certified that there were no accesses to the data of the reporting person during the years 2019 and 2020.

Regarding the alleged communication of the complainant's data to the municipal employee, the City Council denies having communicated the data.

On how the municipal employee would have obtained the data of the reporting person, consisting of the private address and the ID. The employee himself claims that he knew the complainant's home address because they had been workmates for thirteen years and had shared many recreational activities outside of work hours. Regarding the DNI data, he claims that he obtained it from the list in the union elections that was posted on the notice board where the union had posted it (...), given that the complainant presented himself as trade union candidate in the

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trade union elections of 2019. He proves this by providing the aforementioned list, which contains the data of the person making the complaint, specifically, the first and last name and the ID.

In accordance with the previous statements, as well as the previous information actions carried out by the Authority, no indication has been observed that allows it to be inferred that the City Council had allowed the municipal employee access to the personal data of the person reporting or who had communicated them to him. Ultimately, the existence of an infringement could not be proven and, therefore, administrative responsibility cannot be demanded from the City Council.

Consequently, the principle of presumption of innocence is applicable here, given that it has not been possible to prove the existence of evidence of infringement and therefore administrative responsibility cannot be demanded. This principle, which is included in article 53.2 b) of the LPAC, recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise.

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 actions of prior information number IP 336/2020, relating to the City Council (...)
2. Notify this resolution to the City Council (...) and to 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,