

Carrer Rosselló, 214, esc. A, 1st 1st
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File identification

Archive resolution of the previous information no. IP 355/2020, referring to the General Directorate of the Police of the Department of the Interior.

Background

1. On 20/11/2020, the Catalan Data Protection Authority received a letter from Ms. (...) for which he filed a complaint against the General Directorate of the Police of the Department of the Interior, on the grounds of an alleged breach of the regulations on the protection of personal data.

Specifically, from the statements of the person reporting and from all the documentation provided, it is clear that in the framework of a procedure on minor crimes, the Court of First Instance and Investigation of (...) required the police officers of the police station of this town (henceforth, the police officers) so that they relate *the occasions that have come to the Urbanización (...) (at the husband of the person making the complaint here) and, in addition to that, how many have related problems with (...) or with your husband, (...)* and, in the event that there is documentary evidence of said displacements (internal reports, for example), they are brought to the proceedings as long as they refer to departures related to (...) or to her husband, (...).

On 6/11/2020, the police responded to the judicial request providing the list of the police investigations carried out at the instance of the husband of the person making the complaint. In addition to the required information, they provided some police investigations relating to the person reporting here. Specifically, *"which in case it might be of interest to VI also contains the police proceedings on some incidents related to the wife of Mr. (...)", the police proceedings (...) AT USC (...), instructed on 13/10/2020 for alleged violations of LO 4/2015, on the Protection of Citizen Security in which was reported to the wife of Mr. (...), for the refusal to identify themselves once people at their home after they had called 112 for police presence because there was a man at the door of the house provoking her.* And a then, the report referred to a series of incidents that had their origin in calls to 112 where the person reporting here communicated that Mr. (...) was at the door of her house harassing her.

In short, the complainant complained that the police provided her personal information without it having been required by the Court, as she understood that the request was limited to police actions relating to her husband. And he considered that, not having given his consent to the communication of his data to the Court, the communication was illegal.

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

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2. The Authority opened a preliminary information phase (no. IP 355/2020), 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 09/12/2020 the reported entity was required to report on:

- The legal basis that would legitimize the processing of personal data consists in the communication of data by the person making the complaint to the Court, considering that the judicial request referred to the occasions when the police officers had come to their home at the request of the husband of the complainant in relation to Ms. (...) or her husband, Mr. (...).
- In the event that it indicates as a legal basis the fulfillment of a legal obligation or the exercise of a mission in the public interest or in the exercise of public powers, point out the precepts of the rule with the rank of law that provides for it .

4. On 12/29/2020, the DGP responded to the aforementioned request through a letter in which it set out the following:

- *"In response to that request, but also to the conversations that were held with the judicial authority regarding the problems generated around those incidents, the Cos de Mossos d'Esquadra provided the Court with all the information linked to these people and those others that could be linked to the problem generated, which is why the response mentioned the aforementioned proceedings, as well as all those others that, as the judicial authority indicated, were linked to the problem generated.*
- *The information provided by the CME was in response to a judicial request, in its judicial police functions regarding a judicial investigation into alleged criminal acts and subject to criminal proceedings.*
- *The information was delivered solely and exclusively to the judicial authority, and to no one else, under the protection of the Criminal Procedure Law which is the regulation that results from application and the authorization provided for in articles 22.2 and 24 of Organic Law 15/1999, of December 13, protection of personal data*
- *The judicial authority that claimed and received the information did not make any kind of reproach or observation regarding the fact that it was unnecessary or irrelevant, much less that it involved any kind of violation".*

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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 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.

2.1 About the content of the judicial request.

In the first place, the person making the complaint stated that the police officers went too far in the information provided to the Court, given that the judicial request only referred to the occasions when the police officers went to the family home at the behest of the her husband
And he considered that the judicial requirement did not empower them to facilitate police incidents relating to their calls to CAT112 and the actions that resulted from them
calls

At this point it is necessary to analyze the content of the judicial request to determine whether the communication of the data of the person making the complaint to the judicial body was related to the problem referred to in said request. Specifically, it was required that:

*"relate the occasions that have come to the Urbanization of (...) at the instance of (...) and, in addition to that, how many have related having some problem with (...) or with her husband, (..)
and, in the event that there is documentary evidence of said displacements (internal reports, for example), they are brought to the proceedings as long as they refer to departures related to (...) or to her husband, (...)"(the underlined is ours).* Well, in the report that the cops

of squad provided the judicial body, they communicated the information relating to the occasions on which they had gone to the family home at the request of Mr. (...) (it must be taken into account that this is also the address of the reporting person), in relation to the problem related to Mrs. (...) and with Mr. (...). Likewise, they provided information from the complainant regarding some calls he had made to CAT 112, the reason for which was to require the presence of the police at his home, because he claimed that Mr. (...) he was at the door of the house provoking or harassing her. In this case, there is no doubt that the information provided was related to the problems existing between the people to whom the judicial request referred. Indeed, in all the calls that the complainant made to CAT 112, he mentioned some problem with Mr. (...).

2.2 On the alleged non-consented communication of personal data.

Next, we will analyze whether it is necessary to obtain the consent of the affected person to communicate the data to the judicial body. In relation to this, the complainant stated that the

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communication was unlawful, given that he had not given his consent to the communication of his data to the court.

In this regard, it is necessary to refer to the concept of personal data processing established in article 4.2) of the RGPD, which considers as such *"any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as (...) communication by transmission, (...)"*. Likewise, it is necessary to take into account article 4.9) of the RGPD which establishes the concept of recipient of the data: *"the natural or legal person, public authority, service or any other body to which personal data is communicated, whether it is a third party as if not. However, public authorities that may receive personal data in the context of a specific investigation, in accordance with the law of the Union or the Member States, should not be considered as recipients. The processing of these data carried out by these public authorities is in accordance with the rules on data protection that are applicable to the purposes of the processing"*.

And with regard to the lawfulness of the treatment, article 5.1 a) of the RGPD provides that *"Personal data: a) Must be treated in a lawful, fair and transparent manner in relation to the interested party (lawfulness, loyalty and transparency)"*. In accordance with the above, in this specific case it is necessary to consider article 6.1 c) of the RGPD which establishes that *"the treatment will be lawful when it is necessary to fulfill a legal obligation applicable to the person responsible for the treatment"*. And section 3 of the same article requires that the legal obligation must be established *"by the law of the Union, or by the law of the member states to which the data controller is subject"*.

Regarding the existence of a general obligation to collaborate with judges and courts, Organic Law 6/1985, of July 1, on the judiciary (from now on, LOPJ) establishes in I Article 17, the obligation of all public and private persons and entities: *"to offer the collaboration required by judges and courts during the process and in the execution of what is resolved, with the exceptions established the Constitution and the laws"*.

In the case analyzed here, first of all, it should be noted that the recipient of the data is the judicial body. In addition, the data is communicated to the judicial body in the context of a specific investigation, in particular, in the context of a criminal procedure. The purposes of the processing of these data are framed in the exercise of jurisdictional functions, since in this case it is a direct communication to the judicial body and is carried out in accordance with the principles of action established in Organic Law 2/1986 of March 13, on Security Forces and Bodies, which in the fifth article provides: *"The following are basic principles of action for members of the Security Forces and Bodies: 1. Adequacy to the legal system, especially: e) Collaborate with the Administration of Justice and assist it in the terms established in the Law"*. In the same terms, article 11-1 of Law 10/1994, of 11 July, on the Police of the Generalitat - Mossos d'esquadra is pronounced. On the other hand, Article 12 Third of Law 10/1994, of July 11, on the Police of the Generalitat provides that

"The judicial police functions that correspond to him 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

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Organic Law of the Judiciary and the rest of the procedural legislation in force, without prejudice to those corresponding to the local police. These functions are carried out by means of the ordinary services of the Corps or by means of its organic judicial police units, on their own initiative or at the request of the judicial authorities or the fiscal ministry"

And as provided in article 4.9) of the RGPD when public authorities receive personal data within the framework of a specific investigation, the treatment of this data is in accordance with the rules on data protection which are application to the purposes of the treatment.

Well, in relation to this, it is necessary to take into account the specific circumstances of the case. The treatment consisting in the communication of the personal data of the reporting person by the police officers to the judicial body is framed within the functions that the bodies and security forces are assigned both by the Organic Law 2/1986 of March 13, of Forces and Security Bodies as per Law 10/1994, of July 11, of the Police of the Generalitat. In addition, it is personal data whose treatment is carried out in the framework of a criminal procedure. Therefore, the treatment is directly related to the jurisdictional power which in this case has the purpose of establishing the conviction of the judge in relation to the facts that he has to prosecute. In accordance with this, article 236 ter of the LOPJ provides that: *"The Courts may treat personal data for jurisdictional or non-jurisdictional purposes. In the first case, the treatment will be limited to the data as long as they are incorporated into the processes they know about and their purpose is directly related to the exercise of jurisdictional power"*.

And in accordance with article 236 quater of the LOPJ, the consent of the affected person will not be necessary for the treatment: *"In accordance with the provisions of article 11.2 of Organic Law 15/1999, of December 13, the consent of the interested party will not be necessary for the Courts to proceed with the processing of the data in the exercise of jurisdictional power, whether these are provided by the parties or collected at the request of the Court itself, without prejudice to what is provided in the procedural rules for the validity of the test"*.

As explained in section 2.1, the data communicated by the police officers to the judicial body are linked to the judicial request, since they refer to the same facts that the judicial body must prosecute. Specifically, on the occasions when the police went to the family home in relation to some problem with the people mentioned in the court order. In this specific case, the data of the reporting person provided to the judicial body are related to the problem to which the judicial request referred, as the reason why the reporting person required the presence of the police in the family home is related to Mr. (...). In view of the above, the processing of data carried out by police officers, without the consent of the affected person, would be protected by the request made by the judicial body.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts

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that have been addressed in this resolution, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is appropriate to agree to its archive.

Therefore, I resolve:

1. File the actions of prior information number IP 355/2020, relating to the DGP of the Department of the Interior.
2. Notify this resolution to the DGP of the Department of the Interior 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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,