

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 359/2020, referring to the City Council of (...).

Background

1. On 24/11/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the City Council of (...), on the grounds of an alleged non-compliance with the regulations on personal data protection.

The complainant (an agent of the Urban Guard of (...)) first stated that on 23/08/2020 he was taken off leave due to temporary incapacity and that "an official of the City Council of (...)" informed Mr. (...) (head of the Urban Guard of (...)) that he was on leave. The complainant indicated that this communication would have taken place while Mr. (...) was on vacation, which is why during that period a certain sergeant had been designated as accidental head of the Urban Guard.

Secondly, the complainant stated that Mr. (...) privately hired the services of a detective company to carry out a labor monitoring regarding his person.

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

2. The Authority opened a preliminary information phase (no. IP 359/2020), 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.

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.

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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. On access to information during the holiday situation of the head of the Urban Guard.

First of all, the complainant states that "some" employee of the City Council of (...) he informed the head of the Urban Guard (Mr. (...)) that he was on leave. The complainant emphasizes that this communication would have been made while the head of the Urban Guard was on vacation and replaced by another officer.

In advance, it is worth saying that the person making the complaint does not provide any evidence that would allow it to be inferred that any employee of the City Council had communicated to the head of the Urban Guard of (...) his situation of leave.

Without prejudice to the above, it should be borne in mind that article 27.b) of Law 16/1991, of July 10, on the local police, establishes that it corresponds to the head of the local police force "Evaluate the needs of human and material resources and formulate the relevant proposals."

Well, even though the chief inspector of the Urban Guard could be on vacation at the time he would have been aware of the absence from work of the person reporting here, nor in the hypothetical case that he would have been aware of this situation by an employee of the City Council, it can be considered that this eventual communication involves a violation of the regulations on data protection to the extent that the head of the Urban Guard continued to be a person authorized to access that information necessary for in the exercise of their functions.

2.2. About hiring a detective.

Secondly, the complainant stated that Mr. (...) privately hired the services of a detective company to carry out a labor monitoring regarding his person.

In his letter, the complainant already made it clear that the hiring of a detective company by Mr. (...) it was in a private capacity.

Likewise, the person making the complaint provided a copy of the report of the "urgent declaration to the Chief Inspector of the Local Police of (...), D. (...) on May 28, 2019, in relation to [the] Mayor's Decree no. 841/2019".

In that statement, Mr. (...) he stated to the instructor's questions that he, "directly", hired the services of a detective to "be able to defend myself" from a false accusation, according to him

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indicated this one. In turn, in this statement before the instructor of the identified file, Mr. (...) he added that he did not inform either the councilor or the mayor of the decision to investigate the person reporting here through a detective company, because "it was about looking for the truth of my statements (...)." And in the same statement, Mr. (...) concluded that "The City Council did not intervene" and that "I did not need authorization because I did it on a personal level to defend myself from a crime that was directly attributed to me."

That being the case, the reported conduct cannot be attributed to the City Council of (...).

Having said that, the detective company and the person who contracted its services in a personal capacity (Mr. (...)), do not fall within the scope of action of this Authority in accordance with the article 156 of the Statute of Autonomy of Catalonia and article 3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

In accordance with the above, and given that in accordance with article 141 of Law 40/2015, of October 1, on the legal regime of the public sector, public administrations are obliged to respect the legitimate exercise of the powers of the other administrations, it is considered appropriate to transfer these previous actions to the Spanish Data Protection Agency, in order to elucidate any responsibilities that the detective company and Mr. (...).

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, that the City Council of (...) had committed any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, its archive should be agreed.

Therefore, I resolve:

1. File the actions of prior information number IP 359/2020, regarding the City Council of (...).
2. Transfer the referenced actions to the Spanish Data Protection Agency, regarding the processing of personal data carried out by the detective company and Mr. (...), with a testimony of this resolution translated into Spanish.
3. Notify this resolution to the City Council of (...) and to the person making the complaint.
4. 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.

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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,