

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

## File identification

Archive resolution of the previous information no. IP 370/2020, referring to Barcelona City Council.

## Background

1. On 01/12/2020 the Catalan Data Protection Authority received a letter in which a person filed a complaint against Barcelona City Council, on the grounds of an alleged breach of the regulations on data protection personal data. In particular, the reporting person stated that on the night of 14/11/2020 at 9:30 p.m., he was reported by an agent of the Urban Guard to the police station of the District of Ciutat Vella, in Barcelona. The complainant maintained that the agent had photographed, with his personal mobile phone, his ID, his driver's license and the number plate of his vehicle, which in his opinion violated the duty of confidentiality.
2. The Authority opened a preliminary information phase (no. IP 370/2020), 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, by means of a letter dated 01/27/2022, Barcelona City Council was required to report on several points related to the events reported.
4. On 16/02/2022, Barcelona City Council responded to the aforementioned request through a letter in which it denied the reported facts, stating the following:

*"It follows from the report of the Ethics and Internal Affairs Unit of the Urban Guard that, after making the appropriate arrangements to clarify the factual circumstances, the agent who intervened in the events does not remember taking any photographs of the complainant's documents, since it is not necessary to make a complaint, ensuring that whenever he has to make a complaint, he does so with the provided mobile device PDA."*

5. Given the City Council's response, on 03/28/2022 the Authority requested the complainant, by letter of the same date, that within 10 working days from the following day of the reception of the office, manifest or provide some circumstantial evidence of the facts he had denounced from which his commission could be inferred.

The period granted passed without the Authority receiving any writing from the person making the complaint.

6. On 04/25/2022, the Authority again required the Barcelona City Council to provide additional information, as well as certain documentation, among other things, the ticket

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of complaint extended to the person making the complaint and the rest of the documents of the disciplinary file processed in his case as a result of this complaint.

7. On 03/05/2022, Barcelona City Council responded to the aforementioned request through a letter, in which it set out the following:

*"(...) according to the report of the Office of Support to the Prefecture of the Urban Guard dated April 27, 2022:*

*It has been verified that the agent (...) made the complaint with PDA no. (...) for the offense with code 1069 for riding on the pavement with a moped at 21:27 hours of November 14, 2020. Attached is a copy of this ticket and the rest of documentation of the administrative file, in which there are no photographic images.*

*Also, according to the management of the Deontology and Internal Affairs Unit to clarify the circumstances of the events, the agent did not have any photographs and made the complaint without providing a copy given the pandemic situation. That this was processed electronically via PDA without attaching any supporting documents, as is usual for this type of infringement."*

The City Council also stated that it accompanied the administrative file requested by the Authority, made up of the following documentation:

- Complaint slip no. (...), issued by the agent of the Urban Guard no. (...) in date 04/11/2020 at 9:27 p.m., on Carrer Rambla, no. 43, from Barcelona. In this ticket it is stated as a reported fact "circulating on the pavement with a moped", and as the precept infringed article 125.1 of the General Regulations of Circulation is pointed out. In the section corresponding to the reported person, identify the person reporting here with their first and last name, no. of ID and postal address. Regarding the vehicle involved, a moped is identified with the no. of registration, and it is specified that the complaint was not delivered by hand.
- Copy of the letter entitled "notification of complaint for traffic violation", issued on date 17/11/2020 by the Municipal Finance Institute of Barcelona City Council (IMHB) against the person making the complaint here, to whom it is addressed by post (receipt no.: (...), no. file: (...). This letter includes information regarding the complaint, the sanctioning procedure and the fine payment letter, among which the following should be highlighted:
  - o The identification data of the person reporting here, who is listed as a infringing subject
  - o The information on the alleged facts: the date of the facts (14/11/2020), the time of the commission of the offense (9:27 p.m.), the identification number of the reporting agent (which matches the number that the person making the complaint here indicated in the complaint he submitted to the Authority), and the place where the infringing act would have been committed (La Rambla street, no. 43, which coincides with the address of the Office of complaints from the Barcelona Urban Guard);
  - o The infraction that was imputed to the person reporting here ("circulating on the sidewalk with moped").

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- Proof of notification from the Post Office, indicating the date of notification on 01/12/2020.
- Certificate dated 03/05/2022 from the IMHB, in which it is stated that, according to the tax and revenue databases of municipal public law, the amount of the fine corresponding to the infringing act is shown as having been paid imputed to the reporting person.

8. In view of the additional information provided by the City Council, on 05/09/2022 the Authority again requested the complainant, by letter of the same date, that within 5 working days from the day after receiving the notice, he manifested or provided some circumstantial evidence of the facts he had denounced from which his commission could be inferred. Warning him that, otherwise, it would probably agree to file his complaint, due to lack of proof of the facts reported.

9. After the deadline has passed, it is established that the Authority has not received any writing from the person making the 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.

The complainant stated in his written complaint that on the night of 14/11/2020 at 9:30 p.m., he was reported by an agent of the Urban Guard to the police station of the District of Ciutat Vella, in Barcelona, and that this officer had photographed, with his personal mobile phone, his ID, his driver's license and the number plate of his vehicle.

From the documentation provided by the Barcelona City Council to the Authority, it appears that the complaint that this City Council made against the person reporting here on the date of the events reported, obeyed the commission by this person of a violation of traffic regulations, for driving a moped on the sidewalk of a city street.

In this regard, it should be noted that the Guàrdia Urbana de Barcelona is the competent authority for the regulation of urban traffic in this city. Specifically, article 7 of Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, motor vehicle circulation and road safety, states that it is up to the municipalities: "a)

*The regulation, ordering, management, surveillance and discipline, by means of its own agents, of traffic on the urban roads under its ownership, as well as the reporting of infractions committed on the aforementioned roads and the sanctioning of those when is not expressly attributed to another administration".*

On the other hand, article 11 of Law 16/1991, of July 10, on the local police, establishes that the following functions correspond to the local police, in their scope of action: "b) Order, signal and direct traffic in the urban core, in accordance with what is established by the traffic rules (...) d) Exercise administrative police, in order to

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*to ensure compliance with the regulations, ordinances, bans, resolutions and other provisions and municipal acts, in accordance with current regulations (...). Finally, Article 87.2 of the aforementioned Law on Traffic establishes that in complaints about traffic incidents the officers of the authority must in any case record: "a) The identification of the vehicle with which the offense was committed the alleged infringement. b) The identity of the accused, if known; c) (...); d) The name, surname and address of the complainant".*

From the documentation provided by the City Council for the present actions, it has been proven that, in the exercise of the functions of monitoring compliance with traffic regulations, the aforementioned agent visualized the infringing event, and collected various identifying data from the person reporting here, for the purpose of filling out the complaint form for violation of traffic regulations.

However, the City Council does not recognize that the agent collected the data of the person making the complaint by taking a photograph with his personal phone, given that at first he stated that the agent did not remember taking any photographs, since *"no it is necessary to make a complaint"*, and that *"whenever he has to make a complaint, he does so with the PDA mobile device"*, in allusion to the personal digital assistants provided by the City Council to its agents. And in a subsequent letter, responding to this Authority's request for additional information, the City Council pointed out that the agent in question had made the complaint with his PDA, that this agent *"did not have any photographs"*, and who processed the complaint through his PDA *"without attaching any supporting documents, as is usual for this type of infringement"*. On the other hand, in the documentation provided by the City Council, corresponding to the administrative file processed following the traffic violation complaint, there is no photograph.

So things, this collection of data through the indicated device, would be protected by the legal basis provided for in article 6.1.e) of the RGPD, which provides that the treatment will be lawful if *"the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the controller."*

The set of demonstrations made by the City Council are plausible, since, among other considerations, the collection in the complaint form of certain identifying data of the person allegedly infringing and of the vehicle involved, in order to process the corresponding sanctioning procedure, they do not require the collection of photographic images, and the truth is that the administrative file provided by the City Council does not contain any photographs. On the other hand, the Authority does not have any evidence to infer that the agent involved had taken photographs, nor that he had used his private mobile phone to collect identifying data of the person making the complaint.

The Authority notified the person denouncing the City Council's allegations, so that he would state or provide some circumstantial evidence of the facts he had denounced, warning him that if he did not provide this information, the actions for lack of proof of the facts he had reported. But on the date of signing of this file resolution, the deadline granted by the Authority for that purpose has passed, and no written response from the person making the complaint has been entered in the Authority's register.

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In accordance with the above, and given that the Authority does not have elements that allow it to question the statements made by the City Council, the principle of presumption of innocence is applicable given that it has not been possible to prove the existence of evidence of infringement in relation to the facts reported here and, therefore, administrative responsibility cannot be attributed to the reported entity. 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 legal basis 2, and given that during the previous information it has not been proven that there are rational indications that allow Barcelona City Council to be charged with any fact that could be constitutive of any of the infractions provided for in the applicable legislation, it is necessary to agree on the archiving of these actions. 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: *"b) When the facts are not accredited"*.

Therefore, I resolve:

1. File the actions of prior information number IP 370/2020, 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,