

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

File identification

Archive resolution of the previous information no. IP 394/2020, referring to the Catalan Traffic Service

Background

1. On 15/12/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Catalan Traffic Service (hereinafter, SCT), on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the person making the complaint stated that he had received notification of an agreement to initiate a sanctioning file (file no. (...), originating from a complaint dated 02/29/2020, dated which was no longer the owner of the vehicle with registration (...), with which the offense would have been committed. In this regard, the person making the complaint stated that he ceased to be the owner of said vehicle on 21/10/2019, when he sold it, and justified this by providing a copy of the private purchase-sale contract, and added that subsequently, the said vehicle was once again the subject of a new sale (date 20/11/2019). Likewise, the complainant complained that the notification of the initiation agreement was made at a home where he did not reside. In relation to the above, the complainant stated that he had notified the said change of ownership of the vehicle and address to the SCT "with respective written allegations."

The reporting person provided various documentation relating to the events reported, specifically, the following:

- Copy of the first statement of objections submitted against the agreement to initiate the sanctioning procedure (file no. (...), with date of entry 09/07/2020 in the register of the Territorial Traffic Service of Barcelona

In said letter, he claims that the vehicle (...) is no longer his property, and he attaches a copy of the private purchase-sale contract for said vehicle, dated 10/21/2019, between here complainant and a third party. In the letter, he states as his private address an address in the municipality of (...), which coincides with the address of the address where he was notified of the agreement to initiate the sanctioning procedure.

- Copy of a second statement of objections presented against the agreement to initiate the sanctioning procedure, with date of entry in the register of the Barcelona Territorial Traffic Service on 09/10/2020.

In said letter, he sets out the different successive transmissions of which the vehicle has been subject (21/10/2019, 20/11/2019 and a third transmission without

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contract) to justify that since 21/10/2019 he is no longer the holder. It provides copies of the various sales contracts, and a copy of a very poor quality of the document "justificante profesional de tramitación de vehicules" in which the date and the name of the transferor cannot be read clearly, but, according to s infers from his allegations, he would refer to the second transfer of the vehicle between two individuals different from the complainant here, dated 11/20/2019. In the letter, he states as private address an address located in the municipality of Barcelona, different from the one stated in the notification of the initiation agreement.

2. The Authority opened a preliminary information phase (no. IP 395/2020), 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, on 03/15/2021, the reported entity was required to report, among others, on whether on the date on which the sanctioning procedure was initiated (file no. ...), one of the signatory parties to the vehicle purchase and sale contract (...) had notified the SCT of the change in ownership of the vehicle, and if the reporting person had notified a change of address.

4. On 03/29/2021, the SCT responded to the aforementioned request through a letter in which it set out the following:

- That "On the date the file was initiated (4-8-20) none of the parties to the contract had communicated the change of ownership of the vehicle, nor any change of address."
- That "This data update should have been done before the DGT, owner of the vehicle registry. This is provided for in article 33.1 RD 2822/1998, of December 23, which approves the General Regulation of vehicles."
- That "The SCT consults the DGT database for the first time in this file on 7-6-20 at 8:41 am. The result of the inquiry is that the owner of the vehicle between 8-3-16 and up to 13-5-20 is the person with dni (...)" (DNI of the reporting person).
- That "Regarding the domicile of the person reported, the DGT database contains three changes of domicile: 26-3-2013, 12-9-2017 and 28-12-2020. Since the consultation was carried out as we said on 6-7-20, they were sent to the address that the person reported to DGT on 12-9-17"

The reported entity attached various documentation to the letter.

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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 antecedents, it is necessary to analyze the reported facts that are the subject of this archive resolution, specifically, if when the SCT initiated a sanctioning procedure for a traffic violation against the person reporting here, the 'entity made use of accurate, adequate and relevant data, both regarding the identity of the owner of the vehicle on the date of the complaint (29/02/2020), and the address where the notification was made initiation agreement (04/08/2020).

In this regard, it should be noted that, according to the complainant here, on the date of the complaint that justified the initiation of the disciplinary procedure of the SCT, he no longer he was the owner of the vehicle, with registration (...), with which the offense would have been committed. In this regard, he provided a copy of the purchase-sale contract of said vehicle, formalized by the complainant here and a third party on 10/21/2019. Likewise, he stated that, in turn, the buyer of the vehicle sold it a month later and that this change would have been notified to the SCT "with respective written pleadings", and provided together with the said writings of legations presented against the initiation agreement, a blurred copy of the document "justificante profesional de tramitación de vehicules".

Having arrived at this point, it is necessary to indicate that it is not in question here that prior to the date of the events reported, the person reporting here had formalized a private contract for the purchase and sale of the vehicle, as justified by the contribution of the corresponding contracts, or that an administrative manager had initiated the administrative processing of a change of vehicle name, but if the SCT took care that the personal data processed to notify the initiation agreement were correct.

In this regard, it should be noted that, according to the complainant himself, the contribution of the referenced documentation to the SCT was made at the time of presenting the allegations in the initiation agreement, therefore, once the controversial notification of the initiation of the sanctioning procedure. Likewise, the SCT states that before dictating the initiation agreement "none of the parties to the contract had communicated the change of ownership of the vehicle, nor any change of address."

In this sense, it should be added that articles 32 and 33 of Royal Decree 2822/1998, of December 23, approving the General Regulations for Vehicles, which refer to changes in vehicle ownership, distinguishing transmissions between people who are not engaged in the purchase and sale of vehicles of those in which sellers of

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vehicles, establish that when the owner of a vehicle transfers it to another person, he must notify the Traffic Office and attach a series of documents, and warn that "If the transferor fails to comply with the notification obligation mentioned above, without prejudice that the corresponding sanctioning procedure is instituted, will continue to be considered the owner of the vehicle transferred for the purposes of the legislation on traffic, movement of motor vehicles and road safety, as long as it is not registered in the name of another person at the request of this , accompanied by proof of acquisition and other documentation indicated in section 3."

Therefore, compliance with the transferor's obligation to notify the sale of the vehicle to the Traffic Prefecture, which is the entity competent to register vehicle transfers in the Vehicle Registry, has significance for "the effects of the legislation on traffic, movement of motor vehicles and road safety", that is, in a purely administrative order, regardless of whether, according to the terms of articles 32 and 33, the sale is perfected and the transfer of ownership takes place before of the notification and registration in the Vehicle Registry, with only compliance with the rules of the Civil Code.

Having said that, it should be borne in mind that the reported data processing is within the framework of an administrative sanctioning procedure, where the fact reported was that of "Not having arranged the compulsory civil liability insurance of the reviewed vehicle", and " the responsibility for the infringement rests with the owner of the vehicle", in accordance with the Law on Civil Liability and Insurance (art. 2 of RDL 8/2004, of 29 October). As things stand, the person responsible for the commission of said offense was the person who, on the date of the reported event (29/02/2020), was listed as the owner of the vehicle (...).

In relation to the above, Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, motor vehicle circulation and road safety, establishes that the owner of the vehicle is the "Person in whose name the vehicle is registered in the corresponding official register" (Annex I).

That being the case, the SCT states that, before initiating the disciplinary procedure against the person reporting here and the person being reported there, it checked the Vehicle Registry for the identity of the owner of the vehicle on the date the offense was committed. In this regard, they verified that in said register, the person making the complaint was listed as the owner of the vehicle (...), and therefore, in accordance with the regulations applicable to disciplinary procedures in traffic matters, he was responsible of the offense committed.

On the other hand, with regard to the address where the notification was made, article 90 of RDL 6/2015, of October 30, regarding the practice of notification of complaints, provides the following:

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"1. The Administrations with disciplinary powers in the matter of traffic will notify the complaints that are not delivered in the act and the other notifications that result in the disciplinary procedure in the Dirección Electrónica Vial (DEV).

In the event that the accused does not have it, the notification will be made at the address that was expressly indicated for the procedure, and failing that, at the address that appears in the records of the autonomous body Central Traffic Directorate."

In the present case, the SCT explains that before starting the sanctioning procedure they made the consultation, and taking into account that "the DGT database contains three changes of address: 26-3-2013, 12-9- 2017 and 28-12-2020", they sent the notification "to the address that the person reported to the DGT on 12-9-17". In other words, at the home of the owner of the vehicle (...) which was contained in the Vehicle Registry on the date on which the initiation agreement is issued and notified (08/04/2020). Likewise, the SCT states that before the notification of the initiation agreement, the interested person had not indicated or communicated any change of address due to the practice of notifications. It should also be noted here that, in the first statement of objections presented on 07/09/2020 against the initiation agreement, the complainant here stated as his private address the same place where the SCT had practiced said notification. In the case of the second supplementary statement of allegations, dated 09/10/2020, a different address is stated in the heading of the statement, but, in any case, it is obvious that when dealing with a document presented at a later procedural moment, the SCT could not have knowledge of this new address when it practiced the notification of the initiation agreement.

For all the above, it is considered that the SCT made use of accurate and adequate data, both regarding the identity of the owner of the vehicle on the date of the complaint, as well as the address where the 'agreement to initiate the sanctioning procedure.

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.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is evident in the instruction of the procedure. "a) The non-existence of the facts that may constitute the infringement.

Therefore, I resolve:

1. File the previous information actions number IP 394/2020, relating to the Catalan Traffic Service.

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2. Notify this resolution to the Catalan Traffic Service and the reporting person.
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,