

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 numbers IP 334/2020 and IP 407/2020, references to the General Directorate of the Police of the Department of the Interior.

Background

1. On 03/11/2020, the Catalan Data Protection Authority received a letter from a person who made a complaint against the General Directorate of the Police of the Department of the Interior (hereinafter, DGP), on the occasion of an alleged breach of the regulations on the protection of personal data, committed by the Information Technology Security Area (henceforth, ATSI) of the Police Information Systems Division, which depends on the General Technical Commission for Security Planning (which in turn depends on the DGP). The complainant added that he was an agent of the Urban Guard of (...) (hereafter, GU) and that he had been designated as an IT interlocutor in the local area of SIP management.

Despite having the status of IT interlocutor with the DGP, he stated that the head of the GU of (...) requested an audit (it is inferred that he refers to audit no. (...)) in relation to the inquiries made to the SIP Natural Persons and the SIP Vehicles, between August 2017 and mid-December 2018, that he and another agent of the GU of (...) they had performed. The person making the complaint indicated that when the head of the GU requested the said audit, he was on leave, an end that the person making the complaint asserts that ATSI knew.

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

This complaint was assigned IP number 334/2020.

2. The Authority opened a preliminary information phase, in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (from now on, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 09/12/2020 the DGP was required to report whether the reporting person was the computer interlocutor in the local scope of SIP management

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

appointed by the City Council of (...) when audit no. (...) if the head of the GU is considered to be an authorized person to request audits on access to the SIP; whether this audit request must be motivated; as well as whether the ATSI had evidence of the possible leave situation of the head of the GU of (...), when he requested the previously identified audit.

4. On 12/27/2020, the Authority received a new letter from the complainant in which he made another complaint against the DGP. The complainant stated that the head of the GU of (...), while he was on leave, requested the head of the Basic Police Area of the Police of (...) (hereafter, ABP) of the Police of the Generalitat Mossos d'Esquadra (hereinafter, PG-ME), ABP belonging to the South Metropolitan Region, an audit of the accesses to the SIP "for unknown reasons". He added that the aforementioned charge police officer of the PG-ME would have asked for a second audit of accesses to the SIP. The reporting person considered that this person was not competent to request an audit, but that the DGP would be.

The person reporting indicated that the audit (it is inferred that it refers to the second of those that would have been requested, since it would be the one contained in the disciplinary file that was initiated) it would only have been delivered to the head of the GU.

The person reporting provided a provision dated 04/08/2019 of the person who instructed the disciplinary proceedings initiated by the City Council of (...) to the person reporting here and another agent of the GU for alleged illegal access licit in the SIP, in which the statement he took to the head of the GU on 03/28/2019 was transcribed.

In this statement, the head of the GU stated, among others, the following:

- That "I have never used the SIP to request information about any vehicle (...) before buying it, now, once purchased, that I consult a vehicle of mine, I believe that I am not in breach of any type of regulation."
- That "I made these reports [it is inferred that it could refer to the ones he drew up in relation to access to the SIP of the complainant and another agent], born from the news that they say I am dedicated to buying and selling [of vehicles] (...) on a psychological level you are traumatized because it is a lie and what I did was to immediately contact the Head of the Mossos d'Esquadra Corps and I told him: I urgently need to audit the inquiries that they have been done in the SIP with my number, why? Because the person who gave me the number and the key to the SIP was precisely [the person here reporting] (...)." (...) "when he gave me the code, in front of him I asked him to explain how it worked, [and] he told me to change the key, and I changed it in front of him".
- That during "two months, (...) I will have made some inquiries, eight or ten inquiries to see how it worked" [the SIP].

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

- That "this audit, I insist on knowing that my number has been consulted, I took advantage and said, in addition, I need to know if anyone has been consulted about me, at the same audit, and about vehicles that are mine and indeed the result of this audit comes out very clearly [that] whoever had inquired about me and my vehicles, had be [the reporting person].
- That the reporting person "is the one who accesses the SIP to make all the inquiries and subsequently, the information he obtains from the SIP is transferred to [the other agent who was filed] so that he, as a union, makes a complaint to the City Council and before the Court".
- That "with this first audit I see all my queries, my family's, many people's, all my vehicles and from this I request a second audit which is [the one] they have consulted, which is the one you have on file (...)"

This complaint was assigned no. IP 407/2020.

5. On 21/01/2021, the DGP responded to the aforementioned request through a letter in which it stated, among others, the following:

- That the User Management Unit of the DSIP does not have the history of the computer interlocutors of the Local Police. They only have the data of the current interlocutors.
- That the functions of the interlocutor of a Local Police do not include requesting audits from the DSIP.
- That requests for audits, in the case of the PG-ME, must be made by the Head of Region or Division directly to the head of the DSIP and, in the case of the Local Police, the same applies by analogy criteria, so it is requested that the Chiefs of Local Police be the ones to send these requests directly to the head of the DSIP. The motivation to act in this way is because it is considered that it is the person in charge of the service who must control the possible misuse of the system by the agents in their charge.
- That after reviewing the communications made by the head of the Local Police it is not stated that moved that he was on sick leave.

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.

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

2. Based on the background story, it is necessary to analyze the facts reported that are the subject of this file resolution.

In the present case, it is reported that the ATSI carried out two audits, at the request of the head of the GU, even though he was on leave.

In advance, it must be made clear that it does not seem necessary to adduce a specific motivation to request an audit of SIP access, on the understanding that it seems clear that an audit (requested by the authorized person, as 'explained later) aims to verify the lawfulness of the accesses made to the police information systems. In other words, to verify that SIP queries are carried out in the exercise of the functions entrusted to the users who make them.

The DGP has also informed that the audits must be requested by the heads of the local police because it is considered that these are the people responsible for the service and the ones who must control the possible misuse of the SIP by the agents in their charge.

At this point, it should be emphasized that the audit or access registration is a security measure aimed at verifying that the accesses to the information system have been carried out in the exercise of the functions entrusted to the users who access it, as has already been done.

Article 5.1.f) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD) contemplates the principle of integrity that implies that personal data must be processed in such a way as to ensure adequate security, including protection against unauthorized or unlawful processing and against loss, destruction or accidental damage to the data, through the appropriate technical or organizational measures.

For its part, article 32.1.d) of the RGPD provides that the data controller must implement the appropriate technical and organizational measures to guarantee a level of security appropriate to the risk, which if applicable includes a process to verify, evaluate and regularly evaluate the effectiveness of the technical and organizational measures established to guarantee the safety of the treatment. And the 4th paragraph of article 32 of the RGPD also determines that the person in charge must adopt measures to ensure that any person acting under his authority and who has access to personal data can only process this data following the instructions of the responsible, unless obliged to do so by virtue of the law of the Union or the Member States.

Given that the DGP is responsible for the SIP, it is up to her (through the DSIP) to carry out the audits on access to this police information system.

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

On the other hand, with regard to the relative circumstance that the head of the GU was on leave when the audits were requested, it must be taken into account that a series of circumstances come together that would justify the head of the GU alone - asked the Department of the Interior for audits, even though he might be on leave at the time. Specifically, the suspicion of the head of the GU that his SIP code had been used (by the person here reporting, who at the time would be the person who had been appointed accidental head of the GU in the absence of the head of the GU, as indicated by the complainant in his letter of 12/27/2020) or that some other SIP user (GU agents) had been able to consult their data in the police information systems (first audit), a circumstance that it is logical to infer that he would know the DSIP taking into account the object of the audit (the queries through the code of the head of the GU and the queries of other users to his personal data). And with respect to the second audit, it must be borne in mind that the accesses to be audited were those made by the person here complainant (accidental head of the GU) and another agent, audit that was requested to detect irregularities in the previously carried out.

The complainant also stated that the head of the GU would have requested the head of the ABP of (...) (PG-ME), that these audits be carried out. To prove this fact, the complainant provided the statement of the head of the GU of 28/03/2019 before the instructor of the disciplinary proceedings that the City Council of (...) had imposed on him and another officer.

It is not recorded, however, that the said head of the ABP intervened in the request for the audits to the DSIP. In fact, when this Authority requested information from the DGP on whether the ATSI had evidence of the leave situation of the head of the GU when audit no. (...), the DGP responded negatively once the communications made by the head of the GU had been reviewed. Therefore, there are communications between the head of the GU and the DSIP for the purposes of requesting, at least, audit no. (...).

Having settled the above, it must be made clear that the audits on access to the SIP are not to be carried out by the ABP staff, but by the DSIP. Having said that, even if the head of the ABP of (...) (or another command of the PG-ME body) had been the intermediary with the DSIP to carry out the controversial audits, it must be borne in mind that the only The initial audit request would have been made by the authorized person, that is to say, the head of the GU.

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 accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when in the instruction of the procedure

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

manifest the following: "c) When the proven facts do not manifestly constitute an administrative infraction".

Therefore, I resolve:

1. File the actions of prior information number IP 334/2020 and IP 407/2020, relating to the General Directorate of the Police of the Department of the Interior.
2. Notify this resolution to the DGP 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, the reported entity can and the interested parties can file any other appeal they deem appropriate to defend their interests.

The director,