

File identification

Archive resolution of the previous information no. IP 24/2021, referring to the Town Council of Sant Feliu de Pallerols

Background

1. On 01/20/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Sant Feliu de Pallerols Town Council, on the grounds of an alleged non-compliance of the regulations on personal data protection.
2. The complainant complained that following the publication of a tweet on social networks, on 15/01/2021, a councilor from the City Council called her on her private mobile phone number to ask for an explanation about the published tweet. Regarding this, the complainant added that when he asked the councilor how he had accessed his private telephone number, the councilor replied that *"as a councilor he has access to the data of the inhabitants of the town and therefore they can use it."* The person making the complaint provided documentation from which the existence of the controversial call by the councilor was inferred, and a copy of the request that, on 01/18/2021, he presented to the Consistory in which he set out the same facts as those here denounced
3. The Authority opened a preliminary information phase (no. IP 24/2021), 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.
4. On 04/07/2021, he received a letter from the complainant in which he explains that the City Council had responded to the request he submitted on 01/18/2021. In relation to this, he stated that, contrary to what the City Council said, the *"councilor called me about a tweet on Twitter that referred to a person who had stayed in the town. It had nothing to do with him, nor the council, nor did it refer to any inhabitant of the town."*

The complainant provided a copy of the City Council's response, dated 04/07/2021, in which it is stated, among others, that the referenced councilor telephoned her with *"the purpose of dealing with an issue of his functions as councilor of (...) and in any case, he has fulfilled the duty of confidentiality with respect to the information he was able to access by virtue of his position."*

5. In this information phase, on 04/09/2021, the reported entity was required to report, among others, on the circumstances in which the controversial call of 01/15/2021 took place, and about the source of the data relating to the private mobile phone number of the person making the complaint, to which the councilor had access (...). Also, what would be the legal basis that would legitimize a Councilor calling the complainant in relation to the publication of a tweet on social networks.

6. On 04/23/2021, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That *"the councilor who is part of this matter, stated that he called the phone mobile phone of the complainant, in her capacity (...) of the school (...) of Sant Feliu de Pallerols, on 15/01/2021, with the purpose of dealing with an issue of her functions as councilor of (...) (...), and not to ask for explanations about a tweet published on social networks as the complainant exposes in the statements she has made. For all this, it is categorically denied that the call made by the councilor was for the reasons stated by the complainant."*
- That the councilor *"obtained the complainant's mobile phone number through the core section of the file manager called emunicipis in which various personal data appear: the full name, the DNI, the address, the email and the telephone, which facilitate the users through various procedures that they submit to the City Council via telematics."*
- That *"the emunicipis program is a database that can be accessed by all City Council workers, including councilors, with certain limitations depending on the functions of each one."*
- That *"in the specific case of the complainant, all the personal data that she indicates when she submits an instance through the City Council's electronic office are recorded. Whether you present an instance at a private level, or whether you present it at a professional level for your functions such as (...) of the school (...), the same mobile number is always exposed so that the itself is stored in the database of the emunicipis program in the entry registration section."*
- That *"The use of mobile phone data, which the interested party also uses for development of her professional tasks, we believe that she is protected by a legitimate interest, due to the need for her treatment due to the need for communication between the councilor of the City Council and the complainant, in her figure (...) of the "school."*

The reported entity attached various documentation to the letter.

7. On 11/04/2022 and still within the framework of this preliminary information phase, this Authority made a second request to the reported entity in order to obtain more information, and in this sense, it was require him to report on which of the different subjects in which the councilor of "(...)(...)" *has competence*, the telephone conversation of 01/15/2021 between said councilor and the person could be framed reporting In this respect, the entity was required to specify the topic of conversation, and justify the association of the subject treated with the functions performed by the councilor by reason of his office. Also, that in the event that the topic discussed was not linked to (...), explain why this matter was pointed out in the City Council's response letter, dated 04/07/2021.

8. On 04/27/2022, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That the councilor *"held a conversation with the complainant in relation to a project that he wanted to propose to the school to participate in several workshops run by the Foundation Emys to make boys and girls aware of which species they can find in the protected area of Bruguet and what their natural values are. To understand the situation, it is explained that the Emys Foundation is a non-profit organization dedicated to the*

- nature conservation and that works with various local actors to carry out sustainable management of the territory through different means, among them, education (...)(...)."*
- That *"as councilor of (...) and (...) he contacted the now complainant, who we remember is the (...) of the school (...). At that time, the project still did not have a defined structure, and the councilor wanted to talk to the (...) of the school about this matter to find out the possible interest of the school, approach the project with more perspective and thus be able to transfer the details to the Emys Foundation. During the call, the councilor began by explaining the idea of the project, however, the school's (...) did not respond to the proposal that was being offered to him, and instead began to talk about other topics unrelated to the reason for the call and asking for explanations as to why she was being called on her phone; then the complainant hung up and the conversation was terminated."*
 - That *"the conversation held with the complainant was carried out within the scope of (...) and (...); in (...) because it is a protected rural area and in (...) because the Gorgs del Brugent area is an area that attracts a lot of (...) and the project also had an important aspect in this area. It is for this reason that the letter also indicated the connection of the councilor in the field of (...), for this reason and also because it was wanted to transfer to this Authority all the functions assigned to the councilor at a general level since he didn't think it necessary to specify the real topic of the conversation."*

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 20 February, which approves the Statute of the Catalan Data Protection Agency, is competent to issue this resolution I(.. .) 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 archive resolution, and specifically, if the access of the councilor of the City Council's governing team to the telephone number mobile phone of the reporting person, was protected by the personal data protection regulations.

First of all, it should be noted that Regulation (EU) 2016/679, of the Parliament and of the European Council, of April 27, 2016, General Data Protection (hereinafter, RGPD), establishes that all processing of personal data it must be lawful, loyal and transparent (art. 5.1.a).

In this respect, article 6.1 of the RGPD regulates the legal bases on which the processing of personal data can be based. Specifically, section c) provides that the treatment will be lawful if *"it is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment"*. Article 6.3 of the RGPD establishes that the basis of the treatment indicated in this article 6.1.c) must be established by the Law of the European Union or by the law of the Member States that applies to the person responsible for the treatment. The reference to the legitimate basis established in accordance with the internal law of the Member States referred to in this article requires that the rule of development, when dealing with the protection of personal data of a fundamental right, has the status of law (Article 53 EC), as recognized in Article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter, LOPDGDD).

In this regard, it should be noted that taking into account that what is raised in the letter of complaint is the access of a councilor to the database of the council's file manager

(emunicipis), in order to access the mobile phone number of the person reporting here, in this case, the provisions established by the local regime legislation, fundamentally, Law 7/1985, of 2 April, regulating the bases of the local regime (LRBRL), and the revised Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28 (TRLMRLC).

Well, article 77.1 of the LBRLL establishes that *"all members of local corporations have the right to obtain from the Mayor or President or the Government Commission any background, data or information held by the Corporation's services and they are necessary for the development of their function"*. In the same sense, the TRLMRLC pronounces itself, by providing, in its article 164.1, that *"all members of local corporations have the right to obtain (...) all the background, data or information that are in the possession of the services of the corporation and are necessary for the development of its function."* For the case at hand, it should be noted that, among the cases in which the corporation's services must provide information directly to the members of the corporations, article 164.2 provides, when *"a) They exercise delegated functions and the information refers to matters of their own responsibility."*

That being the case, it is considered that the councilor's access to the *"municipal" file manager*, where included the contact details of the person making the complaint, and in particular his mobile phone number, would fit into one of the cases of direct access provided for in article 164.2 of the TRLMRLC, as long as and when he had acted in the exercise of his duties as a councilor

Having said the above, it should be noted that in the present case there are two conflicting versions about what motivated the controversial call, and therefore, about whether when the councilor made it he was acting in the exercise of his duties.

On the one hand, the complainant denies that the councilor of the City Council called her to deal with any issue related to the council she occupied, but to ask him for explanations about a tweet she had published, the content of which is not reported in the complaint. On the other hand, the City Council maintains the version of the councilor, that the call was to discuss an issue on one of the subjects that correspond to him in the exercise of his duties as a councillor, and that he called it in his capacity (...)of the school (...). Regarding this, it should be noted that, since the councilor held a council office that did not include the subject of education, but others as broad and diverse as (...)(...), it was considered necessary to require the City Council to report in detail on which of the different subjects in which he held office

councilor's powers, the telephone conversation between said councilor and the person making the complaint could be framed. In this regard, the City Council justified the call to the complainant, also (...), within the scope of his functions as councilor of (...) and (...), as he wanted to speak of the Emys Foundation, a non-profit organization dedicated to nature conservation, and specifically, the environmental education workshops that the Foundation offers for schools. In this sense, it should be noted that, certainly, on the website of this Foundation, it is indicated that one of the work areas is *the Education and Volunteering Area*, where the different pedagogical activities and workshops directed mainly in school centers. On the other hand, the entity also states that the (...) of the school *"did not attend to the proposal that was being offered to him, and on the contrary began to talk about other issues unrelated to the reason for the call and asking for explanations as to why he was calling her on her phone; then the complainant hung up and the conversation was terminated."*

That's the way things are, and despite the two contradictory versions, the truth is that there is no evidence to prove that the councilor was not acting in the exercise of his duties, when he accessed the "emunicipis" file manager to obtain the given the phone number of the school's (...) which, according to the city council, is the same phone number that the person making the complaint indicates if they present an instance at a private level, such as if he presents it in the exercise of his functions as (...) of the school (...). Well, there are points of connection between the matter that, according to the City Council, the councilor wanted to discuss over the phone with the school's (...) and the subjects that include his council. All this, without it being possible to rule out that, despite the fact that the initial reason for the call was to deal with the person reporting some issue related to the subjects of which the councilor is responsible, in the course of the conversation could have ended up referring to the controversial tweet. Be that as it may, without a single version of what motivated the controversial call or what topics were discussed, the truth is that there are not enough elements to deny that the councilor's access to the person's contact details reporting content to the file manager (...), other than to deal with a matter of his responsibility, in the exercise of his functions as councilor of the government team
municipal

Having reached this point, it must be taken into account that the sanctioning administrative procedure is particularly guarantor because of the consequences that can be derived from it. That is why it is necessary, for its initiation, the existence of evidentiary elements or sufficient rational indications that allow the commission of an infringement to be imputed, elements that are not present in the case under examination.

At this point, it cannot be ignored that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, resulting in the full virtuality of the principles of presumption of innocence and *in dubit pro reo* in the area of sanctioning authority, which shifts the burden of proving the facts and their authorship to the accuser. In short, the presumption of innocence must always rule without exception in the penal system and must be respected in the imposition of any penalty.

So things are, it is considered that in this case, the access of the municipal councilor to the database of the manager of municipal files to know the telephone number of the person making the complaint, was in the exercise of the functions that belong to him, and therefore, it would be protected by data protection regulations, since it would be legitimate treatment based on articles 77.1 of the LBRL and 164 of the TRLMC.

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 the following is highlighted in the instruction of the procedure: "*c) When the proven facts do not manifestly constitute an administrative infraction*".

Therefore, I resolve:



Autoritat Catalana de Protecció de Dades

1. File the actions of prior information number IP 24/2021, relating to the Town Council of Sant Feliu de Pallerols
2. Notify this resolution to the Sant Feliu de Pallerols Town Council 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, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,

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