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File identification

Archive resolution of the previous information no. IP 25/2021, referring to the General Directorate of Police of the Department of the Interior.

Background

1. On 20/01/2021, the Catalan Data Protection Authority received a letter from Mr. (...) for which he filed a complaint against the General Directorate of Police, on the grounds of an alleged breach of the regulations on the protection of personal data.

First of all, according to the complainant, on 4/11/2019 the following *tweet was published on the @(...) profile of the Twitter social network:*

"A known criminal from (...), (...). sentenced to prison for violent delights, candidate of (...) and "(...)(...)" is acting as a confidant of the Spanish police. Is that so Minister (...), how do you deal with independence? How much money do you get paid for dirty work?"

Secondly, he complained that the profile @(...) had been created and was administered by police officers and that they had published his photograph without his permission, as well as his criminal record.

The reporting person provided a screenshot, from which it can only be deduced that it is a WhatsApp message (not a tweet) that a third party would have sent to the reporting person's daughter, which contains the word "Forwarded", the text transcribed above and a photograph. Below is the following sentence: *"Hello beautiful, is your father????"*. But there is no record of the authorship of the forwarded text, nor are there any indications that allow us to state that it is of a *tweet*

2. The Authority opened a preliminary information phase (no. IP 25/2021), 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.

3. On 03/19/2021, as part of this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that by entering the name and surname of the reporting person into the Google search engine (www.google.com), approximately 37 results (2 pages) were returned. And a

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the "Images" section of the search engine obtained, first of all, the same photograph that appears in the screenshot provided by the reporting person.

Regarding the results obtained, first of all, a *tweet* dated 11/08/2018 from the profile @(...) identified as "(...)" is shown, which *tweets* the following:

"(...) (neighbor of (...), the aggressor of (...). More than 40 backgrounds. Arrested 26 times for robberies, thefts, document falsification, property crimes, assault on authorities and coercion and threats among others. Let him run!!!"

In addition to the text, a photo identical to the one in the screenshot was posted provided by the reporting person and that the reporting person identifies as their image. The *tweet* has been *retweeted* 63 times, has 20 *likes* and spawned a thread of conversation with several messages.

Then, in position 3, 4 and 6 are shown a series of links to various media that report on news relating to the reporting person.

In the 3rd position there is a link to a newspaper article (...) dated June 2, 2008 ([https://\(...\)](https://(...))), with the following text:

"The Mossos have arrested four alleged members of a network that falsified (...)"

In 4th position there is a link to a news item dated 07/07/2019 on the website of (...) ([https://\(...\)](https://(...))), among others, with the following content:

"The Court of First Instance of (...) has convicted a man who assaulted a neighbor of (...) ((...)) when he tried to record him (...).

(...) (neighbor of (...)) is the name of the aggressor of (...) who has several judicial records (...)."

The news is illustrated with the same photograph shown in the screenshot provided by the reporting person.

In the 6th position there is a link to the newspaper (...), which refers to a news item dated 08/10/2018 entitled "On provisional release the accused of assaulting several people (...) in (...)" ((...)).

"The court of instruction of guard (...) has provisionally released (...), the neighbor of (...) arrested by the Mossos d'Esquadra this Friday morning for being the author of a

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assault with a ladder on a neighbor of (...) ((...)) and threats with a knife (...) with four other hooded people.

(...)

In addition to having been imprisoned, he has a long record with more than 40 records among the various police forces. (...)."

4. On 06/18/2021, still in the midst of this preliminary information phase, the Authority's Inspection Area carried out checks via the Internet on the facts subject to the complaint.

Specifically, the social network Twitter (www.twitter.com) was accessed, "@(...)" was entered in the search engine and it was found that the account had been suspended. There was only the following message "Suspended account", without any accessible content.

An advanced search was then performed looking for *tweets* and *retweets* made from the account "@(...)", but the search returned no results. Only a few results were obtained where @(...) was explicitly mentioned in relation to account suspension. For example, on 31/12/2019 the user @(...) *tweeted* "Censored the account of (...)".

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 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.

In advance, the regulatory framework applicable to the events reported is set out:

Article 4.1) of the RGDPR defines personal data as follows: "1) *"personal data": all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person;*

And in article 4.2) data processing is defined: *"any operation or set of operations carried out on personal data or sets of personal data, whether by*

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automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, dissemination or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction .”

In accordance with the normative framework transcribed, in the case in question the publication of the personal data of the reporting person constitutes processing of personal data.

Having said that, the facts reported are now being analyzed. The complainant complains that on 4/11/2019 from the profile @(...) of the Twitter social network, the controversial text was published together with his photograph.

However, neither from the evidence provided in the complaint, nor from the checks carried out by the Authority via the Internet, no indications have been found that allow it to be determined that the text was published from the profile @(...) and the reported photograph. On the one hand, because from the screenshot provided by the complainant it can only be concluded that it is a text forwarded from the WhatsApp social network by an unidentified person to the daughter of the complainant.

Indeed, neither the authorship can be inferred from the forwarded text, nor can it be observed that it is a *tweet*. On the other hand, because the @(...) account was suspended by the Twitter social network for breaching the Twitter rules" and, therefore, it is not possible to access any content (*tweets* and *retweets*) that have been able to do from this profile.

And, although the specific date is not listed of the suspension, in any case on 31/12/2019 the profile had already been suspended. This is inferred from the *tweet* of the user @(...) who on that date *tweeted* "Censored the account of (...)" and attached a screenshot of the account where you can see "Suspended account."

Even in the hypothetical case that the text object of complaint had been published in a *tweet* from profile @(...), and this account had been administered by police officers, it could not be said that the police officers would have been aware of the information due to their professional activity. Certainly, the source of the reported information could be,

among others, the news published in the digital media and other opinion websites as can be seen in the 3rd antecedent. As an example, highlight the information published in (...) or (...)cat. Effectively, the information about the criminal record of the reporting person (including the photograph) is information that was widely published in different media and that gave rise to several discussions or threads of conversation on the Twitter social network, as shows, for example, user @(...) 's *tweet*, which has been *retweeted* 63 times, has 20 *likes*, and has a thread with multiple messages. In most cases it can be seen that the publications on the social network reproduce the news

published by the digital press, especially following some events that had a certain echo in Catalan public opinion and that were the origin of discussions and opinions of all kinds in the aforementioned social network.

In accordance with what has been presented so far, everything suggests that the origin of the information is found in the publications made in the digital newspapers and in the subsequent opinion debate about the facts

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news that took place on the social network. Only in the event that information had been published that revealed data that only police officers could know because of their professional status, could they be considered responsible for disclosing personal data, which does not happen in this case. In addition, it is necessary to insist on the fact that the account @(...) was suspended by the social network Twitter for violating the conditions of use of this social network, that no information can be accessed in relation to this account

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.

Therefore, I resolve:

1. File the actions of prior information number IP 25/2021, relating to the General Directorate of Police of the Department of the Interior.
2. Notify this resolution to the General Directorate of Police of the Department of the Interior and to 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,