

## File identification

Archive resolution of the previous information no. IP 35/2021, referring to the Town Council of Castelló de Farfanya

## Background

1. On 01/25/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Castelló de Farfanya City Council, on the grounds of an alleged breach of the regulations on data protection

personal The complainant stated the following:

- That the City Council of Castelló de Farfanya handed over private documents of the complainant here, to '*neighbors of his farm and the town*' without having any prior authorization or consent.

- That in these documents you could see data such as the inheritance of the complainant here and that of his brother.

Together with the complaint, he provided an email, dated 11/10/2020, called '*Documentation provided to the Town Council of Castelló de Farfanya*', addressed to the Complaints Ombudsman of Catalonia, which is relevant for the purposes of clarifying the facts that gave rise to the alleged violation of data protection regulations. In this email, he explained that the neighbors of his property had told him that they would pipe a water arm that was inside the complainant's property and, from there, a conflict arose regarding the ownership of said arm. For this reason, he went to the town hall and provided documentation to prove that '*that arm belongs to our property and to ensure that the building permit was not given to the other party*'. Likewise, in the email he continues to relate that, after unsuccessfully trying conciliation to reach an agreement with his neighbors, they "*asked for my documentation that I had previously brought to the town hall and how could you see, it was given to them without respecting the data protection law*".

In order to prove the facts reported, the complainant, in addition, provided a series of documents among which, for the purposes of interest here, the following should be highlighted:

1. Instance of 27/06/2020, presented by the complainant's neighbors with whom she had the conflict, and through which they requested to obtain a copy of the documentation presented by the complainant here, relating to the property (...), in the (...) plot (...), considering that, as an affected party, they had *the 'right to see it'*.
2. Resolution of the city council, of 07/05/2020, in response to the previous instance, and by virtue of which it is resolved '*In response to your request dated June 27, 2020 with registration of entry (...) in which you request a copy of the documentation presented by Ms. (...) [the complainant here]; I inform you that being an interested party in the procedure and being the adjoining owner of the aforementioned property, your request is resolved favorably and the documents requested for your knowledge and relevant effects are delivered to you in attached files.*
3. Instances of 4/11/2020 and 14/12/2020, both presented by the complainant and addressed to the town hall, and through which he requested to know which was the

legal basis that justified the delivery of their documentation including personal data to their neighbors.

Specifically, the documents that were delivered are: a real estate cadastral file, a three-page extract from a deed of inheritance, two informative notes on domain and charges from the Balaguer Land Registry and, finally, an extract of three pages from a deed which, in the heading, refers to the year 1828.

Among these documents, the extract of three pages from a deed of inheritance should be highlighted in which the following literal mention is made:

"(...).

(...)."

4. Report of 14/12/2020, issued by the acting secretary of the town hall and which covered *'on whether giving a private document to a third person without their consent affects the data protection law, being the third party owner adjoining the land of the person requesting the report'*. In summary, this report defends the fact that the neighbors involved have the status of interested persons to the extent that they may be affected by the outcome of the administrative file and, therefore, have the right to access the information contained in the procedure in the that have that condition and to obtain copies of the documents in the file.

2. The Authority opened a preliminary information phase (no. IP 35/2021), 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. In this information phase, on 04/19/2022 the city council complained about was required to report on which specific documents they provided to the neighbors of the complainant with whom she had a conflict and if, among these documents, there was information about the inheritance of the complainant and his brother. Likewise, it was required to report on what was the legal basis and the regulations that legitimized each of the documents delivered.

4. On 04/30/2022, the Town Council of Castelló de Farfanya responded to the aforementioned request through a letter in which it stated the following:

- That there was a neighborhood conflict over an arm of water between two neighboring properties and that each of the owners involved came to be considered an interested person in relation to said conflict.

• That the complainant presented an instance, on 05/29/2020, through which she provided, among other things, the three-page document consisting of an extract from a deed stating that "(...)".

- That the city council understood that from the moment a person presents documentation, this *"becomes public and if it affects a neighboring neighbor as an interested party, it must be given to him for his legitimate interest"*.
  - That, on July 5, 2020, the intervening secretary of the city council officially notified the neighbors of the complainant, in response to her request of 06/27/2020, favorably resolving said request and handing over the requested documentation, as set out in point 2 of the documents provided by the complainant.
- ÿ That on 4/11/2020 the complainant presented an instance in which she requested the legal basis for which your personal data was provided to third parties without your consent and that in response to this a legal report dated 12/14/2020 was delivered and of which mention has been made in point 4 of the documents provided by the complainant.

### **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.

First of all, it must be clarified that the events reported stem from a neighborhood conflict between, on the one hand, the complainant here, owner of the plot (...) of Castelló de Farfanya and, on the other hand, the owners of the adjoining property, plot (...). Between both parties, as a result of the application for a works license in relation to a body of water, which the complainant claimed was located on the property of her property, but that the neighbor of the adjoining property had told him that, *'he would pipe it because according to him, it is his'*.

This fact led to the complainant going to the town hall and providing a series of documents to justify the ownership of his property in order to *"obtain that the building permit was not given to the other party"*. Among the documents provided by the complainant herself was a three-page extract from a deed of inheritance, with the following literal quote (second page):

*"(...).*

*(...)."*

In this context, the complainant here, owner of the plot (...), filed a complaint with this Authority due to the fact that the city council had handed over his private documents to the other party involved in the conflict, these documents provided by the complainant herself with the aim of not granting the license for the works that her neighbors wanted to obtain.

In this regard, it should be borne in mind that, in the face of the actions undertaken by the complainant administratively, the owners of the adjoining property, automatically, became directly affected people, since what was intended was the denial of a building license interested in them. Therefore, they acquired the status of legitimate interested parties in the appropriate administrative procedure and, as affected persons, they had the right to request the documentation provided by the complainant here. For this reason, the access to the documentation granted by the city council is in accordance with the law, considering that it was an interested party and that it had a legitimate interest.

This access is carried out in the context of an administrative procedure in which both the complainant and the neighbors of the adjoining property are involved parties and, therefore, have interests at stake and may be affected by the administrative resolution that falls. For this reason, in accordance with the provisions of articles 4 and 53 of the LPAC, since they were persons who had the status of direct stakeholders, they had the right to obtain a copy of the documents in the file. In this sense, article 4 LPAC applies, which provides:

*"1. The following are considered interested in the administrative procedure:*

*a) Those who promote it as holders of individual or collective legitimate rights or interests.*

*b) Those who have not initiated the procedure, have rights that may be affected by the decision adopted therein. c) Those whose legitimate interests, individual or collective, may be affected by the resolution and are present in the proceedings until a definitive resolution has been reached. (...)"*

On the other hand, article 53.1.a) of the LPAC establishes the right to obtain a copy of the documents contained in the file:

*"a) To know, at any time, the status of the processing of the procedures in which they have the status of interested parties; the sense of administrative silence that corresponds, in the event that the Administration does not dictate or notify an express resolution in time; the competent body for its investigation, in its case, and resolution and the dictated procedural acts. Likewise, they will also have the right to access and obtain copies of the documents contained in the aforementioned procedures. (...)"*

With regard to the content of the extract from the deed of inheritance, it must be said that this information was closely linked to the object of the administrative procedure, which was precisely to find out the ownership of the property of the body of water located in the property of the complainant and which she herself contributed to credit it. Likewise, there is no evidence that the person reporting had exercised his right of opposition in order to prevent third parties who had lawful access to the administrative file from accessing certain information that would have been incorporated into the file from the moment it was provided by the complainant herself.

Therefore, it must be concluded that the transfer of private documentation to the other interested party in the context of an administrative procedure was carried out legitimately and in accordance with Article 53.1.a) LPAC in relation to article 6.1.c) of Regulation (EU) 2016/679 of the Parliament and of the Council, of April 27, relating to the protection of

natural persons with regard to the processing of personal data and the free circulation thereof, under which the processing is enabled when it is *'necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment'*.

**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 constitute, clearly, an administrative infraction;"*.

Therefore, I resolve:

- 1.** File the actions of prior information number IP 35/2021, relating to the Town Council of Castelló de Farfanya.
- 2.** Notify this resolution to Castelló de Farfanya 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,