

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

## File identification

Archive resolution of the previous information no. IP 71/2021, referring to the Town Council of Sant Joan de Vilatorrada.

## Background

1. On 02/17/2021, the Catalan Data Protection Authority received a letter from Mr.

(hereinafter, the City Council), due to an alleged breach of the regulations on personal data protection.

The complainant explained that in the context of an administrative contentious procedure that was brought against the Organisme de Gestió Tributaria de la Diputació de Barcelona (hereafter the ORG), the administrative file was transferred to the Court and, among the documents that made it up, there was an individual historical negative flyer (municipal Register flyer of inhabitants) corresponding to the complainant where his identification data, those relating to the address, as well as the dates of registration and deregistration in the Municipal Register of the City Council. He complains that the City Council issued the register flyer without his consent and also that he contributed to the administrative dispute procedure.

The reporting person provided a copy of the registration form. In this document you could read the following: *"In the Municipal Register of Inhabitants of this municipality, verified as of December 18, 2019, the registration whose data is collected in this flyer does NOT appear."* Next, the register data of the home were reviewed: address and registration number; the identifiers of the inhabitant (the reporting person) and the dates of registration and deregistration from the Municipal Register. At the end of the document is the following caption: *"NOTE: this document is informative in relation to the residence and habitual address in the municipality, in accordance with what is established in article 61 of RD 2612/1996, of 20 December, by which the Regulation of Population and Territorial Demarcation of Local Entities approved by RD1690/1986, of June 11, is modified."*

2. The Authority opened a preliminary information phase (no. IP 71/2021), 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 04/05/2021 the reported entity was required to report on the purpose of data processing consisting in the issuance of the flyer

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

registry office, presumably at the request of the ORGT and on the legal basis that, in their opinion, would justify this data processing.

4. On 05/20/2021, the City Council responded to the aforementioned request through a letter in which it stated the following:

- The City Council, on February 16, 2007, signed an agreement with the Tax Management Organization (ORG), by means of which competence was delegated for the exercise of management functions and powers and collection, among others, of the Tax on the increase in the value of urban land (IIVTNU). In the framework of the exercise of this delegated competence, the purpose of data processing, consisting in the communication of the personal data of the reporting person contained in the registration form, to the ORGT, is the verification of compliance with the requirements to enjoy the exemption of the habitual residence from the Tax on the increase in the value of land of an urban nature (IIVTNU) of the City Council.
- Specifically, the individual historical negative flyer of the Municipal Register is included in the administrative file processed by the ORGT, which corresponds to an appeal for replacement filed by the complainant, against two settlements of the IIVTNU relating to the transmission of two properties located in Sant Joan de Vilatorrada, which were carried out on October 18, 2017.
- The historical registration flyer of the complainant was requested by the ORGT from the City Council, on December 18, 2019, in order to have the necessary information to resolve the appeal presented. The registry flyer was necessary to verify the provenance of the application of the exemption provided for in article 105.1.c) of Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Law regulator of local finances (TRLRHL), and in article 5 of Municipal Ordinance no. 4 on the IIVTNU, of the Sant Joan de Vilatorrada City Council, which establishes the requirement that it be the habitual residence of the person transferring in order to be entitled to this exemption.
- Article 105.1.c) of the TRLRHL, establishes that, for the purposes of this exemption, the habitual residence will be considered to be that in which the taxpayer is registered in the form uninterrupted during, at least, the two years prior to the transfer of the property or from the moment of acquisition if this term was less than two years. To be able to verify this fact, it is necessary to have the historical registry flyer issued by the City Council. Subsequently, the complainant filed an administrative contentious appeal against the resolution of the Management of the Tax Management Organization, dated December 20, 2019, dismissing the reinstatement appeal filed against the settlements of the Tax on the increase in the value of urban land (IIVTNU), corresponding to the transfers made on October 18, 2017. This appeal gave rise to administrative contentious procedure no. (...), before the Administrative Disputes Court no. (...), from Barcelona. As part of this judicial procedure, the administrative file of the appeal was provided, which contains the individual historic negative flyer of the municipal register.
- The legal basis that justifies the communication of the data is that the processing of the data is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers and for the fulfillment of a legal obligation applicable to data controller,

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

in accordance with the following articles: article 7 and article 105.1.c) of the Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Law regulating local taxes; article 16.3 of Law 7/1985, of April 2, regulating the bases of the local regime. Articles 93 and 94 of Law 58/2003, of December 17, general taxation

#### 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.

The reporting facts are as follows: the reporting person states that the City Council issued an individual register flyer corresponding to the municipality's Resident Register containing their personal data, without having required their consent for the issuance and subsequent contribution to an administrative contentious procedure.

It is not a disputed fact that the registry flyer relating to the reporting person was a document that was part of the administrative file that was contributed to an administrative contentious procedure urged by the reporting person.

Prior to the analysis of the specific case, it is advisable to establish the legal framework applicable to the processing of data relating to the Municipal Register.

About the purposes of data processing of the Municipal Register:

Article 15 of the LBRL provides that: *"Every person who lives in Spain is obliged to register in the Register of the municipality in which they habitually reside. Those who live in several municipalities must register only in the one where they live for the longest period of the year. The set of people registered in the municipal register constitutes the population of the municipality. Those registered in the Municipal Register are the residents of the municipality. The status of neighbor is acquired at the same time of its registration in the Register."*

According to article 16.1 LBRL: *"The municipal register is the administrative register where the residents of a municipality are listed. Your data constitutes proof of residence in the municipality and of habitual residence in the same. The certifications that are issued of said data will have the character of a public and binding document for all administrative purposes. (...)"* In the

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

the same meaning is pronounced, article 40.1 of Legislative Decree 2/2003, of April 28, which approves the revised Text of the Municipal and Local Regime Law of Catalonia (TRLMLRC).

Therefore, the Municipal Register has the following purposes: a) attribute the status of neighbor, b) determine the residence in the municipality and the usual address, c) the accreditation of the residence in the municipality and the address, d) determine the population of the municipality

The register is an administrative record, which serves as an instrument for the exercise of municipal powers.

#### 2.1. Regarding the purpose of the treatment in this specific case.

According to the reported entity, on February 16, 2007, the City Council signed an agreement with the ORGT delegating the exercise of management and collection powers to the IIVTNU. That the complainant filed an appeal against the tax settlements relating to two properties of his property. That in order to resolve the appeal presented, the historical registration form of the taxpayer (the person making the complaint) was necessary, given that the provenance of the application of the transfer tax exemption had to be verified

of habitual residence provided for in article 105.1.c) of Royal Legislative Decree 2/2004, of March 5, which approves the revised text of the Local Finance Regulatory Law (hereinafter, TRLRHL), and Article 5 of Municipal Ordinance no. 4 on the IIVTNU, of the Sant Joan de Vilatorrada City Council, which establishes the requirement to apply the exemption, that is to say, that it is the habitual residence of the person transferring. That the ORGT requested the register flyer from the City Council on 18/12/2019 and the Management of the ORGT resolved the replacement appeal by rejecting it. Subsequently, the complainant filed a contentious administrative appeal against the decision of the ORGT Management. This resource gave rise to the

judicial procedure no. (...), before the Administrative Disputes Court (...).

In relation to the exemption applicable to the IIVTNU, article 105.1.c) TRLRHL establishes that: *"The increases in value that manifest themselves as a result of the following acts will be exempt from this tax: c) The transfers made by natural persons on the occasion of the gift in payment of the habitual residence of the mortgagor or guarantor thereof, for the cancellation of mortgage-backed debts falling on it, contracted with credit entities (...). Likewise, the transmissions of the housing in which the previous requirements are met, carried out in judicial or notarial mortgage foreclosures, will be exempt. (...). For these purposes, the habitual residence will be considered the one in which the taxpayer has been registered continuously during at least the two years preceding the transfer or from the moment of acquisition if said period was less than two years.*

---

---

---

In the same sense, article 5 of Tax Ordinance no. 4 on the IIVTNU, approved by the Plenary of the City Council in session on December 20, 2018, in relation to the tax benefits of mandatory concession and fixed amount, which provides: *"2. They are exempt from this tax*

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

*increases in value that occur as a result of the transmissions made by natural persons on the occasion of the donation in payment of the habitual residence of the mortgagee or guarantor thereof, for the cancellation of debts secured by a mortgage falling on the same, contracts with credit institutions (...). Also, the increases in value that occur as a result of the transfers of the usual home in which the previous requirements are met, carried out in a notarial or judicial mortgage execution procedure, are also exempt from this tax. For these purposes, the residence where the taxpayer has been registered continuously during, at least, the two years prior to the transfer or from the moment of acquisition, if said term was less than two years, is considered a habitual residence.*

In this specific case, the issuance of the registration flyer was necessary to verify whether the person making the complaint was registered in the municipality without interruption for at least the two years prior to the transfer of the property in question and, consequently, whether he had or not entitled to apply the tax exemption.

Next, it is necessary to determine whether the City Council could issue the register flyer at the request of the ORGT.

## 2.2. On the legal basis of the treatment of the specific case and the delegation of powers.

The City Council explains that: *"The legal basis that justifies this data processing is that the processing is necessary to fulfill a mission in the public interest or in the exercise of public powers and a legal obligation applicable to the person in charge of the processing on the basis of the following rules: art. 7 and 105.1 TRLRHL and 93 and 94 LGT.*

In this regard, when the City Council processes data in the exercise of the powers attributed to it, the legal basis article 6.1.e) of the RGPD applies, which provides the following: 1. *The treatment will only be lawful if it is fulfilled at least one of the following conditions: e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment.*" According to article 8. 2. of the LOPDGDD, *"the treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided in article 6.1 e) of Regulation (EU) 2016/679, when it derives from a competence attributed by a rule with the status of law."*

Article 106.3. of the LBRL provides that: *"It is the competence of local entities to manage, collect and inspect their own taxes, without prejudice to the delegations that may be granted in favor of local entities of a higher scope or of the respective Autonomous Communities, and of the collaboration formulas with other local entities, with the Autonomous Communities or with the State, in accordance with what is established by the legislation of the State."*

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

Given that article 7 of the TRLRHL allows the delegation of municipal powers in this area: *"1. In accordance with the provisions of article 106.3 of Law 7/1985, of April 2, Regulating the Bases of Local Government, local entities may delegate to the autonomous community or to other local entities in whose territory they are integrated, the powers of management, liquidation, inspection and tax collection that this law attributes to them."* And that the City Council, on February 16, 2007, signed an agreement with the ORGT

delegating the exercise of the powers of management and collection of the Tax on IIVTNU, the City Council issued the register flyer at the request of the ORGT, so that this body could check that the requirements that allow the application of the tax were met tax exemption.

Considering article 16 of Municipal Ordinance no. 4 on the IIVTNU, which on the delegation of powers in matters of municipal taxes to the ORGT, provides: *"1. If the management, inspection and collection of the tax have been fully or partially delegated to the Diputació de Barcelona, the rules contained in the previous articles will be applicable to the actions to be taken by the delegated Administration. This article placed in relation to Article 13, on the verification of self-assessments provides: "1. The managing bodies will verify that the self-assessment has been carried out through the correct application of the tax regulatory rules."*

Well, in accordance with what has been explained so far, the City Council delegated to the ORGT the management and collection of the IIVTNU and, in order to exercise the powers delegated to it, in this case to answer the repletion appeal that the complainant filed before the ORGT against the settlement of the aforementioned tax, it was strictly necessary to check whether the transferred property it was the habitual residence, because as determined by the regulations applicable to the IIVTNU, the tax exemption is only applicable in this case. Given that one of the purposes of the Municipal Resident Register is to certify residency in the municipality and habitual residence, in this context, the ORGT asked the City Council to issue the reporting person's registry flyer, the purpose of which was to check whether the requirements were met that gave the right to the tax exemption for the transfer of the house and to answer the appeal for replacement presented by the person making the complaint. And also that the data that appears on the register is limited to what is necessary to prove whether it is the taxpayer's usual residence. In conclusion, in this case the consent of the person making the complaint was not necessary for the City Council to issue the registry flyer, since the legal basis that legitimizes this treatment activity is not the consent of the affected person, but rather the treatment is necessary to exercise the powers attributed to the City Council and which it has delegated to the ORGT.

### 2.3. On the contribution of the registry flyer to the court

In relation to this, the complainant complains that the registration form was brought to court without his consent.

In the case at hand, it has been proven that the complainant filed an administrative appeal against the resolution of the Management of the Tax Management Organism,



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

of December 20, 2019, dismissing the appeal filed against the settlements of the Tax on the increase in the value of urban land (IIVTNU), corresponding to the transfers made on October 18, 2017. This appeal gave rise to administrative contentious procedure no. (...), before the Administrative Disputes Court (...). As part of this judicial procedure, the administrative file of the appeal was provided, which contains the individual historic negative flyer of the municipal register.

First of all, it must be clarified that the consent of the interested party is also not necessary in order for the judicial body to be able to process their data for jurisdictional purposes, whether this data has been provided by the parties or if it has been requested the same court. Indeed, article 236 ter of the LOPJ, modified by the third final provision of LO 7/2021 of May 26 on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and of the execution of criminal sanctions, provides that: *1. The processing of personal data carried out on the occasion of the processing by the judicial and prosecutorial bodies of the processes of those that are competent, as well as the carried out within the management of the Judicial and Fiscal Office, will be governed by the provisions of Regulation (EU) 2016/679, Organic Law 3/2018 and its implementing regulations, without prejudice to the specialties established in this Chapter and in the procedural laws: "* *3. The consent of the interested party will not be necessary for the processing of personal data in the exercise of jurisdictional activity, whether these are provided by the parties or collected at the request of the competent bodies, without prejudice to the provisions of the procedural rules for the validity of the test."*

In turn, Law 29/1998, of July 13, regulating the Administrative Contentious Jurisdiction, provides in article 48, that: *"1. The Judicial Secretary, when agreeing to the provisions of section 1 of the previous article, or through diligence if publication is not necessary, will require the Administration to send him the administrative file, ordering him to practice the locations provided for in article 49. The file complaints will be made to the organ author of the impugned disposition or act or to the one to which the inactivity or de facto action is imputed (...). 4. The file, original or copied, will be sent complete, foliate and, where applicable, authenticated, accompanied by an index, also authenticated, of the documents it contains. The Administration will always keep the original or an authenticated copy of the files it sends (...)."*

In conclusion, it is not contrary to data protection regulations to provide the reporting person's registration form (a document that is part of the administrative file) to the Court that must decide on the administrative appeal filed against the resolution of the Management of the ORGT, given that the treatment is necessary to fulfill 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 since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts

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

that have been addressed in this resolution, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is appropriate to agree to its archive.

Therefore, I resolve:

1. File the actions of prior information number IP 71/2021, relating to the Town Council of Sant Joan de Vilatorrada.
2. Notify this resolution to the City Council of Sant Joan de Vilatorrada 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 interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,