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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 90/2021, referring to the City Council of (...).

Background

1. En data 01/03/2021, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava una denúncia contra l'Ajuntament of (...), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant stated that a social worker from the City Council of (...) intervened as a witness in the contentious divorce trial no. (...), processed by the Court of First Instance (...) of (...). In her intervention, this worker stated that she had accessed the aid system, where she had checked that the person reporting here received a guaranteed income, despite not meeting the requirements. The complainant stated, as a reason for the complaint, that this worker had accessed said database without her consent.

In order to prove the facts he reported, the reporting person provided a copy of Sentence no. (...), issued on date (...) by this Court in the aforementioned proceedings, in which indicated the following (fourth legal basis):

"The witness (...) -name and surname-, social worker of the City Council of (...), declares before this Court that it is the mother who always attends with the minors and with whom they perform the cares, having never attended the father. Likewise, it states that the dependency aid of (...) -name of one of the children- is requested by the mother given that she is the person living with the disabled person making it in August 2018, being the witness who notified the mother in February 2019 that the payment of the aid should have already been received. She alleges that she herself enters the aid system and verifies that the guaranteed income benefit of citizenship is requested by the father and that the benefit is being collected by the father without fulfilling the requirements for it, giving part to the relevant body to paralyze the payment of the benefit that corresponds to the disabled minor and the parent who lives with him."

2. The Authority opened a preliminary information phase (no. IP 90/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to areas of competence of the Generalitat, and article 55.2 of the

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Law 39/2015, of October 1, on the common administrative procedure of public administrations (from now on, LPAC), to determine whether the facts were likely to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 03/04/2021 the reported entity was required to report on the entity responsible for the aid system to which the social worker accessed, as well as on the legitimating legal basis of said access.

4. On 04/03/2021, the City Council of (...) responded to the aforementioned request through a letter in which it stated the following:

- On the identification of the entity responsible for the aid system:

"It has been verified that the entity responsible for the aid system to which the social worker accessed is the Department of Work, Social Affairs and Family of the Generalitat de Catalunya."

- With regard to the reason and circumstances of the social worker's access to the aid system and the information relating to the reporting person:

"From the City Council, competent for management as intermediaries for requests for this type of aid, a social report was being drawn up, at the request of the interested party, which was presented to the Call for dining allowances from the CCBC.

The requirements to submit the application for these grants made it necessary to collect and consult other data in possession of other public administrations and in the framework of administrative interoperability the web portal of the Guaranteed Citizenship Income was accessed of the Generalitat de Catalunya to check if the interested party had an approved Citizenship Income Guarantee.

The web portal indicated that the interested party was a beneficiary of this aid and specified the financial amount she had received each month. The same web portal provides information on the holder of the aid, in this case the complainant. Without people who consult the platform legitimately being able to filter or avoid viewing said information."

- Regarding the legitimating legal basis for access by the social worker to aid system:

"Access to this information is legitimated by the exercise of public functions assigned to the City Council in the field of social services and specifically with regard to the case that occupies this information prior to the applicable regulations being Law 17/2017, of July 20, on the Guaranteed Income of Citizens, Decree 55/2020, of April 28, which approves the Regulation of Law 14/2017, of July 20, on the guaranteed income of

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citizenship, Chapter V Coordination of actions, Section 2. Level of technical intervention.

It should also be noted that the social educator who is the subject of the complaint is a representative of RGC, so she has access to the data on the portal. This access is done through the TCAT cards of the digital certificate processed by EACAT. So access is controlled, limited and securely managed.

In this sense, the office of the Department of Work, Social Affairs and Families of the Generalitat is attached, where the instructions and relationship of the social services departments and the reference staff of minimum insertion income for the Councils are given (Annex 1). "

The City Council provided a copy of the aforementioned official dated 1/08/2017, in which the following was noted:

"(...) In the meeting to which we called you last July 26, we informed you about the role that social services would have from September 15, 2017 in this new provision and, in addition, we told you that the computer application you are currently using to process minimum income files (RMI management website) would no longer be used to manage the RGC, and that I was designing a new web interface where, both from the work offices of the SOC and from those of the social services, the management would be done based on the competences you had assigned to each body (...).

Unlike the RMI management web that you are using now, and for which all social workers have the corresponding user and password, the new web front that is being designed needs access to the EACAT platform in which all the local bodies have been operating there for some time. For the above, and given that in order to register a user in EACAT, the manager of your local entity needs to do the management, it is necessary that you request the manager in charge of your local entity to register with the maximum urgent possible to all social workers who are referents of minimum insertion income (...)"

5. In order to clarify the terms of its response, on 03/22/2021 the Authority again required the City Council of (...) to certify that the validation of compliance with the requirements of · the application for the dining allowance presented by the ex-partner of the person making the complaint, it was necessary to access information on the guaranteed citizenship income of the person requesting said aid. Likewise, he was asked to indicate the legal basis that in his opinion would legitimize access to the guaranteed citizenship income system for the preparation of the aforementioned social report.

6. On 03/25/2021, the City Council of (...) complied with this requirement by means of a letter stating the following:

- With regard to the need to access information on the perception of the guaranteed income of citizenship by the person requesting the dining allowance:

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"In the bases established for the awarding of individual school canteen grants aimed at students of compulsory education and second-cycle preschool education schooled in educational centers in the region of (...) paid with public funds for in the 2019-2020 school year (the bases are attached as document Annex 1) the following is provided for in the third section relating to the "Criteria for the granting of aid":

third Criteria for the granting of grants Grants of 50% or up to 100% of the cost of the dining room will be granted to students who meet the established requirements, a cost that may not exceed in any case the maximum price established by the Department of Education .

a) Calculation of family income.

a.1.1) In cases where one of the members of the family unit receives any type of income corresponding to non-taxable or exempt returns, the following documentation must be provided, depending on the source or sources of income:

- Original and photocopy of the updated working life report, issued by Social Security.
- People who receive the guaranteed income of citizenship: updated certificate of accreditation.

As indicated in the previous section, it is a requirement in the case at hand to provide this information, which makes its consultation necessary.

In the same way, in cases where a risk file is being dealt with, at the request of the Regional Council of (...), a Social Report is drawn up by the Social Welfare departments of the Town Councils. This is done using a model form (attached as document Annex 2) of the Social Report for individual dining allowances for the 2020-2021 school year. In this, the Regional Council of (...), the administration that manages the subsidies, foresees the collection of information relating to the Guaranteed Income of Citizens (point 4 income section of the document).

Having understood the procedure and the requirements established to be able to access the dining grants, you understand the need and obligation to consult said data of the family nucleus and thus be able to complete the information for the Social Report.

- With regard to the legal basis that in its opinion would legitimize access to the guaranteed citizenship income system for the preparation of the aforementioned report, the City Council stated the following:

"As stated in the previous point, and as answered in the previous letter, the basis that legitimizes access to the guaranteed citizenship income system is the fulfillment of a mission in the public interest. As has been explained, access and consultation of said information is necessary to be able to provide the Social Welfare service in its full scope and specifically for the processing of dining allowances.

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Attached are the bases (Annex 1) of the dining allowances that provide for the collection of this information.

Likewise, Law 12/2007, of 11 October, on social services (...) establishes the following on the functions and services of Social Services, the situations considered to be at risk and the duties in relation to care of these people and their families (...) (transcription of articles 3, 4, 7, 13 and 17 (...))."

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.

As explained in the antecedents section, the complainant stated as a reason for the complaint the fact that the mentioned social worker from the City Council of (...) had accessed, without her consent, the system of aid and that "he had verified that he received a guaranteed income", in reference to access to the web platform for managing the guaranteed income of citizenship, the person responsible for the processing of which is the Department of Social Rights, in accordance with the information published on its website on the Register of Processing Activities (RAT).

With respect to the reason for the complaint, the City Council has admitted that the social worker accessed said web platform, and specifically the information regarding the fact that the person making the complaint was the holder of the guaranteed citizenship income (RGC), and has justified such access pointing out, in essence, that he accessed said system to fulfill the assigned functions, and that access to the information regarding the person making the complaint took place occasionally and irretrievably, when the social worker verified certain data from the ex-partner of the reporting person.

Specifically, the City Council points out that the ex-partner of the person making the complaint had presented to the Regional Council of (...) an application for individual school canteen aid for the 2019-2020 academic year (application basis approved on (...)), and that, given the family unit's risk of social exclusion, the Social Welfare area of the City Council of (...) he had to draw up a social report proposing the granting of the aid, and address it to the said County Council.

With regard to the need to draw up a social report for the indicated purpose, the third basis of the indicated call (BOPT of (...)) regulates the criteria for granting aid,

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among which is the "assessment by the social services for social need", and certainly from its content it is clear the participation of the competent Social Services in the accreditation of a social need of the family nucleus, as follows:

"c) Assessment by social services due to social need.

For this concept a maximum scale of up to 15 points is established. In this case, it will be imperative that the student is monitored by the social services, through which the existence of a social need for this family will be proven. It is necessary for the student to be included in an intervention or work plan due to the risk of social exclusion (...)"

The City Council has provided a copy of the social report model provided for this type of aid, which must be signed by a member of the Basic Primary Social Care Team (EBASP), and this model contains a 4th section entitled "employment status and income of those over 16 years of age in the family nucleus", in which the person signing the EBASP must include various information corresponding to the income of each member of the family unit, including the reference to whether in the family nucleus receives the guaranteed income of citizenship (RGC).

The City Council has stated that the mentioned social worker is the referent of RGC at the City Council, and that in the face of the request for aid presented by the ex-partner of the person making the complaint, she had to issue the corresponding technical report of which provides the model, from which manifestation it is inferred that the mentioned social worker would be part of the EBASP of the City Council. For this purpose, the social worker would have accessed the RGC system in order to consult data on the family nucleus of the person who requested the aid (the ex-partner of the person making the complaint).

As the City Council also states, with access to the RGC system the social worker would have verified that the ex-partner was a beneficiary of this aid (RGC), also what was the financial amount that this person would receive each month, and also the identity of the person entitled to the aid granted, who is the person who requested the aid, and who in this case was the person making the complaint.

Lastly, the City Council stated that the social worker who consulted this information on the RGC's web portal could not avoid viewing the information on the identity of the holder of the aid (in this case, the complainant).

The account of the events carried out by the City Council that has been presented is believable, considering both the documents that the council has provided to the Authority, and the divorce judgment provided by the complainant together with his complaint.

In accordance with the facts described, it must be taken into account that the access made by the worker to the personal data of the person making the complaint and that of his ex-partner listed in the RGC system, constitutes processing (art. 4.2 RGPD) , and as such, it must be respectful of the principles provided for in article 5 of the RGPD (among which the principle of legality is included), and must be protected by one of the legal bases provided for in article 6 of the RGPD.

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It should be clarified, in view of the fact that the reason for the complaint was that the person making the complaint had not consented to access - by said social worker - to their data incorporated in the RGC system, that the concurrence of the consent of the person concerned it is only one of the legal bases provided for in this precept. So, even if this consent is not available, the treatment may be lawful if it is based on another legal basis. Article 6.1 of the RGPD establishes the following:

"1. The treatment will only be lawful if at least one of the following conditions is met:

- a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
- b) the treatment is necessary for the execution of a contract in which the interested party is part or stop the application at the request of this pre-contractual measures;
- c) the treatment is necessary for the fulfillment of a legal obligation applicable to responsible for the treatment;
- d) the treatment is necessary to protect the vital interests of the interested party or another physical person;
- e) the treatment is necessary for the fulfillment of a mission carried out in interest public or in the exercise of public powers conferred on the person responsible for the treatment;
- f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.

The provisions in letter f) of the first paragraph will not apply to the treatment carried out by public authorities in the exercise of their functions."

With regard to the cases provided for in sections 6.1.c) and e) of the RGPD (fulfillment of a legal obligation, and fulfillment of a mission in the public interest or in the exercise of public powers, respectively), it is necessary to bear in mind take into account that article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), requires that the obligation be provided for in a rule with the rank of law (art. 6.1.c RGPD), or that the treatment derives from a competence attributed by a rule with scope of law (art. 6.1.e RGPD).

With regard to the concurrence of a rule with the rank of law, Law 12/2007, of 11 October, on social services, establishes in article 31.1.e) that it corresponds to the municipalities "Completing their own functions of basic social services". And in its article 17 it establishes that the following are functions of the basic social services, among others:

- "c) Evaluate and make social, socio-educational and socio-labor diagnoses of situations of social need at the request of the user, his or her family, social or social environment or other services of the Network of Social Care Services
Public, in accordance with data protection legislation.

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(...)

o) Manage the processing of municipal and regional economic benefits and the others attributed to it."

On the other hand, it must also be taken into account that the social worker, as a reference professional for basic social services, is part of the first level of technical intervention of a basic nature (art. 32.1.ai art. 33 Decree 55/2020, of April 28), and this first level includes, in accordance with article 35 of Decree 5/2020: "...all actions that allow the evaluation, monitoring and transfer of a unit to another, depending on the situation in which the recipients of the guaranteed citizenship income find themselves. These actions are carried out through the web platform for managing the guaranteed income of citizenship and other forms of collaboration that can be established, depending on the complexity of each case" (art. 34.1 Decree 55/2020); this first level of intervention includes the actions indicated in article 35 of Decree 55/2020, among which it is worth noting: "b) Keep updated information and changes in relation to the personal and economic situation of the members of the family unit ". In accordance with the aforementioned precepts, in order to fulfill the indicated social functions, the competent social worker could access the management web platform of the RGC to, among other functions, update the information on it about the personal and economic situation of the members of the family unit that made up the complainant and his ex-partner.

Having said that, with regard to the legality of the specific access that is the subject of the complaint, it has been pointed out that this access took place in the framework of the processing of an individual dining allowance requested by the ex-partner of the person making the complaint before the Regional Council of (...). Specifically, the third basis of the call provided for the "assessment by the social services for social need" among the criteria that scored. The City Council has indicated that it had an open social risk file regarding this family unit. So the EBASP had to issue the corresponding assessment and send it to the said Regional Council. In order to carry out this assessment, the City Council of (...) has a social report model, in the 4th section of which it is expected that the income of the family unit, including the RGC, will be indicated . The City Council states that the social worker accessed the RGC's web portal in order to complete section 4 of the technical report.

It is clear from the above that the social worker accessed the RGC system - whose responsibility is the Department of Social Rights - in exercise and for the fulfillment of the assigned functions.

However, with regard to the legitimacy of access to the complainant's specific data that appeared in the RGC system, it should be clarified at the outset that, even if the complainant's ex-partner had consented to access by the social worker of the EBASP in said system for the purpose of issuing the indicated technical report, such consent would not protect the access of the social worker to the personal data of the complainant referring to the fact that he was the person holding the RGC .

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In this regard, the City Council has stated that the complainant's access to this data was irremediable, since people who legitimately consult the platform cannot "filter or avoid viewing said information."

Apart from these manifestations of the council, it is considered that the access to the information about the person holding the RGC was something necessary to issue the technical report, since the purpose of the access was to verify if the ex-partner of the complainant received the RGC, and this could be due either to the fact that the ex-partner was the holder of the RGC (the person who had requested the perception of the RGC), or to the fact that the ex-partner was the beneficiary of the aid. This is clear from article 10.3 of Decree 55/2020, of April 28, which approves the Regulation of Law 14/2017, of July 20, on the guaranteed income of citizenship, which provides that : "both the holder and the beneficiaries are recipients of the guaranteed income benefit". Therefore, the aforementioned social worker had to review the information recorded in the RGC system on whether the ex-partner of the complainant was the holder of the RGC. In accordance with this, the fact that the RGC system stated that the person reporting was the holder of the RGC allegedly perceived by his ex-partner, made access to this information of the complainant certainly irremediable, since the 'access to such information was necessary to fulfill the assigned functions.

In the particular case, in addition, there is the circumstance that the ex-partner of the complainant, despite being listed as a beneficiary of the aid, was not a recipient of the benefit, as seems to be clear from the statements made by the worker in the trial of divorce and which are included in the fourth legal basis of the sentence ("...she herself enters the aid system and verifies that the guaranteed citizenship income benefit is requested by the father and that the benefit is being collected by the father ..."). This circumstance seems to be possible in the present case, in which the request for the aid and the subsequent access to the RGC web platform would have taken place on an undetermined date but in any case before the holding of the divorce trial , and logically also of the sentence by which the dissolution of the marriage will be declared due to divorce. So at the time of accessing the web platform, they would still be listed as a family unit. Article 10.4 of Decree 55/2020, of April 28, states that: "In the event that in the same family unit there is more than one person with the right to be entitled to the benefit, preference is given to the person who does not have any type of economic resource or has the lowest, with priority, also, for whoever has custody and custody of minors, if applicable. In the case of having shared custody and custody of the children, the part of the guaranteed income benefit corresponding to the affected children is paid, in accordance with the percentage established in the court ruling that regulates this custody and custody".

This personal circumstance could be relevant in the technical assessment that the social worker had to issue, since in the 4th section of the report model, the income received by the RGC of the unit had to be recorded, among others familiar

For all the above, it must be concluded that access by the mentioned social worker to this information regarding the person making the complaint, would be protected by the base

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legal provision provided for in article 6.1.e) of the RGPD, since such information was necessary to fulfill the public functions entrusted, which in this case was the issuance of the corresponding technical report of the EBASP proposing the perception of the 'individual dining allowance, requested by the complainant's ex-partner.

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 made clear in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement".

Therefore, I resolve:

1. Archive the actions of prior information number IP 90/2021, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) and to 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,