

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

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 106/2021, referring to the City Council of (...).

### **Background**

1. On 12/03/2021, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the City Council of (...), on the grounds of an alleged breach of the regulations on personal data protection.

In particular, the complainant stated that a certain person (Mr. A), who was an agent of the Generalitat Police Force-Mossos d'Esquadra, had become aware of information that was not public and that referred to his person, such as the fact that the City Council of (...) had instituted a disciplinary case against him due to unjustified access to the databases of the Police Information System (SIP).

The complainant indicated that he did not know Mr. A nor had he had any contact with him, and he considered that someone from the City Council of (...) had disclosed this information to him, although he did not specify the date or the circumstances in which the eventual communication of data. It also referred to an ongoing administrative dispute process at the time of submitting the complaint to the Authority, referring to an act of this disciplinary procedure that did not specify, from which it was inferred that the person making the complaint was the plaintiff and the City Council the defendant.

In order to prove that the police officer (Mr. A) was aware of the existence of a disciplinary procedure against him and the reason for its opening, the complainant provided impressions of screen of 3 tweets (messages) from the Twitter social network, in which Mr. A made references to a third person (the complainant) whom he did not identify, but whom he linked to the municipality of (...), the opening of a file for access to police databases, and the status of president of the association (...). Below are transcribed in chronological order the messages or tweets made by Mr.

To on Twitter:

1.1. [https://twitter.com/\(...\)](https://twitter.com/(...)): It contains a tweet made on 04/07/2020 from the Twitter account @(...) (Mr. A), with the following content:

"You can tell the president of (...) (name of an Association) *about the use of police databases* . Yes, *the one of* (...) (name of the municipality). *He has experience and some record.*"

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

1.2. [https://twitter.com/\(...\)/\(...\)](https://twitter.com/(...)/(...)): it contains a tweet made on 12/11/2020 from the Twitter account @(...)(...)"'. Faced with this tweet, Mr. A (@(...)) made the following comment on 11/12/2020:

*"Well, they should explain precisely that the files are for having leaked private data from independents (sic) to fascist squads. But they don't say that. Ask for (...) (name of municipality)..."*

1.3. [https://twitter.com/\(...\)](https://twitter.com/(...)): This contains a tweet made on 02/23/2021 from the Twitter account @(...). Faced with this tweet, Mr. A (@(...)) made the following comment on 02/23/2021:

*"SPer (sic) pass information from the police database? And was he from a municipality of (...)?  
Can it be from (...) (name of the municipality) ?"*

On the other hand, in order to certify that the City Council of (...) was aware of the fact that the person making the complaint was the president of the Association (...), and that therefore it was 'information that the City Council could have revealed to Mr. A, provided a copy of an instance dated 11/10/2018 that the complainant would have presented to the City Council, accompanied by a letter that the secretary of the Association (...), addressed to whom he was then the mayor, through which he communicated, among other issues, that the person making the complaint here was the president of said association.

2. The Authority opened a preliminary information phase (no. IP 106/2021), 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.

On 03/26/2021, the Authority's Inspection Area accessed Twitter and verified the veracity of the messages provided by the reporting person. He also verified that the profile from which the controversial messages had been sent belonged to Mr. A. From the result of the actions carried out, a due diligence was carried out.

3. On 03/26/2021, the Authority transferred the letter of claim to the Spanish Data Protection Agency (AEPD), with regard only to the knowledge of the part of the complaint referring to the 'eventual dissemination of the complainant's personal data carried out by Mr. A through Twitter, since they referred to facts that are not included in the cases over which this Authority has jurisdiction, in accordance with the provisions of article 156 of the Statute of Autonomy of Catalonia. This Authority reserves knowledge of the facts that pointed to the eventual dissemination of data by the City Council of (...).

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

4. On 07/04/2021 the Authority required the City Council of (...) to inform, among others, if it had evidence that any person from the City Council had disclosed to Mr. The initiation of a disciplinary file against the reporting person.

5. On 03/05/2021, the City Council of (...) responded to the request through a letter in which it reported, among others, the following:

*"Consulted with the services that might have information about it, the answer has been that "there is no evidence" that any person from the City Council revealed anything to do with files initiated by HR."*

### **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.

The complainant has filed a complaint against the City Council of (...) to consider that this City Council would have revealed to a police officer (Mr. A), that said council had instituted disciplinary proceedings against the person making the complaint, due to accesses to the SIP databases carried out for purposes not police officers In order to prove it, he referred to three tweets made on Twitter by this police officer on 07/04/2020, 11/12/2020 and 02/23/2021.

It is certainly clear from the content of the aforementioned tweets that the police officer (Mr. A) was aware of the fact that the City Council of (...) had instituted disciplinary proceedings against the complainant, for having allegedly accessed the SIP databases to search for information for a purpose other than that of the police, as well as his status as an agent of the Local Police of said City Council and president of the Association (...).

However, with regard to the specific person who would have communicated this information to Mr. A, from the documentation provided by the reporting person, their identity is not inferred, nor nor its link with the City Council of (...). For its part, the City Council has stated that it is not aware that this information was disclosed by the council.

At this point, it should be pointed out that there is another complaint referred to dissemination of data linked to the same disciplinary procedure imposed on the person reporting here, the Authority processed sanctioning procedure no. 47/2020 against the City Council of (...), in the framework of which a resolution was issued on 01/21/2021 penalty, for which the City Council of (...) was warned for having violated the principle

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

of confidentiality. In this resolution, the following are listed as proven facts, among others:

- On the one hand, that this City Council communicated to the people affected by illicit access to the SIP, the initiation of disciplinary proceedings for these facts against two agents of the Urban Guard of (...) -among them the person making the complaint here-, whom he identified.

This communication of data would have taken place on a date close to 12/27/2018, when the head of the Urban Guard of (...) issued a reserved report, in which he requested that the illegal accesses be reported legal in the SIP *"To all the people who have been investigated by the sergeant (...) (name and surname of the person reporting, and (...), for their knowledge and in case they consider it appropriate to initiate any type of administrative or criminal action against the investigated officials."*

- On the other hand, that on 08/04/2019 the Popular Unity Candidacy (CUP) publish a news item on its website informing about the initiation of disciplinary proceedings against two officers of the Urban Guard of (...), as well as the reason for the opening of disciplinary proceedings. It was clear from the content of the news that the CUP knew the identity of the people filed, including the person making the complaint. In addition, in the resolution it was noted that at the time of publication of the news, the processing of the disciplinary file was not a matter of responsibility of any member of the municipal group of the CUP, nor any of these, in their capacity as councilors, they had exercised the right to know the identity of the people filed.

These proven facts become relevant in the present case, since they refer to the dissemination of the same information on a date prior to the facts that are reported here, that is, to the sending by Mr. To messages via Twitter. Specifically, with regard to the facts proven in PS 47/2020, the communication to the people affected by the illicit access to the SIP took place on a date close to 12/27/2018, and the publication of a news on the CUP website took place on 08/04/2019 (and on a date close to this, CUP members would have known the identity of the people who had been subject to disciplinary proceedings). While Mr. A sent the messages on subsequent dates, specifically on 07/04/2020, 11/12/2020 and 02/23/2021.

Therefore, before Mr. Before I sent the first message (07/04/2020), it had already been publicly announced that the City Council had instituted disciplinary proceedings against the person reporting here for accessing the SIP for non-police purposes. So it cannot be ruled out that people outside the City Council could have communicated such information to Mr. A, or that even Mr. A had directly accessed the information published on the Internet. This would prevent the City Council from being charged with an offense due to the dissemination of data based on the principle of personality that governs disciplinary matters, since it is not known who would have provided the controversial information to the police officer (Mr. A ).

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

But even if the facts clearly pointed to a dissemination of data carried out by the City Council, to the extent that this council has already been sanctioned (through the PS 47/2020) for having disclosed the same personal data, it is considered that it would be disproportionate to initiate a new sanctioning procedure against said City Council for the same reason.

All this, with the understanding that the considerations made here only refer to the action of the City Council of (...) towards the events reported, and therefore do not refer to the eventual responsibility of Mr. A for the dissemination through Twitter of the complainant's personal data, as these are facts the knowledge of which exceeds the competences of this Authority, as set out in the precedent 3rd.

**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, any fact that can be attributed to the City Council of (...) and is constitutive of any of the infractions provided for in the legislation on data protection, should be archived.

Article 89 of the LPAC, in line 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 : "*b) When the facts are not accredited; d) When the person or persons responsible does not exist or has not been identified or appear exempt from responsibility*".

Therefore, I resolve:

- 1.** File the actions of prior information number IP 106/2021, 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.

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

Likewise, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,

Machine Translated