

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

File identification

Archive resolution of the previous information no. IP 107/2021, referring to the Junts per Catalunya Municipal Group of the City Council (...).

Background

On 12/03/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Junts per Catalunya Municipal Group (hereafter, GM JuntsxCat), on the grounds of an alleged breach of the regulations on personal data protection.

The complainant stated that GM JuntsxCat had *"distributed by e-mail to "all animal organizations that are part of (...) a document for reserved use containing my full name and ID"*.

The *reserved use document* to which he was referring was a letter dated 12/02/2021 issued by the same complainant in response to a request that GM JuntsxCat made to the City Council (...), regarding the construction in the city (...) of a new Center (...) (hereafter, ...). Specifically:

- 1.1. The letter from GM JuntsxCat that contained the request was addressed to the mayoress ((...) of the City Council (...), and noted the following:

"(...)

- *Given the delay of one year due to the construction of the new kennel of (...).*
- *Given that we are already more than twenty years behind schedule.*
- *Since this government committed to its construction.*

question

In what state is the construction project for the new kennel in (...) ? Why hasn't it been tendered yet? When do they plan to award it? What budget do you have? What are the start and end dates for the works?"

- 1.2. The letter dated 02/12/2021 in response to this request was issued by the complainant in his capacity as Head of the Department of (...) of the City Council (...); it was entitled *" ANSWER TO THE QUESTION (...) JuntsxCat Municipal Group "*, and contained a table with three rows, with the following content:

" (1st row)

Reference (...) *Spokesperson of the Municipal Group of Junts per Catalunya asks* (...)

(2nd row)

(...)

answer

In 2021 there is no item for the execution of the new Center (...), given the priorities set by the pandemic.

The forecast is to tender and award before the end of the mandate and to carry out the work. The executive project of (...) has been drawn up, but adjustments will need to be made, such as that of the sewage treatment plant.

A study of treatment alternatives or connecting the center to the sewer network is being done. (...) is finalizing the sewer master plan and from this plan the specific studies of feasibility and infrastructure needed for the connection can be carried out."

(3rd row)

Barcelona, February 12, 2021

The Head of the Department of (...)

(electronic signature)"

The electronic signature of the undersigned person (here the complainant) corresponded to his public employee certificate, on the left side was the logo of the City Council (...), and on the right was his first and last name and number of ID, in addition to the day and time of signature.

2. The Authority opened a preliminary information phase (no. IP 107/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to 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 susceptible to motivate the initiation of a sanctioning procedure.
3. In this information phase, on 03/21/2021 the complainant was required to provide a copy of the email mentioned in his complaint letter, as he did on 03/24/2021.

From the document provided it was inferred that the GM JuntsxCat sent an email on 11/03/2021 to thirty-one email addresses, with the subject "*government response to the new location of (...)*", which contained as an attached document the letter of response dated 02/12/2021. The email stated the following:

"Good morning,

On behalf of the councilor (name and surname), we attach the Government's response, regarding the question made in relation to the new location of (...).

And here is the link to access a video of the complaint that the councilor made yesterday on the subject: (...)"

4. On 11/06/2021, GM JuntsxCat was required to report on several issues related to the events reported.
5. On 28/06/2021, the City Council of (...) responded to the aforementioned request through a letter in which it stated, among others, the following:
 - That the GM accessed the information - which he then forwarded by mail - in exercise of his right to control and audit the government action provided for in article 12.2.c) and 12.5

of the approved Municipal Organic Regulation (ROM) by agreement of the Plenary of the Municipal Council on (...).

- That the request for information from the GM JuntsxCat *"it was made within the framework of article 64.1 of the ROM (...) which provides that: Requests for action addressed in writing by one or more councilors or a group, to the governing bodies in the area of their respective competence"*.

6. On 07/06/2021, the Authority sent the information request again, specifying that the person who had to provide an answer was the JuntsxCat GM .

7. On 07/19/2021 he received a written response from GM JuntsxCat , through which he stated, in essence and among others, the following:

- That the request for information made by GM JuntsxCat *"it is based on the right of local elected officials to obtain information from the council. Right to information regulated in article 164 LMRLC and all those other provisions of the local regime legislation that may be applied to it (art. 12 ROM) (...)"*.
- That the document that GM JuntsxCat sent by email *"is a response from the municipal government to a question asked by a councilor of this municipal group and in reference to a project (construction of a new kennel) to which the government municipal had committed previously"*, and that *"deals with information subject to the transparency regime, as it is a request and the corresponding response regarding the execution of a project previously agreed by the administration (construction of a kennel), with the aim of monitoring the fulfillment of a previously acquired commitment in a public commission (Commission of... of the City Council...) ."*
- That the question was asked of the Mayor of the City Council (...), but was *"answered on behalf of the Municipal Government by the Head of the Department of (...) "*.
- That *"the controversial email refers to the Government's response, omitting any reference to the person who signed the document"*.
- That the persons and groups addressed to the mail had *"a direct interest in the knowledge of this information"*, and that it is *"public information"*.
- That they trusted that the data appearing in the high official's signature were those necessary for his identification, and that they respected data protection regulations.
- The fact that the document sent by the City Council contained the official's signature with his first and last name and ID, led the JuntsxCat GM to believe that the City Council had carried out the corresponding weighting.
- That they acted considering that *"the same public worker (if he wants to omit certain information) can modify the information that is displayed in his electronic signature "*.
- That the City Council of (...) is the one that should modify the configuration of the electronic signature of its workers, that *"the appearance of legality and publicity of public events cause this responsibility on third parties who have acted in good faith and under*

the guise of a legitimate exercise, such as transparency and control of government action".

He accompanied his writing with two documents: the question posed by GM JuntsxCat (doc. no. 1), and the answer given by the City Council (doc. no. 2), transcribed in the 1st antecedent.

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 Catalan Authority of Data Protection, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the Director of the Authority is competent to issue this resolution Catalan Data Protection Authority.

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

2.1. First of all, it should be noted that the access by the councilor of GM JuntsxCat to the information detailed in the 1st antecedent -provided by the City Council itself-, is not considered contrary to the data protection regulations.

The right of access to municipal information that all members of the City Council have - regardless of the fact that they are in the government team, or in the opposition, as would be the case - is expressly provided for in the article 77 of Law 7/1985, of April 2, regulating the bases of the local regime (LRBRL) which establishes that *"todos los miembros de las Corporaciones locales tienen derecho a obtener del Alcalde or President or de Comisión de Gobierno any antecedents, data or information in the possession of the Corporation's services and are necessary for the development of its function. The request to exercise the right contained in the previous paragraph must be resolved motivatedly in the five natural days following the one in which it had been presented."* In the same sense, Legislative Decree 2/2003, of April 28, is issued, by which the revised Text of the Municipal and Local Government Law of Catalonia (TRLMRLC) is approved by providing, in article 164.1, that : *"all members of local corporations have the right to obtain (...) all the background, data or information that is in the possession of the corporation's services and is necessary for the development of its function."*

Regarding the right to information of the elected members of the City Council (...), article 12.2.c) of the ROM provides that they can exercise the right to information in the exercise of their control and inspection functions . Article 12.5 of the ROM establishes that: *"In the exercise of the functions of control and supervision of the actions of the municipal government, councilors may obtain information, requesting it by means of a letter addressed to the Mayor's Office in which the administrative file in which the municipal resolution subject to this control or inspection has fallen will be specified."*

2.2. However, without prejudice to this legal authorization to access the content of the controversial document, it must be borne in mind that once this access has been carried out, in accordance with the provisions of article 164.6 TRLMRLC, the councilors *" have to respect the confidentiality of the information to which they have access by virtue of their position if the fact of publishing it may harm the interests of the local body or of third parties"* .

Regarding, in particular, the elected members of the City Council (...), article 12.8 of the ROM establishes the obligation of confidentiality of the information collected, as follows: *"The elected members of the City Council and the advisors referred to in this article have the obligation to preserve the confidentiality of the information obtained in application of this precept, and of the rest to which they may have access in the development of their functions. In particular, they must reserve the right to information that may affect the rights and freedoms of citizens recognized by the Constitution, or that may serve as a basis or precedent for resolutions or agreements not yet adopted."*

On the other hand, as regards data protection regulations, Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the treatment of personal data and the free circulation thereof (hereinafter, RGPD) regulates in article 5.1.f) the principle of confidentiality, establishing that personal data must be: *"treated in such a way as to guarantee adequate security of personal data, including the protection against unauthorized or illegal treatment and against its loss, destruction or accidental damage, through the application of appropriate technical or organizational measures ."*

In order to assess whether, by sending the mail, the GM JuntsxCat councilor violated the principle of confidentiality provided for in article 5.1.f) of the RGPD, it is necessary to determine which personal data the controversial document contains. Article 4.1 of the RGPD defines personal data as:

"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;

In accordance with this definition, the personal data contained in the City Council's response letter are:

- On the one hand, the name and surname of the councilor who formulated the question, and which appear in the "Reference" section (1st row): the dissemination of this data has not been the subject of a complaint.
- On the other hand, the first and last name and no. ID of the reporting person, which appear in the electronic signature (3rd row), together with the information about their position at the City Council.

The body of the forwarded document, which contains a transcript of the questions asked by the councilor, together with the answer given by the person making the complaint as Head of the Department of (...), does not contain information regarding the person making the complaint, beyond the fact that it is information that was provided by that person. The content of the response referring to the action of the City Council in response to a commitment from its Government, in itself is not personal data of the person making the complaint. Therefore, without elucidating whether, in view of the duty of confidentiality provided for in articles 164.6 TRLMRLC and 12.8 ROM, the aforementioned councilor should or should not have kept secret about its content, from the point of view of the regulations of data protection, its dissemination does not constitute an infringement.

2.3. Regarding the dissemination of the name and surnames and no. of ID and municipal position of the reporting person that appear in the electronic signature (3rd row), first of all it should be noted that the fact that the City Council had previously sent the response document to the GM in which these data appeared, did not empower the GM to carry out a treatment of the same. In order for the controversial processing of the GM to be considered lawful, it is necessary to have, at the outset, one of the legal bases provided for in article 6.1 of the RGPD, which include the fulfillment of a mission carried out in the public interest (6.1.e), and the satisfaction of a legitimate interest of the data controller or a third party (6.1.f), as follows:

"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.

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 GM JuntsxCat states that it formulated the request in exercise of the right to information and - the City Council adds - in exercise of its right to control and audit government action.

These allegations (indicative that the purpose of the access was the control and supervision of the action of the municipal government) would justify the access by the GM to the data of the person reporting contained in the response letter, the which would be protected by article 6.1.e) RGPD, and also by article 6.1.a) RPGD, since it was the same person undersigned (here complainant) who sent the response letter to the GM.

On the other hand, the particular circumstances lead us to consider that the subsequent forwarding by the GM of this response would also fit into the functions of control and supervision of the action of the municipal government.

This conclusion is reached taking into account that the recipients of the email containing the City Council's response were members of (...), which, according to the information published on the City Council's website (...), is a municipal body for citizen participation, which is formed *"by the animal protection entities of (...) that work for the rights of the city's animals and good coexistence with people. It welcomes all the municipal political groups of the Barcelona council, municipal technicians, universities and representatives of businesses"*. From the mission and the activity carried out by this municipal body - according to information on the same municipal website - it can be inferred that these people (mostly entities) had an interest and knowledge about the matter that was the subject of the request, the which can justify the GM sharing the City Council's response with them, in order to compare relevant information for the exercise of its control functions of government action.

On the other hand, it must be noted that the case analyzed here does not exactly correspond to the case provided for in article 164.6 TRLMRLC, since, while this precept prohibits the publication of information collected by councilors when such publication may harm the interests of the local body or of third parties, in the present case, the dissemination was limited to specific entities or persons who had a direct interest in the matter and, what is

more relevant, who were mostly representatives of local entities and all of them were part of a municipal body, with a direct interest in the matter.

For the reasons indicated, the forwarding of the response to the members of said municipal body would be protected by article 6.1.e) RGPD.

However, in order for this treatment to be considered lawful, it is also necessary that it is respectful of the principle of data minimization provided for in article 5.1.c) of the RGPD, according to which, personal data treated must be: *"adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated"*.

It is therefore necessary to analyze whether the dissemination of the data of the reporting person was respectful of the principle of minimization. We remind you that at the foot of the City Council's response letter the position is stated and, in the electronic signature and for what is of interest now, the name and surname and number. ID of the reporting person.

With regard to the dissemination of this data, it should be borne in mind that, although requests must be addressed to the mayoress (...) of the City Council (...) (art. 77 LRBRL and 12.5 ROM), the answer can be issued by a municipal executive position, as can be seen from article 96 of the ROM, which establishes that: *"1. The presentation of reports and the answering of requests and questions is the responsibility of the member of the governing team competent by reason of the matter. This, except in the case of the sessions of the Plenary of the Municipal Council, may designate a managerial position of the executive administration to provide information on the performance of the corresponding body or explain the content of the reports or matters presented"*. This seems to be the present case, in which the complainant would have answered the request as Head of the Department of (...) of the City Council, and for the reason of the matter.

Accordingly, and to the extent that the forwarding of the information was part of the control and monitoring functions of government action, it does not seem disproportionate that the reply brief that the GM forwarded included the information on the charge of the person making the complaint. With regard to this assessment, it should be borne in mind - despite referring to a different case - that article 19 of the LOPDGDD protects the treatment of this data in the cases indicated in this provision, among the which includes, for example, (art. 19.3) the processing of this data by a political group of a City Council, when the processing derives from a legal obligation or is necessary for the exercise of their competencies.

The same cannot be said of the dissemination of the first and last name and the ID number of the reporting person.

The inclusion of these other data in the letter of response that the GM forwarded does not seem strictly necessary to fulfill the purpose pursued by the GM when he sent the controversial mail, which was to inform the members of the (...) municipal about the eventual commitment of the municipal government to build a new Center (...) in (...).

The unnecessaryness of the data is particularly noticeable in the case of the DNI number of the person making the complaint, since, initially, the signature recorded in the response letter could have been made without this data being displayed. Therefore, its dissemination does not seem to be considered respectful of the principle of data minimization.

However, given the circumstances of the case, it does not seem that this contravention could be imputed to the reported GM. This consideration is reached based on the joint assessment of the following facts:

- First, of the fact that the data disclosed by the GM are only those included in the electronic signature recorded in the submitted document.

- Second, and with regard only to the dissemination of the first and last name, that the signature with a digital certificate unequivocally identified the signatory and ensured the integrity of the signed document, which could be considered relevant to the recipients of the document, given that it was indicative of the authenticity of the response, in the sense of indicating that it came from the municipal government or the City Council, and that it was not an interpretative letter from the GM.
- Third, that the electronic signature submitted was configured in such a way that the public employee's ID number was automatically displayed in the image of the signature.
- Fourth, that the GM comes to point out in his letter dated 07/19/2022, that he acted with the conviction that this visualization was correct due to the fact that it came from the City Council (...), misleading him when forwarding the document; adding that the employee herself could modify the configuration of the signature and omit this information (implying that they acted with the conviction that the public employee had consented to the dissemination of this data of hers).
- Fifth, it is foreseeable that the DNI number would also appear in the part of the configuration of the public employee's certificate, configuration that is carried out by the entity providing certification services and which cannot be modified even by the employee public nor by the Public Administration to which it belongs, in this case (...). In the event that this is the case, it should be noted that, unless the City Council (or later the GM) had sent the response document as an image, this information could also be accessed by querying the properties of signature. The inclusion of the DNI number in the information fields that make up the structure of the qualified certificates issued for public workers has been addressed by this Authority in Opinion CNS 17/2017, published on the Authority's website. In this Opinion it has been concluded that the inclusion of this data would not, in general, be adequate to the minimization principle. In any case, the fact that the City Council had not taken the no. of ID in the part of the signature that was visualized, and that the undersigned person (here the complainant) had not done so either and was the one who sent the letter in which this data was visualized, caused the GM not to delete it later when forwarded the document.
- Sixth and last, with regard to the dissemination of the name and surname of the complainant, it cannot be ruled out that the members of the (...) could access this data (name and surname) in exercise of the right to the public information provided for in the transparency laws, given his position as Head of the Department of (...) of the City Council. In this sense, the name and surname are identifying data of the public employee, and therefore do not form part of the special categories of data in the terms of article 23 of Law 19/2014, of December 29, of transparency, access to public information and good governance (LTC). In these cases, article 24 of the LTC provides that: *"1. Access to public information must be given if it is information directly related to the organization, operation or public activity of the Administration that contains merely identifying personal data unless, exceptionally, in the specific case it has to prevail over the protection of personal data or other constitutionally protected rights"*.

In conclusion, it is considered that the inclusion of the DNI number of the reporting person and its subsequent dissemination would not respect the principle of minimization, but this contravention cannot be imputed to GM JuntsxCat, for the reasons indicated.

2. 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 that have been addressed in this resolution, any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

Article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that "(...) *no charges will be drawn up and the dismissal of the file and the archive of actions when the proceedings and the tests carried out prove the non-existence of infringement or liability. This resolution will be notified to the interested parties*". And article 20.1) of the same Decree determines that the dismissal proceeds: *c) When the existence of responsibility has not been proven, or its extinction has occurred.*"

Therefore, I resolve:

1. File the previous information actions number IP 107/2021, relating to the Junts per Catalunya Municipal Group of the City Council (...).
2. Notify this resolution to the Junts per Catalunya Municipal Group of the City Council (...) and 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,