

## File identification

Archive resolution of the previous information no. IP 226/2021, referring to the Town Council of Ribes de Freser

## Background

1. 05/31/2021 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Ribes de Freser City Council, on the grounds of an alleged breach of the regulation on protection of personal data .

Specifically, the person making the complaint stated that on 11/05/2021 he tried to complete an electronic procedure with the Ribes de Freser City Council, but that due to an IT incident it was not possible for him to attach the documentation he attached with the application, and that the next day the Council called the school where she worked to contact her about the failed electronic process. In this regard, the complainant states that at that time he was on leave due to temporary incapacity, and as the school informed him, the City Council had contacted the educational center to request his telephone number, given that doing a search for the person reporting on the internet, the " *school blog* " had come up . In this regard, the complainant complains that the City Council called the school to request her personal contact details, and explained to them that she had tried to do an electronic procedure with the City Council. Finally, specify that the person who called identified herself as Mrs. (...)and who left the following contact email (...)

2. The Authority opened a preliminary information phase (no. IP 226/2021), 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 02/02/2022 the reported entity was required to report on whether the City Council called the school where the reporting person worked, and if so, the source of where the data relating to the workplace of the person here reporting was obtained that allowed this call to be made. Likewise, it was required that reports on the information provided during the call to the school, specifically on whether it was revealed that the complainant here had contacted the City Council to carry out some specific procedure, as well as the circumstances and the context that motivated the City Council worker to call the school.

4. On 09/02/2022, the City Council responded to the aforementioned request through a letter in which it stated, among others, the following:

- That " *Mrs. (...), who according to the reporting person would have made the alleged call, made a temporary substitution at the OAC (Consumer Service Office) during a quarter of the spring of 202, during which he attended to different requests, among others, the one contained in the Entry Register presented on 05/11/2021 at 13:40:27 hours, and assigns the number (...)*"

- That " *the worker does not remember the existence of any call in the sense presented by the complainant and, consequently, this City Council does not have information about the existence of such an alleged call or the meaning and/or content of the same . " "*
- That " *the information that the City Council has about the person making the complaint has been obtained by it actively, as stated in the request that the complainant presented to the City Council on May 13, that is to say, one day later of the alleged call from the City Council to the school ."*
- That " *In this instance the interested party herself says "I am sending you an instance because I called you and you told me to do it this way so that you would keep my contact". Therefore, as the interested party herself says, there was a call from the interested party to the City Council **before the 13th**, in which the City Council told her to send an instance and facilitate her contact details."*

The reported entity attached various documentation to the letter, specifically, the following:

- Screen printout of the program for the entry of the municipal files, where it states that on 11/05/2021 the reporting person submitted a "request (...)", in which the data of contact a private email address of the reporting person.
- Copy of the letter dated 05/13/2021 that the complainant addresses to the City Council, in which he expresses his interest in the " *Program of (...)* ", and adds that " *I am sending you a request because I call and you told me to do it that way so that you would save my contact.* "

**5.** On 02/16/2022, also during this preliminary information phase, the Authority's Inspection Area, by means of an office dated 02/14/2022, required the reporting person because in within 10 working days, provide the information relating to the name and contact details of the school where the City Council worker allegedly called, or of the person from the school who answered the controversial call from the City Council , in order to be able to collect the school center's testimony about the events reported, since the City Council had reported that it did not have information about the existence of the controversial call.

In the same office, the reporting person was informed that it was essential to have this information to be able to continue the inspection actions and it was expressly warned that if the required information was not provided after the deadline, it would be considered that the his opposition to the Authority contacting the school to ask them to testify about the events reported.

The deadline granted has passed without, as of today, the Authority having received any written and/or response communication.

## **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.

Specifically, the person making the complaint explained that on 11/05/2021 he tried to do an electronic procedure with the Ribes de Freser City Council, but that due to an IT incident, he was unable to attach the documentation he attached with the application submitted. The complainant complained that, the following day, the City Council called the school where she worked to contact her, claiming that she had tried to do an electronic procedure with the entity. He adds that in the face of the school's refusal to provide his contact details, the person from the City Council asked the school if they could notify him that he had been called, identifying himself with a first and last name and giving a corporate and generic email address. The complainant adds that, according to the school, the City Council employee who called said that he had located the name of the school by doing an internet search based on the personal data contained in the request submitted by the complainant here.

In this respect, it should be pointed out that these facts could potentially constitute an infringement in terms of data protection, due to the violation of the principle of confidentiality (art. 5.1.f. RGPD).

Having said that, it should be noted that, from the documentation provided by the reported entity, it is established that, on 11/05/2021, the reporting person submitted an electronic request addressed to the City Council, in which it was identified with first and last name. Also, that on 05/13/2021, she presented a second instance in which she herself affirmed that she submitted the letter electronically, following the instructions that the City Council had given her when she had called (*" I am sending you an instance because I called you and you told me to do it that way )* .

Therefore, it is an unquestionable fact that the City Council, with the request submitted on 11/05/2021, had at its disposal the personal data relating to the name and surname of the complainant here, and also that the complainant he subsequently contacted the City Council by phone, as stated in the request submitted on 05/13/2021.

For its part, the City Council reports that the employee who allegedly made the call does not remember having made it. Also, the reported entity adds that it is the reporting person who telephoned the City Council to find out how to submit the request, as she herself acknowledges in her letter dated 05/13 /2021.

So things are, taking into account the two versions of the events that happened, and that with the information available it was not possible to determine without a doubt that the disputed call had come to be produced, this Authority, as stated in actions, he contacted the complainant to inform him that in order to continue the investigations it was necessary to obtain more information.

In this regard, it should be noted that although the complainant indicated the name and surname of the person who allegedly made the controversial call and a generic corporate e-mail address of the City Council (...), it cannot be ruled out that these data he could know following the telephone conversation he acknowledges he had with the City Council about how to present the request.

In this regard, the complainant was required to provide the name and contact details of the person from the school who, as he claimed in his complaint, would have answered the alleged call and would have informed him that the employee of the City Council had called, in order to collect their testimony about the events reported. In this regard, it should be noted

that, in fact, as this Authority verified, among the results obtained from an internet search with the name and surname of the person making the complaint, there is the name of a school, but it was necessary to collect the testimony of the person from the school who would have answered the alleged call to know the terms in which the hypothetical conversation would have developed, to determine if this action constituted a violation of the data protection regulations. In the same communication, which was notified to him on 02/16/2022, he was also warned that the information was necessary to continue the investigations, but, even so, the reporting person did not provide the required information, which would have made it possible to collect the testimony of the person at the school center who allegedly answered the controversial call, and to have sufficient elements to certify that this call took place and to know what the content of the conversation was.

At this point, it must be taken into account that the sanctioning administrative procedure is particularly guaranteeing because of the consequences that can be derived from it. That is why it is necessary, for its initiation, the existence of evidentiary elements or sufficient rational indications that allow the commission of an infringement to be imputed, elements that are not present in the case under examination.

It can be ignored that the penal administrative law is applied, with some nuance but without exceptions, the inspiring principles of the criminal order, resulting in the full virtuality of the principles of presumption of innocence and *in dubio pro reo* in the area of sanctioning authority, which shifts the burden of proving the facts and their authorship to the accuser. In short, the presumption of innocence must always rule without exception in the penal system and must be respected in the imposition of any penalty.

Therefore, based on the right to the presumption of non-existence of administrative responsibility, until the contrary is proven (art. 53.2.b LPAC), the filing of the present proceedings proceeds.

**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 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 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure: "*b) When the facts are not accredited*".

Therefore, I resolve:

- 1.** Archive the previous information actions number IP 226/2021, relating to the Ribes de Freser Town Council.
- 2.** Notify this resolution to the Ribes de Freser 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,

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