

File identification

Archive resolution of the previous information no. IP 230/2021, referring to the Barcelona Association of Surveyors, Technical Architects and Building Engineers

Background

1. 02/06/2021 , the Catalan Data Protection Authority received a letter in which a person files a complaint, on the grounds of an alleged breach of the regulations on personal data protection. Specifically, the person making the complaint stated that he signed up voluntarily to the register of technical architects competent to make energy efficiency certificates of the Catalan Energy Institute (ICAEN), through the Association of Installers, Technical Architects and Building Engineers of Barcelona (hereinafter, the College or CAATEB), and reports that the archive of this record is available, in open format, at the following web links:

<https://docplayer.es/amp/61236155-Registre-d-arquitectes-tecnics-competents-per-fer-certificats-d-eficiencia-energetica-de-l-icaen.html>

https://documen.site/download/listat-de-collegiats-inscrits-com-a-certificadors-deficiencia_pdf

The letter of complaint adds that the reference file contains personal data of the professionals who were registered in the register. Among others: first and last name, ID number, full address, town, postal code and email.

2. The Authority opened a preliminary information phase (no. IP 230/2021), 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. On 04/19/2022, the Authority's Inspection Area carried out a series of checks via the Internet on the facts reported. Thus, it was found that by accessing the web links identified in the first antecedent, a pdf document appears as a result that allows you to view the personal data included in the following fields: name and surname, DNI, full address, town, postal code, telephone, e-mail, training and company name, of the people registered in the Register of technical architects competent to make energy efficiency certificates of the ICAEN. The document incorporates a distinctive corporate graphic of the College of Apparatus, Technical Architects and Building Engineers of Barcelona.

4. In this information phase, on 22/04/2022, the reported entity was required to indicate, among others, the basis that would legitimize the open publication of the file relating to the register of competent technical architects to make energy efficiency certificates, the date from which the publication is available and the reasons that would justify disseminating the personal data of members. Likewise, it was also required that, in the event that the College

had not disseminated the said archive, it argued the reasons that could justify its being accessible on the controversial links.

5. On 04/26/2022, the reported entity responded to the aforementioned request through a letter in which it stated, among others, the following:

- That, the file accessible from the links reproduced on the web pages, unrelated to the CAATEEB, contains the list of experts for the years 2016 and 2017.
- That, currently, the file referred to is not published on the CAATEEB website and that it has not been published "*since the dates recorded in the same*".
- That, everything indicates that these web pages copied the lists at the time and made them public on their own, without the knowledge or authorization of the College.
- That, these lists and their content have been evolving and the same information that was published in the reference years is no longer published, but it remains information open to the public, and for these purposes all the members who are part of it give the corresponding authorization.

Finally, the College emphasizes that the lists of experts are for voluntary registration and that they are published on the CAATEEB website at the direction of the ICAEN, pursuant to the provisions of the Third Transitional Provision of Royal Decree 235/2013, of April 5, which approves the basic procedure for the certification of the energy efficiency of buildings, which establishes: "*It must also make available to the public regularly updated records of competent technicians or companies that offer the services of experts of this type and must serve as access to information on citizens' certificates...*".

6. On 05/30/2022, the Authority's Inspection Area made a series of checks via the Internet and found that the file containing the list of experts for the years 2016 and 2017 is not found accessible from the official website of the College of Apparatus, Technical Architects and Building Engineers of Barcelona, nor from the website of the Catalan Energy Institute.

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.

The complainant stated that the links transcribed in his written complaint allow access to a file that contains personal data of different professionals registered in the Register of Technical Architects competent to issue Energy Efficiency Certificates.

In this regard, the reported entity has argued that the web pages referred to are owned by persons outside the College, who have never had any relationship with the entity. He adds that, at present, these lists are not published on the CAATEB website and that , *"they have not been since the dates recorded in them"*. The letter from the denounced entity also points out that *"everything indicates that these websites should have copied the listings at the time and made them public on their own, without the knowledge or authorization of the College"*.

Well, based on the due diligence carried out by the Inspection Area of this Authority, on 04/19/2022, it has been established that the reference file is published on the web links identified by the complainant , and that the document contains personal data of the different professionals who were registered in the said register. Specifically: your first and last name, full ID number, postal address, email address, telephone number and company name.

In this regard, it should be noted at the outset that the links referred to are not the property of the College, and consequently the fact that the controversial file remains published on the web links, as indicated by the person making the claim, would not be attributable to the entity denounced

Having said that, the reported entity has acknowledged having published the reference file on its website, during the years 2016-2017, and has affirmed that, since those dates, the reference file is not accessible from the your web page. For verification purposes, on 05/30/2022 the Inspection Area of this Authority accessed the College's official website and verified that the file is not available on the website of the reported entity, as he claims.

In accordance with the arguments presented, ruling out the possibility of attributing responsibilities to the College for the publication, by a third party, of the file on the links indicated by the complainant, it is necessary to analyze whether it is appropriate to agree on the beginning of a sanctioning procedure against the reported entity, for the publication of the said file on its website during the years 2016 and 2017.

Certainly, the disputed document contains personal data that could be excessive, in relation to the purposes for which they are processed. In this sense, although the proven facts could be constitutive of the violation provided for in article 83.5 a) of the RGPD, which typifies the violation of *"the basic principles for the treatment, including the conditions for consent, of in accordance with articles 5, 6, 7 and 9"* among which, the principle of minimization is contemplated (art. 5. c RGPD), given that the conduct addressed has been collected as a very serious infraction in article 72.1 a) LOPDGDD, its limitation period is three years.

Consequently, taking into account that the events took place in 2016 and 2017, at the time of submitting the complaint to this Authority, on 06/02/2021, the infringing conduct would have already expired.

The prescription of the infringement causes the extinction of the responsibility that could be derived from the eventual infringing conduct. Therefore, it is not appropriate to initiate the corresponding sanctioning procedure, as no action can be taken to prosecute the alleged infringement.

At least, given that the controversial information continues to be published on the web links identified by the complainant, and that this publication may lead to a breach of data protection regulations, given that the data controller would be outside the scope of action of this Authority, in accordance with article 156 of the Statute of Autonomy of Catalonia, and article 3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, proceed to transfer this matter to the Spanish Data Protection Agency, for their knowledge. This is without prejudice to the fact that the reporting person can exercise their right to delete personal data before the person responsible for the controversial web links.

3. In accordance with everything that has been set out in the 2nd legal basis, it is appropriate to agree on the archive of the present actions of prior information, with regard to the responsibility of the College.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, provides for the cases in which the actions must be archived. In accordance with what has been set forth in the previous legal basis, the assumption provided for in letter e) of article 89 of the LPAC applies, which establishes that the archive corresponds *"When it is concluded, at any time, that the offense has prescribed"*.

However, the present actions are being transferred to the Spanish Data Protection Agency regarding the publication of the lists by the owner of the links indicated in the first antecedent of the resolution, as it falls within its scope competence

Therefore, I resolve:

- 1.** File the previous information actions number IP 230/2021, relating to the College of Installers, Technical Architects and Engineers of Barcelona Building.
- 2.** Notify this resolution to the College of Surveyors, Technical Architects and Building Engineers of Barcelona and to the person making the complaint.
- 3.** Transfer the actions of the previous information number IP 230/2021, to the Spanish Data Protection Agency, regarding the publication of the lists by the holder of the links indicated in the first antecedent of the resolution, in order to within its scope of competence.
- 4.** 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 denounced entity may the interested persons may file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within a period of one month from the day after its notification, in accordance with the provisions of 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,

Machine Translated