

File identification

Archive resolution of the previous information no. IP 235/2021, referring to the General Directorate of the Police

Background

1. On 06/03/2021, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the General Directorate of the Police, on the grounds of an alleged breach of the regulations on personal data protection.

The complainant stated that, on 04/23/2021, in her capacity as a lawyer assigned to the official shift, she attended the police station of the Mossos d'Esquadra de l'Hospitalet. According to reports, the investigating officer (TIP no. 21131) included his personal telephone number in the affidavit, instead of indicating his professional telephone number.

The letter of complaint also shows that, from the Shift of Office Commission, it would have been confirmed to the now complainant that they did not provide the Police Station with their personal mobile phone number.

The reporting person provided the school file that contains his public personal data, which does not include his personal telephone number, but the professional one that corresponds to a landline.

2. The Authority opened a preliminary information phase (no. IP 235/2021), 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.

3. In this information phase, on 21/09/2021 the reported entity was required to report, among other issues, on the reasons why the officer who instructed the reference police report entered the personal mobile phone number of the lawyer acting, as well as any other issue that would contribute to clarifying the facts reported.

4. On 02/25/2022, this Authority again required the reported entity to report on the aspects indicated in the previous precedent, given the lack of response, well beyond the deadline granted.

5. On 01/04/2022, the General Directorate of the Police responded to the aforementioned request through a letter in which it stated the following:

- *"The telephone numbers of the lawyers available to the Police Squad for the assistance at the police station to people arrested, investigated or reported can only come from 3 ways: because this is the contact number provided by the Bar Association to the person who belongs to the judicial party of the police station where the police station was held assistance (situation specific to assistance for the Office Shift); because it provides him with the person arrested, investigated or reported (situation specific to those assistances in which the*

person who must be assisted appoints a private lawyer); or by the lawyer himself who in either case contacts the police station to obtain more information about the assistance, to inform that it will be delayed, etc. In any of these cases the police completely ignores whether it is a professional or private phone.

- *It is appropriate to indicate that in this case the assistance of the person who was denounced was made through a letter from the Office of the Illustrious Bar Association of Barcelona (hereafter ICAB), noting in the certificate by means of "Telephone Diligence" that an ex officio lawyer had been requested from the said College to assist her on April 21, 2021 at 2:00 p.m.: 30 hours*
 - *It is stated in the proceedings that the reported person presented himself at the police stations that day at that time, it is also noted that the ICAB provided the name of the official lawyer assigned, as well as the fact that until at 4:05 p.m. that day he had been waiting for her and that she stated that she was in Court, that ICAB knew about it, and that she would be at the Police Station in a quarter of an hour, from which it follows that there was a telephone contact with her while she was not in the office."*
6. On 04/05/2022, this Authority required the complainant to confirm, within ten days, whether the telephone call to the Police, referred to in the DGP's letter, existed and, if so, indicate whether you did it from your personal phone, and whether you consented to that phone number being used as a means of contact. Likewise, he was also required to provide the police report in which his mobile phone number would have been collected. On 04/16/2022 the notification was rejected without access.
7. On 04/20/2022, the Authority will notify the complainant, again, of the letter indicated in the previous antecedent. The reporting person accepted the notification on the same date, and after the deadline has passed, he has not responded to this Authority's request for information.

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 subject of this complaint procedure is an alleged collection of personal data, contrary to data protection regulations.

Specifically, the letter of complaint shows that the investigating officer of certificate number 345595/2021 would have collected the personal number of the now complainant, instead of her professional number. The person making the complaint also points out that only his professional number appears in his collegial file and that, after having consulted the Duty Shift Committee, he was confirmed that the Committee does not he provided the police station with his personal number.

Well, within the framework of this previous information, the reported entity has made it clear that the telephone numbers of the lawyers who are available to the Police Squad regarding assistance to the police station for people arrested, investigated or denounced can only come from 3 ways: from the Bar Association to which the judicial party of the police station where the assistance was made belongs, a situation which they indicate is typical of the assistance of the office shift; because it is facilitated by the person under investigation, a situation specific to assistance in which the arrested person appoints a private lawyer; or, by the lawyer himself. In this regard, he adds that, after examining the police proceedings, in the particular case, the complainant acted as an ex officio lawyer, also noting that the ICAB "*facilitated the name of the assigned ex officio lawyer*". Likewise, with respect to the events that occurred, they indicate that, although the assistance to the arrested person was supposed to occur at 2:30 p.m. on 04/21/2021, the now complainant would have contacted the Police Station by telephone to in order to inform "*that he was in Court, that the ICAB knew about it, and that he would be at the Police Station in a quarter of an hour*", and they conclude that there is no doubt that there was a telephone contact with the lawyer, now complainant, who stated that he was not physically in the office, but in Court, justifying in this way that the call would not have been made from his professional telephone which corresponds to a fixed telephone number.

Having received the allegations of the reported entity, the Authority required the reporting person, on two occasions, to report whether the telephone call to the Police, which is referred to in the DGP's letter, the did from your personal mobile phone, and if so, if you consented to the collection of this phone number as a means of contact.

However, these requests for information have not been attended to, and the complainant has not contradicted the allegations of the DGP regarding the existence of this call, from his private telephone, to communicate his delay regarding the time she had to go to the police station to provide assistance to a detainee, nor has she made any statement to deny that she herself was the one who, in this way or in any other way, had provided his private telephone number to the DGP, or had lent his consent for this personal data to be collected in the police report as a means of contact.

So things are, apart from the initial statements of the person reporting, there is no other element that corroborates that the investigating officer collected the personal telephone number of the person reporting without a legal basis, and therefore, in a way contrary to data protection regulations.

Having reached this point, it must be taken into account that the sanctioning administrative procedure is particularly guarantor 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 offense to be imputed, elements that do not come together in this case, since it is not possible to accredit the circumstances of the events reported.

In this regard, the Judgment of the National Court of 18/03/2009, ratified by the Court Supreme in judgment dated 05/16/2012, which confirmed a resolution of the Agency Spanish Data Protection Act under which the archive of the actions was declared of prior information because it was considered that there was no corroborating evidence of the authorship of the reported facts that would allow the same to be imputed: "*The appealed resolution recognizes*

that the reported conduct could have given rise to a breach of the duty of secrecy in application of the provisions of Article 10 of Organic Law 15/99 and that it could have given rise to the imposition of a sanction for carrying out a non-consented data treatment (...). However, the only argument on which the file is based is that it has not been possible to prove who could be responsible for the offense committed. The presumption of innocence thus becomes the basis of the archive resolution and a new assessment of the facts carried out by this Chamber obliges to confirm said criterion because said presumption (proceeding from Article 24 of the EC), is an essential figure of the punitive law and, therefore, applicable to the administrative sanctioning area (article 137 of the Law on the Legal Regime of Public Administrations and of the Common Administrative Procedure), implies the existence of a minimum evidentiary activity of charge, practiced with observance of all guarantees proceedings, from which the culpability of the accused can be deduced; to this is added the right to defense under the terms of the current sanctioning regulations (art. 135 LRJA-PAC 1.398/1993), so since there is not sufficient evidence, it turns out that it is not possible to agree to the initiation of the sanctioning procedure, being the file agreed upon by the appealed resolution is reasonable."

Consequently, the principle of presumption of innocence is applicable here as there is no evidence to prove the allegedly unlawful collection of data that is the subject of this complaint, and therefore the commission of an offense by of the DGP. In this sense, article 53.2. b) of Law 39/2015, of October 1, recognizes the right: *"The presumption of non-existence of administrative responsibility until proven otherwise"*.

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 highlighted in the instruction of the procedure: *"b) When the facts are not accredited;"*.

Therefore, I resolve:

- 1.** File the actions of prior information number IP 235/2021, relating to the Directorate General of the Police.
- 2.** Notify this resolution to the General Directorate of the Police and to the reporting person.
- 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. One can also be directly interposed



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administrative contentious appeal 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, regulator of the administrative contentious jurisdiction.

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

The director,

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