

## File identification

Archive resolution of the previous information no. IP 238/2021, referring to the Department of Health

## Background

1. E n data 04/06/2021, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, a través de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava una denúncia contra el Departament de Salut (hereinafter, SLT Department), due to an alleged breach of the regulations on personal data protection .

The complainant stated that in the month of April 2021 he received an *SMS message to the " professional "* mobile phone number in which he was informed that he had at his disposal an electronic notification from the SLT Department. In this regard, the complainant complained about the use by the SLT Department of the data relating to his " *professional* " mobile phone number to send him said notice of the provision of a notification of an administrative act relating to his private sphere. In relation to this, the reporting person pointed out that he had never authorized the use of this telephone number to receive notifications or electronic communications relating to " *subjects that only refer to me personally*", and that he had only authorized its use to the Administration of the Generalitat of Catalonia for labor and/or professional matters.

The reporting person provided various documentation relating to the events reported, including the following:

- the image capture of the SMS message of the notice of making available an electronic notification of the Department of SLT.
- the capture of the image of the electronic notification, made on 23/04/2021, by the appearance of the person here denouncing in his private space through the electronic Headquarters of the Administration of the Generalitat of Catalonia. The electronic notification is the resolution proposal, issued as part of the sanctioning procedure initiated by the SLT Department ((...)). In the upper right part of the image, there is the mobile phone number where the notice of the electronic notification was sent ((...)).

2. The Authority opened a preliminary information phase (no. IP 238/2021), 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 01/02/2022, the reported entity was required to report, among others, on the source of the data relating to the " *professional* " telephone number of the person here reporting, where the Department of SLT sent him a statement that he had at his disposal an electronic notification, and, if the reporting person had authorized to relate to the Department through electronic means, and for that purpose had facilitated the data relating to your " *professional* " telephone number .

4. On 07/27/2021, given that the deadline had been exceeded without the entity having provided the required information, the request for information was reiterated to the entity with the warning that, in case of non-compliance, an infringement of the regulations on the protection of personal data could be incurred.

5. The Department of SLT responded to the aforementioned request through a letter in which it stated the following:

- That " *The telephone number to which the electronic notification was made was provided by the plaintiff himself in the Act for alleged violation of the health prevention and containment measures to deal with the health crisis caused by the COVID-19, raised by the police officers on 08/11/2020.* "
- That " *as stated in the document of evidence of the notification process, which is attached to this letter, the first notification was made both by post and by electronic means and in relation to the latter it is specified:  
"Accepted on 29/03/2021 at 10:54:26 by (...)((...))  
Do you want to receive electronic notifications: YES  
You want to receive notices of electronic notifications to:  
Tel . Phone: (...)  
E-mail:"* "
- That " *According to this, although the person denounced in the minutes drawn up on 08/11/2020 did not authorize receiving notifications by electronic means, in the notification of the sanctioning file carried out on 03/29/2022 by the Department of Health, which was made both by post and electronically as required by article 41.6 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, accepted it indicating who wanted to receive electronic notifications. The SMS on which the claim is made is from the month of April. Therefore, subsequent to her decision in March to want to receive electronic notifications and it suits her.* "

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

- Copy of the document " *Act for alleged violation of health prevention and containment measures to deal with the health crisis caused by Covid-19* ", dated 08/11/2020. The document contains the personal data of the complainant here as an alleged infringer for " *violation of mobility due to restrictions between municipalities* ", and the mobile phone number included is " (...) ". In the " *Authorization of electronic notifications* " section of the form, the " *No* " box is marked .
- The document " *Evidence of the notification process* " generated by e- Notum , dated 03/29/2021, which the entity refers to in its allegations.

In said document it is stated that, on 29/03/2021, the person reporting here has accepted an " *Electronic Notification of the disciplinary file* ", related to the file of the Department of SLT " (...) ". Also, the reference is included that the act to which the interested person has accessed electronically has been the subject of a " *Notification sent on paper* ". Also, it is recorded the consent of the person making the complaint to receive, in relation to said disciplinary file, electronic notifications, and that the mobile phone number "(...)" is *where* the notices of electronic notifications.

## 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 facts that are the subject of this archive resolution, and specifically, whether the Department of SLT could send a notice about making available the electronic notification related to the proposal resolution of the sanctioning procedure " (... ) ", to the "professional" telephone number of the person making the complaint.

The first thing to indicate is that the "professional" mobile phone number that, according to the person making the complaint here, would only have communicated to the Administration of the Generalitat de Catalunya to deal with professional or work matters, is the same phone number that is collected in the " *Act for alleged violation of health prevention and containment measures to deal with the health crisis caused by Covid-19* ", dated 11/08/2020, filled out by a police officer during a road check, and where the person reporting here is listed as an alleged infringer. The facts denounced in said Act is the " *violation of mobility due to the restrictions between municipalities* ", and it states that the person denounced there declares that the reason for the breach is to visit the couple and that they do not acts as responsible for a professional activity.

Therefore, contrary to what the complainant here states, the telephone number to which the controversial notice of making available an electronic notification of a disciplinary procedure was sent, he would have communicated it himself, to an agent , in a police check for events unrelated to his professional life, as stated in the referenced Police Act.

This Police Act gave rise to the initiation of the sanctioning procedure of the SLT Department against the person making the complaint here ( ( ... ) ), and it is within the framework of this procedure that the proposed resolution subject to the controversial notice is issued to the mobile phone number.

In relation to the said disciplinary procedure, it should be noted that the police report contains the refusal of the person reporting here and the person reported there to receive electronic notifications " *related to the file derived from this report, by electronic means, to the e-mail address and mobile phone indicated* ". In other words, the person reporting here at the time he was reported gave his telephone number, but he did not consent to the notifications that were made as a result of the report for breaching health prevention measures, to be carried out by electronic media

At this point, it must be said that although article 41.6 of the LPACAP provides that, regardless of the fact that the notification is made on paper or by electronic means, the public administrations must send a notice to the electronic device and/or the 'e-mail address of the interested party that he has communicated, to inform him of the provision of a notification at the electronic headquarters of the Administration, it must also be taken into consideration that, the identification of the electronic means to notify of making the notification available is

an optional element for people not obliged to process communications digitally, as would be the case of the one reported here.

Well, having said that, it should be noted that, regardless of whether the notification is made on paper or by electronic means, in accordance with the provisions of article 42.1 of the LPACAP, all notifications that are made on paper are they must make available to the interested party at the electronic headquarters of the Acting Administration so that the interested person can access its content voluntarily.

Therefore, despite the fact that the person reporting here and the person reported there had indicated in the referenced Police Act that they did not want to receive electronic notifications, this did not prevent the Department of SLT, in addition to sending the notification on paper, to making available to the electronic Headquarters all the notifications of the different acts that were issued during the processing of the disciplinary file. This requirement made it possible for the person reporting here, who had initially chosen the paper channel, to be able to access on 03/29/2021, through the electronic Headquarters, the notification sent to him by the SLT Department by electronic channel, as evidenced by the document " *Evidence of the notification process* " generated by e- Notum , provided by the reported entity.

In this sense, it should be noted that article 42.3 of the LPAC determines that in the event that the interested person who has chosen to receive the notifications on paper, accesses the electronic notification, he will be offered the change of channel for the subsequent notifications of the procedure So things are, in the electronic notification evidence document of 03/29/2021, it also states that the person reporting here authorized, from that moment on, to receive electronic notifications (Does he want to receive electronic notifications: *YES* ) and to receive notice of electronic notifications by mobile phone, indicating for this purpose the same mobile phone number collected in the Police Record ( *Want to receive notices of electronic notifications to: Mobile phone : (...)*).

Therefore, when the SLT Department sent on 04/23/2021, the controversial notice of making available the electronic notification of the resolution proposal, it had the prior authorization of the person here reporting, since he himself on 03/29/2021, when he accessed a previous electronic notification of this sanctioning procedure deposited in the electronic Headquarters (which had also been sent to him through the paper channel), he authorized that the successive administrative acts could be notified electronically , and to receive the corresponding notices of availability to the "professional" telephone number.

In short, in the present case, the person reporting here on 29/03/2021 identified and authorized the use of the mobile phone number to which he wanted to receive the notices linked to the electronic notifications of the sanctioning procedure of the Department of SLT, for which reason, on 04/23/2021, he was sent the notice of the availability of the electronic notification of the proposed resolution of the referenced sanctioning procedure. Consequently, it is considered that the action of the SLT Department when it sent the controversial notice to the complainant's mobile phone did not constitute any violation of the personal data protection regulations.

**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 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 responsibility. This resolution will be notified to the interested parties*". And article 20.1) of the same Decree determines that the dismissal proceeds: " a) *When the facts do not constitute an administrative infraction*".

Therefore, I resolve:

1. Archive previous information actions number IP 238/2021, relating to the Department of Health
2. Notify this resolution to the Department of Health and 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. 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,