

(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 the event of revealing the name of the affected entity, they could be identified also the natural persons affected.)

## File identification

Archive resolution of the previous information no. IP 246/2021, referring to the City Council of (...)

## Background

1. On 01/06/2021, the Catalan Data Protection Authority received a letter from the Business Committee of the City Council of (...) (hereinafter, the reporting entity) in which it filed a complaint against the City Council of (...), due to an alleged breach of the regulations on the protection of personal data .

Specifically, the reporting entity highlighted that, on 02/02/2021, it presented a letter addressed to the " *highest authority (Mayor-President)*" *before the aforementioned City Council* , in relation to the direct aid in favor of the workers of residential Social Services provider centers, which they asked to extend to the personnel of the Municipal Brigade and the Local Police. He added that, a week later, the Head of the Department of Social Services and the social assistant of the same Department, addressed the president and the secretary of the Works Committee verbalizing the content of the aforementioned letter, demanding explanations with the desire to achieve the same gratification and/or recognition by the staff of your Department.

The reporting entity provided various documentation.

2. The Authority opened a preliminary information phase (no. IP 246/2021), 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 18/06/2021 the reported entity was required to give a statement on whether the people from the Department of Social Services who contacted the president and secretary of the Company Committee, for the exercise of their functions, they had to access the letter presented on 02/02/2021 by the Company Committee.

4. On 01/07/2021, the City Council of (...) responded to the aforementioned request through a letter in which it stated the following:

- That the people referred to in the letter of complaint corresponded with the head of the People's Care Area and the social worker of the City Council of (...) and that these people "did not access the document presented by the reporting person on February 2, 2021."

- That the people referred to in the letter of complaint were aware of the direct aid given that *"In a meeting between the People Care Area and the Human Resources Area, for strictly labor reasons and coordination between areas, the Human Resources Area informed the head of the People Care Area that the government team had decided ex officio to grant extraordinary gratuities to family workers (...)"*.
- That *"without referring to any writing or action carried out by the workers' representatives, the Human Resources Area informed the head of the People Care Area that the government team was considering making extending these extraordinary gratuities to other municipal workers who also carried out tasks that could be considered essential services during the pandemic."*
- That *"The social educator and the social worker, technicians of the People Care Area, (...) requested a meeting with the workers' representatives, since it is the means available to the workers municipal offices to make requests or resolve doubts of a labor nature."*
- That the *"meeting was held with the head of the People Care Area and the social worker. These stated to the workers' representatives that they had been aware of the extraordinary gratification granted and of the one that was being assessed to be extended through their colleagues. For this reason, they did not demand explanations but only asked them that, as representatives of the workers, they requested the government team to consider also including the social educator and the social worker in the extraordinary gratifications to others municipal workers who also performed tasks that could be considered essential services during the pandemic. (...)"*

## 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 reporting entity highlighted that the City Council of (...) had made *"improper use of confidential information addressed to the mayor's office by the President of the Company Committee and the Delegate of Officials "* (the letter dated 02/02/2021, referring to direct aid in favor of working people, which was addressed to the Mayor). He added that, following this fact, two workers from the same City Council addressed the president and the secretary of the Works Committee, verbalizing the content of the aforementioned letter and demanding explanations with the aim of achieving the same gratification and/or recognition by the staff of your department.

For its part, the City Council of (...), in response to this Authority's request for information, stated that the people referred to in the letter of complaint (the head of the Area of Attention to People and the social worker) *" did not access the document presented by the complainant on February 2, 2021. "* He added that these people were aware that *" the government team had decided to grant ex officio extraordinary bonuses to the family workers (...)"* and that *" (...)" was considering extending these extraordinary gratuities to other*

*municipal workers (...)", because the Human Resources Area reported in this regard to the head of the People Care Area " without referring to any writing or action carried out by the workers' representatives" , given that he was "the head of the area affected by the decision" , so he had to be informed, "as a person in charge, of the issues relating to his department catfish".*

Well, apart from the statements made by the reporting entity here, there is no other element that allows us to corroborate that the employees of the People's Service Area who addressed the Works Committee, had had access to the personal data contained in the letter presented by the Business Committee to the City Council on 02/02/2021, which has been expressly denied by the City Council.

On the contrary, as has been advanced, the City Council of (...) has argued in a reasoned way that the head of the Area of Attention to People and the social worker of the Consistory itself were aware that " *the "the government team was considering extending these extraordinary gratuities to other municipal workers (...)" , without the need to access the letter presented by the Company Committee.*

That being the case, the principle of presumption of innocence is applicable, provided for in article 53.2 b) of the LPAC, which recognizes the right "to the *presumption of non-existence of administrative responsibility until the contrary is proven*".

**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 " *b) When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred*".

Therefore, I resolve:

- 1.** Archive the actions of prior information number IP 246/2021, relating to the City Council of (...).
- 2.** Notify this resolution to the City Council of (...) and communicate it to the reporting entity.
- 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 its notification, in accordance with the which provides for 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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