

File identification

Archive resolution of the previous information no. IP 261/2021, referring to Lleida City Council

Background

1. On 23/06/2021, the Catalan Data Protection Authority received, by referral from the Spanish Data Protection Agency, a letter from a person for which he made a complaint against the City Council of Lleida, due to an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant complained about the fact that the City Council had handed over to third parties the document relating to the "*Joint Declaration of Change of Ownership of Activities*", dated 06/04/2021, which contained his data personal data (name, surname, ID number and private address), without your consent.

In this regard, the now complainant adds that the "*Joint Declaration of change of ownership of activities*" referred to a name change in the license of a restaurant, which would have run until 2019. And, as he points out, the recipient of the communication of his personal data, by the City Council, would be the new holder of the license.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 261/2021), 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 09/28/2021 the reported entity was required to inform, among others, about the legal basis that would justify the communication of the personal data to the new holder of the license activities.

4. On 13/10/2021, Lleida City Council responded to the aforementioned request through a letter in which it stated the following:

- That, on 10/09/2019, the now complainant ceased to be the holder of the license for activities carried out in the premises located on the street (...).
- That, in the Department of Industries and Activities, there is no other holder of the activity until 16/06/2021, the date on which the Management (...), representing the lady, who identifies herself with the initials (...), presented a communication of transmission of ownership of the activity.
- That, with the communication presented by the Management (...) the document of "*Joint declaration of change of ownership of activities*", dated 06/04/2021, signed by the now complainant and the lady (...). The previous and the new owner jointly communicate the transfer of the license.

Also, the reported entity explained that the new purchasers of the licenses, in order to find out who is the holder of a license, can request in writing to consult the file of the activity, being duly registered in the file, who are the people who have requested its consultation. In this regard, he pointed out that no access to the files containing the personal data of the now complainant has been recorded.

Finally, it is also noted that the controversial document, of joint declaration of change of ownership of activities, has not been delivered by Lleida City Council to third parties, and it invoked article 86 of Decree 179/1995, of June 13, which establishes that "*the subjects involved in the transfer of the license must communicate this in writing*", as well as articles 36.4 of Law 11/2009, of July 6, on the administrative regulation of shows public and recreational activities, and article 126.2 of Decree 112/2010, of August 31, which approves the Regulation of public shows and recreational activities, which establish that the transmission of licenses must be carried out jointly by the transmitters or owners of the establishments.

5. On 25/10/2022 the Authority requested the Management (...) to confirm whether the document relating to the "*Joint Declaration of Change of Ownership of Activities*" was presented to Lleida City Council on 06/16/2021, acting on behalf of Mrs (...), and to confirm whether the personal data of the person now making the complaint was entered from the Management. If so, the Management was required to indicate how it obtained the personal data of the now complainant.

6. On 10/28/2022, the Management (...) responded to the request for information indicated in the previous antecedent, in the following terms (the emphasis is ours):

- "On behalf of Mrs. (...) we submitted a joint declaration of change of ownership of activities and declaration responsible for waste production with the purpose of communicating to the Excellency. Ajuntament de Lleida the change of owner of the activity that takes place in the premises located at C/(...)de Lleida.
- Given that in the forms presented it was necessary to inform the data of the owner of the premises, the previous owner of the activity and the new owner, the owner of the premises, Mr. (...) provided his data and those of Mr. [now reporting] excerpts from the lease that they had formalized in the past.
- Regarding the signatures that appear in both statements presented, Ms. (...) signed as the new owner of the activity and Mr. (...) as transferor and owner of the premises since Mr. [now complainant] did not do it".

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 explained that he would have been the holder of a license to run a restaurant until 2019, and denounced the fact that Lleida City Council, without his consent, had communicated to a third person – the new licensee – their name, surname, ID number and private address.

In this regard, Lleida City Council has made it clear that it has not communicated the personal data of the now complainant to third parties, nor has it delivered the document relating to the "Joint Declaration of Change of Ownership of Activities " .

For what is of interest here, the City Council also stated that, although new license purchasers, in order to find out who is the holder of a license, can request to consult the file of the activity, this access remains duly registered, for the purpose of knowing who has accessed it. And, in the case at hand, there is no record of access to the files containing the personal data of the now complainant. Likewise, the City Council added that, in the Department of Industries and Activities, there is no other holder of the activity until 16/06/2021, the date on which the Management (...), representing Mrs. which is identified with the initials (...) presented the document " *Joint declaration of change of ownership of activities* " .

In turn, the Management (...), consulted by this Authority, has confirmed that it has submitted the " *Joint Declaration of Change of Ownership of Activities* " to Lleida City Council, on behalf of the new licensee, the Lady (...). In this regard, he explains that the statement contained the personal data of the now complainant, and argues that he proceeded to enter these data, given that they were necessary in order to request the change of license ownership. Likewise, the Management also informs that it was Mr. (...), owner of the premises, who provided the personal data of the now complainant, which he would have extracted from a lease agreement signed between both parties - Mr. (...) and the now complainant -.

In this regard, it should be borne in mind that the sanctioning procedure is particularly warranted because of the consequences that can be derived from it. This is why the existence of evidentiary elements or sufficient rational indications that allow the commission of an offense to be imputed is necessary. In accordance with article 24 of the Spanish Constitution, regarding the presumption of innocence, article 53.2.b) of the LPAC includes the following as the right of those presumed to be responsible for administrative procedures of a punitive nature: " *On the presumption of non-existence of administrative responsibility until proven otherwise* " .

It cannot be ignored that the penal administrative law applies, 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* en the scope of the sanctioning power, which shifts to the accuser the burden of proving the facts and their authorship. In this sense, the Constitutional Court, in its judgment 76/1990, of April 26, considers that the right to the presumption of innocence entails "that *the sanction is based on acts or probatory means of charge or incrimination of the reprehensible conduct; that the burden of proof corresponds to the accuser, without anyone being obliged to prove their own innocence; and*

that any inadequacy in the results of the tests carried out, freely assessed by the sanctioning body, must be translated into an absolute pronouncement". In the same way, the Supreme Court, in its Judgment of 10/26/1998, declares that the right to the presumption of innocence "does not oppose that the judicial conviction in a process can be formed on the basis of circumstantial evidence , but in order for this evidence to disprove said presumption it must satisfy the following constitutional requirements: the evidence must be fully proven - it cannot be mere suspicion - and it must explain the reasoning by virtue of which, based on the proven evidence, reached the conclusion that the defendant carried out the infringing conduct, then, otherwise, neither the subsumption would be founded in law nor would there be a way to determine if the deductive process is arbitrary, irrational or absurd, that is, if the right to the presumption of innocence when considering that the evidentiary activity can be understood as a charge ".

In accordance with the above, in view of the circumstances of the disputed facts, it must be concluded that the eventual communication of the personal data of the now complainant to third parties, is not attributable to the Lleida City Council, as as stated by the complainant, but it would have been a third person who would have collected them and entered them into the " *Joint Declaration of Change of Ownership of Activities* " document, given that in this form certain fields related to the personal data of the previous license holder, who is now the complainant.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information it has not been proven that the Lleida City Council has committed any act that could be constitutive of any of the violations provided for in the legislation on data protection, it is necessary to agree on 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 liability. 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.** File the actions of prior information number IP 261/2021, relating to Lleida City Council.
- 2.** Notify this resolution to the City Council of Lleida and to the person making the complaint.
- 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,

Machine Translated