

File identification

Archive resolution of the previous information no. IP 268/2021, referring to Vallromanes Town Council.

Background

1. On 07/05/2021, the Catalan Data Protection Authority received a letter from a person filing a complaint against Vallromanes City Council, on the grounds of an alleged breach of data protection regulations of personal data .

Specifically, the complainant, who identifies himself as a representative of (...)Vallromanes, stated that, on (...)/2021, the councilor (...) of the City Council published in the Facebook group "*Vallromanes (...)*", an image of a word document , which would have been drawn up by the councilor himself, and which would be the response that the City Council would be preparing to a previous request from (...)for celebrate a (...). The complainant complained that the councilor had published said response on the social network, and specifically, that the letter identified him, through his first and last name, as the recipient of the letter in the his status as a representative of (...).

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

2. The Authority opened a preliminary information phase (no. IP 268/2021), 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 07/19/2021, also in the midst of this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, the following was established:

- That on (...)/2021, the complainant made a publication in the Facebook group "*Vallromanes (...)*", where he complained that the City Council did not respond to the requests of (...), making specific reference to the (...)", and moreover, it prevented them from doing them ("*every summer the (...) is held. (...). But it seems that this year the Government of Vallromanes in more than not attending to us, he is boycotting our activities. (...). We have asked for a meeting with the councilor (...) and he does not want to attend to us .* ").
- That on the same day (...)/2021, the councilor of (...), responded to the previous publication, on the same Facebook channel "*Vallromanes (...)*". In his response, he addresses the complainant directly, and attaches an image of a computer screen where a word document can be seen , the content of which is a request for information from the City Council at (...) de Vallromanes, on different necessary aspects that need to be known ((...)) to be able to resolve the instance presented by the entity (...). This document is addressed to the person making the complaint here, identified through his first and last name, as a representative of (...).

- That on date (...)2021, the same councilor attached the image of a second letter, this one with the letterhead of the City Council, and digitally signed by the same councilor, through which an answer is given to the sole request of (...) on the referenced (...). This document is addressed directly to (...), and does not contain the details of the person making the complaint, nor that of any other representative of (...). This writing is similar, in terms of content, to the Word document published the previous day in which certain information about the (...) was required.

4. In this information phase, on 20/07/2021 the reported entity was required to report, on what would be the legal basis that would legitimize the publication of the aforementioned letter, where the reporting person is identified.

5. On 07/30/2021, the City Council responded to the above-mentioned request in a letter in which it set out the following:

- That the "*(...) deputy mayor and councilor of (...), published the image of the word document, in which Mr. (...) is identified, in the Facebook group "Vallromanes (. ..)".*
- That "*The Facebook group "Vallromanes (...)" is a private group that is not part of the municipal social networks, and which, therefore, is unrelated to the communications carried out by the Vallromanes City Council and the City Council is not responsible for the processing of personal data that may be carried out".*

6. On 01/13/2022, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint.

In this regard, he found that by entering the name and surname of the person making the complaint together with the name of the entity (...)Vallromanes in the Google search engine, one of the first results is the link to the website of the Register of Agreements of cooperation collaboration of the Generalitat, where the "*Collaboration agreement between the Vallromanes City Council and the (...) of Vallromanes*" is published in the open. In said document, the complainant is listed as a signatory party, and identified through his first and last name in his capacity as president of (...).

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 object of the complaint is the publication on the date (...)2021 on the Facebook of "Vallromanes (...)", of an image in which you can see the answer that the councilor (...) of the

Vallromanes City Council has prepared the request of the (...) of Vallromanes for the celebration of a (...). The complaint obeyed the fact that with the publication of this image the person making the complaint was identified through his name and surname, since the written response was addressed to the person making the complaint as a representative of (...).

The first thing to point out is that, of the content of the controversial publication, the only disclosure of personal data is the name and surname of the complainant, which is associated with the (...) of Vallromanes, given that, as has indicated, the written object of the publication is addressed to him as a representative of (...). In other words, the content of the letter does not reveal any other information that is considered personal data of the person making the complaint, since it is a request for information that the City Council addresses to (...) on different aspects of the (...) ((...)) that the entity has requested to hold.

On the other hand, it should be indicated that, the fact that the published letter is a response to a previous request presented by (...), certainly means that its publication reveals that the (...) had previously presented an instance at the City Hall. But, since it was an action that would have been carried out by the entity, or in any case, a natural person as a representative of an entity, the disclosure of this information - that the (...) had submitted a request to hold a (...)-, is excluded from the scope of application of the data protection regulations, limited to the processing of data of natural persons (art.4.1 RGPD).

Having said that, it should be noted that, contrary to what the City Council indicates, the entity is indeed responsible for the processing of the dissemination of personal data (name and surname of the complainant), given that said disclosure of personal data made the councilor (...), a representative of the municipal government, who had had access to said personal data in the exercise of his position, and who used them to disseminate them to (...).s. The dissemination of this personal data through a social network - as well as through any other communication channel - constitutes data communication, and therefore, data processing (art. 4.2 RGPD). Therefore, it is necessary to review whether the communication carried out constituted an unauthorized or illegal treatment, and therefore, a violation of the principle of confidentiality established in article 5.1.f) of the RGPD. In this regard, it is necessary to analyze whether the City Council had a sufficient legal basis to carry out the controversial publication, in accordance with the provisions of article 6 of the RGPD.

Well, in the present case, none of the cases provided for in article 6 of the RGPD are observed, nor has the City Council raised any of them in the written response to the request for information from the Authority. So, at the outset, it is inferred that we could be faced with a communication of data without a legal basis and, therefore, contrary to the RGPD. However, the nature of the personal data that was revealed with the controversial publication – the name and surname of the complainant associated with the representation of (...) – and the previous statements of the complainant, alters this initial qualification of the facts reported.

In this regard, it should be noted that, as the complainant himself stated in his written complaint, when he made the publication in the Facebook group " Vallromanes (...)" on (...)/2021 complaining that the City Council did not respond to the requests of (...) and that it prevented them from carrying out the activities of "(...) Vallromanes", he did so "*as a member and representative of (...)*". Indeed, from the publication of the complainant, made under his first and last name, complaining about the City Council's lack of response to the request of (...), it is inferred that he is connected with (...) and his status as a representative ("*every*

summer there is the (...). (...). But it seems that this year the Government of Vallromanes, in addition to not attending to us, is boycotting the activities. (...). We have asked for a meeting with the councilor (...) and he does not want to attend to us. "). Therefore, his status as a representative of (...) was information that, at least as a result of this publication, was accessible to any user of the " Vallromanes (...)" Facebook group. All this, without prejudice, that since it is a Facebook group intended to deal with matters of interest to the residents of the municipality, it can be assumed that the status of president of the (...) of the person making the complaint, which grants inherent powers of representation of the entity, it was easily already known by the majority of neighbors who use the said social network.

Therefore, before the municipal councilor revealed the name and surname of the person making the complaint as the person representing the (...) to whom the response to the request from the (...) was addressed, the affected person had already made public on the same Facebook account his status as a representative of (...) and his discomfort with the City Council's lack of response to the request presented by the entity (...) months earlier.

In this sense, it should be added that the identification of the reporting person, through the name and surname, as president of (...), and therefore, the highest representative of the entity, is also accessible through the search engine of internet Google, given that with a simple search for the name of (...), the " *Collaboration agreement between the Vallromanes City Council and the (...) of Vallromanes* " appears published. In said agreement, in accordance with the transparency regulations, there is information on the names and surnames of the people who act on behalf of the parties that sign it, and in this sense, it is identified in the person reporting as president of (...) de Vallromanes and representative of the entity.

At this point, it is necessary to refer to the regulation carried out by the RGPD, referring to the legitimacy of the processing of data by a (...) person when the owner of the data has previously made it manifestly public. In this sense, article 9.2 of the RGPD provides for the legitimacy of the treatment of data qualified as "special categories" (health, political, sexual opinions, etc.) when: "e) *the treatment refers to personal data that the interested party has made manifestly public;*".

Well, this provision that authorizes the processing of personal data of "special categories" based on the conduct of the person concerned, with more reason should be applicable to the case in which the data that the affected party makes manifestly public are not special or specially protected categories, but merely identifying, as would be the case of a person's name and surname.

Therefore, the information that the councilor (...) of the City Council disseminated (name and surname of the representative of the (...) to whom the response to the entity's request (...) was addressed of celebrating a (...)) is the same as the one that the complainant had previously published through the same communication channel, the "Vallromanes (...)" Facebook , and was therefore already known to the users of said social network interested in municipal affairs. This, without prejudice, that the name and surname of the person reporting as president, and consequently representative, of (...) is information that is also accessible on the internet, through the Register of Cooperation Agreements and Col collaboration

In accordance with the above, it must be concluded that from the facts reported, it cannot be inferred that Vallromanes City Council has committed any breach of data protection regulations .

However, it is worth noting that, although in this case, the conduct of the municipal councilor does not constitute a violation of the principle of confidentiality provided for in the data protection regulations given the specific circumstances exposed, in other circumstances different from those analyzed in this case, the communication of personal data to (...)s, to which a councilor of the municipal government has had access due to his position, may constitute the commission of an infringement, if this treatment is not legitimate on a legal basis established in article 6 of the RGPD.

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.*"

For all this, I agree:

1. File the actions of prior information no. IP 268/2021, relating to Vallromanes City Council.
2. Notify this resolution to the City Council of Vallromanes and the complainant .
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,