

File identification

Archive resolution of the previous information no. IP 284/2021 and no. IP 285/2021, referring to the Municipal Institute of Social Services of Barcelona City Council.

Background

1. On 16/07/2021, the Catalan Data Protection Authority received two letters from a person in which he made two complaints against the Municipal Institute of Social Services of Barcelona City Council (hereinafter, the IMSS), due to an alleged breach of the regulations on personal data protection .

The person reporting stated that the IMSS had made several inquiries about him, without a reason to justify it, without his authorization and without having been informed that this information would be requested and, therefore, without giving him the option to object- to the said access. One letter of complaint referred to the electronic inquiries that the IMSS had made of the data held by the Ministry of Justice relating to whether the situation of death had occurred, and in the other, to the inquiries to the data from the State Public Employment Service (SEPE) on whether you were unemployed. Specifically, the consultations would have been carried out between 20/07/2020 and 10/07/2021 with a monthly frequency.

The reporting person provided as documentation relating to the events reported, the screenshot of the information recorded in the section " Mis intercambios entre administraciones " contained in their "Citizen Folder", accessible through the web page of the State administration. In said screenshot, you can see the various IMSS inquiries to the Ministry of Justice " *Death Inquiry (Justice)* " and SEPE "(*SEPE*) *Inquiry of the current unemployment situation* ", all of them, carried out between 20 /07/2020 and 10/07/2021.

2. The Authority opened a preliminary information phase corresponding to each complaint (no. IP 284/2021 and no. IP 285/2021), in accordance with what is provided for in article 7 of Decree 278/1993, of 9 of November, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of 1 October, on the common administrative procedure of public administrations (from now on , LPAC), to determine if the facts were likely to motivate the initiation of a disciplinary procedure.

3. In these information phases, on 11/29/2021 the reported entity was required to report, among others, on the reason why between 07/20/2020 and 07/10/2021 it consulted to the Ministry of Justice and the SEPE information regarding the death situation and the unemployment situation of the reporting person, respectively. Likewise, it was required to specify the purpose of the information queries and the legal basis that would justify them, and whether the duty to inform articles 13 or 14, both of the RGPD, was fulfilled.

4. On 12/15/2021, the IMSS requested the extension of the deadline granted to respond to the information request. This request was accepted, extending the initial deadline by another 5 days.

5. On 12/22/2021, the IMSS responded to the aforementioned request through a letter in which, among others, it stated the following:

- That " *This Institute incorporated telematic interoperability services with the information systems of other Public Administrations in the context of the "Simplification of CSS processes" initiative in view of the need to speed up the work of Social Service Centers (avoid keeping papers/appendices, avoid asking the citizen for information previously requested or available from other administrations) at the same time as processing the management of resources, benefits, activities, programs, projects and equipment intended for the social care of the population, owned by Barcelona City Council included in the public social services system.* "
- That " *Thus, on July 1, 2014, the Delegated Secretariat of the Institute formalized the Request for authorization to access data on unemployment benefits and benefit amounts for periods of State Public Employment Service (SEPE), with the purpose of "verifying the user's unemployment benefits in order to be able to check his suitability to make him a beneficiary of actions, transversal programs, community projects and the benefits of economic and technological services established by the Social Services portfolio; promote social, labor and educational insertion measures; manage social emergency benefits."* "
- That " *In similar terms, the respective "Request for access authorization" was formalized with the Ministry of Justice.* "
- That " *Regarding the information to users of municipal social services about the interoperability of their data, it must be said that they are informed in writing prior to the opening of their file in the System's Social Care History of Social Action Information (henceforth SIAS) so that they can object expressly in the following terms :*

*" Regarding the exchange of data and documentation between this City Council and other administrations, we inform you of the following:
In the exercise of its own and delegated powers in the field of social services, Barcelona City Council may check, ex officio and without the prior consent of the persons concerned, the personal data declared by the applicants for the benefits of the which have the competence attributed legally or by regulation, and, where appropriate, the identification data, the residence, the kinship, the disability or dependency situation, the assets and the income of the members of the economic unit of coexistence, in order to check if the necessary conditions for the perception of the benefits are met at all times and in the amount legally recognized, with the aim of serving people in an integral way, and addressing their social needs in a coordinated manner; pursuant to the provisions of the seventh additional provision of Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures (as worded by Law 5/2020, of April 29 , of fiscal, financial, administrative and public sector measures and creation of the tax on facilities that affect the environment)."*
- That " *it is known that Mr. (...)has had a file open with the municipal social services since July 2, 1996 (...) and until June 6, 2021, (...)"*
- That " *During the said period, Mr. (...) has had several periods of care open, during which he has received care regarding his own person, and care regarding his son (...) in respect of what he holds the status of legal guardian ."*
- That " *from January 30, 2007 to September 16, 2021, there are 72 interventions (telephone or face-to-face) related to the care of Mr. (...) and/or his son (. .) ."*

- That " *Currently the son of Mr. (...), has been receiving care since January 29, 2007 at the Social Services Center (...) and since September 1, 2006 at the Municipal Institute of (...) of the "Barcelona City Council ."*
- That the consultations carried out at the SEPE and the Ministry of Justice aimed " *to improve services, the ability to predict situations of potential vulnerability and the effectiveness and efficiency of the public interventions carried out by this Institute, in the exercise of the functions and powers conferred by Law 12/2007, 11 October on Social Services, but also to verify the concurrence of the specific circumstances and requirements concerning the specific demands made by Mr(...) in their own interest and in the interest of their son (...), which include requests of a different nature such as (according to records registered in the SIAS) mainly the granting of financial aid to meet needs related to food, home maintenance, leisure, supplies, summer camps and legal and social advice in family matters, disability, guardianship, successions, claims for amount, fines, penalties, information and or information on leisure resources, on socio-educational resources, on Dependency Law, Respir program).*
- That as a result of a request to delete data from the complainant, since 08/30/2021, the IMSS " *has no longer carried out any further data inquiries relating to Mr. (...), although his son (...) continues to have a file open at SIAS ."*
- That the IMSS is a " *local autonomous body of the Barcelona City Council, which has among its purposes the improvement of the well-being of people and the community in the city as a whole (as provided in its approved statutes by the Plenary of the Municipal Council of the Barcelona City Council in the session of October 2, 2009, modified on March 29, 2019), in the exercise of the powers granted to it by the Barcelona Municipal Charter and by the Law 12/2007 on social services ."*
- That " *Law 22/1998, of December 30, of the Municipal Charter of Barcelona, in article 107.1, establishes:*
"The activity of providing social services must contribute to making equality real and effective by guaranteeing and facilitating all citizens' access to services that tend to favor a free and full development of the person and of the groups within the society, especially in case of limitations and shortcomings. We must promote the prevention and elimination of the causes that lead to marginalization and achieve the integration of all citizens by promoting solidarity and participation".
- That " *Law 12/2007, of October 11 provides in its article. 17 as functions of basic social services, among others:*
"a) Detect situations of personal, family and community need in their territorial scope.
b) To offer information, guidance and advice to people in relation to social rights and resources and the social actions to which they may have access.
f) Carry out preventive actions, social or socio-educational treatment and necessary interventions in situations of social need and evaluate them.
i) Provide services of help at home, teleassistance and support to the family or cohabitation unit, without prejudice to the functions of health services at home .
- That " *this Institute has accessed Mr.(...)'s data in the exercise of the powers granted to it by the Barcelona Municipal Charter and by Law 12/2007 on social services, with the aim to be able to provide him with the most appropriate social care for his needs and those of his child"*

- That " *the said consultations would be legitimized by what is provided for in article 6 letter e) of the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016) in relation to the lawfulness of data processing when this is necessary for the fulfillment of a mission carried out in the public interest, and that established in article 8.2 of Organic Law 3/2018, of December 5, on Data Protection and Guarantee of Digital Rights.*"

The reported entity attached various documents to the letter, in particular, a copy of the document " *Request for authorization to access the data of the State Employment Service (SEPE)* " and the document " *Informed consent to the treatment of data* " that the IMSS provides to users of social services, and in which they are informed about the interoperability of their data.

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 in particular, whether the IMSS was legitimate to carry out the inquiries relating to the person reporting on the possible situations of death and unemployment, without their consent and without having previously informed them.

2.1 About enabling the IMSS to consult data from other administrations

First of all, it should be noted that the IMSS of the Barcelona City Council, in its statutes (approved by the Plenary of the Municipal Council of the Barcelona City Council on 02/10/2009, and modified on 29/03/2019), establishes that the IMSS is configured as a local autonomous body of the Barcelona City Council, and whose sole purpose is to " *Promote, organize, manage and articulate, internally and externally, the process of providing services municipal social responsibility aimed at citizens, and this with parameters of quality and equity that contribute to guaranteeing the well-being of all the people who live and live together in the city.* "

Well, taking into account that the IMSS's field of action is the provision of social services, reference must be made to the seventh final provision of Law 2/2014, of January 27, on fiscal, administrative measures, financial and public sector, which has the following:

" *Seventh*

Authorization for public administrations in relation to access to personal data

1. Authorization of the competent public administrations in the field of social services

1.1. The competent public administrations in matters of social protection are empowered to verify, ex officio and without the prior consent of the persons concerned, the data declared by the applicants for the benefits for which they are legally or by regulation competent and , if

applicable, the identification data, residence and kinship, disability or dependency status, assets and income of the members of the economic cohabitation unit, in order to check whether the conditions are met at all times necessary for the perception of benefits and in the recognized amount, with the aim of serving people in an integral way, and addressing their social needs in a coordinated manner.

(...)"

This provision establishes an authorization in favor of the competent public administrations in matters of social protection to be able to access, ex officio and without the prior consent of the persons concerned, the information declared by the persons applying for benefits in matters of protection social, in order to verify the necessary conditions to be able to receive such benefits and in the amount legally recognized. That is to say, it enables the entities dedicated to the matter of social services to make the corresponding inquiries to verify the data that have previously been declared by the subjects themselves requesting public benefits, among them, the data relating to the "members' *income of the economic union of coexistence*".

In this sense, it should also be noted that Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), contains a similar qualification in its eighth additional provision. On the other hand, it should also be remembered that article 28.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), in relation to the documents they must provide those interested in an administrative procedure, provides for the consultation between administrations of said documents required by the applicable regulations.

Having said that, and with respect to the claimant's status as a social service benefit applicant, it is necessary to take into account the statements of the IMSS regarding the fact that, consultations with the SEPE and the Ministry of Justice have been carried out because the person making the complaint here, acting in his own name or on behalf of his son - with respect to whom he holds the status of legal guardian -, has requested several demands "which include requests of different nature as they are (according to records registered in the SIAS) *mainly the granting of financial aid to meet needs related to food, home maintenance, leisure, supplies, summer camps and legal and social advice in family matters, incapacity, guardianship, successions, claims of amount, fines, sanctions, information and guidance on leisure resources, on socio-educational resources, on Dependency Law, Respir program*".

Likewise, the organization points out that the complainant has " *a file open to the municipal social services since July 2, 1996 (...) and until June 6, 2021*", a period in which that " *several attention periods have been opened*" and that until September 2021 there are " *72 interventions registered in SIAS (telephone or face-to-face)*". Lastly, that your son receives the attention of the Social Services Center (...) of Barcelona City Council, since 2007.

Therefore, everything indicates that, regardless of whether the person reporting here has finally been a beneficiary in a personal capacity or as the legal guardian of his child of a provision of social services, the truth is that the reporting person complies with the condition of applicant for various demands for social benefits.

In relation to the data that the IMSS consulted, it should be indicated that the seventh final provision of Law 2/2017 expressly specifies the data that could be the subject of treatment,

and, among these, as has been advanced, the data relating to the *"income of the members of the economic unit of coexistence"*. Well, the inquiries relating to the eventual benefits for unemployment of the person making the complaint, would fit within the category of the referenced *"income"*, because it is unquestionable that the variations that can be made in the employment/unemployment situation of the person making the complaint they would have a direct impact on the income of the family nucleus. Likewise, with regard to inquiries to verify that the person reporting here is still alive. In this regard, it should be noted that, in accordance with Royal Legislative Decree 8/2015, of October 30, which approves the revised text of the General Social Security Law, the child of the person reporting, in in the case of the death of his father and legal guardian, he would have the right to receive an orphan's pension (art. 224 LGSS), an economic benefit that would be included in the concept of the referenced *"income"*.

In this sense, it should also be noted that Law 12/2007, of 11 October, on social services, includes in its article 17 the functions that correspond to the competent entities in the matter of the provision of social services, among these are the following: "a) *Detect situations of personal, family and community need in their territorial scope.*; b) *Offer information, guidance and advice to people in relation to rights and social resources and the social actions they may have access to.*; f) *Carry out preventive actions, social or socio-educational treatment and the necessary interventions in situations of social need and evaluate them.*" These functions could be framed within a proactive responsibility of the competent entities in order to prevent situations of need or potential vulnerability, and to carry out the necessary actions to carry them out.

For its part, article 6.1 of the Regulation (EU) of Regulation (EU) 2016/679, of the Parliament and of the Council, of April 27, 2016, General Data Protection (hereafter RGPD) establishes:

" 1. The treatment will only be lawful if at least one of the following conditions is met: e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment; (...)"

Article 8 of the LOPDGDD establishes that the processing of personal data can only be protected on the legal basis provided for in article 6.1.e) of the RGPD, relating to the fulfillment of a mission in the public interest or the exercise of public powers, when it comes to the exercise of a competence attributed by a norm with the rank of law.

In accordance with this, the legal basis for the data consultation carried out by the IMSS on the different situations in which the person reporting here could eventually be found, would not be the consent of the affected person, but the compliance of 'a mission in the public interest or the exercise of public powers established in a standard of law (art.6.1.e) RGPD and 8.2 LOPDGDD), in this case the seventh final provision of Law 2/2014 in connection with Law 12/2007, of 11 October, on social services.

That being the case, the inquiries carried out by the IMSS would have sufficient legal authority, since they would be actions to check the data previously declared by the person making the complaint, which would have as their ultimate purpose the control of the use of public funds intended for social services or benefits, in order to guarantee their good use and allow these services or benefits to continue to sustain the situations that require it. Therefore, processing may be considered necessary for reasons of essential public interest.

2.2 On compliance with the right to information

Article 14 of the RGPD requires the data controller to comply with the right to information when the data has not been obtained directly from the person concerned, as would be the case here. The same precept, however, relates certain cases in which this duty of information is not enforceable, specifically, and for what is of interest here, provides for this exception when obtaining the information is expressly established by Union or State Law members (art.14.5.c) RGPD).

Such is the case we are dealing with here, in which, as we have seen, the consultation of data relating to people requesting benefits in the field of social services would be legally provided for in the seventh final provision of Law 2 /2014 in connection with Law 12/2007, which is why the IMSS would be exempt from informing the complainant here of the processing of his data.

However, it should be noted that according to the IMSS, users of municipal social services are expressly informed about the interoperability of their data, in writing and prior to the opening of their file at the " *History of Social Care of the Social Action Information System (SIAS)* ", as would be the case of the reporting person.

In this regard, the entity attaches a model of the said information form " *Informed consent for data treatment* ", in which it is reported that among the purposes of the treatment, there is that of: " *The management of the basic social services of the public system of social services (resources, benefits, activities, programs, projects and equipment intended for the social care of the population, owned by Barcelona City Council)*". Of the various information items contained in said form, it is worth highlighting, for the case at hand, the existence of an exclusive information section on "the exchange of data and documentation between this City Council and other administrations", which is transcribed to the antecedents of this resolution (antecedent 5th), to which we refer. There it is informed about the possibility that the IMSS can check, ex officio and without the prior consent of the affected person, the personal data declared by the applicants for benefits in the field of social services, by virtue of the seventh final provision of Law 2/2014. Lastly, it should be noted that the said form also includes information on the possibility of the person interested in objecting to the processing of their data, or in their case, of the person they represent.

In accordance with the above, it is considered that the IMSS was not obliged to inform the person making the complaint about the possibility of consulting personal data held by other public administrations through electronic means. But, even in the event that he had fulfilled this duty, it is considered that through the referenced " *Informed consent to data treatment* " the duty to inform on this end would be fulfilled.

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 dismissal proceeds " a) *When the facts do not constitute an administrative infraction.*"

Therefore, I resolve:

1. File the actions of prior information number IP 284/2021 and prior information no. 285/2021, relating to the Municipal Institute of Social Services.
2. Notify this resolution to the Municipal Institute of Social Services and 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,

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