

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 case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 307/2021, referring to the City Council of (...)

Background

1. 07/31/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the City Council of (...), on the grounds of an alleged non-compliance of the regulations on personal data protection.

The complainant, (...) from the Urban Guard of (...), stated that his '*communication and medical data rights*' had been violated and, to prove this, provided the following emails are related:

- One of the (...)h of the day (...), with the title '*COURT SUMMONS SECOND ACTIVITY*', sent by the (...) of the (...) Unit of (...), addressed to the complainant through which he was summoned to attend the "*next Medical Court on (...) in 2021 at (...) hours*" and "*the prior visit with the Medical Inspection is maintained on next day (...) at (...) hours*'.

In this mail, five recipients were included in the copy, four of which were people identified with first and last names, and a fifth recipient named ' (...) '.

- One of the (...)h also on the day (...), with the title '*To return signed – Re: Subpoena Court Second Activity*', in which the person ' (...) ' addresses the reporting person in relation to the aforementioned appointments and in what is said to him:

" This morning I received his call confirming that he had received the summons to appear at the Medical Court of second activity on (...) and his attendance, as well as the summons for the previous visit to the Medical Inspection for tomorrow Thursday day (...). However, he has indicated to me that he prefers not to go to tomorrow's preliminary visit to the Medical Inspection to review the medical documentation that he will present to the court and to be able to make the corresponding clinical summary for the evaluating doctor, and hand him the corresponding summons. He has also refused the offer to provide me with this information by email to avoid his displacement since, as indicated, he lives in (...). We are therefore sending him the summons by email for the two visits specified in a document that must be returned signed and indicating the non-attendance at tomorrow's visit if that is the case."

In this mail there are four recipients in copy, three of which were people identified with names and surnames, and a fourth recipient who is the so-called ' (...) '.

- One of the (...)h of the same day (...), with the title '*Re: To return signed – Re: CITATION COURT SECOND ACTIVITY*', in response to the previous mail, and in which the the

reporting person addressed the person ' (...)' in order to inform him about which people/organizations he sent ' *a private conversation totally out of line with the telephone reality they had* '.

This email contains the same recipients as in the previous email, with the difference that, in this case, the email addresses of each of them can be seen in the document provided by the complainant.

2. The Authority opened a preliminary information phase (no. IP 307/2021), 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 11/05/2022 the city council reported was required to report on the reasons for which the e-mails of (...) were sent to the recipients thereof, while indicating the positions and functions of each of the recipients that would justify the sending in each case, as well as the legitimating legal basis for the treatment.

4. On 05/23/2022, the City Council of (...) responded to the aforementioned request through a letter in which it stated the following:

- That, in accordance with article 43 of Law 16/1991, of July 10, on local police, which regulates the second activity: *'Local police officers who, according to a medical opinion or due to age, who in no case can they be less than fifty-seven years old, their capacity to fulfill the ordinary service is diminished, they pass to the situation of second activity, in accordance with the provisions of the respective municipal regulations'*.
- That, in accordance with the Decree of the Government Commission of March 5, 2020, approving the modification of the organizational chart of the Security and Prevention Area Management in the area of the Prefecture of the Urban Guard , the Resource Management Unit (hereafter, UGR), has as its mission the management of human and material resources in accordance with the indications of the Prefecture and interlocution in the workplace.
- That, the UGR is competent to manage and process the administrative part of the transition of members of the Urban Guard to the situation of second activity and that the recipients of the e-mails were part of the staff working in the aforementioned unit. And that, the positions and tasks of that staff are:

" - (...): *Head of the UGR office,*
- 2 (...)*if 1 (...): Personnel who manage and process all the administrative part for the transition to second activity,*
- (...): *generic mailbox for the processing of the pass to the second activity, to which the people who manage the activity have access.*"

- All in all, it concludes that *'the recipients of the mails are civil servants responsible for managing and processing the administrative part that, in compliance with the functions under the competence of the UGR, must pass the second activity status.'*

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, (...) from the Urban Guard, stated that his rights to communication and medical data had been violated given that on (...), he received two emails, one from ' (...) of the Urban Guard of (...) ' (at (...)h) with the title ' *Court Summons Second Activity* ' and another from ' (...) ' (at (...)h) with the title ' *To return Signed – Re: Subpoena Court Second Activity* ', in which a series of recipients that I did not know were included in the copy.

In these emails, the matter was about a summons to two visits, one to attend a ' *Medical Court* ' and another to attend a ' *Medical Inspection* '. For what is of interest here, it is worth noting the mail of (...)h, in which the sender sent him a summons which he had allegedly rejected, so that he would return it signed and indicating non-attendance, *if that was the case* '. In response, the complainant sent an email at (...)h on the day (...) in which he stated 'to inform him of my disagreement with the transcription he made of a private conversation between you and me this morning' '.

First of all, it is necessary to clarify the context in which the reported events took place. As can be seen from the email of (...)h of (...), with the title ' *Court Summons Second Activity* ', we are dealing with the processing of the second activity status of the person here complainant, (...) from the Urban Guard. In order to find out if the events reported lead to a breach of data protection regulations, it is necessary to determine if the recipients who received the two e-mails on (...) (of the (...) there (...) h) were part of the staff that has been assigned the powers to carry out said processing.

In this regard, it is necessary to highlight article 43 of Law 16/1991, of July 10, on the local police, which regulates the second activity: '*Local police officers who, according to a medical opinion or due to age, who in in no case can they be less than fifty-seven years old, their capacity to fulfill the ordinary service is reduced, they pass to the situation of second activity, in accordance with what the respective municipal regulation provides*'. And, in relation to this, the Decree of the Government Commission, of March 5, 2020, approving the modification of the organization chart of the Security and Prevention Area Management in the scope of the Prefecture of the Urban Guard, annex 2, relating to the '*Description of the functions of the bodies*', which regulates the UGR and establishes:

"Resource Management Unit

Immediate superior body: Under the head of the Urban Guard

Associate Level: 27

Mission: management of human and material resources in accordance with the indications of the Prefecture and interlocution in the labor field. (...)"

At this point, the letter from the city council denounced in response to this Authority's request is particularly relevant, in which it stated ' *In view of the information provided by the head of the UGR, the recipients of the mails are personnel who works in the aforementioned unit, specifically the positions and tasks they carry out are the following:*

*(...): Head of the UGR office,
- 2 (...):if 1 (...): Personnel who manage and process all the administrative part for the transition to second activity,
- (...): generic mailbox for the processing of the pass to the second activity, to which the people who manage the activity have access."*

Therefore, the facts reported do not involve any violation of data protection regulations, taking into account that the data processing reported occurs within the context of the exercise of a public power attributed to the 'UGR' unit, which has powers to carry out the management related to the processing of the pass to the situation of second activity. All the recipients of the controversial e-mails were part of the staff of said unit, which at the same time justified the communication of their names, surnames and e-mail addresses given that they were acting in the framework of a public function.

In short, it must be concluded that we are facing a lawful treatment, protected in article 5.1.e) of the RGPD, ' *e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of powers public given to the person in charge of the treatment ; .*

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 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when the following is highlighted in the instruction of the procedure: "*c) When the proven facts do not constitute, in a manifest manner, an administrative infraction;*".

Therefore, I resolve:

- 1.** File the actions of prior information number IP 307/2021, relating to the City Council of (...).
- 2.** Notify this resolution to the City Council of (...) and communicate it 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,

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