

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

File identification

Archive resolution of the previous information no. IP 314/2021, referring to the Bagà Endavant Municipal Group of the Bagà City Council

Background

1. On 06/08/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Bagà Endavant Municipal Group of the Bagà City Council (hereafter GM), due to an alleged breach of the regulations on the protection of personal data. The reporting person argues that the reported municipal group disseminated a newsletter in the month of July 2021, with information about his person, with the aim of affecting his private business. The complainant provides the reference bulletin and points out, from the underlining of the disputed sentences, that the information contained on page six of the bulletin,

attempt on his person. This information is as follows:

"That's why we proposed the urgent drafting of a Special Protection Plan to guarantee its conservation. The acquisition of Palau Solanell as a town heritage, taking advantage of an exceptionally low price.

What did the government do:

The government used every possible excuse not to approve this proposal. You must know, then, that everything that is so valuable to us, we can lose it at any moment. As soon as you walk there you will see its degradation in appearance and the artificial elements that the governing team is increasingly authorizing.

The government allowed a private individual (who was part of its electoral list) to make the purchase. The possibility of having a historic building for municipal and public use was therefore lost."

The complainant, through a letter presented to this Authority, states that after acquiring the Palau Solanell property, he proceeded to request a change of ownership from the City Council. Next, he bases his complaint on the fact that, according to him, the councilors of the reported GM accessed the information available at the City Council, in relation to the purchase of the property in question, in order to disseminate it for the benefit of of his municipal group. In literal terms, the complainant argues that, regarding the content of the newsletter:

"the property could have been bought by the city council for a very low price, which you cannot know the sale price if you do not consult the purchase and sale file that I presented to the property. (this fully affects my economic activity which is aggravated by future buyers, and therefore I ask the administration to take responsibility, as councilors can extract information for their political interest.

This shows how they have used my private information, (purchase agreement that is in my file from the city council to change the name of the property) thanks to

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

the conditions they have as councilors, since they can consult all the possible information.

The Bagà Endavant Municipal Group, led by Pep Llamas, has unduly incurred accusations of erroneous information, since the property was bought by a group of people, not just me personally, and it is against my image. (page 6)

The Bagà Endavant Municipal Group has had its own and personal interest in its political or private benefit, and this is causing it to use public data information for political and private interests.

(...) The property had been for sale for 8 years, and had been offered to the town hall several times."

Finally, the complainant's letter concludes that the councilors of the Bagà Endavant municipal group would have taken advantage of their work as local elected officials to extract public information for political gain, and to seriously affect their image.

2. The Authority opened a preliminary information phase (no. IP 314/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the 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 capable of motivating the initiation of a sanctioning procedure.

3. On 30/03/2022, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Given that the reference newsletter states that the person who bought the Palau Solanell property was part of the electoral candidacy of the party that governed in Bagà City Council, the checks focused on finding out the number of candidates which included the list of the municipal group "Together for Bagà - Municipal Agreement". Thus, it was found that on the website of the Official Gazette of the Province of Barcelona there is published the Announcement (Register 2019015018) "Candidates presented for the municipal elections of the Electoral Board of the Berga Area" in which notes that the "Together for Bagà - Municipal Agreement (JxB AM)" candidacy was made up of eleven candidates, including the complainant, and two alternates.

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 Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

2. Based on the background story, it is necessary to analyze the facts reported that are the subject of this file resolution.

The complainant points out that the councilors of the Bagà Endavant municipal group would have taken advantage of their status as local elected officials to obtain information about them, held by the City Council, and to disseminate it in a newsletter, harming the his image

2.1 In relation to the alleged violation of the duty of confidentiality of councillors denounced

As a preliminary consideration, it should be noted that, in accordance with article 164.1 TRLMRLC "all members of local corporations have the right to obtain from the mayor or mayoress or the president or the governing commission, all the antecedents, data or information that are in the possession of the corporation's services and are necessary for the development of their function" with the obligation to respect confidentiality if the fact of publishing this information may harm the interests of the entity local or from third parties (article 164.6 TRLMRLC).

Well, in the newsletter dated 03/17/2021 published by the GM, it is indicated that an individual, who was part of the electoral list of the municipal government, acquired the Palau Solanell property at an "excessively low" price. Likewise, it is stated that this building is part of the "patrimony of the Town" and that it is a "historic building".

In this regard, the complainant maintains that the sale price of the property could only be known by consulting the purchase-sale file held by the City Council, and points out that the members of the reported GM would have been able to access this information given their condition.

It should be noted that, according to the complainant, the property in question had been for sale for eight years, and had been offered to the local administration on several occasions. However, apart from these manifestations, no other element is provided, such as the specific purchase-sale price contained in the file held by the City Council, which allows it to be maintained that the councilors of the reported municipal group breached their duty of confidentiality and disseminated data relating to the reporting person linked to the purchase of this property.

In this sense, bearing in mind that this building, as reported in the bulletin, is part of the "village's heritage", is "historic", and had been for sale for a long time, as stated the complainant, it cannot be ruled out that any other person outside the City Council could have known that the price at which this unique building was offered for sale was low, maximum when the information disseminated alludes to an "exceptionally

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

low" but does not specify the acquisition price, or that anyone could have consulted the property register.

It should be noted that, even if the members of the GM had accessed the information relating to the purchase and sale of the property held by the city council, it could not be maintained, as will be justified below, that it has been violated the data protection regulations.

- In relation to the information disseminated in the Newsletter of the municipal group "Bagà Come in"

In order to assess whether the whistleblower's information has been disseminated, in breach of data protection regulations, it is necessary to bear in mind the definition provided for in article 4.1 a) RGPD, according to which it is personal data:

"Any information about an identified or identifiable natural person (interested party). An identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements specific to the physical, physiological, genetic, psychological, economic, cultural or social identity of this person."

Therefore, a personal data is that information relating, not only to an identified natural person but also to a natural person who can be identified directly or indirectly from certain information. In this regard, Recital 26 of the RGPD specifies the following:

"The principles of data protection apply to all information relating to an identified or identifiable natural person. Pseudonymized personal data, which could be attributed to a natural person using additional information, should be considered information about an identifiable natural person. In determining whether a natural person is identifiable, account must be taken of all means that the controller or any other person can reasonably use to directly or indirectly identify the natural person, such as singulation.

In determining whether there is a reasonable likelihood that means will be used to identify a natural person, all objective factors, such as the costs and time required for identification, must be considered, taking into account both the technology available at the time of the treatment as technological advances."

In this regard, it should be noted that, as indicated in the previous third, this Authority has been able to verify that, in the municipal elections of 2019, the Junts per Bagà – Municipal Agreement (JxB - AM) candidacy there were eleven candidates, including the complainant, and two alternates.

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

From the above it can be inferred that, with only the information contained in the Newsletter, where reference was made to an individual who was part of the "electoral list" of the municipal government's candidacy, it is not possible to identify the person who acquired the property of reference, given that the complainant was not the only candidate for the Junts per Bagà – Municipal Agreement candidacy, but there were twelve other people.

3. In accordance with everything that has been set out in the 2nd legal basis, and given that 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, no fact that could be constitutive of any of the violations provided for in the legislation on data protection, should be archived.

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 made clear in the instruction of the procedure: "a) The non-existence of the facts that may constitute the infringement"

Therefore, I resolve:

1. File the actions of prior information number IP 314/2021, relating to the Bagà Endavant municipal group
2. Notify this resolution to the municipal group Bagà Endavant 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,