

## File identification

Archive resolution of the previous information no. IP 331/2021, referring to Lleida City Council

## Background

1. On 08/19/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Lleida City Council, on the grounds of an alleged breach of the regulations on protection of personal data .

The person making the complaint complained that on 10/08/2021, several agents of the Urban Guard of Lleida City Council (hereafter, GU) asked him to identify himself, without this action - according to the person making the complaint - was enabled by any regulation. For the purposes of contextualizing this identification, the complainant explained that, that day, the GU was carrying out a police action to stop the street vendor in a square in Lleida and that, considering that it was a "relevant action", he decided to "*do several photographs and two recordings. The angle of distance with which I tried to capture the images tried to avoid being able to identify both the acting agents and the rest of the people surrounding the square*". The complainant indicated that it was at that moment that the GU required him to identify himself, and that when he asked the agents what was the reason for this identification, he was told that "*it was to preserve the right to *privacy and the right to the image of third parties who were in the square (...)* who did not want to be photographed*".

Among other considerations, in his letter of complaint, the complainant stated that he is convinced that "*the real purpose of the police identification can be presumed to have been to intimidate a citizen to prevent him from continuing to take photographs and record a police action*", and at the same time showed his concern about the eventual inclusion of his data in an "*informal register of social activists in Lleida*", as well as the fact that they could have been the object of transfer or communication to third parties given that , as he pointed out, the situation had echoed on social networks.

The complainant provided various documentation relating to the events reported, as well as the link to two pages of the social network "*Twitter*" which, according to him, echoed the events.

2. The Authority opened a preliminary information phase (no. IP 331/2021), 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 23/06/2022 the City Council of Lleida was required to confirm if, on 10/08/2021, certain agents of the GU identified the reporting person, justifying the basis legal that would have protected this police action, and confirm if the personal data of the now complainant were incorporated in any certificate, act, file or database. Likewise, the City Council was also required to report whether the data of the complainant here were communicated to third parties and, if so, to indicate the circumstances in which the

communication took place, as well as the legal basis that would have protected this treatment.

4. On 07/08/2022, Lleida City Council responded to the aforementioned request through a letter in which the following was argued:

- That, "*(...) the identification of the complainant was carried out as part of a scheduled police intervention by the Urban Guard of Lleida (...)*"
- That, in relation to the legal basis that would have protected the collection of the personal data of the complainant here, they argue that "*the police identification was carried out as a result of the behavior of the interested party consisting of taking photographs and/or recording the police action and the rest of the people in Plaça del Dipòsit. This behavior (...) generated annoyance and an energetic recrimination of the people in the Square, which could have meant an escalation of tension and conflict during a police action against street vendors in the square, a situation that already in itself it is conflicting*".
- That the attitude of the complainant here "*in that context could have been an indication of the commission of an administrative offence, by way of example, of articles 102.2 or 103.6 of the Municipal Ordinance on civility and coexistence of the city of Lleida*". That the identification of the complainant here by the agents of the GU was in accordance with the provisions of article 16 of Organic Law 4/2015, of March 30, on the protection of public safety (hereafter, LOPSC), which provides for the cases in which identification may be required by the police.
- That, the data of the reporting person were included in the police reports, as well as in an own database called "GESPOL" with number. 25120210028671, which records the police actions of the GU and which is municipally owned.
- That, regarding the alleged existence of an informal register of social activists in Lleida, the Guàrdia Urbana "*does not have or has had any file or database that contains any data of this type, and therefore they cannot be transferred this type of data, nor perform searches by ideologies or social statuses in our software*".
- That, the data was not given to any other person or body.

The City Council invoked, as the legal basis for processing the data of the complainant here, article 6.1 e) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, on the protection of data (hereinafter, RGPD), and article 8.2 of Organic Law 3/2018, of December 5, on data protection and guarantee of digital rights (hereinafter, LOPDGDD), in connection with article 16 of the cited LOPSC.

The written response of the denounced entity was accompanied, among others, by the report signed by the agents of the Urban Guard of Lleida, with TIP numbers (...), (...) and (...), in which the following statements are collected:

*" What while they were making a device together with the MMEE body in Plaça del Dipòsit de Lleida, the agent (...) observed how a person was heading towards the agents, from c/ Sant Carles at the height with c/ University, carrying the mobile device in hand, allegedly taking photographs and/or recording the police action and the rest of the people who were in the square at the time  
That some of the people of African ethnicity who were in the square felt annoyed and strongly reprimanded him for his attitude, which is why the agents had to intervene to mediate and prevent the conflict that was being generated , go further*

*That the (...) (...) and the agents (...) and (...) have proceeded with their identification, having to temporarily abandon the tasks they were performing to provide security to the area and the supervening situation".*

5. On 12/14/2022, 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. Thus, it was found that in the links to *Twitter*, which the complainant provided with his written complaint, no reference is made to personal data of the complainant here that allows his identification, despite the fact that the events that occurred on 10/08/2021, in Plaça del Dipòsit de Lleida, in relation to the police action to stop street vending.

## 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.

### 2.1. About the collection of personal data by the GU

The complainant was complaining about the fact that certain agents of the GU de Lleida asked him to identify himself, without this action - according to the complainant - being authorized by any regulations.

Well, as a preliminary matter, it is necessary to bear in mind the circumstances in which the agents of the GU carried out the identification reported here.

In this regard, from the police report provided by the City Council, signed by officers with TIP numbers (...), (...) and (...), it follows that the person making the complaint here is was taking photographs and videos of the police action and of the rest of the people who were in Plaça del Dipòsit de Lleida, a fact that would have inconvenienced some of the people who were in the square and who would have addressed the complainant and " *strongly reprimanded the attitude*". According to the agents, these facts would have justified their intervention to " *mediate and prevent the conflict that was being generated from going further* ", as well as the identification of the complainant here.

For his part, the complainant here, in his letter of complaint, has made it clear that, although he was capturing photographs and videos of the police action, "no one in the square said anything to me until *after the same Urban Guard with TIP (...) shouted at me telling me to ask them if they liked me recording them. No one had noticed my presence before.*" On this, he also pointed out that he captured the photographs and recorded the police action preventing the officers or third parties from being identified.

Well, given this contradictory version of what happened, it should be taken into account that the City Council provides a report signed by three agents of the GU. This nuance is entirely

relevant given that, in accordance with Article 7 of Law 16/1991, on local police, police officers hold the status of agent of the authority. In this sense, article 77.5 of Law 39/2015, of October 1, on the common administrative procedure of public administrations establishes the following:

*"5. The documents formalized by the officials to whom the condition of authority is recognized and in which, observing the corresponding legal requirements, the facts ascertained by those are recorded will prove these unless the contrary is proven".*

In accordance with the aforementioned precepts, documents formalized by officials who hold the status of authority - such as reports signed by agents of the GU - constitute evidence, unless proven otherwise.

In short, although there are two contradictory versions of the events that occurred - that of the agents, and that of the complainant here - given that the complainant has not provided sufficient evidence to discredit the statements of the agents, this Authority cannot ignore the presumption of truth of all the statements contained in the said report, in accordance with article 77.5 of the LPAC.

In relation to the above, article 16.1 of the LOPSC, relating to the identification of people, foresees the cases that enable agents of the forces and security forces to identify people, in the following terms:

*"1. In compliance with their functions of criminal investigation and prevention , as well as to sanction violations criminal and administrative, the agents of the forces and security forces may require the identification of the people in them assumptions following :*

*a ) When there are indications that they have been able to participate in the commission of one infringement \_*

*b ) When , in consideration of the circumstances concurrent , be considered reasonably necessary to prove theirs \_ identity to prevent commission of one crime \_*

*In these assumptions , the agents can carry out the checks \_ necessary on the public road or on the site where have made the request , including the identification of people whose face is not fully or partially visible to use anyone type of piece of clothing or object that covers it , something that prevents or makes it difficult to identify it , when be it necessary to the effects indicated \_*

*In the practice of identification it is necessary to strictly respect the principles of proportionality , equal treatment and non- discrimination based on birth , nationality , racial or ethnic origin , sex, religion or beliefs , age , disability , sexual orientation or identity , opinion or any other personal or social condition or circumstance (...)"*

The LOPSC empowers authorities and agents to practice identification - and consequently, to collect personal data - in certain circumstances.

Having established the above, the report of the agents of the GU is clear when it states that the identification was carried out for the prevention of a major conflict between the people who were at the scene. Having said that, this Authority does not have sufficient elements to

contradict the version of the authority's agents and maintain that the identification of the complainant here served another purpose.

In view of the concurrent circumstances, it must be concluded that the processing of the complainant's personal data, carried out as part of a police identification, was necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the data controller (article 6.1 e) RGPD), in connection with the LOPSC .

## 2.2 On the eventual communication of the complainant's personal data to third parties

The person making the complaint explained that from the Body of the GU it would be spreading, " *through the Platform "Assembly of residents and neighbors of the Historic Center", made up supposedly of residents of the area, that I would be a member of the Fruita Platform with Social Justice and that I dedicated myself to questioning the police action*".

In order to substantiate these reported facts, the reporting person provided two links to the *Twitter social network* that allow access to publications made by two different users, and which, according to him, echoed the events that occurred on 08/10/2021.

As explained in the antecedents, the person instructing this case, accessed the said links on 14/12/2022 - fifth antecedent -, and found that, although the publications referred to the police action that took place on 08/10/2021, in order to stop a street vendor, they did not contain any mention or reference that allows the complainant to be identified. In this sense, it is also necessary to show that the content of these publications did not infer that the GU, through the Reference Platform, was behind these broadcasts.

For its part, Lleida City Council, consulted by this Authority, has denied having transferred or communicated the data of the complainant to third parties.

In view of the above, it is necessary to demonstrate that this Authority does not have any evidence - apart from the mere assertions of the complainant here - that allows it to be maintained that agents of the GU body have disseminated or communicated their data to third parties people As things stand, the principle of presumption of innocence provided for in article 53.2.b) of the LPAC is applicable here, which recognizes the right "*To the presumption of non-existence of administrative responsibility until the contrary is proven*".

## 2.3 On the alleged existence of an informal register of social activists

The complainant expressed his concern about the eventual inclusion of his data in an "informal register of social activists" in Lleida.

Asked about this, Lleida City Council denies the existence of files containing data of this type, and has stated that it does not have a register that stores data by ideologies or social status.

In these terms, taking into account the City Council's response, and the lack of evidentiary elements to substantiate the facts reported, the principle of presumption of innocence is also applicable here.

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; b) When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred.*

Therefore, I resolve:

1. File the previous information actions number IP 331/2021, 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 its notification, in accordance with the which provides for 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,