

File identification

Archive resolution of the previous information no. IP 373/2021, referring to the Town Council of Terrassa

Background

1. On 09/25/2021, the Catalan Data Protection Authority received a letter from a person who filed a complaint against Terrassa City Council, on the grounds of an alleged breach of the regulations on personal data protection.

The complainant stated that, in December 2019, in his capacity as a union representative, he submitted a complaint to the human resources service of Terrassa City Council, in relation to certain actions of Mr. (...), as in (...). He then states that, in September 2021, he received, at his private address, a complaint filed by Mr. (...), in relation to an alleged crime of insults and slander, and argues that *"the (...) has consulted my data, being a person authorized for the processing of master data. My current address is only in the population register, I have not updated my current address in my employee file."*

The data from the population register must be kept by the Terrassa City Council and cannot be used for purposes incompatible with those for which they have been collected."

The complainant provided a copy of a letter in which Mr. (...) requested the holding of a conciliation act with the now complainant.

2. The Authority opened a preliminary information phase (no. IP 373/2021), 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. In this information phase, on 09/05/2022 the reported entity was required to report, among other issues, on whether Mr (...) would have obtained the information relating to the address particular of the person making the complaint, based on the consultation of the City Council's information systems and, if so, to argue what legal basis would have legitimized the processing of this data.

4. On 12/05/2022, the Terrassa City Council responded to the aforementioned request through a letter in which it set out the following:

- *"From the legal advice and data protection service, it has been verified that the Technology and Information Systems Service of the Terrassa City Council, which consulted the access registration table in the municipal register of Terrassa, No query movement was found for user (...) (...), with ID (xxx).*
- *In conclusion, obtaining the personal data of Mr. (...) that Mr. (...), in any case, they have not been obtained through access to the register of inhabitants of Terrassa by Mr. (...), not having been given access to the municipal register of Mr. (...), due to the*

his position at the City Council of Terrassa, for personal purposes that allows the adoption of disciplinary measures against this worker".

Likewise, Terrassa City Council reports that the complaint filed by Mr. (...) against the now complainant would have been filed privately, without the intervention of the municipal legal services, and without filing himself as an employee of the City Council, and concludes:

"In any case, obtaining the personal data of Mr. (...) that Mr. (...) has not occurred through access to the register of inhabitants of Terrassa by Mr. (...), there having been no access to the municipal register due to his position at Terrassa City Council, for personal purposes, also taking into account the relatively small scope of the police work environment municipal, common friendships... or even the existence of public records, such as that of property or vehicles... which allow any citizen to obtain information from another, regarding the domicile or properties of the latter. .. bearing in mind, as it has been stated, that Mr. (...) has not accessed the municipal register of Terrassa residents".

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.

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

The object of this complaint procedure is an alleged access to the register of inhabitants of Terrassa, by a municipal worker, to obtain the habitual address of the now complainant and use this information to file a complaint against private title

In his letter, the complainant also pointed out that the information relating to his current address was only reported in the population register.

Well, within the framework of this prior information, the reported entity has made it clear that, consulted with the City Council's Technology and Information Systems Service, no access has been found by Mr. ..) in the data of the reporting person's register.

In this regard, it should be noted that, aside from the complainant's statements, there is no other element that corroborates that Mr. (...) accessed the complainant's data through the municipal register of inhabitants, access that , on the other hand, the City Council denies that it happened. Nor can it be ruled out that, as the accused entity points out, it was a third person or a query to a public register, the source of information that allowed Mr. (...) to know what the address of the complainant.

Therefore, by not being able to establish the authorship of the leak, nor rule out that its origin comes from other sources unrelated to the reported entity, it has not been possible to prove that the City Council has allowed a improper access to the whistleblower's information.

Indeed, the Judgment of the National Court of 18/03/2009, ratified by the Supreme Court in a judgment of 16/05/2012, which confirmed a resolution of the Spanish Data Protection Agency under which the archive of the actions of prior information was declared because it was considered that there was no evidence of the authorship of the reported facts that would allow the same to be imputed: *"The appealed resolution recognizes that the reported conduct could have given rise to an infraction of the duty of secrecy in application of the provisions of article 10 of the Organic Law 15/99 and which could lead to the imposition of a penalty for non-consensual data processing (...). However, the only argument on which the file is based is that it has not been possible to prove who could be responsible for the offense committed. The presumption of innocence thus becomes the basis of the archive resolution and a new assessment of the facts carried out by this Chamber obliges to confirm said criterion because said presumption (proceeding from Article 24 of the EC), is an essential figure of the punitive law and, therefore, applicable to the administrative sanctioning area (article 137 of the Law on the Legal Regime of Public Administrations and of the Common Administrative Procedure), implies the existence of a minimum evidentiary activity of charge, practiced with observance of all guarantees proceedings, from which the culpability of the accused can be deduced; to this is added the right to defense under the terms of the current sanctioning regulations (art. 135 LRJA-PAC 1.398/1993), so since there is not sufficient evidence, it turns out that it is not possible to agree to the initiation of the sanctioning procedure, being the file agreed upon by the appealed resolution is reasonable in relation to the arts. 16 to 19 of the RD*

Consequently, the principle of presumption of innocence is applicable here as there is no evidence to prove the reported communication of data, and therefore the commission of an offense by the Terrassa City Council. In this sense, article 53.2. b) of Law 39/2015, of October 1, recognizes the right: "The presumption of non-existence of administrative responsibility until proven otherwise".

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 highlighted in the instruction of the procedure: *"b) When the facts are not accredited;"*.

Therefore, I resolve:

1. File the actions of prior information number IP 373/2021, relating to the Town Council of Terrassa.
2. Notify this resolution to Terrassa City Council 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, on an optional basis, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of 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,