

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 previous information no. IP 406/2021, referring to the City Council (...).

Background

1. On 10/10/2021, the Catalan Data Protection Authority received a letter of complaint against the political party (...) and the City Council (...), on the grounds of an alleged non-compliance with the regulations on personal data protection.

Specifically, the complainant (local police officer of the City Council (...)) complained that, on date (...), the representative of the political party (...) made the following statements - relating to his person - before the Plenum of the local corporation, which was being broadcast live on social networks: "because the agent (first name of the person reporting) has been assuming command of the night shift of the local police without having either the condition or the capacity or the preparation to oppose the head of the shift."

According to the complainant, this person demonstrated to have "extensive knowledge about the personal data, quadrants and working calendar of civil servants", since during his intervention in the aforementioned Plenary "he had appealed to more issues of trade union negotiations and actions Internal Police with respect to the Shift Leaders who have been promoted by the trade union section (...) as the majority representation of the officials of the Local Police (...)." According to the complainant, that the representative of (...) having this information would prove that there was a leak of information from the City Council (...) "as responsible for the data protection of its employees" . Finally, the complainant complained that the statements of the representative of (...) in the Plenary were also published "on the social networks under his control [of (...)], where thousands of people access."

Along with the complaint, he provided several internet links and a photo report on the publications on the networks of the demonstrations that were the subject of the complaint.

2. The Authority opened a preliminary information phase (no. IP 406/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application 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 (LPAC), to determine whether the facts were likely to motivate the initiation of a sanctioning procedure.
3. On 02/24/2022, this Authority transferred the complaint to the Spanish Data Protection Agency (AEPD), solely in relation to the dissemination of personal data carried out by Mr. (...) (whom the reporting person links to the political party (...), to the Municipal Plenum of (...) and to the social networks of this party, as these are facts included in of its area of competence . This Authority kept the investigation open regarding the City Council (...), for a possible leak of information with personal data.

4. On 05/17/2022, the City Council was required to answer several questions related to the events reported.
5. On 06/23/2022, the City Council responded to the request with a letter stating the following:

In relation to the statements made at the General Assembly of the corporation by the representative of (...):

- That the complainant "has received several tasks of higher category functions. These assignments have been limited to one day and one work shift. The motivation for these tasks has been the lack of commands and other agents to perform the functions of shift leader. Mr. [surname of the person making the complaint] has a university degree in law that justifies the professional competence to perform the duties of a shift leader."

In relation to whether the representative of (...) had access to this information through the City Council and what legal basis would have legitimized this access:

- That "this information was in no case provided by the City Council, or specifically, by the Local Police Service, to the representative of (...)."
 - That "we do not know how the representative of (...) could have been aware of this information. Anyone has been able to inform the representative of (...) in relation to what he said. In this sense, indicate that the dial with the timetables and shifts of the Local Police personnel is posted on the information desk inside the Local Police offices, in a space where access is restricted to the authorized persons. It is also made available to commanders so that they are aware of the personnel they have. All of them have a duty and obligation of secrecy and confidentiality. It is planned that soon this quadrant will only be provided via email to the Commands and will not be posted on the information desk."
 - That the data of the reporting person referring to his condition, capabilities or preparation are not contained in the schedule quadrant and, therefore, this information could not be extracted from there.
6. On 06/30/2022, also in the context of 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, by accessing the YouTube web portal and searching for the video of the Plenary Session of the City Council (...) of (...), it was found that there is no record of the intervention mentioned in the letter of complaint. However, a new search was carried out and in this second attempt a video of the pre-Plenary hearing, held on the same date, was located, in which the reported intervention is recorded.

Specifically, at minute (...) Mr. (...), of the political party (...), and states the following:

"Because the agent (last name of the person making the complaint) has been assuming command of the night shift of the local police without having either the condition or the capacity or the preparation for opposition to head the shift (...)."

7. On the same date, 06/30/2022, the complainant was requested to provide some proof or indication that, as he had stated in his complaint, the representative of (...) had a "extensive knowledge about the personal data, quadrants and working calendar of civil servants."
8. On 3/07/2022, the complainant responded to this request with a letter of which, for what is of interest here, the following should be highlighted:
 - That "there is evidence of the existence of several WhatsApp groups in which officials and individuals share confidential data including the quadrants [of shifts of local police officers]."
 - That "Mr. (...) it disseminates data both in plenary and (...) in publications on its social networks and from (...)."
 - That "the trade union section (...) in (...) acts in coordination with Mr. (...) ((...)) in their trade union demands in front of social networks, the press and in the sessions prior to the plenary sessions (...)."
 - That there are statements before a judicial body in which "the reported Mr. (...)" acknowledges that the controversial data were provided by the Local Police officers themselves.

Together with the letter, he provided four pieces of video consisting of extracts from the judicial statements that the representative of (...) made, in the framework of the judicial procedure in which he intervened as a party sued by two police officers Local (one of them, the complainant) for the violation of the right to honor, personal privacy and self-image and data protection (ordinary court no. (...), court of first instance no. (. ..) from Barcelona).

The four contributed video pieces are linked below:

(...)

9. On the same date, 3/07/2022, the complainant provided a letter "expanding his complaint", in which he set out the following:
 - That Mr. (...) "acted in public" disseminating personal data "in collaboration with a political party (...) to extract political income and in collaboration with a social action to claim the majority of the Police union Local (...)."
 - That there is a WhatsApp group of about 120 people, "(...)", where ""for a significant period of time the administrators of this group and members of the group have been publishing personal data of citizens, and officials, as well as the Excel documents relating to the quadrant sheets (...)."
 - That the City Council delegated to the Mossos d'Esquadra DAI body unit the opening of an investigation into this WhatsApp group, the result of which was reported to the City Council in several files.

- That "in this WhatsApp group personal data of sensitive and high-level citizens is transferred, that the quadrants with data of internal control officials can be reproduced and exported to the groups cited and via computer file (...)." ."
- That it appears from the investigation of the Cos de Mossos d'Esquadra that there are several WhatsApp groups of the local police with the presence of policemen and non-policemen, who exchange information, among other things, about the quadrants of the police shift local
- That "the staff of the police room, about two or three people per shift, connect their personal devices mobile phones to the police management computers using WhatsApp Web for the transfer of images and data between the staff and WhatsApp groups."
- That there is a relationship between the conduct of the WhatsApp groups and the facts initially reported (in writing of 10/10/2021, antecedent 1), since the demonstrations against his person are also made in the WhatsApp groups referred to.

Together with this letter, the complainant provided the following documentation:

- a) Screenshots of some messages that contain personal data and that, according to him, would have been exchanged in WhatsApp groups whose members would be Local Police officers "and individuals". By way of example only:
 - Message sent by a person who identifies himself on WhatsApp as "(...)" (tel....), which in turn reproduces a message from "(...)" showing a photograph of a person accompanied by the following text "El desaparecido (...)."
 - Message that includes a photograph of a document with the logo of the Local Police (...) entitled "Daily Service Order corresponding to: (...)."
 - Message sent by ("[illegible] (...)", which contains a copy of an ID (illegible).
 - Capture of a screen showing that a WhatsApp group, of which the administrator would be "(...)", is made up of 112 members.
 - b) Various e-mails exchanged between the union (...) and the delegated person for data protection (DPD) of the City Council (...), in the period between (...). In one of these emails, the DPD informs the aforementioned union that, during a visit to the local police offices, it was found that "this desk [where the shift quadrants are hung] is in an area in the one that can only be accessed by authorized personnel, given that all the doors that give access go with a fingerprint (or code)."
- 10.** On 07/06/2022, the complainant submitted a new letter in which he provided judgment no. (...), issued by the Court of First Instance no. (...), in ordinary court no. (...) (to which reference has been made in the 8th foundation). In this judgment, among other aspects, it is analyzed whether the statements made by Mr. (...) of (...) in the Plenary meeting of the corporation on (...) (the same that were the subject of a complaint before this Authority, transcribed in the preceding 6th in fine) could have affected the right to honor and privacy of the complainants (two local police officers with the same surname, one of whom is the complainant).

In the legal basis of this sentence, the following text is included (the bold is from the APDCAT):

“(….)”

11. On 24/02/2023, this Authority addressed a request to the City Council, in order to obtain more information in relation to the exchange of information (among which the service quadrants of the local police) through WhatsApp groups of which, according to the complainant, local police officers and third parties unrelated to this body would be members.
12. On 03/27/2023, given that the deadline had been exceeded without the City Council having responded, this Authority reiterated the requirement with the warning that, if not complied with, an infringement could be incurred of the data protection regulations.
13. On 03/29/2023, the City Council responded to the request by means of a letter in which it stated the following:

In relation to whether the City Council was aware of the existence of the WhatsApp groups referred to:

- That "on 06/25/2021, a municipal employee presents a letter in which he states the existence of facts published in a WhatsApp group called [...] (...), identified with the official logo of the Local Police (...) and some facts that could constitute *mobbing* within the Local Police collective. As a result of the above, the action procedure for cases of psychosocial risk was activated. From the Local Police Service it is reported that they became aware of this process after the initiation of this psychosocial risk procedure and not before, because these facts were not formally brought to the attention of the reporting person at the Service's chain of command of the Local Police of the City Council and moreover, this WhatsApp group is not corporate."

In relation to whether in any of the messages or images exchanged within these WhatsApp groups information had been extracted from the City Council's database - among which, the quadrants with the schedules and shifts of the staff of the Local Police (...)-, or other databases to which he had access:

- That "the origin of the data contained in this WhatsApp group is unknown since it is not a corporate WhatsApp group".

In relation to whether the City Council knew that the Local Police officers of the City Council were using the WhatsApp network to exchange information:

- That "the City Council is aware of the existence of this WhatsApp group based on the complaint of a worker on (...), which motivates the initiation of an action procedure against cases of psychosocial risk, but he had no prior knowledge of its existence and was unaware of the operative nature of its operation, which people intervened and for what purpose they carried out these exchanges of information and from where they extracted it and with what authorization."

In relation to whether, as claimed by the complainant, the City Council had delegated to the DAI police force unit the opening of an investigation into these WhatsApp groups and the procedures carried out:

- That "it was agreed by Decree of the Mayor's Office (...), to carry out a reserved information in order to determine whether the facts, in which several members of the Local Police force could allegedly be involved (...), they could be the subject of a disciplinary proceeding. As well as, designate the Internal Affairs Division of the General Directorate of the Police to carry out the corresponding preliminary proceedings, in accordance with what is provided in article 14 of the Regulation of the procedure of the disciplinary regime applicable to local police forces of Catalonia, approve by 179/2015, of August 4, and the collaboration agreement dated January 10, 2022 signed between the City Council (...) and the Department of the Interior of the Generalitat of Catalonia ."
- That "it is reported that the procedures carried out are:
 - Acts of the Mossos d'Esquadra body of incorporation into the reserved information file of a digital evidence collection act to incorporate files that correspond to screenshots corresponding to the chat conversations of the WhatsApp group called (...), of dates (...).
 - Minutes of the Internal Audit and Security Unit of the Internal Affairs Division of (...) to extract the records of access and inquiries made on natural persons, to the databases of the Police Information Systems of the PGME on certain NIE and DNI(...).
 - Summons and statement taking of twenty-one Local Police officers."
- That the documentation referring to these actions cannot be provided, as they are part of a reserved information file followed by the Police Corps.

In relation to whether the City Council itself carried out investigations into WhatsApp groups:

- That the City Council "did not carry out any investigation, but it was carried out by the internal affairs division of the Mossos d'Esquadra body, as previously indicated, in the yes of the processing of the reserved information file."

It also provided the following additional information:

- That "According to the Local Police Service, as a result of this fact known by the worker's complaint and the initiation of the action procedure against psychosocial risk, and in order to guarantee safe communication due to the assigned functions, the Service of Local Police launched in July 2021 the Bitrix24 cat which is a software platform that offers, among other functions, a corporate instant messaging system. Thus, the transmission of information from the Service takes place from this date with a corporate system that identifies the users who have access, guaranteeing in this way that those who access the information do so because of the functions entrusted to them ."

14. Based on the antecedents that have been related and the result of the investigative actions carried out within the framework of the previous information, today this filing resolution is issued regarding the behavior reported on the eventual leakage of personal data by the City Council to the representative of the political party (...).

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.

The person making the complaint complained that the representative of the political party (...) revealed information about him (transcribed in the previous 6ème *in fine*) during the Municipal Plenum of (...). The person reporting also evidenced that this information would have been leaked by a person or persons who worked for the City Council and/or who would have had access to this data.

In order to substantiate this complaint, the complainant provided the following documentation and information.

- The statements made by the representative of (...) in the Plenary in which he literally says "because the agent (...) has been assuming command of the night shift of the local police without having either the condition or the capacity or the preparation por oposición of head of shift").
- The statements of the representative of (...) in ordinary judgment no. (...), in which he declared that he obtained the information relating to the complainant that he disseminated in the Plenary of (...) " by direct indication of a 'safe source' of the local police (...), sympathizer of the political party (...). " (previous 10th)
- It stated that the Local Police shift quadrants (which include, among other data, the surname of the officer who performs the duties of shift leader in a certain service) are displayed on a Police information panel Local, which can be photographed and then send this photograph to third parties outside the body.
- He reported the existence of a WhatsApp group, of which local police officers and people from outside the body would be part, in which police information would be exchanged, including shift quadrants. And he provided several screenshots of the messages that, according to him, had been exchanged in this WhatsApp group (antecedent 9è *in fine*).

For its part, in the responses to the requests addressed to it by this Authority, the City Council stated the following:

- He denied having provided the disputed information to third parties.

- It stated that the complainant had held this position of shift leader on one occasion and that he had the qualifications required to perform these duties.
- That he did not know how the representative of the political party (...) had come to know this information and that "anyone could have informed the representative of (...) in relation to what he expressed (...)." And he added that "there is no data in the quadrant in relation to the condition, capacity or preparation of the agents/leaders, and therefore, I could not extract the information from here."
- He reported that he did not know who was part of this WhatsApp group, since it was not corporate, and he provided certain complementary information (13th precedent).

As has been advanced in the antecedents, the complaint for an alleged violation of the data protection regulations by the representative of (...), for the disclosure of data to the Municipal Assembly and to the social networks of this political party, it was transferred to the AEPD because it falls within its area of competence. This Authority kept the previous information open, in order to resolve whether the information disseminated by this representative of (...) could have its origin in a leak from the City Council. This prior information is archived through this resolution, based on the following considerations.

On the revelation that the reporting person had neither the qualification nor the sufficient preparation to occupy the position of shift leader

- The first thing to note is that the information revealed by the representative of (...) in the Plenum of (...) was incorrect, since, as reported by the City Council, the complainant had the qualification and the ideal preparation to occupy the shift leader position. The fact that the representative of (...) provided (and presented before the Plenary) incorrect information is indicative that the person who would have provided him with the information (in the event that it had been provided to him and was not a mere lucubration without any base) was not linked to the City Council or, at the very least, had not had access to the data on the preparation and qualification that the complainant had. This incorrect information about the qualification could not have come from the City Council's databases.
- With regard to the statements made by the representative of (...) in the framework of the judicial proceedings, in which he gave a statement as a defendant and in which he affirms that the information referring to the complainant that he presented in the Plenum of (...) provided him with a "safe source" from the local police (...), the argument made in the previous paragraph is reproduced here: the source must not have been so "safe", if the information provided was incorrect. In addition, it must be said that it was a party statement and that in the judgment this disclosure is not established as a proven fact.

Regarding the disclosure that the reporting person had taken the position of shift leader

While it is true that this specific information could have been found in one of the shift quadrants that are posted on the information panel located in the offices of the Local Police of the City Council (...), this information could also have been known by other people outside the City Council, such as the same unions that the complainant alludes to in his writings (one of them, as he indicated, with a close relationship with (...)), who could

have access due to their union functions, and also the same family or social circle of the reporting person. Therefore, it cannot be attributed with certainty to the City Council the leakage of information that could be known to other people or entities.

On the eventual lack of confidentiality linked to the exposure of data to the Local Police panel and its exchange in a WhatsApp group

The whistleblower complained that the shift dials of the local police were displayed on a panel, which could lead to anyone photographing them and leaking them to third parties. And he explained that proof of this was that some photographs of the quadrants, as well as other personal data linked to citizens, had been exchanged in a WhatsApp group of which local police from the City Council (...) and third parties would be part alien to the Local Police; data leakage for which the City Council would be responsible.

Regarding the location of the information panel where the quadrants are hung, the person making the complaint has provided a communication issued by the City Council's DPD. In this communication, it was indicated that the information desk of the Local Police is located in a restricted area, which could only be accessed through strict control systems.

The fact that photographs of these quadrants (as well as other personal data) have been exchanged in a WhatsApp group is also not sufficient evidence to impute a violation of the principle of confidentiality to the City Council. And this because it is not known that members of this group are people who are not part of the Local Police (...).

It must be taken into account that the sanctioning procedure is particularly guaranteeing because of the consequences that can be derived from it. That is why there must be enough evidentiary elements or rational indications to impute the commission of an offence. In line with article 24 of the Spanish Constitution, regarding the presumption of innocence, article 53.2. *b* of the LPAC includes the following as the right of those presumed responsible for administrative procedures of a punitive nature: "The presumption of non-existence of administrative responsibility until the contrary is proven."

It cannot be overlooked that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, and the full virtuality of the principles of presumption of innocence and in dubio pro reo in the area of sanctioning power, which shifts the burden of proving the facts and their authorship to the accuser. In this sense, the Constitutional Court, in its judgment 76/1990 of April 26, considers that the right to the presumption of innocence entails " that the sanction is based on acts or probative means of charge or incrimination of the reprehensible conduct; that the burden of proof corresponds to the accuser, without anyone being obliged to prove their own innocence; and that any inadequacy in the results of the tests carried out, freely assessed by the sanctioning body, must be translated into an absolute pronouncement. "

In the same way, the Supreme Court, in its sentence of 10/26/1998, declares that the right to the presumption of innocence " does not oppose that the judicial conviction in a trial can be formed on the basis of evidence indiciaria, but in order for this evidence to disprove said presumption, it must satisfy the following constitutional requirements: the evidence must be fully proven - it cannot be treated as mere suspicion - and it must explain the reasoning by virtue of which, based on the proven evidence, has come to the conclusion

that the accused carried out the infringing conduct, then, otherwise, neither the subsumption would be founded in law nor would there be a way to determine if the deductive process is arbitrary, irrational or absurd, that is to say, if it has been violated the right to the presumption of innocence when considering that the evidentiary activity can be understood as a charge. "

For everything that has been presented, it is appropriate to archive the proceedings, since the City Council's responsibility for the events reported has not been proven.

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, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, should be agreed to be archived.

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 liability. This resolution will be notified to the interested parties". And article 20.1) of the same Decree determines that the dismissal proceeds "(...) b) When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred."

resolution

Therefore, I resolve:

1. Archive the actions of prior information number IP 406/2021, relating to the City Council (...), since during the actions carried out within the framework of the prior information it has not been established that any act that may be constitutive of any of the violations provided for in the legislation on data protection.
2. Notify this resolution to the City Council (...) and to the person making the complaint.
3. Order that the resolution be published 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 Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director

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