

File identification

Archive resolution of the previous information no. IP 407/2021 referring to the City Council of Llançà.

Background

1. On 10/10/2021, the Catalan Data Protection Authority received a letter from a person filing a complaint against Llançà City Council, on the grounds of an alleged breach of data protection regulations of personal data, specifically for the disclosure to third parties of the jobs he had held. In this regard, the complainant stated the following:

1.1 That he had participated in a selective process for a place in (...) school, and that, upon seeing the score obtained, he requested the revision of the assessment of merits, specifically, with respect to point ' a) *Professional experience*', as well as the review of your practical test.

1.2 That, in response to the review request, Llançà City Council notified him of the Mayor's Resolution of 10/5/2021 in which, among other things, explicit mention was made of the jobs that had previously occupied. In this regard, it is necessary to highlight the part of the resolution where this information is mentioned:

" Review score of the merits presented by the applicant: Once the documentation presented in time and form, by the applicant (...), it is verified that he indeed presented two certificates of services provided as labor personnel, one of them corresponding to (...) and the other from (...). In the two certificates it is verified that the category is comparable to group E (Professional Associations)."

This resolution, estimated in relation to the review of the score of the merits of the complainant here, agreed: *" Accept the review of the score of the merits presented within the deadline established by the applicant (...), given that has detected a form error in the assessment of the experience, and consequently rectify the total score of the merits phase obtained by the applicant, passing from having (...)"*.

1.3 That the City Council had sent the aforementioned resolution to all applicants or *' at least to those who have passed the selection process and soon on the City Council's notice board'* and that he had only provided information on their previous jobs for the purposes of assessment by the court but, in no case, for their disclosure.

Along with the complaint, he provided the aforementioned Resolution of the Mayor's Office of 10/5/2021.

2. The Authority opened a preliminary information phase (no. IP 407/2021), 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 25/05/2022, the City Council was required to confirm whether the resolution of 5/10/2021 had been notified to the rest of the applicants (eligible and/or ineligible) and, in said case, indicate the legal basis that would justify said notification. Likewise, it was asked to indicate whether said resolution had been published on the City Council's notice board.

4. By means of a letter dated 06/07/2022, the Llançà City Council requested an extension of the deadline of 10 days to respond to the request for prior information. This request was resolved by agreement of the same date, notified on 10/06/2022, and by means of which the deadline for responding to the request for prior information was extended by another 5 days.

5. On 06/16/2022, the City Council responded to the aforementioned request in a letter in which it stated the following:

- That the call for the competitive competition to fill the school job provided for the creation of a job board with those applicants who passed said competitive competition; and that, given that the complainant's allegations were accepted, this '*changes the descending order of the order of applicants who would be part of the school's (...) job board, reason by which and as an interested and affected party, the affected applicants are notified of the resolution, motivating the reason for the variation in their order in the final scores, and consequently in the subsequent creation of the job board*'.
- That the legal basis that justified the notification to the rest of the applicants was the fulfillment of a legal obligation and the exercise of public powers. He stressed that the notified applicants were an interested party and affected by the file, in accordance with the LPAC.
- That the aforementioned resolution had not been published on the City Council notice board. And that '*the procedure followed was to personally notify interested applicants who were affected by the descending order in the subsequent creation of the (...) school job board*'.

6. On 07/19/2022 and still within the framework of this preliminary information phase, the Authority petitioned the reporting person to report within 10 working days if they had any proof or indication about the publication of the resolution of 10/5/2021 on the notice board of the City Council and that, if affirmative, he provided it.

However, the period of 10 working days ended on 2/08/2022, without the reporting person providing any response in this regard.

Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, in relation to article 5 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, 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 is competent to issue this resolution.

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

The complainant explained that he had participated in a competitive competition for a (...) school place in the Llançà City Council and that he requested, among others, a review of the assessment of his merits professionals. In response, the City Council notified him of the Mayor's Resolution of 10/5/2021, in which he resolved to accept the merit score review and rectify the total score obtained by the applicant. The complainant stated that said resolution contained an explicit mention of the jobs he had previously held (background 1.2), that this resolution was notified to the rest of the applicants or, at least, to those who had passed the selection process and that it would most likely have been published on the City Council's notice board (without providing any proof or indication of this eventual publication); and he complained that he provided information about his previous jobs for the purposes of assessment by the court but, in no case, for disclosure.

For its part, the City Council pointed out that Resolution 05/10/2021 considered in part the allegations of the complainant here, which changed the score obtained by the applicants and therefore the descending order in which these appeared in the job board that would be created to fill a (...) school job; that said resolution had not been published on the City Council notice board, but only notified to those people who were affected by the new rating obtained by the complainant here after the review and that the legitimating basis that justified the notification of the resolution was the fulfillment of a legal obligation and the exercise of public powers - in connection with what is provided for in the LPAC-.

Indeed, the Resolution of the Mayor's Office of 5/10/2021 resolves:

' First.- ACCEPT the revision of the score of the merits presented within the deadline established by the applicant (...), given that a formal error has been detected in the evaluation of the experience, and accordingly rectify the score total of the merit phase obtained by the applicant, going from having (...).'

(...)

And, in the third section of the dispositive part, orders:

'Third.- MODIFY the descending total score order of the applicants who have passed all the tests of the competitive competition, and in accordance with the rules of the call, the first applicant with the highest score, will be the applicant proposed to occupy the job of (...) school and the rest of the applicants, will be proposed in descending order of priority of total score, to be part of the job board of (...) municipal of this City Council , which is created for this purpose. (...).'

First of all, it must be taken into account that the disputed resolution appreciated the claim of the person making the complaint and that, as the City Council claims, this entailed a change in the order of the applicants' final scores. That being the case, the communication of said Resolution to the affected applicants must be considered legitimate to the extent that it was enabled by the concurrence of the legal bases provided for in article 6.1, letters c) ("el tratamiento es necesario for the fulfillment of a legal obligation applicable to the person responsible for the treatment") ie) (" the treatment is necessary for the fulfillment of a mission carried out in public interest or in the exercise of public powers conferred on the

person responsible for the treatment ”), in connection with what is provided for in articles 4 and 53 of the LPAC:

Art. 4 LPAC

"Stakeholder concept

1. The following are considered interested in the administrative procedure:

- a) Those who promote it as holders of individual or collective rights or legitimate interests.*
- b) Those who, without having initiated the procedure, have rights that may be affected by the decision adopted in it.*
- c) Those whose legitimate interests, individual or collective, may be affected by the resolution and are personified in the procedure until a definitive resolution has been issued. (...)"*

Art. 53 LPAC

"Rights of the interested party in the administrative procedure

1. In addition to the other rights provided for in this Law, those interested in an administrative procedure have the following rights:

- a) To know, at any time, the status of the processing of the procedures in which they have the status of interested parties; the meaning of the corresponding administrative silence, in case the Administration does not dictate or notify an express resolution within the deadline; the competent body for its instruction, if applicable, and the resolution; and the procedural acts dictated. Likewise, they also have the right to access and obtain a copy of the documents contained in the aforementioned procedures. (...)"*

Having said that, it must be pointed out that the City Council could have concealed from the Resolution that it transferred to the interested persons the information relating to the specific jobs that the complainant had held, but the truth is that each of these people would also have been able to access this information if they had exercised their right of access to the documentation by acting on the file as interested parties in the procedure (art. 53 LPAC transcribed above). In this regard, it should be emphasized that this specific information (the jobs held by the complainant here) is not considered to be specially protected data (art. 9 RGPD) so there would have been no impediment for the interested people access it.

Likewise, there is no evidence that the person reporting had exercised his right of opposition in order to prevent third parties who had lawful access to the administrative file from accessing certain information that would have been incorporated into the file from the moment it was provided by the reporting person himself.

Finally, regarding the publication of the resolution on the City Council's notice board, a fact that the complainant pointed to as a possibility, but without providing any evidence that this had happened, the City Council, in response to the request of this Authority, he stated that he had not published it. As things stand, the publication on the table of the controversial Resolution has not been accredited.

Therefore, it must be concluded that the fact of having notified the Resolution of the Mayor's Office of 5/10/2021 to the rest of the applicants who had passed the competitive competition and were affected by the new qualification obtained by the here reporting after the review, is in accordance with the regulations cited throughout this resolution.

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 violations provided for in the legislation on data protection, it is necessary to agree to its archive, in accordance with article 10.2 of Decree 278/1993, of November 9, on the procedure sanctioning authority for the areas of competence of the Generalitat.

Therefore, I resolve:

- 1.** File the previous information actions number IP 407/2021, relating to the Llançà Town Council.
- 2.** Notify this resolution to the Llançà City Council and to the complainant.
- 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, the interested parties can] file any other appeal they deem appropriate to defend their interests.

The director,