

"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 the previous information no. IP 410/2021, referring to the City Council of (...)

Background

1. On 13/10/2021, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the City Council of (...), on the grounds of an alleged breach of the regulation on protection of personal data .

Specifically, the complainant stated that he was " *an officer of the Local Police of (...)*" and that he had participated " *in the selection process for a corporal's position through the system of internal promotion competition*". The complainant complained that, on (...), " *the City Council published a decree with the definitive list of those admitted and excluded, with the names and surnames of the 8 aspiring agents*" and in relation to this it pointed out that , otherwise, " *in point 4 of the regulatory bases*" of said selective procedure it was indicated that " *the number corresponding to the registration of the application submitted, to participate in the call, will constitute the reference for each participating person.*" .

In relation to these facts, the reporting person accompanied the letter of complaint with the following documentation:

- a copy of mayoral decree no. (...), dated (...), through which it was resolved, among others, " *1. To approve the definitive list of applicants admitted and excluded from the call, and which remains as follows: (...)*" and " *4. Display this decree on the electronic notice board of the Headquarters of the City Council of (...), (...).eadministracio.cat*". This mayor's decree included the quadrant with the list of the eight applicants admitted, among them the person making the complaint here, all of them identified by name and surname, and it was indicated that " *No applicant is excluded*".
- a copy of the announcement, dated (...), published in the Official Bulletin of the Province of Barcelona (BOPB), by which it was made public that by mayoral decree no. (...) the " *Call and bases for the provision of 1 place of corporal of the Local Police of the City Council of (...) had been approved, through the competition system of internal promotion*". The regulatory bases of the selection process were included, as annexed documentation, to said announcement.

2. The Authority opened a preliminary information phase (no. IP 410/2021), 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. As part of this preliminary information phase, on 09/21/2022, the reported entity was required to report, among others, on the legal basis that would legitimize the publication of

the final list of admitted applicants and excluded from the call for the selection procedure for a position of corporal in the Local Police of the City Council of (...), all of them identified with their first and last names, as well as, about the period during which they would have been published the said listing (date of publication and withdrawal of the ad). Also, information was required on the reference included in the fourth base of the regulatory bases, when it was indicated that *"The number corresponding to the registration of the application submitted, to participate in the call, will constitute the reference for to each person participating."*

4. On 06/10/2022, the reported entity responded to the aforementioned request through a letter in which it stated the following:

- That "On date (...), *"through Mayor's decree no. (...) they proceeded to approve the regulatory bases and the call that were to govern the selection process for the provision of a position of corporal of the Local Police, through an internal promotion competition. .*
- That in the "fourth base", regarding *"the submission of applications"*, it was indicated that *"The number corresponding to the registration of the application submitted, to participate in the call, will constitute the reference for each person participating."* . However, *"It is not indicated in the rules that subsequent announcements will be made with an indication of the reference number."* .
- That *"the publication of the definitive list with the details of the names and surnames of the applicants admitted to the call was made following what is indicated in the seventh additional provision of the LOPDGDD"*.
- That *"According to the certificate of publication on the Notice Board , from (" esPublico Gestiona"), the date of publication of the listing on the Notice Board was (...). The document was published for 30 days and the publication was withdrawn on (...)"* .

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.

In essence, the complainant complained that, on (...), the City Council of (...) published mayoral decree no. (...), regarding the selection process, of internal promotion, to fill a position of corporal of the Local Police of the said City Council, *"with the definitive list of admitted and excluded, with the names and surnames of the 8 aspiring officers"* , and without having followed the provision of the fourth regulatory basis of said selective process, relating to the *" submission of applications "*, in which it was indicated that *" the number corresponding to the registration of the application submitted , to participate in the call, will constitute the reference for each participating person."* .

That being the case, in this resolution it is necessary to analyze two questions, the first, if the way in which the entity published said list, could violate the provisions of article 5 of the RGPD, relating to the principles of treatment, which provides that the personal data must be treated, among others, in accordance with the principles of legality, minimization and limitation of the retention period (article 5.1, letters a) c) and e) of the RGPD), and the second, if the said publication contradicted the forecasts collected in the regulatory bases of the referenced call.

In this sense, in relation to the question of the principle of legality, it should be borne in mind that the selective personnel procedures, including those for internal promotion, are governed by the principles of publicity and transparency. It is also expressly included in article 55 of Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law on the Basic Statute of the Public Employee (EBEP), (applicable as established in article 2.1.c) to civil servants and, where appropriate, to the labor staff of the Local Administration).

For its part, article 45.1.b) of the LPAC, in relation to the publication of the administrative acts derived from the selective procedures of competitive competition, provides that the publication of the administrative acts will have notification effects, among others, in the following case: " *b) When it comes to acts that are part of a selective or competitive procedure of any kind. In this case, the call for the procedure must indicate the medium in which the successive publications will be carried out, and those carried out in different places are not valid.*" In similar terms, article 58 of Law 26/2010, of 3 August, on the legal regime and procedure of the Catalan administrations is also pronounced.

At this point, it should be noted that, the third basis of the regulatory bases of the call established that the City Council would make public on the bulletin board of the electronic headquarters "the *list of admitted and excluded applicants*", and that said publication would have " *all the effects of notification to interested parties in accordance with what is established in article 45.1.b) of the Law 39/2015, of October 1, 2015, of the common administrative procedure of public administrations.*"

Having said that, it should be noted that with regard to the controversial publication of the referred definitive list of admitted and excluded applicants, the reported entity only published the list of the names and surnames of the persons admitted, given that there was no case of no applicant excluded. Regarding this, article 21 of Decree 8/2021, of February 9, on transparency and right of access to public information (hereafter, Decree 8/2021), which refers to the calls for proposals and the results of processes to access the status of administration staff, and which also refers to internal promotion procedures (art. 21.1.b) establishes:

"2. The data to be published must refer, at least, to the announcement of the call, the rules, the official announcements and the first and last names and the four numbers of the national identity document or equivalent document of the admitted persons in each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection."

So things are, in general terms, the legal provisions that regulate personnel selection procedures, enable the publication of the lists of admitted persons and those who have passed the selective process, but not of persons not admitted, excluded or declared not suitable, which are only published if there is an express legal provision that obliges to do so.

In the present case, as already indicated, the name and surname of none of the people who were excluded was not included in the list, given that all the participants were admitted. However, it should be noted that, even in the event that the name and surname of an excluded person had been included in the list, in this particular case, this publication would not have entailed a violation of the principle of legality, under of Decree 214/1990, of 30 July, which approves the regulations for staff at the service of local entities (hereinafter, RPEL). The RPEL regulates, under the principle of publicity, the personnel selection procedure, both official and labor of local entities, and with regard to the application admission phase, it expressly provides that the resolution on the admission of applicants must identify the place where the complete lists of admitted and excluded applicants are made public (article 78 RPEL).

Consequently, having analyzed the aforementioned regulations, it must be concluded that, from the point of view of data protection, it cannot be considered that with the publication of the referenced list of admitted/excluded, the principle of legality has been violated (article 5.1.a RGPD), given that it is lawful data processing on the basis of articles 6.1.c) and e) of the RGPD.

However, the above considerations do not prevent this Authority from being able to analyze whether the publication on the Notice Board of the list of admitted applicants, -identified by first and last name-, was carried out in accordance with the principle of data minimization personal (Article 5.1.c RGPD).

In this regard, the seventh Additional Provision of the LOPDGDD provides for the following:

" When it is necessary to publish an administrative act that contains personal data of the person concerned, it must be identified by means of his first and last name, with the addition of four random numerical figures from the national identity document, the foreigner's identity number, the passport or an equivalent document. When the publication refers to a plurality of those affected, these random figures must be alternated .

In turn, article 21.2 of Decree 8/2021 provides that the data to be published, in relation to the selective processes of public administrations, must respect the criteria established in the field of data protection. And, in this sense, as already mentioned, it establishes that the data to be published are those relating to " *the first and last names and the four numbers of the national identity document or equivalent document of the persons admitted to each test or exercise of the process and of the person finally selected, in accordance with the criteria established in the field of data protection.*"

Therefore, given the aforementioned regulations and bearing in mind that the list of those admitted/excluded from the selection process only included the list of admitted applicants, detailing their first and last names, without including the four random digits of the DNI, it can be concluded that the reported entity published less personal data than provided for in the seventh additional provision of the LOPDGDD and article 21.2 of Decree 8/2021, and therefore, that the publication did not entail a violation of the principle of minimization of data (Article 5.1.c RGPD).

In relation to the time that the controversial list was published on the City Council's notice board, the reported entity stated in its response to the request for information that, on (...), the City Council published the list of admitted/excluded on the Notice Board, which " was

published for 30 days and the publication was withdrawn on (...)". Consequently, the violation of the principle of limitation of the conservation period (Article 5.1.e RGPD) cannot be imputed either, given that the City Council published said list for a non-excessive period, which allowed compliance with the principle of publicity, which governs the concurrent procedures and which has notification effects (article 55 of the EBEP and 45.1.b of the LPAC).

Finally, regarding the issue relating to the publication of the list of admitted and excluded applicants, identifying them with their first and last names, and not with the reference of the "*number corresponding to the registration of the entry of the application presented*", without prejudice to the arguments presented and which lead to discarding the imputation of the commission of an infringement provided for in the data protection legislation, it is not superfluous to point out that the aforementioned provision contained in the fourth regulatory basis, referred to the "*Presentation of sol · applications*", could generate the expectation that the application code would be the reference that would be used and published to identify the applicants admitted to the call.

Nevertheless, it should be indicated that the third regulatory base relating to "*Advertising*", expressly states that the list of admitted and excluded applicants will be published on the electronic notice board of the City Council of (...), and refers to article 45 of Law 39/2015 regarding the effects of notification to interested parties that the publication of the various acts will have. But, as has already been done, and as the City Council highlighted in the framework of this preliminary information phase, this third regulatory basis does not indicate anywhere that the reference code of the request had to be used to identify applicants in subsequent publications resulting from the selection process.

In short, the fact that the City Council has identified the admitted applicants with their first and last names, and not with the reference code of the application, cannot be considered a violation of the data protection legislation, taking into account the 'existence of rules that require publicity and transparency in the selective internal promotion procedures (article 55 EBEP, article 78 RPEL and article 21 of Decree 8/2021) and that in the fourth regulatory basis, relating to the "*Presentation of applications*", where the reference to the registration number of the application is collected, also includes an express paragraph in which mention is made of data protection, where it is indicated that the participants in the process of selection, with the submission of their application, they give their consent to process the personal data necessary to carry out the correct processing of the selection process. And, he ends by saying, that to "*guarantee the respect and confidentiality of the applicants' data*", the applicable regulations will be the RGPD and the LOPDGDD. Regarding this referral, here we refer to the text of the seventh Additional Provision of the LOPDGDD, previously cited, which guarantees that when it is necessary to publish an administrative act that contains personal data of the person affected, it is identified through of their first and last names.

In accordance with what has been set out and given that it has not been proven during the present preliminary information, that the facts analyzed could be constitutive of any of the infractions provided for in the regulations on data protection, it is appropriate to agree to their archive.

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 the dismissal proceeds "a) When the facts do not constitute an administrative infraction."

Therefore, I resolve:

1. File the actions of prior information no. IP 410/2021 relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) 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 denounced entity and the interested parties may file, as a matter of discretion, 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 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.

Equally, the reported entity and the interested parties may file any other appeal they deem appropriate to defend their interests.

The director,