

## File identification

Archive resolution of the previous information no. IP 411/2021, referring to the Town Council of Collbató.

## Background

1. On 11/10/2021, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the Collbató City Council, on the grounds of an alleged breach of the regulations on personal data protection .

Specifically, the person reporting stated that on (...)/(...)/2021 at (...) hours, local police officer no. (...) he took a photo of him with a mobile phone in order to process a complaint for violation of traffic regulations, for having stopped at a zebra crossing. The complainant's complaint was based on the fact that the photograph, of which he provided a copy, not only showed his vehicle (and therefore the information relating to the model and registration number of the vehicle), but also the his own image, since at the time of taking the photograph, he was sitting in the driver's seat and sticking his head out of the window, and consequently he was identified. He added that he told the officer that he did not authorize him to take his picture, and that he asked him to let him out of the vehicle before taking the picture, but that the officer took it without giving him time to go out there Together with the aforementioned photograph, he provided the payment document for the corresponding fine and the proof of payment thereof.

2. The Authority opened a preliminary information phase (no. IP 411/2021), 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 12/07/2022, the Collbató City Council was required to report on several aspects related to the events reported.

4. On 07/21/2022, the Collbató City Council responded to the aforementioned request through a letter in which it stated the following:

- *"The Collbató City Council has municipal guards, whose functions are those set out in article 13 of Law 16/1991, of July 10, on the local police, which are as follows:*
  - a) *Custodial and surveillance of goods, services, installations and municipal dependencies.*
  - b) *Order and regulate traffic within the urban core, in accordance with traffic regulations.*
  - c) *Participate in citizen assistance and civil protection tasks, in accordance with the provisions of the laws.*
  - d) *Ensure compliance with regulations, ordinances, bans, resolutions and other municipal provisions and acts.*

*In the exercise of these functions, on (...) of (...) of 20(...), the vehicle (...) - registration -, owned by Mr. (...) - first and last name of the reporting person- , by committing an offense for stopping the vehicle in a pedestrian crossing, obstructing traffic, and refusing to remove it until the arrival of his companion, who give rise to sanctioning file no. (...) ) As documentary evidence and to be able to process the administrative penalty, a photograph was taken of the front of the vehicle in order to collect the license plate and the scene of the infringement.*

*By letter dated (...) of (...) of 20 (...) , the offending person was informed, in response to the instances of complaint made on (...) of (...) of 20 (...) ( ... and...), that the photographs taken during the actions of the municipal watchmen are focused on the vehicle and not on the people who may be in it interior These photographs are attached to the complaint as documentary evidence of the infringement which is sent to the Tax Management Organism, a local autonomous body of the Diputació de Barcelona, for the management and collection of the public law revenues of the Collbató City Council, as data controller. At no time did the occupant of the vehicle request that he not be photographed."*

- *" The mobile phone used by the municipal watchman to capture the evidence of the infringement is a corporate tool of the Collbató City Council and a device owned by the municipality. This mobile phone is a corporate tool that the City Council puts at the employee's disposal for the development of the tasks of their workplace, among them, the processing of complaints for infringement of traffic regulations.*
- *"We confirm that the photograph taken was included in the disciplinary file no. (...) ) The workers who have had access to the disciplinary file no. (...) have been:*
  - a) *Collbató City Council officials who have access to it for the performance of their job functions and who have processed the corresponding disciplinary file.*
  - b) *The staff of the Tax Management Organism, a local autonomous body of the Diputació de Barcelona, as the person in charge of the treatment for the development of the collection management of public law revenues of the Collbató City Council."*
- *"The photograph responds to the capture of the image of the offending vehicle and not to the capture of the offending person.*

*The legal basis that legitimizes the capture of the photograph of the traffic violation committed is the fulfillment of a mission carried out in the public interest or in the exercise of public powers, contained in article article 6.1.e) of the RGPD .*

*Specifically, article 7 of Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, movement of motor vehicles and road safety, establishes that municipalities are responsible for regulation, ordering, management, surveillance and disciplining, by means of its own agents, of traffic on the urban roads under its ownership, as well as the reporting of infractions that occur on these roads and the sanctioning of these when they are not expressly attributed to another Administration.*

*The data that the municipal watchmen must collect to fill out and formalize a traffic complaint, in accordance with article 87 of Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, movement of motor vehicles and road safety, are the following:*

- a) *The identification of the vehicle with which the alleged offense was committed.*
  - b) *The identity of the accused, if known.*
  - c) *A succinct description of the fact, with an expression of the place or section, date and time*
  - d) *The name, surname and address of the complainant or, if he is an agent of the authority, his professional identification number."*
- On whether it is common practice for Local Police officers to capture photographic images of alleged offenders : *" Photographs of alleged offenders are not taken. The photographs that are taken are always photographs of the situations that lead to an infringement, in order to accredit its commission ."*

The City Council provided a copy of the following documentation:

- Letter dated (...) of the City Council's response to two letters of complaint that the complainant would have submitted to this City Council on date (...) subsequent to the events reported:  
  
*"In relation to your instance with entry registration number (...) and (...) of the day (...) of (...) of 20 (...), in which he presents a complaint about an action by the Guard Municipality of Collbató the past (...) of (...) of 20 (...), I inform you that it was decided penalize him for making a stop with the vehicle in a place no ability, obstructing circulation.  
The photographs taken during police actions are focused on the vehicle, and not the people who may be inside. These photographs are attached to the complaint as documentary evidence of the violation that is sent to the Tax Management Body of the Provincial Council of Barcelona, the body in charge of the collection of the penalties.  
To appeal the fine, you can go to the Tax Management Body."*
- Letter from the Collbató City Council dated 09/14/2021 for payment of the fine, addressed to the complainant. In the section corresponding to the offense committed, the following is indicated:  
  
*"Stop the vehicle in a pedestrian crossing.  
The driver refuses to remove the vehicle until the arrival (.sic) of the escort (.sic)"*
- Document issued by the Barcelona Provincial Council's Tax Management Organism, entitled *"detail of the fine"*, which contains information regarding the processing of the corresponding sanctioning procedure. The same information transcribed above appears in the section of the alleged infraction, and in the section *"reason for not stopping"*, the following information appears: *"denunciation communicated verbally"*.

## **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.

As stated in the antecedents, the complainant stated in his complaint that on (...) a municipal watchman photographed his vehicle to consider that he had committed a traffic infraction, and by photographing it he captured his image due to the fact that he was sitting in the driver's seat and sticking his head out of the window, which he did without his authorization, adding that he objected to the capture of his image, but that the said watchman did not he paid attention to it.

In this regard, the Collbató City Council has not questioned the fact that the aforementioned municipal watchman captured the image of the complainant when he took the photograph of the vehicle, and that this image was included in the disciplinary file that he processed against the reporting person for violation of traffic regulations. But he did disagree with other facts related by the complainant, which will be addressed later.

With regard to the legal basis that would legitimize the capture of the image of the reporting person by the municipal watchman, the City Council has invoked the basis provided for in article 6.1.e) of the RGPD, which provides that the treatment will be lawful when *"it is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment"*. In order to base a data processing on this legal basis, article 8 of the LOPDGDD requires that it derives from a competence attributed by a rule with the rank of law.

In this respect, it is necessary to refer to article 7 of the Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, circulation of motor vehicles and road safety, which establishes that it corresponds to the municipalities: *"a) The regulation, ordering, management, surveillance and discipline, by means of their own agents, of the traffic on the urban roads under their ownership, as well as the reporting of infractions that are committed in the mentioned ways and the sanction of those when it is not expressly attributed to another administration"*. Likewise, it is necessary to refer to article 11 of Law 16/1991, of July 10, on the local police, which establishes that the following functions correspond to the local police, in their scope of action: *"b) Order, signal and direct traffic in the urban core, in accordance with what is established by the traffic rules (...) d) Act as an administrative police, in order to ensure compliance with the regulations, ordinances, bans, resolutions and other municipal provisions and acts, in accordance with current regulations (...)*. Finally, it is necessary to refer to article 87.2 of the Law on traffic, which establishes that in complaints for traffic incidents, the agents of the authority must in any case record: *"a) The identification of the vehicle with which the alleged offense was committed. b) The identity of the accused, if known; c) a succinct description of the fact, with an expression of the place or section, date and time; d) The name, surname and address of the complainant (...)"*.

From the aforementioned regulations it follows that the collection, by the watchman, of identifying data of the person reporting here, for the purpose of filling out the complaint form for violation of the traffic regulations, would certainly be covered by the legal basis provided for in article 6.1.e) of the RGPD.

However, with regard specifically to the collection of the image of the reporting person, it must be noted, at the outset, that article 87.2 of the Law on traffic does not mention the collection of this data. However, it should be borne in mind that this precept only indicates the minimum mandatory content that must be included in a traffic violation ticket. This is clear from his statement, when he points out that (the remark is ours): "2. *In the complaints about traffic incidents it must be stated, in any case: (...)*" Therefore, this precept would not prevent the collection of additional data.

With regard to the collection of additional data, it should be borne in mind that article 88 of the Law on traffic, referring to the probative value of the denunciations of the agents of the authority in charge of monitoring the traffic in the exercise of the functions entrusted to them, establishes the following (the remark is ours):

*"The complaints made by the agents of the authority in charge of traffic surveillance in the exercise of the functions entrusted to them will have probative value, unless proven otherwise, of the facts reported, of the identity of those who had committed them and, in his case, of the notification of the complaint, without prejudice to the duty of those to provide all the evidentiary elements that are possible about the reported event."*

In relation to the content of this last precept, it is worth remembering that the municipal watchmen enjoy the status of agents of the authority, in accordance with the provisions of article 7 of Law 16/1991, of July 10, of the local police, as long as the requirements provided for in its section 2 are met, which is clear from the circumstances analyzed, and therefore would be a precept applicable to the present case.

This precept imposes on the agent of the authority the obligation to provide "all the evidentiary elements that are possible about the fact reported". In this regard, in its letter dated 07/21/2022, the City Council refers to the probative purpose of the photograph taken by the watchman when it states that: " *As documentary evidence and to be able to process the administrative sanction, took a photograph of the front of the vehicle in order to collect the license plate and the scene of the offence*", and that " *the photographs taken during the actions of the municipal watchmen are focused on the vehicle and not on the people who may have - there inside. These photographs are attached to the complaint as documentary evidence of the infringement*".

That's how things are, taking into account that the City Council of Collbató had provided its wardens with a mobile device for the processing of complaints for infringement of traffic regulations, and that the photograph of the vehicle is considered a probative element of the fact reported by the watchman, it must be concluded that this precept would protect the collection of the photograph of the vehicle involved.

At this point, it should be borne in mind that the collection of the image of the reporting person must also respect the principle of data minimization provided for in article 5.1.c) of the RGPD, which provides that the personal data will be: "adequate, relevant and limited to what is necessary in relation to the purposes for which they are treated". This involves analyzing whether the collection of the complainant's image was necessary to fulfill the intended evidential purpose.

On this issue, it would be necessary to differentiate between the incident reported by the watchman and the offense ultimately charged.

With regard to the reported events that were recorded in the complaint form, the fact that the watchman refers to the complainant's refusal to withdraw the vehicle ("The driver refuses to withdraw the vehicle until the arrival (.sic) becomes *relevant* ) of the *accompanying* (.sic)" ), so it cannot be ruled out that the watchman considered that the collection of the image of the driver of the vehicle (here the complainant) was a probative element of his presence at the time of the events , and indicative of their negative manifestations to withdraw the vehicle.

With regard to the traffic infraction finally charged as a result of these events (having contravened the prohibition to stop the vehicle at a pedestrian crossing), it must be recognized that for its charge it was not required that the image of the infringing person (here complainant), it being sufficient to catch the vehicle stopped in the middle of the pedestrian crossing. From this perspective, the capture of the complainant's image could be considered accidental and accessory or secondary to the main image of the vehicle. This seems to be the meaning of the demonstrations carried out by the City Council in the letter dated 21/07/2022 , in which it was pointed out that: "*the photographs that are taken during the actions of the municipal watchmen are focused on the vehicle and not on the people who may be inside*", "*the photograph responds to the capture of the image of the offending vehicle and not to the capture of the offending person*".

Be that as it may, the fact is that at the time of the events reported by the watchman, the reporting person was inside the photographed vehicle, and therefore his capture was completely irremediable in order to fulfill the purpose pursued, which was to obtain a visual test of the vehicle stopped in the middle of the pedestrian crossing. In this consideration, it is taken into account that the agent of the authority who aims to obtain proof of the facts reported when it is a vehicle where the driver is, may have to act quickly in order to avoid a movement of the vehicle that prevents the capture of photographic evidence of the events reported.

The unique circumstances noted prevent us from concluding that the City Council violated the principle of data minimization.

Another thing is that the reporting person had objected to the capture of their image at the time of capture. On this, it is necessary to note a divergence between the parties involved, since, while the complainant stated in his letter of complaint to the Authority that he opposed it, the City Council in its letter of 21/07 /2022 has denied it, noting that: "*At no time did the occupant of the vehicle request that he not be photographed*".

It is worth saying that in the letter dated 21/07/2022, the City Council has acknowledged that, on a date subsequent to the events reported, the complainant complained about the capture of his image, specifically, through two letters that present on the day (...), and therefore, after the capture of his image by the watchman (...). Well, in view of the City Council's response denying this fact, the presentation by the complainant of those documents alone do not allow us to infer that we are faced with a case of eventual disregard of the formally exercised right of opposition by the person here reporting.

**3.** 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; c) When the existence of responsibility has not been proven (...)."*

Therefore, I resolve:

1. File the previous information actions number IP 411/2021, relating to the Collbató City Council .
2. Notify this resolution to the City Council of Collbató 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, 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, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,