

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 natural persons affected can also be identified.

File identification

Archive resolution of the previous information no. IP 424/2021, referring to the City Council of (...)

Background

1. On 19/10/2021, the Catalan Data Protection Authority received a letter from a person, who holds the status of an agent of the Local Police of (...), in which he formulated a complaint against the City Council of (...), on the grounds of an alleged breach of the regulations on the protection of personal data .

Specifically, the person reporting stated that the Inspector (...)(...) of the Local Police would have issued on 23/12/2019 a report requesting the initiation of disciplinary proceedings against him, in which the judicial decision adopted by the Superior Court of Justice of Catalonia, in the judgment dated (...)/02/2008, which dismissed his claim to obtain partial permanent incapacity, would have been collected and attached.

In relation to the above, the Inspector (...)(...) of the Local Police proposed the initiation of disciplinary proceedings against the complainant here given that he had "*left the service*" without the existence of a just cause In relation to the above, the person making the complaint here would have alleged that he could not go out "*especially today that I am fully loaded*" .

Apart from this report issued by the Inspector (...), the complainant here also pointed out that the sanctioning file (it is inferred that it refers to the administrative acts issued in the disciplinary procedure) instituted against him, contained references to the content of sentence no. (...)/2019 of the Social Court number 2 of Tarragona, dated 25/11/2019, which dealt with a request for incapacity, as well as the appeal that the complainant presented against sentence no. (...)/2019.

The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 424/2021), 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 04/22/2022 the reported entity was required to report, among others, on the legal basis that would enable the processing of the information related to the said report and the constituent documents of the disciplinary file; and pointed out which circumstance of article 9.2 of Regulation (EU) 2016/679 of the European Parliament and of

the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement of these (hereinafter, RGPD) would allow the processing of the health data of the reporting person.

4. On (...) /05/2022, the City Council of (...) responded to the aforementioned request through a letter in which it stated the following:

- That to *"the agent with TIP no. 3193 [the person now reporting] a disciplinary case is initiated against him for the commission of an alleged infraction. This initiation is based on the request by the police inspector (...) (...) through a report issued on December 23, 2019, which effectively stated the Judgment issued by the Superior Court of Justice of Catalonia dated (...) /02/2008.*
- That *"This Judgment and its content are considered relevant to the facts that are described and to the request to initiate a disciplinary file since they refer to the state of health of the agent with TIP. 3193, and this information is directly related to the alleged offense committed. Therefore, the legal basis corresponds to article 6.1 cid" of the RGPD.*
- That the Inspector (...) (...) of the Local Police has the obligation to plan the human resources available to the service, as well as to ensure safety and health in the workplace, to agreement with the relationship of jobs, so that the state of health of a Local Police officer is relevant in order to decide what are the functions that he is able to do and to distribute the police force. Therefore, the disputed treatment is necessary for the fulfillment of a legal obligation (art. 6.1.c RGPD).
- That the processing of the reporting person's health data was necessary to guarantee the safety and health of all members of the Local Police force (art. 6.1.d RGPD).
- That the sentence dated (...) /02/2008 of the Superior Court of Justice of Catalonia, did not include the personal file of the person making the complaint, and that the Inspector (...) (...) the would have located from a "sentence search engine", given the public nature of these.
- That the circumstances that would enable the processing of health data are those contemplated in the statements "f" (the processing is necessary for the formulation, exercise or defense of claims) and "h" (the processing is necessary for purposes of preventive or occupational medicine, evaluation of the worker's work capacity, medical diagnosis) of article 9.2 of the RGPD.
- That , in relation to the incorporation of judicial documentation in the disciplinary file, the person instructing the procedure must order the practice of all the acts of instruction he considers appropriate for the determination, knowledge and verification of the data by virtue of which the resolution must be issued. And, in particular, that of those tests and actions that lead to the clarification of the facts and to determine the responsibilities liable to sanction.
- That, for the case that concerns us here, it is appropriate to cite the judgment number (...) 2022 of the abbreviated procedure (...) /2020-A of the Administrative Disputes Court number 2 of Tarragona, which resolves to dismiss the administrative dispute appeal filed by the person reporting against the Mayor's Decree (...) /2020 of the City Council of (...), by which a penalty was imposed for serious lack of suspension of work and salary for one month, for disobedience of orders receipts _ In this one judicial procedure , the person reporting here also sued the City Council for an alleged violation of personal data , and

for what is of interest here , the foundation legal second sentence no . (...)2022 establishes the following :

" (...) Regarding the violation of art. 18 of the Constitution, relating to personal privacy, the Administration is charged with a violation of this precept for having incorporated into the sanctioning procedure judicial sentences of the social jurisdiction in which pronouncements were made on the appellant and his service relationship with the City Council , with information on the appellant's state of health. No violation of the art. 18 in this case. The most important reason is that the appellant, by introducing his state of health as a determining and specific reason for his conduct, opens up the question to a complete analysis of this state in what is relevant. And there is no doubt that court judgments that are pronounced on the appellant's ability and capacity to perform his function are essential to resolve his allegations. It could even be affirmed that the lack of provision of these sentences by the appellant is an indication of a breach of the good faith that must govern personal relations, although they may be framed in the defense exercise. But what is not admissible is that it is intended that the appellant can provide the documentation that he deems appropriate about his state of health and refuse to provide public, judicial documentation, in which the City Council itself was a party, which is obviously relevant to resolve, because this contradicts their interests (...)"

The City Council of (...) provided various documentation.

5. On 05/10/2022, also during this preliminary information phase, the reported entity was again required to provide a copy of sentence nº(...)2022, of the abbreviated procedure (. .)/2020-A, of the Administrative Disputes Court number 2 of Tarragona, and specify whether the aforementioned sentence was final.

6. On 11/05/2022 , the City Council complied with the information requirement indicated in the previous precedent, providing the reference sentence, as well as the order diligence of the Attorney of the Administration of Justice of the Administrative Disputes Court no. 2 of Tarragona which, on 02/16/2022, declared the sentence of 01/19/2022 final.

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.

2.1 In relation to the alleged violation of the principle of legality

The complainant complained about the fact that, on 12/23/2019, Inspector (...) (...) of the Local Police of (...) issued a report requesting initiation of disciplinary proceedings against him, to which various documentation was attached, such as the sentence of the Superior Court of Justice of Catalonia no. 2008/(...) which fully confirms the judgment of the Social Court no. 2 of Tarragona, which rejected the claim of the complainant here to obtain partial permanent disability.

The request to initiate disciplinary proceedings by the Inspector (...) (...) of the Local Police contained, among others, the following statements:

"G- The undersigned is aware that, according to the Judgment of the Social Chamber of the Superior Court of Justice of Catalonia, dated February 6, 2008, EDJ 2008/(...), it was DISMISS the appeal filed by Mr. [the person making the complaint] against the sentence of June 5, 20(...), issued by the Social Court number 2 of Tarragona in cases number (...)/2007 followed by the acting party and then appellant, against the City Council of (...), MATT, Mútua d'Accidentats Treball y Malalties Professionals, the TGSS and the INSS, fully confirming the same.

- a. *According to the Judgment dated June 5, 20(...) of the Social Court 2 of Tarragona, in which the lawsuit filed against the National Institute of Social Security and the General Treasury of Social Security is DISMISSED IN ENTIRETY, MUTUA MATT and the City Council of (...), acquitted to the defendants from all claims against them formulated in the suit.*
- b. *The claim of the lawsuit was the granting of Incapacity Permanent Partial (...)*
- d. *The pretense was dismissed in the tenor of "Por tanto, the residual picture of the actor is practically coincident with the one he presented in the year 2003 when the non-disabling permanent injuries were recognized, and does not incapacitate the actor by more than 33% if he is put in relationship with the residual cadre with the tasks of his usual profession of local police"*

F- On April 10, 2019, Dr. (...) certified that Mr. [the complainant] is FIT for his usual workplace."

In turn, the complainant also denounced the fact that, in the section "*antecedents of the same disciplinary file*" (it is inferred that it refers to the administrative acts issued in the disciplinary procedure), the judgment of the Social Court was also related no. 2 of Tarragona no. (...)2019 of 25/11/2019, which was notified to the City Council on 09/12/2019 (after the events of 20/10/2019, which were addressed there), which was incorporated in said file, even though it contained data relating to his health (there was also addressed the request for partial permanent disability of the person making the complaint), as well as the appeal he filed against the judgment of the Social Court no. 2 of Tarragona no. (...)2019.

2.1.1 In relation to the report of the request to initiate a disciplinary file.

With respect to the fact reported consisting of the fact that the Inspector (...) (...) of the Local Police, in the report requesting the initiation of a disciplinary file, referred to the Judgment of the Superior Court of Justice of Catalonia dated (...)/02/2008 and attached it to its report, the City Council of (...) has argued that both the sentence and its content were relevant " *to the facts described and for the request to initiate a disciplinary file since they refer to the state of health of the agent with TIP no. 3193, and this information is directly related to the alleged offense committed*". Likewise, the City Council has also argued that the sentence had not been included in the complainant's personal file, so it infers that the Inspector (...) (...) located it from of a sentence finder, given the public nature of these.

At this point, it should be noted that, both in the report issued by the Inspector (...), and in the sentence that was attached, the reference that had been assigned to this sentence in the database was included legal that the Inspector (...) (...) would have consulted to access its content. In addition, it also constitutes an indication that the judgment that was attached to the report had been consulted on a legal basis, the fact that it was written anonymously, that is, without identifying the now complainant.

In relation to the above, it should be noted that, although the sentence did not identify the now complainant, it did refer to the fact that the appellant held the position of Local Police of the City Council of (...), as well as the object of the appeal. Information that would have been sufficient for the Inspector (...), to relate the aforementioned sentence to the person making the complaint.

In accordance with the above, the accused entity maintains that the said processing of personal data is protected by article 6.1 sections c) and d) of the RGPD. And he adds that the circumstances of article 9.2 of the RGPD that would legitimize the treatment of special categories of data are those foreseen in sections f) ih) of article 9.2 RGPD.

Well, article 5.1 a) of the RGPD provides that personal data must be treated in a " *lawful, fair and transparent manner in relation to the interested party (" lawfulness, loyalty and transparency "*), and in this respect, article 6.1 RGPD establishes a system of legal bases for legitimizing the treatment.

In the field of public administrations, the legal basis provided for in letter e) of article 6.1 RGPD applies, according to which, the treatment will be lawful when it is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the data controller. In the present case, that the data were treated to assess the eventual initiation of disciplinary proceedings, this mission in the public interest, linked to the management of human resources, is regulated in the civil service regulations applicable to members of local police forces , as will be explained later.

This legal basis, on its own, is not sufficient to deal with special categories of personal data, such as health data. In this respect, article 9.1 of the RGPD establishes, as a general rule, the prohibition of treating special categories of data, unless one of the circumstances provided for in paragraph 2 of article 9 of the 'RGPD.

In the present case, the Inspector (...)(...) of the Local Police submitted a request for the initiation of disciplinary proceedings against the person reporting here, incorporating data that referred to the health of the 'here reporting, in accordance with his functions.

Article 27 of Law 16/1991, of July 10, on local police, specifies the following:

"It corresponds to the (...) of the body:

a) Direct, coordinate and supervise the body's operations, as well as administrative activities, to ensure their effectiveness.

b) Assess the needs of human and material resources and formulate the relevant proposals.

(...) "

In this sense, the City Council argued that the Inspector (...)(...)" *has the obligation, among others, in accordance with the list of the City Council's Jobs List of (...), approved by the General Assembly of the Corporation in a session held on February 29, 2016, to plan the human resources available to the service and to ensure health and safety in the workplace. The state of health and the medical information of a local police officer is completely relevant in order to decide what are the functions that he is capable of doing and therefore, to distribute the cash in an effective, efficient and especially safe way for the agent himself and for the other members of the corps."*

Linked to this, article 13.1 of Decree 179/2015, of August 4, which approves the Regulation of the procedure of the disciplinary regime applicable to the local police forces of Catalonia determines that the "*disciplinary procedure is always initiated ex officio, by agreement of the competent body, either on its own initiative or as a result of a superior order, reasoned request from subordinates or complaint."*

On the other hand, article 54.2 of Law 16/1991 provides that "*The mayor, or the person to whom he delegates, the initiation of the disciplinary file and the appointment of the instructor and, if applicable, are responsible , of the secretary."*

Therefore, the Inspector (...)(...)was entitled, in the exercise of his functions, to propose to the competent body the initiation of disciplinary proceedings against the person making the complaint. Likewise, the exercise of disciplinary power by the City Council was based on Law 16/1991 (arts. 46 et seq.). Therefore, the reported treatments were protected, as has been advanced, in the legal basis provided for in article 6.1.e) of the RGPD.

With regard to the circumstances of Article 9.2 of the RGPD that enabled the processing of health data, the following are considered to apply here:

"(...)

b) the treatment is necessary for the fulfillment of obligations and the exercise of specific rights of the person responsible for the treatment or of the interested party in the field of labor law and of social security and protection, to the extent that this is authorized by the Law of the Union of the Member States or a collective agreement in accordance with the Law of the Member States

that establishes adequate guarantees of respect for the fundamental rights and interests of the interested party;
f) the treatment is necessary for the formulation, exercise or defense of claims or when the courts act in the exercise of their judicial function;
g) the treatment is necessary for reasons of an essential public interest, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish measures adequate and specific to protect the fundamental interests and rights of the interested party; (...)"

In accordance with the above, it must be concluded that the judicial information that was included in the reference report was relevant in the City Council's assessment of the appropriateness of initiating a disciplinary procedure (art. 9.2.f RGPD) ; and that the treatment would be justified for reasons of essential public interest linked to the management of human resources (art. 9.2.g RGPD).

2.1.2 In relation to the court rulings included in the disciplinary file against the now complainant

The complainant also denounced the fact that, in the administrative acts issued as part of the disciplinary proceedings brought against him, references were made to the judgment of the Social Court no. 2 of Tarragona no. (...)2019 of 25/11/2019, which contained data relating to his health (his request for partial permanent disability was also addressed there), as well as the appeal filed against the sentence (. ..)2019.

In this regard, the City Council defended that the references to the controversial judgments in the context of the sanctioning file, were completely relevant to clarifying the facts under investigation. Likewise, he invoked article 22 of Decree 179/2015, of August 4, which approves the Regulation of the procedure of the disciplinary regime applicable to the local police forces of Catalonia which, in relation to the ordinary disciplinary procedure, states the following:

"Diligence practice

22.1 Upon receipt of the notification of the initiation, the instructor must order, within thirty days, the practice of all the acts of instruction that he considers appropriate for the determination, knowledge and verification of the data under of which the resolution must be issued and, in particular, that of those tests and actions that lead to the clarification of the facts and to determine the responsibilities liable to sanction.

22.2 As the first actions, a statement must be taken from the person filed, all those proceedings must be ordered to be carried out that derive from the reasoned request of the subordinates or from the complaint that has motivated the initiation of the file and what he has alleged in his statement. If the file does not appear in the summons in the appropriate form, unless it justifies a sufficient cause, the actions of the file will continue."

For its part, article 50 of Law 26/2010, of August 3, on the procedure of the public administrations of Catalonia establishes, among others, the following functions of the person instructing a procedure:

"(...) b) Arrange for the opening of the test procedure and agree on the practice of the tests it considers necessary, arrange for their admission or, in a motivated manner, their refusal and also the practice of those proposed by the interested person

c) Request the mandatory reports, and also the other reports and data necessary for the resolution of the procedure, unless the applicable regulations determine that another body must make the request."

It can be inferred from the above that, within the framework of a disciplinary procedure, the investigating person may request and incorporate into the file all those documents he deems necessary for the purpose of clarifying the facts. Therefore, the processing of personal data, carried out by the person instructing the procedure, remains protected by letter e) of article 6.1 RGPD, according to which, the processing will be lawful when it is necessary for compliance of a public interest or in the exercise of public powers conferred on the data controller. All this, in accordance with article 9.2 sections f) ig) of the RGPD, for the reasons indicated in the previous section of this resolution (2.1.1).

2.2 In relation to the alleged violation of the minimization principle

Having established the lawfulness of the processing of personal data subject to a complaint, it is necessary to analyze whether the fact of including information relating to the health of the person making the complaint contravened the principle of minimization. This principle is provided for in article 5.1.c) of the RGPD, which determines that personal data must be "adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed".

In this regard, the City Council has argued that the health data relating to the person reporting here, which was included both in the request to initiate disciplinary proceedings, and in the disciplinary proceedings, were completely relevant given that the conduct in relation to which it was requested to initiate a disciplinary procedure, was directly related to the health of the reporting person.

In relation to the above, the accused entity has provided a copy of the judgment number (...)2022 of the abbreviated procedure (...)/2020-A of the Administrative Disputes Court number 2 of Tarragona which is pronounced on the eventual violation of the data protection regulations by the City Council that the person reported here was accused of, for having transferred to the instructor of the reference disciplinary file, medical information relating to his person. In the 2nd legal basis of this sentence, the following was indicated:

" Any violation of art must be rejected. 18 in this case. The most important reason is that the appellant, by introducing his state of health as a determining and specific reason for his conduct, opens up the question to a complete analysis of this state in what is relevant. And there is no doubt that court judgments that are pronounced on the appellant's ability and capacity to perform his duties are essential to resolve his allegations .

This Authority cannot rule out, nor contradict the statements of the City Council, according to which, the fact of referring to or incorporating in the file judicial resolutions that contained

references to the health of the person making the complaint, was necessary to assess the advisability of initiating a disciplinary procedure or to process it once initiated, to the extent that the controversial conduct (referring to an alleged abandonment of service) would be closely linked to the health of the complainant here.

In this regard, it should be borne in mind that the Inspector's report (...) (...) stated that the person reporting here had refused to comply with a service order, relating to the control of a sporting event, since he couldn't go outside. Linked to this, the report also explained that, prior to these events, the now complainant had a fixed service in the Operational Coordination Room, as a result of a medical recommendation for a knee injury, and so had agreed with the previous (...) of the Local Police of (...).

However, in relation to the abandonment of the controversial service, the Inspector (...) (...) also argued that in the personal file of the now complainant there is no (...) medical report indicating that he could not perform " *the basic functions of a Local Police officer, such as prevention, surveillance and traffic regulation*".

However, it must be concluded that the information was adequate, relevant and limited to the purposes for which it was necessary, and consequently, the violation of the minimization principle must be ruled out.

In conclusion, according to the arguments that have been put forward in this resolution, the treatment subject to analysis does not violate the data protection regulations, which is why the present actions are archived.

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, (...) fact that could be constitutive of any of the violations provided for in the legislation on data protection, its archive should be agreed.

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: " *a) When the facts do not constitute an administrative infraction.*"

Therefore, I resolve:

- 1.** Archive the actions of prior information number IP 424/2021, relating to the City Council of (...).
- 2.** Notify this resolution to the City Council of (...) and 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, interested parties may file any other appeal they deem appropriate to defend their interests.

The director,

Machine Translated