

## File identification

Archive resolution of the previous information no. IP 502/2021, referring to the Department of Business and Labor of the Generalitat de Catalunya

## Background

1. On 13/12/2021, the Catalan Data Protection Authority received a letter from a person making a complaint against the Department of Business and Labor of the Generalitat of Catalonia, on the grounds of 'an alleged breach of the regulations on the protection of personal data.

The complainant stated that the Head of Human Resources of said department accessed his personal file and issued a certificate on his current employment status " *to hand over to the procedure (...) of the Court (...) of Barcelona , without there being a judicial requirement to that effect and without legitimation to consult and process the data in my file*".

2. The Authority opened a preliminary information phase (no. IP 502/2022), 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 11/05/2022, in order to find out the circumstances of the events reported and the convenience of initiating or not a sanctioning procedure, the reporting person was required to report on what was its relationship with the reported entity; briefly indicate the object of the judicial procedure that referred to his complaint and what was his condition in said procedure.

4. On 06/21/2022, the complainant responded to the aforementioned request through a letter in which he set out the following:

- That there was no judicial requirement justifying the contribution, by the denounced entity, of his employment situation at a time subsequent to the demand and that the Head of Human Resources of said entity did not have legitimacy to access in your personal file.
- That ' *access to the GIP of Ms. (...) had the sole objective of trying to undermine my allegations, to fraudulently access my personal data and illegitimately extract from it information not related to the judicial procedure, specifically , Ms. (...) I wanted to know what my employment situation was on different dates of the judicial procedure.*'
- And that, in addition, ' *Without the request of his superior Ms. (...), neither from the General Secretary nor from the Councilor himself, Mrs. (...) he issued two certificates about my employment situation within the Generalitat, which he sent to the Attorney of the Generalitat who was following the case and who he asked to present it to the procedure*'.
- With respect to the judicial procedure, he informed that it was about the irregular termination he suffered on date (...) and the derived patrimonial responsibility. And he went on to explain that the fact that he worked or not at the Generalitat on a date

subsequent to the irregular termination and the filing of the appeal was irrelevant to the development and resolution of the judicial procedure.

- And it concluded that '*any treatment of my personal data in the sense reported in which Ms. (...), becomes illegitimate and constitutes infringing conduct (...)*', and invoked article 18.4 of the Spanish Constitution in relation to articles 6, 7 and 9 of Regulation (EU) 2016/679 of the European Parliament and the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (hereafter, RGPD); and with articles 5, 6, 8 and 9 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD).

Along with the written response to the request, it provided:

- An email from the complainant here, dated 11/15/2021, addressed to the head of the General Sub-Directorate of Personnel, Organization and Prevention of Occupational Risks of the Department of Business and Work, regarding what, for what is of interest here, it is necessary to highlight the information requested by the complainant in relation to her employment record:

'(...)

In this same email, the complainant asked if her file was visible to anyone who wanted to consult it within the Generalitat; and whether the Generalitat Attorney had permission to access the information relating to the workers' personal records.

- An email from the head of the General Sub-Directorate of Personnel, Organization and Prevention of Occupational Risks of the Department of Business and Labor, dated 11/25/2021, addressed to the person reported here, in which it is detailed:
  - That the person responsible for the treatment is the Secretary General of the Department of Business and Work '*Notwithstanding this, the data of the personnel files are part of the General Personnel Register, in accordance with the applicable regulations*'.
  - That '*the corresponding treatment is Human Resources Management and is included in the Register of Processing Activities on the website of the Department of Business and Work*' and that '*the main purpose of the treatment is to manage the staff of the Department of Business and Work in relation to the casuistry associated with the administrative or employment relationship. Several communications of data are foreseen due to legal obligation*'.
  - That '*the data in the personal files of the Department's public employees are strictly confidential and only accessible to each individual holder in relation to their data. At the level of each department, paper data are filed in security cabinets and data in electronic format are filed in folders in the corresponding network unit. In both cases, access is restricted*  
(...)'.

- That ' *public employees are subject to the duty of confidentiality provided for by article 52 of the TREBEP, in the exercise of their functions*' and then says that ' *access to the data does not require the authorization of Data Protection Delegate since he has no competence to decide on the means and purposes of the treatments, in accordance with the powers recognized by the RGPD and by Organic Law 3/2018*'.
  - That ' *With regard to the legitimacy of the communication of data to judicial bodies, certain specificities must be taken into account, such as its foundation in the right to effective judicial protection (Article 24 EC) as a fundamental right. The Generalitat de Catalunya has the right to defend itself in the framework of the judicial proceedings, so the communication of data is part of the defense actions, taking into account its possible status as a defendant.*'
  - In this regard, he invoked the Organic Law of the Judiciary and explained that ' *the processing of personal data carried out on the occasion of the processing by the judicial bodies and prosecutors of the processes of which they are competent, as well as that carried out within the management of the Judicial and fiscal office, will be governed by the provisions of Regulation (EU) 2016/679, Organic Law 3/2018 and its implementing regulations, without prejudice to the specialties established in this Chapter and the procedural laws. It also provides that the consent of the interested party is not necessary for the processing of personal data in the exercise of jurisdictional activity, whether provided by the parties or requested at the request of the competent bodies, without prejudice of what the procedural rules have for the validity of the test. It also establishes that the personal data that the parties know through the process must be treated by them in accordance with the general data protection regulations. This obligation also falls on the professionals who represent and assist the parties, as well as anyone else who intervenes in the procedure. Finally, he added that no security breach would have occurred in terms of Article 33 RGPD ' given that the communication of data in question has been carried out in accordance with the applicable regulations*'.
- And a standard form (presented on 25/11/2021), addressed to the Department of Business and Work, consisting of an access request through which he requested to have access to the administrative act that ordered the issuance of a certificate about your current employment situation and its referral to the lawyer of the Generalitat; and a letter to the same effect addressed to the General Secretary of the reported entity.

On the other hand, the complainant indicated that he was attaching the judicial sentence in the administrative contentious procedure (...) as well as the appeal filed before the Superior Court of Justice of Catalonia. However, these documents were not attached.

5. That, having not provided the documentation just referred to, on 21/07/2022, also during this preliminary information phase, the Inspection Area of the Authority will request the reporting person to provide the referred documents.
6. On the same date, 21/07/2022, the reported entity was required to report on what relationship existed between the reported entity and the reporting person; and to confirm whether the Head of Human Resources of the reported entity accessed the personal file of the person making the report and on what date she issued the certificate on her employment status provided in the judicial procedure referred to in precedent 1. Likewise, he was asked to report on what was the legitimate basis that justified the access by the

Head of Human Resources to the personal file of the person making the complaint and the issuance of the certificate for its subsequent delivery to the body judicial in the aforementioned procedure.

7. On 2/08/2022, the reported entity complied with the requirement by means of a letter stating the following:

- That Ms. (...) she provided services as an interim official in the Department of Business and Labor assigned to a job in the Superior Body of General Administration (A1-21) in the General Directorate of Tourism, between the dates (. . .).

*And that ' she was terminated from the mentioned workplace following the concurrence of a cause of termination provided for by the applicable regulations in the field of public service and filed a claim for patrimonial liability as well as a lawsuit before the administrative contentious jurisdiction. On date (...), the Court (...) of Barcelona issued the sentence (...) (Abbreviated Procedure (...)) favorable to the Generalitat of Catalonia.'*

- That the Head of Human Resources of the Department of Business and Labor accessed the personal file of the person making the complaint and issued an *update certificate relating to the latter's administrative affiliation in order to send it to the aforementioned judicial body'* which he stated was attached together with the answer. However, this document was not attached.
- That the legitimating basis that justified the access by the Head of Human Resources to the personal file of the person making the complaint and the issuance of the certificate for its subsequent delivery to the judicial body in the context of the aforementioned procedure was article 20 of Legislative Decree 1/1997, of October 31, which approves the recasting in a Single Text of the precepts of certain legal texts in force in Catalonia in the field of public service and which is available to *all the personnel reference to this Law must be registered in the General Personnel Register, depending on the department that has been assigned powers in the field of civil service.'* It also invokes article 1 of Decree 71/1987, of January 15, approving the Regulation of the General Personnel Register of the Generalitat de Catalunya, which provides that *' the General Personnel Register is made up of personal files, in which the documents that incorporate the acts relating to the administrative life of the Generalitat's staff are gathered, and by the Computer Register, set of inscriptions and annotations relating to those acts. The General Register of Personnel depends on the Department of Governance [current department of the Presidency] and is governed by the Directorate General of Public Service, in accordance with the rules established by this Regulation.'*

8 . On 08/05/2022, the complainant provided the required documentation, consisting of:

- Judgment no. (...), of (...), issued by the Court of the (...) of Barcelona.
- Appeal filed before the Superior Court of Justice of Catalonia, by the complainant here against the previous sentence.

9 . On 09/06/2022, also during this preliminary information phase, the reported department provided the certificate referred to in its letter of 08/02/2022, with the following text:

*' That, Mrs (...), with ID (...), in accordance with the information contained in the GIP database of the Generalitat de Catalunya, occupied, subsequently to her termination at the Department of Empresa i Treball, a new job as an interim for programs of the higher body of the Administration of the Generalitat of Catalonia, for the period initially of (...), attached to (...), receiving the own amount of a superior technician, level 21, with annual remuneration, in accordance with remuneration tables published at that time, (...).*

*That this appointment mentioned above (...) was extended to date (...), at which time Ms. (...) freely resigned from it to access a new appointment with better conditions, as we will detail next.*

*That, Mrs (...), dated (...), was appointed interim from (...).*

*That this currently occupied job position (group A or A1) is (...). Specifically, in this last sense explained, it goes from an appointment (...), to an appointment open in time until its regulatory provision in accordance with law.*

*That, briefly, Mrs (...), since date (...), has not ceased to have employment within the Generalitat de Catalunya and that, in addition, (...).'*

## **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 the 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 facts reported that are the subject of this file resolution.

The complainant explained that the Head of Human Resources accessed his personal file without any identification and without his consent. He considered that he could not access or issue a certificate about his current employment situation to be delivered to the court since it had nothing to do with the object of the judicial procedure and that, in addition, there was no judicial requirement that justified the contribution of said certificate. He added that since he was not a member of the Department of Business and Labor since the date of (...), the Head of Human Resources could not access his file for this purpose.

The denounced department, for its part, explained that Ms. (...) she provided services as an interim official at the Department of Business and Labor and was terminated from her job following the occurrence of a cause of termination provided for by current regulations. This termination resulted in her filing a claim for patrimonial responsibility and an administrative appeal contesting the resolution of (...) that made her appointment ineffective, as of (...).

Faced with this context, the department claimed that the information provided to the court was in accordance with its right of defense in the framework of a judicial procedure. For this

purpose, he accessed the personal file of the person making the complaint and issued an ' *update certificate*' relating to the administrative affiliation of the person making the complaint (precedent 9). Finally, he argued that the legitimizing basis of the treatment was article 20 of Legislative Decree 1/1997, of October 31, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in the matter of public function in relation to article 1 of Decree 71/1987, of 15 January, approving the Regulation of the General Personnel Register of the Generalitat de Catalunya.

In order to analyze whether the reported facts are constitutive of an infringement of the data protection regulations, first of all, it is necessary to determine what was the object of the judicial procedure. In this sense, it is necessary to pay attention to the sentence that resolves the judicial procedure, provided by the person reporting, in which it says (paragraph 1 of the factual background): ' *In the demand for PROCEDIMIENTO ABREVIADO followed in this Court, a contentious appeal was formulated- administrative for the defense of Ms. (...) against the Resolution of the Director of Services of the Department of Business and Knowledge of (...) by which the temporary appointment of the recurrent.*'

In the same sense, the legal basis first states: ' *As indicated in the antecedents of fact in the present procedure, the resolution of the Director of Services of the Department of Business and Knowledge of (...) is challenged by which the interim appointment of the appellant is left without effect, as of (...). And he goes on to say ' That party wants a judgment to be issued by which the contested resolution is annulled and without effect and an indemnity is recognized for all retributive concepts from the date on which he quit his job, the (...), for an amount of (...) as well as the three years generated since that date; (...)'.*

This sentence decided to dismiss the contentious administrative appeal filed by the appellant. This resolution resulted in the person making the complaint today filing an appeal against the sentence. Of this appeal, even though it is subsequent to the events that are the subject of the procedure that concerns us, it is necessary to highlight the third reason, second section, in which the appellant stresses the amount of compensation that he seeks for the derived patrimonial responsibility: ' *He says by mistake Your Honor, in line 10 of page 2 of the sentence, that I claim compensation of (...) when the compensation I requested for property liability is of (...), with an increase in that amount until the date of execution of sentence and with an increase of the same in the corresponding interests (...). All this taking into account that to that amount of (...) of patrimonial responsibility, you have to add the compensation that corresponds to me for the termination, consisting of all the wages stopped receiving until the moment of re-entering the position of I quit, majority in the three years that have matured during that period. Likewise , the eleventh reason of the appeal is specifically dedicated to the compensation claimed for the termination and for the patrimonial responsibility.*

As can be seen from the documents provided by the complainant, the purpose of the judicial proceedings was to contest the resolution of (...) by which his appointment is rendered void as well as the claim for patrimonial responsibility that according to the transcribed documentation amounted to the amount of (...)

In this judicial context, the reported department, against which the person reporting here brought an action, opposed the claims of the appellant and, in exercise of his right of defence, provided a certificate with the aim of prove the employment relationship with the appellant, the non-existence of damages and, in short, the impropriety of the claimed compensation.

These facts are in accordance with article 24 of the Spanish Constitution which regulates the fundamental right to effective judicial protection in relation to article 60 of Law 29/1998, of July 13, on administrative contentious jurisdiction, which regulates the evidence in the administrative contentious procedure in exercise of the right of defence, which enable the defendant, in this case the author of the act object of appeal, to contribute to the procedure those arguments, documents and other elements of evidence that consider relevant to support their right and demonstrate the lack of grounds for the action brought by the appellant. That being the case, the department wanted to prove the lack of provenance of the wages stopped being received (emphasize at this point that the appellant claimed ' *todos los s salaries ceased to be received until the moment of re-entering the position from which I was transferred, increased in the three years that have matured during that period* ') and that, since the contested termination, I had been occupying other jobs within the Generalitat of Catalonia.

In this order of things, it is undeniable that the right of defense involves, by definition, repelling the opposing position to convince the judge that the arguments and grounds of the other party cannot succeed. For this reason, what the person reporting here claims that the only objective was " *to try to sink my allegations* " is nothing more than the exercise of the right of defense by the opposing party. Likewise, the sending of the certificate to the lawyer of the Generalitat who followed the case on behalf of the defendant department and the presentation of this before the court are legitimate communications, both inherent in the right of defense and protected by the regulations current

At this point it should be remembered that the complainant acknowledged that the judicial proceedings were about the irregular termination he had suffered and the resulting patrimonial responsibility, extreme, the latter, which justifies the provision of the controversial certificate. And the fact is that the judicial procedure was fully linked to the complainant's employment record and that certificate contained information that highlighted the complainant's working life after her termination, because it was precisely this temporary moment that the department complainant wanted to make known to the court to prove that during all that time, from the termination, he had worked and received a salary. Therefore, we can conclude that the information in the certificate was necessary to defend the position of the respondent department, now denounced. On the other hand, the fact that the certificate has been provided to the legal representatives and the court is an action covered by data protection regulations.

In conclusion, as argued by the head of the General Sub-Directorate of Personnel, Organization and Prevention of Occupational Risks of the Department of Business and Work, in his email of 11/25/2021: *'As regards the legitimacy of the communication of data to judicial bodies, certain specificities must be taken into account, such as its foundation in the right to effective judicial protection (Article 24 EC) as a fundamental right. The Generalitat de Catalunya has the right to defend itself in the framework of judicial proceedings, so the communication of data is part of the defense actions, taking into account its possible status as a defendant.'*

On the other hand, and from the perspective of the personal data protection regulations, reference should be made to article 6.4 of the RGPD, which provides: *than the one for which the personal data was collected is not based on the consent of the interested party or on the Law of the Union or of the Member States that constitutes a necessary and proportionate measure in a democratic society for safeguard the objectives indicated in article 23, section 1, the person responsible for the treatment, in order to*

*determine whether the treatment with another purpose is compatible with the purpose for which the personal data was initially collected will take into account among other things:*

- a) any relationship between the purposes for which the personal data have been collected and the purposes of the subsequent treatment provided;*
- b) the context in which the personal data have been collected, in particular with regard to the relationship between the interested parties and the controller;*
- c) the nature of personal data, in particular when special categories of personal data are treated, in accordance with article 9, or personal data relating to criminal convictions and infractions, in accordance with article 10;*
- d) the possible consequences for the interested parties of the planned subsequent treatment;*
- e) the existence of adequate guarantees, which may include encryption or pseudonymization*

The invocation of this legal precept proceeds, given that the reporting person maintains that the purpose for which the data were initially collected (personnel management) would not imply the possibility of being able to make use of the information in the judicial context analyzed (the provision of data on the reporting person's working life in a labor-related judicial procedure), so that this further processing of their data would require their consent. However, this controversy is not relevant for the purposes of considering that in the present case there has been no unlawful processing of personal data.

Indeed, it must be borne in mind that the personal data communicated to the court concerned exclusively the career, administrative or labor, of the worker here reporting to the Generalitat de Catalunya. So things, even and all placed in the hypothesis that the purpose of this extended treatment was not implicit in the initial purpose of the collection of this data, which was, precisely, '*to manage the staff of the Department of Business and Work in relation to the cases associated with the administrative or employment relationship*', the analysis of sections a), b), c) and e) of article 6.4 of the RGPD leads to the conclusion of the compatibility of the purpose of the subsequent treatment with the initial, given the following set of circumstances: the close relationship between both purposes (accreditation of the employment or administrative relationship), the context in which the data were collected (incorporation in the Personnel Register), the type of data (exclusively those documented in the Personnel Register), and the recipient of this data (guarantees from a judicial body).

For all the above, it must be concluded that the facts reported do not constitute a violation of data protection regulations

**3.** In accordance with everything that has been set out in the 2nd legal basis, and given that 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, it is necessary to agree to its archive, in accordance with article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat.

Therefore, I resolve:

**1.** File the actions of prior information number IP 502/2022, relating to the Department of Business and Labor of the Generalitat of Catalonia.



2. Notify this resolution to the Department of Business and Labor of the Generalitat de Catalunya and to 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,

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