

## File identification

Archive resolution of previous information no. IP 516/2021, referring to the Department of Social Rights.

## Background

1. On 12/22/2021, the Catalan Data Protection Authority received a letter of complaint against the Administration of the Generalitat de Catalunya, due to an alleged breach of the regulations on personal data protection .

The person making the complaint did not specify the specific entity within the institutional organization of the Government of the Generalitat against which he was filing the complaint, since he did not know it. Regarding this, the person making the complaint stated that, from the Generalitat de Catalunya, "my data from the tax agency" had been "accessed" on the dates 08/10/2021 and 13/10/2021, and only requested to know which specific entity (a department, public company, autonomous body, etc.) had accessed it and for what purpose. He added that this access had been made without his consent.

As documentation, the complainant provided the image of two screenshots, in which the information contained in his electronic folder of the State Tax Administration Agency (AEAT) was observed. The information contained in it is that, on the dates 08/10/2021 and 13/10/2021, the Generalitat de Catalunya is registered as the "petitioner" of the 800 IRPF certificate of the reporting person. It also states that the reason for the inquiry is "AJUSUV", from which the complainant infers that the entity that would have accessed the tax data would have justified it by processing some aid or subsidy, which the complainant denied to have requested

2. The Authority opened a preliminary information phase (no. IP 516/2021), 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 (LPAC), to determine if the facts were likely to motivate the initiation of 'a sanctioning procedure.
3. Given that with the information provided by the reporting person, it was not possible to initiate inspection actions aimed at any specific entity, on 07/10/2022 this Authority requested information from the AEAT about the specific subject or entity that would have accessed on the dates 08/10/2021 and 13/10/2021 to the 800 IRPF certificate of the reporting person. Also, for what purpose was the certificate that would contain personal data of the complainant here accessed. The AEAT did not respond to this request for information.
4. On 11/22/2022, due to the lack of additional information necessary to be able to continue the investigations, the Inspection Area of this Authority contacted the complainant by telephone.

In this call, she was informed that she could submit a request for access to public information before the AEAT (provided for in Law 19/2014, of December 29, on

transparency, access to public information and good government). In this way, the reporting person could obtain the desired information (specific entity that would have accessed their tax data and for what purpose) and, in addition, could present more information to this Authority, which would then have elements to continue the investigations into the facts reported and determine whether they constitute an infringement in terms of data protection.

5. On 02/15/2023, still in the midst of this preliminary information phase, this Authority sent a letter to the complainant to inform him whether he had requested access to public information before the AEAT, and what response he had obtained.

The complainant responded and certified that on 24/11/2022 he had made a request for "right of access" before the AEAT. In his letter, he requested that "the file not be closed pending the AEAT's response."

6. On 05/22/2023, the Department of the Presidency was required to report on whether from the Administrative Integration and Collaboration Platform (PICA), or through another channel, it was possible to know which department, unit and /o specific person from the Administration of the Generalitat de Catalunya accessed the information of the reporting person regarding the 800-IRPF certificate. Also that, if affirmative, report on this issue and on the purpose of the accesses.
7. On 06/06/2023, the Department of the Presidency responded to the request with a letter stating the following:
  - That "the Administrative Integration and Collaboration Platform (PICA) has a record of activities and, therefore, it is possible to access the requested information."
  - That "we detail the information from the inquiries made by the Department of Social Rights, specifically the General Directorate of Personal Autonomy and Disability, for the purpose of AJUTSUBV (generic purpose used for inquiries about aid procedures and grants):
    - 08/10/2021. The automatic query was made from the PICS backoffice (application of the Department of Social Rights). The public employee listed as responsible for the automatic inquiries is (...)
    - 13/10/2021. The manual query was made from the PAE (Corporate application. Digital administration platform) and the public employee recorded as making the query is (...)."
8. On 07/06/2023, following the information obtained from the Department of the Presidency, this Authority required the Department of Social Rights (from now on, Department of Social Security) to report on the following:
  - The legal basis that would justify the consultations in document 800 IRPF in the name of the reporting person.
  - The purpose of these inquiries and whether they were linked to the provision of an aid or subsidy to the reporting person.

- And the positions held within the organization of the DS Department by the two people who made the inquiries, on the dates 08/10/2021 and 13/10/2021.
- If these people were authorized to make these inquiries by the indicated corporate platforms.
- If the duty of information was complied with (art. 13 and 14 RGPD) and, specifically, about the possibility of consulting personal data held by another administration.

9. On 06/20/2023, the DS Department responded to the request with a letter stating the following:

- That " Article 6.1.e) of the General Data Protection Regulation, is the legal basis that legitimizes the consultations, in accordance with what is established in the seventh final provision of Law 2/2014, of January 27, of fiscal, administrative, financial and public sector measures."
- That "The consultation carried out was made in relation to the file (...) in the name of the beneficiary of the recognition of dependency, Ms. (...), mother of the complainant."
- That " When the Individual Care Program (PIA) was drawn up for people dependent on the beneficiary, it was noted that Mr. (...), person making the complaint on the grounds of an alleged breach of the regulations on personal data protection, is the child and non-professional carer of the beneficiary in accordance with the resolution dated October 14, 2021 ."
- That " The purpose of the consultation was following the aggravation of the beneficiary."
- That "The legal regulations on dependency, Law 39/2006, of December 14, on the promotion of personal autonomy and attention to people in a situation of dependency establishes in its article 4 point 4: 'Las personas en situación de dependency and, where appropriate, their relatives or those who represent them, as well as the assistance centers, will be obliged to provide all the information and data required by the competent administrations for the assessment of their degree of dependency, to communicate all type of personalized aid they receive, to apply the economic benefits to the purposes for which they were granted and to any other obligation provided for in the legislation in force.'
- That " In order to calculate people's economic capacity and assess their access to the dependency system, apart from the income they may receive, a series of bonuses can also be applied depending on the person's social and economic situation shop assistant."
- That " In accordance with Order BSF/130/2014, of April 22, which establishes the criteria for determining the financial capacity of the beneficiaries of non-free services and of the financial benefits intended for the attention to the dependency situation established by the social services portfolio, and participation in the financing of non-free services. (DOGC No. 6612 dated 29.4.2014), in the calculation of the available economic capacity, personal situations such as the payment of rent for the usual home can be taken into account, or if the dependent person lives with relatives who

are at your expense, which may represent a reduction of the available economic capacity from which we calculate the amount of the service and the co-payment of the service.”

- That "In Catalonia, in accordance with Law 12/2007, of 11 October, on social services (article 27 and article 31, point h) it is established that "the Administration of the Generalitat, the municipalities and the other local bodies in Catalonia are the competent administrations in the field of social services.

Within the framework of the powers established between the administration of the Generalitat and the local bodies (basic areas of social services), the latter will be in charge of agreeing with the dependent people, the benefits and/or services most suitable for them needs, formalizing the Individual Care Program (PIA).”

- That "In order to be able to formalize these PIAs, the General Directorate of Personal Autonomy and Disability, provides the necessary economic data to local bodies ."
- That "The obtaining of this data is carried out through automated and manual queries, where queries are automatically sent to the register in order to know the cohabitation unit, to the State Tax Agency, to the Cadastre, to the census of disabled people and finally the possible pensions that dependent people may receive are loaded manually, consulting the database of the General Treasury of Social Security.

This set of data forms the dependent person's economic capacity and depending on the benefit and/or service they choose, the different bonuses will be taken into account or not.

The collection of economic data is prior to the formalization of PIA, therefore, the Department provides the maximum information likely to be necessary for the correct granting of the provision and/or service, but it is impossible to know in advance which benefit and/or service will be chosen by the person and, therefore, what financial information of the cohabitation unit will be necessary.”

- That in accordance with the seventh additional provision of Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures, "the department can verify, without the consent of the persons concerned, what is the dependent situation of the affected person, in order to verify whether the necessary conditions are met for the perception of one of the benefits contained in Law 12/2007 and the Social Services Portfolio, and Law 39/2006. And that in accordance with his powers, he must verify information from the applicants and the members of the economic unit of coexistence for the correct processing of the dependency, in accordance with its regulations."
- That "Based on the degree of dependency recognized for the user and also the economic capacity of the dependent person, social services contact the interested party (user) to draw up the Individual Care Program (PIA) . The PIA is established, in accordance with article 29 of Law 39/2006."
- That "For the calculation of the economic capacity of the dependent person, this Administration obtains the data through automated and manual queries, specifically, the following:

- consult the population register
- inquiry to find out the coexistence unit of the interested person
- consult the Tax Agency
- consult the Cadastre to find out the patrimony of the person interested
- consult the census of people with disabilities.

Finally, the possible pensions that the dependents may receive are manually loaded into the computer application for dependency files, SIDEPA, and the Social Security Treasury is also consulted.

This collection of data is prior to the formalization of the PIA, therefore, from the Department of Social Rights we provide the maximum information likely to be necessary for the correct granting of the provision and/or service.

It is, however, impossible to know a priori which benefit and/or service the person will choose and, therefore, which economic information from the cohabitation unit will be necessary."

- That "The economic benefits provided for in the portfolio of services for people with dependency are:
  - Economic benefit linked to the service (SAD, CD or residence for the elderly)
  - Economic benefit for care in the family environment (non-professional carers)
  - Financial provision of personal assistance."
- That "(...), is an employee of the INDRA company (this company is in charge of the treatment), the company manages the administrative records of dependency. The company's staff enter the requests in the computer application, make the information requirements if necessary and scan the information in the application(...), (...) of Benefits Management, of the General Directorate of Social Benefits of the Department of Social Rights."
- That "in the request for recognition of the dependency situation and the right to benefits, page 5 contains the "Communication from the Department to the applicant, where in accordance with DA1 of Law 2 /2014 data of the interested person and data of the other members of the cohabitation unit can be consulted, without prior consent."
- That in "the 'Responsible Declaration' the beneficiary declares that he has informed the other members of his economic unit of coexistence that the Department will be able to check ex officio and without prior consent the identification data, residence, kinship, situation of disability or dependency, assets and income, given the legal authorization established in Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures."
- That "in the Individual Care Program (PIA) signed by the person making the claim, the right to information provided for in article 13 is included."

The entity attached a copy of the following documentation:

- The request for recognition of the dependency situation and the right to benefits, made by the mother of the person reporting (year 2016), which contains the following informative clause:

"In accordance with the seventh additional provision of Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures, published on January 30 in the DOGC, the competent public administrations are empowered to matter of social services so that they can check, ex officio and without the prior consent of the persons concerned, the personal data declared by applicants for benefits regulated by Law 12/2007, of 11 October, on social services, and by the decree that approves the Social Services Portfolio, and, where applicable, the identifying data, residence, kinship, disability or dependency status, assets or income of the members of the economic unit of coexistence with the purpose to check whether they meet at all times the necessary conditions for the receipt of benefits and in the legally recognized amount."

- The responsible statement made by the mother of the person reporting (year 2016), which contains the following text:

"I declare that I have informed the rest of the members of my economic cohabitation unit that the Department will be able to check ex officio and without prior consent the identification data, residence, kinship, disability or dependency status, assets and income, given the "legal authorization established in Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures."

- Individual Care Program (PIA), completed by the reporting person (2017). In this form, the reporting person states that he "lives with the dependent person" (his mother). It also includes a clause informing about the processing of personal data and, for what is of interest here, that "your data will be transferred (...) to local bodies or public entities, in accordance with their related powers in terms of social services."

## **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 antecedents, it is necessary to analyze whether the Department of DS was legitimate to make inquiries to tax data of the reporting person without their prior consent.

In accordance with the response to the request for information, the DS Department consulted the tax data in the context of a dependency status recognition file, processed in the name of the mother of the reporting person, in accordance with the Law 12/2007, of 11 October, on social services (LSS), which determines the following:

- "The public system of social services is organized in the form of a network to work in coordination, in collaboration and with dialogue between all the actors involved in the

process of care for people, and is structured in services basic social services and specialized social services." (art. 15)

- "The Administration of the Generalitat, the municipalities and the other local bodies of Catalonia are the competent administrations in terms of social services, in accordance with the provisions of this title and, where appropriate, the legislation on territorial organization and local regime. " (art. 27.1)

Thus, the LSS envisages a shared competence exercise between the different Catalan public administrations. Among the powers that correspond to the department responsible for social services (that is, the Department of Social Services), there are those of collaborating and cooperating with municipalities and other local bodies in the application of service policies social services, as well as the rest of the actions needed to develop and execute the social services policy that are not expressly attributed to another department or another public administration (art. 29 LSS). On the other hand, the municipality is given the competences in the provision of social services, which include creating and managing the necessary social services (art. 31 LSS).

In accordance with this distribution of competences, the DS Department explains that, although it is the local bodies that are in charge "of agreeing with the dependent persons, the benefits and/or services most suitable to their needs, formalizing the Individual Program of 'attention (PIA)", it is the General Directorate of Personal Autonomy and Disability that previously "facilitates the necessary economic data to local bodies" so that they can determine the correct social benefit that corresponds in each case. The DS Department obtains this data electronically by consulting data brokerage platforms or other enabled electronic systems, which allows the consultation of data from other public administrations, including the State Tax Agency.

Once the above has been established, it is necessary to analyze whether the DS Department could consult the data relating to the assets and income of the members of the economic unit of coexistence of the person making the complaint. The seventh additional provision of Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures, which provides the following:

"1. Authorization of competent public administrations in the field of social services

1.1. The competent public administrations in matters of social protection are empowered to verify, ex officio and without the prior consent of the persons concerned, the data declared by the applicants for the benefits for which they are legally or by regulation competent and , if applicable, the identification data, residence and kinship, disability or dependency status, assets and income of the members of the cohabitation economic unit, in order to check whether the conditions are met at all times necessary for the perception of benefits and in the recognized amount, with the aim of serving people in an integral way, and addressing their social needs in a coordinated manner. "

The same additional provision defines as " economic unit of coexistence" the one formed by the beneficiary with his spouse or de facto partner and relatives up to the second degree of consanguinity or affinity who live together in the same address. According to this definition, and given that in the PIA form completed in 2017 he stated that he lived with his mother, the complainant is a member of his mother's " cohabitation economic unit".

This provision of Law 2/2014 establishes an authorization in favor of the competent public administrations in matters of social protection to be able to access, ex officio and without prior consent of the persons concerned (nor, where applicable, of the members of their unit economic of coexistence), to the information declared by the persons applying for social protection benefits, with the purpose of verifying the conditions necessary to receive these benefits and in the amount legally recognized. Among the data that can be consulted, there are those relating to the assets and income of the members of the economic unit of coexistence.

For its part, article 6.1 of Regulation (EU) 2016/679, of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of this data (RGPD), establishes:

"1. The treatment will only be lawful if at least one of the following conditions is met: e) the treatment 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; (...)"

Article 8 of the Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), establishes that the processing of personal data can only be protected on the legal basis provided for in article 6.1. e of the RGPD, relating to the fulfillment of a mission in the public interest or the exercise of public powers, when it comes to the exercise of a competence attributed by a rule with the rank of law.

In accordance with this, the legal basis for the consultation made by the Department of DS, including the tax data of the reporting person, would not be the consent of the affected persons, but the fulfillment of a mission in the interest public or the exercise of public powers established in a standard of law (art. 6.1. e RGPD and 8.2 LOPDGDD), in this case the seventh additional provision of Law 2/2014 in connection with Law 12/2007, of October 11, of social services.

At this point it should be pointed out that, although the legislation provides for its reserved nature, the data with tax implications are not part of the data considered to be of special protection under the terms of article 9 of the RGPD. Therefore, the treatment can also be based on the legal basis of article 6.1. e of the RGPD, without the need for any of the enabling circumstances established in article 9.2 of the RGPD.

The DS Department has declared that this would be actions to check the data previously declared by the beneficiary of the recognition of dependency, following its aggravation and in the framework of the recognition of the condition of "non-professional carer" (14/10/2021) of the reporting person. These consultations would have the ultimate purpose of controlling the use of public funds intended for social services or benefits, to guarantee their good use and allow these services to sustain the situations that require it. Therefore, the queries made by the DS Department (10/08/2021 and 10/13/2021) on the 800-IRPF certificate corresponding to the reporting person, with the purpose of AJUTSUBV (generic purpose used for queries of aid and subsidy procedures), would have sufficient legal capacity.

On the other hand, it should also be noted that in the application form for recognition of the dependency situation and the right to benefits that the mother of the person making



the complaint filled out (in 2016) there was a clause in which reference to the seventh additional provision of Law 2/2014; specifically, to the possibility of consulting the data relating "to the assets or income of the members of the economic unit of coexistence in order to check whether they meet at all times the conditions necessary for the perception of the benefits and in the amount legally recognized."

Likewise, the declaration of responsibility form made by the mother of the complainant (year 2016) as part of the dependency recognition file includes a clause in which the applicant declares that "the rest of the members of my economic cohabitation unit" have been informed that "the Department will be able to check ex officio and without prior consent" their personal data, among others, those relating to "property and income, given the legal authorization established in the Law 2/2014, of January 27, on fiscal, administrative, financial and public sector measures." Therefore, the other members of the family unit would also have been informed of the possibility of some of their personal data being consulted - which should be limited to those established in the seventh additional provision of Law 2/2014 -, to check its accuracy when processing the application for social benefits.

With the inclusion of this informative clause, the duty to inform all persons liable to be affected by the processing of their personal data, in accordance with the provisions of article 14.5, would also have been fulfilled. c of the RGPD, which makes compliance with the obligation to inform more flexible when the obtaining or communication is provided for in a law that applies to the person responsible and appropriate measures are established.

Finally, it should be noted that the eighth additional provision of the LOPDGDD contains a qualification similar to that provided for in Law 2/2014. On the other hand, it should also be remembered that, in relation to documents that are already in the possession of the acting administration or that have been drawn up by any other administration, the LPAC also provides for consultation between administrations.

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 dismissal is appropriate: "a) When the facts do not constitute an administrative infraction."

In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions carried out within the framework of the previous information, no fact has been proven that could constitute any of the violations provided for in the legislation on data protection, it is necessary to agree on its archiving.

## **resolution**

Therefore, I resolve:

1. File the actions of prior information number IP 516/2021, relating to the Department of Social Rights, since it has not been established that any act has taken place that could constitute any of the violations provided for in the legislation on data protection.

2. Notify this resolution to the Department of Social Rights and the complainant.
3. Order that the resolution be published on the Authority's website ([apdcat.gencat.cat](http://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 articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the interested parties may file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after 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 of Barcelona, within two months from the day after its notification, in accordance with Law 29/1998, of July 13, regulator of administrative contentious jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director

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