

Carrer Rosselló, 214, esc. A, 1st 1st
08008 Barcelona

In this resolution, the mentions of the affected population 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 population, the physical persons affected could also be identified.

File identification

Archive resolution of the previous information no. IP 73bis/2021, referring to the General Directorate of the Police (ABP (...)).

Background

1. 02/18/2021 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the City Council of (...), on the grounds of an alleged breach of the regulations on personal data protection . In the body of the complaint, the action of the head of the Basic Police Area of (...) was also denounced.

Specifically, and with regard to this last reason for the complaint, the person making the complaint stated that the head of the Basic Police Area of (...) (hereafter, ABP) had responded to a request made by the Court of First Instance and Instruction (...) of (...), when, according to the complainant, the person who should have given an answer is the head of the Division of Police Information Systems (hereinafter, DSIP) of the Directorate General of Police (DGP) of the Department of the Interior.

In order to certify this, he provided the official letter issued on 07/08/2020 by the head of the ABP, addressed to the said Court of First Instance and Instruction (...) of (...), in which the following was stated:

"In response to his office dated 07/27/2020, in which he requested if there was any request from the City Council of (...) or the Urban Guard of this locality in relation to the access to the user's databases (...) we inform you that, according to the Audit Unit of the Division of Police Information Systems, it is stated that:

On date (...), the chief inspector of the Urban Guard of (...), Mr. (...) -name and surname- requested, via email addressed to the head of the Information Technology Security Area of the Division of Police Information Systems, that as a matter of urgency immediately block access to the user's SIP (...) - first and last name of the reporting person - as a disciplinary file had been opened against him by Mayor's Decree no. (...), dated (...).

In response to this request, the said user was left without access in (...) and is currently without access."

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2. In relation to the facts reported regarding the action of the City Council of (...) the Authority opened a preliminary information phase (no. IP 73/2021).

With regard to the fact reported relating to the performance of an ABP of the Generalitat Police-Mossos d'Esquadra, the Authority opened the present preliminary information phase no. IP 73bis/2021, in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of the Law 39/2015, of October 1, of the common administrative procedure of public administrations (from now on, LPAC), to determine if the facts were likely to motivate the initiation of a sanctioning procedure

In this resolution, the reason for the complaint referred to the action of the head of the ABP of (...) (IP 73bis/2021) is addressed.

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. The fact that is the subject of the complaint is that the head of the Basic Police Area (ABP) of (...) responded to a request made by the Court of First Instance and Instruction (...) of (...), by official document issued on 07/08/2020 (precedence 1), when according to the person reporting who should have given an answer is the head of the DSIP.

In this regard, it must be emphasized that the complainant has not invoked the rule that in his opinion would have been contravened, and the only document he provides to substantiate his complaint is a copy of the official response issued by the head of the aforementioned ABP.

So it cannot be ruled out that it was the Court itself that addressed the request for information to the head of the aforementioned ABP, whether because he was his police reference from the Police of the Generalitat in the municipality to which the body itself belonged judicial ((...)), or because the City Council of (...) - object of the consultation formulated by the Court - belongs to the ABP of (...). This would explain that it was the head of this Basic Police Area who gave an answer to the Court.

In any case, the complainant has not provided any evidence to substantiate that the Court addressed its request for information to the head of the DSIP. But even if that were the case, if the head of the ABP had access to the information requested by the Court, he would be entitled to communicate it to the judicial body, without the need for any authorization. And in the event

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that the head of the ABP was not authorized to access said information, it cannot be ruled out that the head of the DSIP had authorized him to refer the office to the Court.

So things are, from the facts reported and the documentation provided, it cannot be inferred that the DGP has committed an infringement of the data protection regulations.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts that have been addressed in this resolution, any fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is necessary to agree to its archive.

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993 , foresees that the actions should be archived when the following is highlighted in the instruction of the procedure "a) *The non-existence of the facts that could constitute the infringement;* b) *When the facts are not proven.*"

Therefore, I resolve:

1. Archive the actions of prior information number IP 73bis/2021, relating to the General Directorate of the Police of the Department of the Interior of the Generalitat.
2. Notify this resolution to the General Directorate of the Police and to the reporting person.
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,