

File identification

Archive resolution of the previous information no. IP 7/2022, referring to the Housing Agency of Catalonia.

Background

1. On 09/01/2022, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Housing Agency of Catalonia (hereinafter, AHC), with reason for an alleged breach of the regulations on the protection of personal data .

The complainant stated that, using a digital certificate as a representative of a legal entity, he applied to the AHC for a certificate of fitness for a building (file ITEB-0000(...)-21). He added that, in the acknowledgment of receipt of this request, it was recorded that the signature of said request had been made by means of a digital certificate and that his name was stated in the field "*Signatory person*" and surnames and their ID (apart from the company's corporate name and that the person making the request was a legal entity).

Likewise, the person making the complaint pointed out that the AHC sent him the electronic notification of the decision to grant the certificate of suitability for the building, using his personal data (name and surname and ID) for this purpose , in instead of directing it to the company you represented in that procedure, using the NIF and company name of that one. Given the above, the complainant explained that he could not access the notification using the digital certificate as a representative of the company that had made the initial request.

At the same time, the complainant, in his written complaint, specified that the AHC did not communicate these facts to the Authority which, in his judgment, would be considered a breach of personal data security.

On the other hand, the person making the complaint explained that, in the office with which the AHC sent said certificate of fitness, the information regarding the domicile of this entity was wrong and addressed to a different population than the correct one , so I understood that the data had been manipulated.

The reporting person provided the following documentation relating to the events reported:

- Communication of the card certifying the tax identification number (NIF), from the Tax Agency, dated 12/01/2009.
- Certificate of census status, from the Tax Agency, dated 03/01/2022.
- Application for a certificate of suitability for the building, from the AHC.
- Acknowledgment of receipt of the application for the building's suitability certificate, from the AHC, dated 12/21/2021.
- Notice of having an electronic notification available, dated 12/30/2021.
- Notice of receipt of application, from the Generalitat de Catalunya, dated 12/31/2021.
- Office of transmission of the certificate of aptitude, from the AHC, dated 12/30/2021.
- Resolution granting the certificate of aptitude, from the AHC, dated 12/30/2021.
- Screen printout of the portal usuari.enotum.cat/ webCiutada / bustia .
- Evidence of the notification process, dated 12/30/2021.

Finally, the complainant, in the letter of complaint, requested the following from the Authority:

1. That when accessing the procedures that can be carried out on the Generalitat's website, see the address and the population, whether using the user certificate or that of the company representative.
2. That it be confirmed which address and town is currently registered both as a user and as a representative of the company.
3. That they send you the digital notification again in the name of the company, in relation to the referenced file, with the correct town name.
4. That any change in the census data in the Generalitat must be communicated to the interested parties, since if said data is altered, the interested parties will not find out.
5. That the officials who intervened, in relation to the events reported, be sanctioned.
6. That the complaint presented to the AHC on 12/31/2021 be recorded as closed.
7. That it is informed as a natural person, and also the legal person it represents, of the actions that are carried out in relation to the complaint.

2. The Authority opened a preliminary information phase (no. IP 7/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application 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, the reported entity was required to confirm whether the properties of the digital certificate that the reporting person used to process the request for a certificate of fitness the building, on behalf of a legal person, also included his ID, and to indicate the reasons why the ID was included in the acknowledgment of receipt of the application, in the "signatory person" section of the reporting person and not the NIF of the requesting legal entity. Likewise, he was asked to point out the reasons why the notification was addressed to the reporting person as a natural person, instead of linking the notification to the data of the legal entity that submitted the procedure. He was also asked to state the reasons why the complainant was listed as an applicant in the decision to grant the certificate of fitness. Finally, he was required to prove what actions he had carried out so that in the corresponding procedure it was reflected that the person requesting was the legal person, who acted represented by the person making the complaint.

4. On 05/24/2022, the AHC responded to the aforementioned request through a letter in which it stated that:

- It provided the data of the digital certificate with which the application for the fitness certificate in question was signed, as well as the company data contained therein.
- "(...) the notification is made to the representative person listed in the Certificate Application", by means of the e-mail address indicated therein.
- As they obtain the data from the user's request, the data from the Virtual Office of Procedures (OVT) that are mechanized by the applicants are considered good.
- The application forms for the procedure have been modified and it has been added that, when it is a legal entity, the name of the legal entity and that of the representative person appear.

The reported entity attached the following documentation to the letter:

- The application for the certificate of fitness.
- The office of notification of the resolution.
- The resolution of the fitness certificate.
- The certificate of aptitude.

5. Still in this information phase, on 03/09/2023, the reported entity was again required to report whether the "Resolution granting the certificate of aptitude" would have been amended, relating to the file ITEB-0000(...)-21 , regarding the identity of the applicant and, if so, to justify it, as well as whether the amendment had been notified to the person interested. In addition, the reported entity was asked to report whether it responded to the complaint with procedure number (...) -1 presented by the person making the complaint, as well as whether said claim was resolved.

6. On 03/20/2023, the AHC responded to the aforementioned request through a letter in which it stated that:

- The "Resolution on the granting of the certificate of aptitude" relating to the file indicated has been amended, so that it is currently indicated that the complainant makes the request as a representative of the legal entity concerned.
- On 01/18/2022, the inquiry was resolved with the indicated code and the amended documentation was sent to the applicant .

The reported entity attached the following documentation to its letter:

- Copy of the "Resolution granting the certificate of aptitude", in relation to file ITEB-0000 4795 -21, dated 03/20/2023, in which, in the antecedents section, it is stated that the complainant requested said certificate "on behalf of (...)".
- Evidence of the deposit of the notification of the previous modified resolution, dated 03/21/2023.
- E-mail in response to the inquiry with procedure number 4ZX5D08VN -1, dated 01/18/2022.

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. Before considering the merits of the matter, it must be made clear that the requests of the complainant referred to in points 1, 4 and 5, of the antecedents section, do not deal with issues included within the 'scope of the competences of this Authority, in accordance with

articles 4 et seq. of Law 32/2010, of October 1, of the Catalan Data Protection Authority , so it is not applicable make any pronouncement about it.

2.2. In relation to the request of the reporting person referred to in point 2, of the antecedents section, it must be specified that the interested person, at any time, can exercise their right of access, among others, before the person in charge of the file to which it refers, as established in article 15 of the RGPD, in relation to article 16.1 of Law 32/2010, of the Catalan Data Protection Authority.

2.3. With regard to the request of the complainant referred to in point 3, of the antecedents section, the AHC certified that it had amended the error contained in the "Resolution granting the certificate of fitness " in relation to the representation exercised by the applicant.

2.4. With regard to the request of the complainant referred to in point 6, of the antecedents section, the AHC certified that it had answered the query, with the code 4ZX5D08VN -1 , by sending an email to the interested person, on 01/18/2022.

2.5. On the other hand, with regard to the request in point 7, of the same section, it should be noted that, in accordance with what is established in article 62.5 of Law 39/2015, "The presentation of a complaint does *not confers, by itself, the status of a person interested in the procedure* ". In addition, legal entities are not holders of the fundamental right to the protection of personal data, therefore, it is not appropriate to communicate the actions arising from this procedure to the legal entity that the reporting person represented.

2.6. With regard to what is set out in the letter of complaint, it turns out that the person making the complaint requested the AHC to issue a certificate of fitness for a certain building. This procedure was carried out by means of the digital certificate of representative of the requesting legal entity.

At this point, it should be emphasized that the digital certificate that certified his status as a representative of a company, in its properties, also had to contain the name and surname of the person representing him and his ID. That is why, in the acknowledgment of receipt of the application, which is generated automatically, it was stated in the section "Information on the signature of the application document" that it was signed using a digital certificate that it corresponded to a legal person in which the name of the company and the data relating to the name, surname and ID of the representative person appeared.

On the other hand, although it has been proven that the information on said digital certificate did not include the NIF of the applicant company, this fact cannot be attributed to the AHC, given that it is not the entity responsible for issuing this certificate.

2.7. With regard to the complaint that the AHC addressed the electronic notification to the individual, using their personal data (name and surname, and ID), instead of addressing it to the company they represented that procedure, it must be said that it has been proven that the AHC carried out said electronic notification and the corresponding notice by means of the electronic address and the mobile phone number that had been provided for such purposes by the person representing the company. In this way, the said data of the reporting person (name and surname, and ID) were the same as those contained in the digital certificate used to make the request.

On the other hand, the complainant complained in his letter of complaint that he could not access the notification using the digital certificate as a representative of the company that had made the request.

In this regard, in the office dated 12/30/2021, issued by the AHC, through which the requested certificate of fitness was sent, the following was noted:

—It was addressed to "(...) SL", therefore, to the applicant legal entity.

—The reverse side of said office included the following text: "This documentation can only be downloaded by the person who was stated in the application for the Certificate of Aptitude (DNI, mobile phone and email)".

In addition, in the document "Evidence of the notification process" of the resolution it is stated that it was made available on 12/30/2021, at 2:41:58 p.m., and was accepted by the recipient in date 12/31/2021, at 11:36:13 a.m.

Otherwise, it has been verified that in the Resolution granting the certificate of aptitude, dated 12/30/2021, which accompanied the office indicated in the previous paragraph, it was certainly listed as the person requesting the person now reporting, with the same information that appeared in his application (name and surname and ID), without indicating that he was acting on behalf of a legal entity. However, it cannot be considered that this omission has the sufficient entity to be considered an infringement of those typified in article 83 sections 4 and 5 of Regulation (EU) 2016/679 of the European Parliament and of the Council (hereinafter, RGPD), but that it would be a material error, which the Administration could rectify at any time, in accordance with article 109.2 of Law 39/2015. To arrive at said consideration, it was also assessed that the letter accompanying said certificate was indeed addressed to the legal entity represented by the person making the complaint, as well as that said error or omission did not affect the 'main administrative act, which was the obtaining of the Certificate of suitability of the building, the content of which refers to a specific building and not to any natural or legal person. In addition to the fact, as already stated in legal basis 2.3., that the AHC certified that it had corrected the error contained in said resolution, which it notified the interested person.

2.8. Regarding the fact that in the aforementioned office the data regarding the address of this entity was wrong, once the documentation presented by the interested person to the AHC has been verified, it can be deduced that it was the applicant who indicated this erroneous data to the AHC, which would in itself prevent attributing this fact to the reported entity. However, it should be noted that legal entities are not holders of the fundamental right to the protection of personal data, so no pronouncement should be made in this regard.

2.9. Finally, and with regard to the fact that the AHC would not have communicated to this Authority the facts which, in the judgment of the reporting person, would be considered a violation of the security of personal data, it must be said that, although in accordance with the facts reported, there could eventually have been a breach of security of the personal data of the person making the claim, this, in no case, would constitute a risk to the rights and freedoms of natural persons, as long as the said person is the same as the one who acted as the legal person's representative in the procedure initiated before the AHC. Therefore, there would have been no obligation to notify this Authority of the alleged violation of the security of personal data, according to article 33 RGPD.

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, no fact that

could be constitutive of any of the infractions provided for in the legislation on data protection, should be archived.

Article 89 of the LPAC, in line with articles 10.2 and 20.1 of Decree 278/1993, foresees that the actions should be archived when in the instruction of the procedure it is made clear that the proven facts do not constitute, in a manifest way, an administrative violation.

Therefore, I resolve:

1. Archive the previous information actions number IP 7/2022, relating to the Housing Agency of Catalonia.
2. Notify this resolution to the Housing Agency of Catalonia and the person making the complaint.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.

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

The director,