

(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 the event of revealing the name of the affected entity, they could be identified also the natural persons affected.)

File identification

Archive resolution of the previous information no. IP 74/2022, referring to the City Council of (...).

Background

1. On 02/22/2022, the Catalan Data Protection Authority received a letter from a person (hereafter, complainant) in which he filed 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 complainant, who held the position of Secretary of the City Council of (...), stated that, following her temporary disability, the City Council had approved Mayor's Decree 2022/150, dated 02/17/2020, for the temporary coverage of his workplace, which included " *particularly sensitive personal data* ", such as the fact that he was in a situation of " *temporary incapacity* ", and had transferred the said "announcement" to the Official College of Secretaries Comptrollers and Treasurers of Local Administration of Barcelona (hereafter, CSITAL).

The person making the complaint accompanied the letter of complaint with a copy of the notification of Mayor's Decree 2022/150, which approves the " *Resolution for the coverage temporary of the post of Secretary of the City Council of (...) due to temporary incapacity of the holder, through provisional appointment, commission of services or accumulation of civil servants of Local Administration with national qualification, until reinstatement of the holder* ". In the dispositive part, it is decided to approve the publication of the announcement of the temporary coverage of the aforementioned place, in the Official Gazette of the Province of Barcelona (hereinafter, BOPB), as well as on the website of the City Council of (. .), and transfer it to CISTAL.

2. The Authority opened a preliminary information phase (no. IP 74/2022), 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 preliminary information phase, on 03/15/2022, the Authority's Inspection Area made a series of checks via the Internet on the facts subject to the complaint. Thus, it was established that on 23/02/2022 the City Council of (...) published on the BOPB website the edict announcing the approval of Decree 2022/150, dated 17 /02/2022, with the " *Specific regulatory bases of the selection process to provide through provisional appointment, commission of services or accumulation the post of Secretary of the City Council of (...)* ". In this publication it was indicated that the reason for the provisional coverage of the job was

the temporary incapacity of its holder and its duration was foreseen until the reinstatement of the holder.

4. On 09/05/2022, also during this preliminary information phase, the Catalan Data Protection Authority received a second letter from the person making the complaint in which he expanded the initial complaint and put it is clear that on that same day, the City Council of (...) had transferred to the CSITAL a new announcement regarding the procedure for the temporary coverage of his job as secretary of the City Council, in which it indicated the temporary incapacity of the holder as the reason for the provisional coverage.

This second letter was accompanied by the edict by which Mayor's Decree 2022/525, dated 05/05/2022, with the regulatory bases of the selection process to provide the position of Secretary of the City Council of (...). The content of Mayoral Decree 2022/525 coincides in its entirety with that of the referenced Mayoral Decree 2022/150, dated 02/17/2022, thus also mentioning here that the reason for provisional coverage of the workplace was the temporary incapacity of its holder.

5. On 08/03/2022, the Authority's Inspection Area made a series of checks via the Internet on the facts that were the subject of the letter expanding the initial complaint. Thus, it was established that, on 12/05/2022, the City Council of (...) published on the BOPB website the edict relating to Mayor's Decree 2022/525, dated 05/05/2022, with the " *Specific regulatory bases of the selection process to provide, through provisional appointment, commission of services or accumulation, the position of Secretary of the City Council of (...).*" In said regulatory bases it is indicated that the reason for the temporary coverage of the post of City Council secretary was the temporary incapacity of its holder.

6. On 08/25/2022, also in the yes of this preliminary information phase, the reported entity was required to pronounce on the following points:

- Inform whether, apart from publication in the BOPB, the edicts had been communicated in full to other persons or entities, and in such case, what information would have been communicated, the recipient persons or entities, and the date of communication .
- Indicate the legal basis (Regulation 2016/679) and the related regulations, which would enable the publication in the BOPB of information relating to the fact that the holder of the appointed job is in a situation of temporary incapacity; as well as that which would enable the eventual communication of this information to other people or entities.

7. On 09/14/2022, the City Council of (...) responded to the above-mentioned request in a letter in which it set out the following:

- *"(...) The reference announcements were published in the Official Gazette of the Province of Barcelona (BOPB) as well as on the website of the City Council of (...), and it was transferred to the Col · registration of Secretaries, Comptrollers and Treasurers of Local Government of Catalonia (CSITAL), all in accordance with the advertising requirements established in the Information Note of the General Directorate of Local Government in relation to the new requirements on advertising in requests for non-definitive coverage of positions reserved for local government officials with national qualification (attached document). At the same time, the Resolutions of the Mayor's Office which are the cause of the Announcements were notified to those interested in the administrative file: Mr. (...)*

Head Secretary of the City Council of (...), to Messrs./es. (...) accidental substitutes, and the Personnel Board, for the appropriate legal and informative purposes; on the same dates 02/18/2022 and 05/05/2022, respectively.

- *Articles 49 and 52 of Royal Decree 128/2018, of March 16, which regulates the legal regime of Local Administration officials with national qualification provide for the temporary incapacity of the holder as one of the causes for the his provisional replacement. The information relating to the fact that the holder of the position of Secretary of the City Council is in a situation of temporary incapacity has been published and communicated based on the requirements of the Information Note of the General Directorate of Local Administration in relation with the new requirements on advertising in applications for non-definitive coverage of positions reserved for civil servants of local administration with national qualification (attached document), whereby "The announcement of the coverage of the vacancy of reserved place to be published must include, at least, the following information: Reason/anticipated duration" (p. 5); or, by analogy with accidental appointments to cover temporary disabilities of less than one month, "For the accidental appointment due to absence to produce effects, the local corporation must notify the DGAL, beforehand or on the same day that it occurs, the "absence that must be covered by the official staff appointed, indicating the cause and the dates or term of the absence." (p. 10)".*

The City Council accompanied its letter with the document entitled "*Informative note from the General Directorate of Local Administration in relation to the new requirements on advertising in applications for non-definitive coverage of positions reserved for civil servants of local administration with qualification of a national nature*" of the General Directorate of Local Administration of the Department of the Presidency General Directorate of Local Administration (hereafter, DG of Local Administration), dated 02/11/2021, on which pages 5 and 10 are includes the verbatim transcribed by the City Council in the written response to this Authority's request.

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.

Specifically, the complainant complained that the City Council of (...) transferred to the CSITAL two advertisements advertising the approval of the regulatory bases of the selection process for the temporary provision of the workplace that he held as Secretary of said City Council, in which it was included that the reason for the temporary coverage of said job was the "*temporary incapacity of the holder*". These announcements were approved by Decree 2022/150, dated 02/17/2022, and by Decree 2022/525, dated 05/05/2022, respectively.

So things are, in this resolution it is necessary to analyze two questions, the first, if the entity was legitimate to include in the regulatory bases of the selection process for City Council

Secretary , approved by Decree 2022/150 and by Decree 2022/525 , the health data that the person reporting here (holder of the position) was in a "situation of temporary incapacity", and the second, if the announcements of the call that were transferred to the CSITAL, and advertisements to the BOPB and on the City Council's website, they had to include that the reason for the provisional coverage of the job was *"the temporary incapacity of the holder"*.

Well, the first thing to point out is that the City Council of (...), in response to this Authority's request for information, confirmed that the controversial announcements publicizing the approval of Decree 2022/150 , dated 02/17/2022, and of Decree 2022/525, dated 05/05/2022, relating to the " *Specific regulatory bases of the selection process to provide through provisional appointment, commission of services or accumulation the workplace of Secretary of the City Council of (...)* , were transferred to the CSITAL, and were also published in the BOPB and on the website of the City Council of (...), on the dates 02/23/2022 and 12/05/2022, respectively.

In relation to this, the entity indicated that its action was legitimized based on articles 49 and 52 of *Royal Decree 128/2018, of March 16, which regulates the legal regime of Local Administration officials with habilitation of a national nature*, and based on the criteria published by the DG of Local Administration, of 11/02/2021, in relation to the new requirements on advertising in applications for non-definitive coverage of positions reserved for civil servants with national qualification.

With regard to the inclusion of the data relating to the situation of temporary incapacity in the regulatory bases of the selection process, it should be noted that article 49.1 of *Royal Decree 128/2018, which regulates the provisional appointments of civil servants of the Administration premises with national qualification* , provides for the following:

"The Autonomous Communities may make provisional appointments to Local Administration officials with national qualifications for the vacant positions reserved for them (...). This includes, for the purposes of these appointments, the positions occupied with accidental and temporary appointments, and those others that are not effectively filled by their holders due to one of the following circumstances:

- a) Service commission.*
- b) Provisional suspension.*
- c) Child care leave during the first two years.*
- d) Temporary disability.***
- e) Other cases of absence. (...)"*

In turn, article 52.2 of *Royal Decree 128/2018, relating to accidental appointments*, has the following:

"For an accidental appointment to be made, the position must be vacant, or not effectively filled by its holder, due to any of the following circumstances:

- a) (...)*
- e) Temporary disability for a period exceeding one month.***
- f) (...)"*

In accordance with the above, the directives of the DG of Local Administration, approved on 11/02/2021, include in their third point, relating to the advertising of the non-definitive coverage of positions reserved for civil servants of Local Administration with national qualification, the following:

*"The announcement of the vacancy coverage of the reserved place to be published must include, at least, the following information: Scale/ subscale ; Target plugin level; Annual specific supplement; **Reason/anticipated duration**; Date of incorporation; Offer expiration date; Guidelines or assessment criteria for applications (...)"*

So things, from a joint reading of articles 49 and 52 of Royal Decree 128/2018, which considers temporary incapacity as one of the circumstances for which provisional or accidental appointments can be made to officials of the Local Administration with qualification of a national nature, and of the criteria of the DG of Local Administration, which when they refer to the advertisement of the non-definitive coverage of a reserved job, indicate that the announcement of the coverage of the vacant position must include, among others, the " *Reason/anticipated duration* ", it is inferred that the controversial regulatory bases of the selection process to fill the post of City Council Secretary, approved by Decree 2022/150 and Decree 2022 /525, information relating to the "temporary incapacity" of the holder of said job could be included. In the case we are dealing with, the temporary incapacity of the complainant here was, among the circumstances contained in Decree 128/2018, the one that motivated the start of the selection process to fill the vacancy that was temporarily left free . That being the case, the inclusion in the referenced Mayor's Decrees of the fact that the person reporting here was in this situation cannot be considered, by itself, a violation of the principle of data minimization, since the inclusion of this personal data would be justified in the need of this Consistory to motivate the causes that would lead to the formalization of the provisional or accidental appointment of an official of the Local Administration, in compliance with the requirements imposed by the regulations that regulate the legal regime of officials of Local Administration with national qualification.

In this sense, it must be considered that, if the mention of the reason for provisional coverage is an element that must be stated when opening the concurrent process, the inclusion of this same information, in the edicts published in the BOPB, and to the announcement published on the City Council's institutional website and transferred to CSITAL, would not constitute a breach of data protection regulations either.

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 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 responsibility. This resolution will be notified to the interested parties*" . Article 20.1) of the same Decree determines that dismissal " a) *When the facts do not constitute an administrative infraction.*"

Therefore, I resolve:

1. Archive the actions of prior information number IP 74/2022, relating to the City Council of (...).
2. Notify this resolution to the City Council of (...) and to 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,

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