

File identification

Archive resolution of the previous information no. IP 200/2022, referring to Barcelona City Council

Background

1. 05/27/2022 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Barcelona City Council on the grounds of an alleged breach of data protection regulations of personal data .

The complainant stated the following:

1.1 That on (...) an informative meeting was held via Zoom with the Barcelona City Council in relation to the Door to Door initiative (hereinafter, PaP) which was attended by the person making the complaint but not identified -se with his name - but with that of (...) -. And that also attended Mr. (...), regarding the person who states '*I have no personal or professional relationship with him and I do not even identify him as a neighbor of the estate. To find out who he is and why he is attending this meeting I search for him on the Internet, as shown in my search history, but I cannot identify him.*'

1.3. That on 05/25/2021 the reporting person published in the Facebook group "(...)" a message that linked to a document referring to the PaP collection system implemented by the City Council and where the email address appeared (...);

1.4. That through this post your name and surname could be linked with this email address, but in no case with your private address;

1.5. That on 05/29/2021 Mr. (...), cabinet deputy of the Climate Emergency Department and Ecological Transition of the City Council, sent an email to the address (...) requesting a meeting for 05/31/2021.

1.6. What date (...), Mr. (...) he showed up at the complainant's private address and was attended by his partner, who told him that he was the son of a neighbor on the stairs and that he wanted to talk to the complainant because '*he was generating movement in relation to the PaP*', and that '*he is a close friend of (...), (... de Sant Andreu* ' .

1.7. That on (...) the neighborhood council of the district of Sant Andreu is held and that, after having presented here denouncing the events that happened without giving any names, Mr. (...) acknowledges that he showed up at his house claiming that they met at the meeting of (...). In this regard, the complainant states that it is not true and that *at no time was he able to identify me as I already explained in the section of that day. It is also not true that he is a neighbor of the staircase, it is his parents with whom I have no relationship either (...)*'. The complainant states that this advice is recorded on ' Youtube ' .

Along with the complaint, the complainant provided an image of the search history on (...), the message published in the Facebook group (background 1.3), and the email of 05/29/2021 (background 1.5) .

2. The Authority opened a preliminary information phase (no. IP 200/2022), 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 23/06/2022 Barcelona City Council was required to report on:

- What is the link between the City Council and Mr. (...) between the months of May and June 2021;

- That you confirm or deny whether the private address of the person making the complaint was provided by the City Council, Mr. (...), to Mr. (...) and, in case it has been facilitated, indicate the legitimating legal basis; or, in the event that it has not been facilitated, argue as Mr. (...) was able to know the personal data of the complainant's private address; i

- That he provide the register of accesses to the municipal register regarding the consultation of the data of the person reporting, from the day (...) to the (...) and justify the reason for each of the accesses.

4. On the same date, 06/23/2022, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Specifically, access the 'YouTube' web portal and search for the video referred to by the complainant, referring to the neighborhood council of the Sant Andreu District of (...). Thus, it was found that in said council, the following interventions were made:

- (...):

"(...)".

- (...):

"(...)".

5. On 07/13/2022, Barcelona City Council responded to the request through a letter in which it set out the following:

- That Mr. (...) he was a member of some organizations in the District of Sant Andreu, *such as the Solidarity Economy Network and the Harmonia University*. And that from the District of Sant Andreu and, specifically, the (...) Mr. (...), I knew him from dealing with him on behalf of these two entities.
- That, in addition, Mr. (...) attended some of the sessions of the PaP follow-up Commission representing Ateneu Harmonia.
- That in no case did the City Council facilitate Mr. (...) the private address of the reporting person. And then he sets out a succession of facts to justify how Mr. (...) came to know the personal data of the private address of the person reporting:

" - On May 24, 2021, the door-to-door collection system will be launched in the old town of Andreu de Palomar after several meetings with the monitoring commission in which several neighborhood entities participated.

- With the start of the service, there are several critical voices for various reasons, some of them linked to data protection and other aspects.

- From the door-to-door driving group, and in a coordinated way between the District of Sant Andreu and the Councilor for Climate Emergency, an attempt is made to contact the critical group through e-mail (...) in order to 'offer them a meeting to resolve doubts, listen to improvements and propose that they join the Sant Andreu door-to-door monitoring committee.

[the email of 29/05/2021 referring to precedent 1.5 is reproduced]

- The referred mail does not get a response and from the District of Sant Andreu, specifically on (...), Mr. (...) tries to locate an interlocutor in various ways.

- In a new conversation he mentions it with Mr. (...) whom, as explained above, he knows from various places in Andreuen (Xarxa d'Economia Solidària, Ateneu Harminia ...).

- Mr. (...) comments that a neighbor of his mother's staircase has pasted a poster at the entrance of the building offering to write letters of complaint regarding the protection of data related to the door to door addressed to Barcelona City Council.

- Mr. (...) he consults the aforementioned sign at the gate of the estate where his mother lives and sees that it states the floor and door of the door that offers to write the letters of complaint against the City Council. Mr. (...) takes a look at the letterboxes and sees that the name of Mr. (...).

- Mr. (...) addresses this neighbor saying that these days from the City Council, the (...) whom he knows, is looking for interlocutors from the critical group in order to arrange a meeting and get an answer to the mail sent from the council.

- The visit of Mr. (...) is not well received by Mr. (...)."

The reported entity provides a report from the Department of Population and Electoral Processes, signed on 07/05/2022 and in which it says ' *The traces enabled in the Municipal Register of Inhabitants have been consulted, regarding the queries made on the register data of Mr. . (...), during the period between the days (...) (both inclusive), it has been established that no consultation has been carried out, either directly on the register management application, or through the intraoperability services municipal (MIB), nor through the interoperability services of the CAOC (Via Oberta).*'

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.

The complainant stated that the City Council had violated the current data protection regulations 'via' Mr. (...), a person who has a relationship with the City Council since he is a member of several entities in the District of Sant Andreu. He considered that his personal data had been used 'for political and partisan purposes without being legitimate' since that person showed up at his private address and told him that he wanted to talk to him because 'he was generating movement in relation to the PaP' and that 'they have tried to contact us (it does not specify who we are) and that they have not received a response'. He also states that when Mr. (...) he showed up at his address and said he was the son of the neighbors of (...). With regard to this end, the complainant denies knowing this person and provides a document consisting of an 'internet search history' in which the name of Mr. (...) in the search engine. Contradictorily, in his account of the events he states that 'it is also not true that he is a neighbor of the staircase, it is his parents with whom I have no relationship either.' In other words, at the very least, he was aware that the parents of Mr. (...) they were his neighbors.

For its part, the City Council, in its response to the request, states that in no case has the address of the complainant here been provided to Mr. (...) and that there has been no access to the registry data of the complainant during the period in which the events reported took place, a matter which he attests through the contribution of a report from the Department of Population and Electoral Processes.

Firstly, it should be noted, according to the allegations of both parties, that both Mr. (...) such as the complainant here are people who have shown their interest in the PaP project; and that both the complainant - because he lives there - and Mr. (...) - because their parents live there - they have a connection with the same building.

These two circumstances would explain that Mr. (...), seeing a poster about the PaP project at the entrance to the building where his parents live in which the complainant himself had specified the floor and the door of his private address, found out who was the owner of that address.

Given this context, it is likely that through the information on the poster and the mailboxes in the building, Mr. (...) obtained, on his own account, and apart from the City Council, the data of the complainant's private address. As the City Council also states when it states that 'Mr. (...) takes a look at the mailboxes and sees that the name of Mr. (...) '.

On the other hand, it must be taken into consideration that the sanctioning procedure is particularly guarantor because of the consequences that can be derived from it. This is why the existence of evidentiary elements or sufficient rational indications that allow the commission of an offense to be imputed is necessary. In line with article 24 of the Spanish Constitution, regarding the presumption of innocence, article 53.2.b) of the LPAC includes the following as the right of those presumed responsible for administrative procedures of a punitive nature: *To the presumption of non-existence of administrative responsibility until the contrary is proven* ".

It cannot be ignored that the penal administrative law applies, with some nuance but without exceptions, the inspiring principles of the criminal order, resulting in the full virtuality of the principles of presumption of innocence and in dubio pro reo in the area of sanctioning authority, which shifts the burden of proving the facts and their authorship to the accuser. In this sense, the Constitutional Court, in its Judgment 76/1990 of April 26, considers that the

right to the presumption of innocence entails " *that the sanction is based on acts or probative means of charge or incrimination of the reprehensible conduct; that the burden of proof corresponds to the accuser, without anyone being obliged to prove their own innocence; and that any inadequacy in the results of the tests carried out, freely assessed by the sanctioning body, must be translated into an absolute pronouncement* ". In the same way, the Supreme Court, in its Judgment of 10/26/1998, declares that the right to the presumption of innocence " *does not oppose that the judicial conviction in a trial can be formed on the basis of evidence indiciaria, but in order for this evidence to disprove said presumption, it must satisfy the following constitutional requirements: the evidence must be fully proven - it cannot be treated as mere suspicion - and it must explain the reasoning by virtue of which, based on the proven evidence, has come to the conclusion that the accused carried out the infringing conduct, then, otherwise, neither the subsumption would be founded in law nor would there be a way to determine if the deductive process is arbitrary, irrational or absurd, that is to say, if it has been violated the right to the presumption of innocence when considering that the evidentiary activity can be understood as a charge* ".

In view of the specific concurrent circumstances in the case that is the subject of this resolution, it has not been proven that there was a leak from the City Council, given that the statement of the complainant, in his intervention at the Neighborhood Council of the District of Sant Andreu of (...), of which Mr. (...) is ' *a related person*' in the City Council (antecedent 4), constitutes a simple suspicion. Indeed, Mr. (...), as stated by the City Council, he had dealings with him because he was a member of some entities in the district, although this fact does not prove, not even in an indicative way, that the communication of data took place denounced by the City Council.

Besides, it should be borne in mind that the City Council denies having provided the personal address of the person making the complaint to a third party, and that, in addition, it has provided a report in which it states that there has been no access to the data registers of the complainant during the period of the facts (between May 19 and 30, 2021).

Finally, the document provided by the complainant, consisting of an Internet search history in which the search for the name of Mr. (...) does not contradict the fact that Mr. (...), in accordance with the circumstances described, decided to go to the home of one of his parents' neighbors to discuss an issue that affected him.

For all of the above, the archive of the proceedings proceeds, as the City Council's responsibility for the events reported has not been proven.

In accordance with everything that has been set out in the 2nd legal basis, it is necessary to agree on the archive of the present actions, in accordance with article 10.2 of Decree 278/1993, of November 9, on the sanctioning procedure of 'application to the areas of competence of the Generalitat, which provides that no charges will be drawn up and the dismissal of the file and the archive of the proceedings will be ordered, when the diligence and tests carried out do not prove the responsibility of the alleged infringer .

Therefore, I resolve:

1. File the previous information actions number IP 200/2022, relating to Barcelona City Council.

2. Notify this resolution to Barcelona City Council 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 its notification, in accordance with the which provides for 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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