

## File identification

Archive resolution of the previous information no. IP 236/2022, referring to the Sant Cugat del Vallès Town Council.

## Background

1. On 06/27/2022, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Sant Cugat del Vallès City Council (hereinafter, the City Council), due to an alleged breach of the regulations on the protection of personal data .

Specifically, the complainant ((...)) stated that a worker from the Social Services of the City Council (hereafter, SSB) ' *reported my intimate issues to my family by telephone without my or judicial authorization in a procedure in relation to the custody of my children* ', without specifying any further information.

2. The Authority opened a preliminary information phase (no. IP 236/2022), 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 07/12/2022, a request for information was sent to the reporting person in order to facilitate more information about the events reported.

4. On 07/26/2022, the complainant responded to the request for information through a letter in which he set out the following:

- That the SSB worker who gave information about her was called (...); and that the information was given to his sister, (...).
- That this event occurred on 21/06/2022, at around 12 in the morning.
- That he could not provide any evidence of the fact reported since the City Council had not yet given him access to the file he had requested.

5. On 09/13/2022, also during this preliminary information phase, the Authority's Inspection Area required the City Council to answer the following questions:

- To confirm whether there was a file processed by the SSB regarding the family of the person reporting (or their minor children) and that, if so, to report on the object, the interested parties, and whether Ms. (...) was the reference technique of the file.
- To report if on 06/21/2022, and in relation to the aforementioned file, Ms. (...) revealed information about the person reporting to his sister and that, if affirmative, indicate the legal basis that legitimized said communication and the specific circumstances in which it occurred.

6. On 12/10/2022, the City Council responded to the request by means of a letter in which it stated the following :

- That there was a file open to the SSB with reference number ' (...)('...' )' .
- That *the referring person in the case is Ms. (...), social educator and co-referent , Mrs. (...), social worker'* .
- That the opening of the file was motivated by the referral made by the EAP [Psycho-pedagogical counseling and guidance team] and the School (...), which requested the intervention of the SSB due to a situation of emotional suffering of the complainant's three minor children, following a conflictual separation with the other parent. That *the minors live with the father, Mr. (...), who holds the guard and custody, attributing a regime of visits with the mother'* .
- That on 06/15/2022, the father of the minors informed the referents of the SSB file that he had had a conversation with the sister of the person making the complaint here (Mrs. (...)) and that she reported on the situation that occurred during the month of May when the minors were with their mother in Sant Cugat del Vallès. That *' following the father's communication to Mrs. (...), this asks him to contact social service professionals. In response to this request, a telephone appointment is provided for 06/21/2022'* .
- That on 21/06/2022, the sister of the person reporting contacted the SSB, and stated that she *' spoke with Mrs. (...) [the complainant here] and with Mr. (...) [father of the minors] , and is aware of the existing controversy regarding compliance with the visiting regime during the summer'* .
- That the information provided to you in this telephone contact is as follows:

*"That she is already aware of the situation because the father informed Basic Social Services that, during the week that mother and children have been together in St. In Cugat del Vallès, inappropriate situations occurred that generated a level of emotional suffering and high tension in minors.  
She is also informed that the private psychologist who takes care of the children has sent a report to Basic Social Services where a possible risk situation is exposed due to some unprotective actions by the mother during the stay in Sant Cugat , which have seriously affected the emotional state of minors."*
- That *"the information that comments social services with Ms. (...) had previously been facilitated by the children's father"* and that the telephone appointment with the SSB takes place at the request of Ms. (...), *' not at the initiative of social services'* .
- That during the conversation with Ms. (...)" *explores the possibility that Ms. (...) or someone from the extended family can support this situation to ensure the well-being and proper care of the children while they live with the mother during the summer."*
- That *'the objective of acceding to the demand is to explore the support that the extended family can offer in the event that the minors spend the summer at the mother's home in order to ensure that there are no risky situations during the regime of visits with the*

*mother , like the ones that happened during the week of May when they were in Sant Cugat' .*

- That the legal basis that legitimizes the actions described are Organic Law 8/2021, of June 4, on the comprehensive protection of children and adolescents against violence, articles 15 and 16; and Law 14/2019, of 27 May, on rights and opportunities in childhood and adolescence (LDOIA), articles 5, 37.3, 99, 100.3 and 5, 102, and 103.
- That the sister of the reporting person, on 06/22/2022, informed the SSB of the possibility of providing support during the holiday period that the minors spent with the mother.

### **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.

As stated in the background, the complainant complained that an SSB worker (Ms. (...)), in the context of a telephone conversation she had with her sister (Ms. (...)) on 06/21/2022, he had provided him with information about his person included in ' *a procedure in relation to the custody of my children*', without having either his consent or judicial authorization.

As part of the investigations carried out by this Authority, the City Council has informed that in relation to the family there is a file open to the SSB (no. "(...)(...)" ), which opening came motivated by the referral carried out by the EAP and the School (...) "*due to a situation of emotional suffering for the minors (...) following a conflictual separation of the parents*"; that the referring technician for this file is Ms. (...) that the father has custody and custody of the minors, with the mother (the complainant here) being granted a visitation regime; that on 15/06/2022 the father of the minors informed the SSB that he had brought to the attention of Ms. month of May, when the minors were with their mother; that Ms. (...), following the information that the father of the minors provided him, he requested a telephone appointment with the SSB, which took effect on 06/21/2022; that the information provided by the SSB to the sister of the complainant in the context of this conversation "*had previously been provided by the children's father*"; that it was agreed to attend to this person by telephone with the aim of '*exploring the support that the extended family can offer in the event that the minors spend the summer at the mother's home in order to ensure that there are no risky situations during the regime of visits with the mother, such as the ones that happened during the week of May when they were in Sant Cugat*'; and, that the legal basis that legitimizes the actions described are Organic Law 8/2021 (articles 15 and 16); and the LDOIA (articles 5, 37.3, 99, 100.3 and 5, 102, and 103).

In accordance with what has been stated, the City Council admits that the SSB provided certain information regarding the complainant to her sister, but that it was done in the interest of the minors and given the conflicting situation that occurred when the the complainant's children were under her care in compliance with the visiting regime. It is therefore a matter of

elucidating whether this disclosure of information would be protected by data protection regulations.

Any processing of personal data must comply with the principle of legality (art. 5.1.a) RGPD). According to article 6.1 of the RGPD:

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

- a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;*
  - b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;*
  - c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;*
  - d) the treatment is necessary to protect the vital interests of the interested party or another natural person;*
  - 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;*
- (...)."*

For its part, it is necessary to take into account article 8 of the LOPDGDD, according to which the rule that enables the treatment based on the fulfillment of a legal obligation required of the person in charge (art. 6.1.c/ RGPD), or the treatment based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers (art. 6.1.e/ RGPD), must be a norm with the rank of law.

It is necessary to start from the fact that the SSB managed a file relating to the complainant's minor children. In these circumstances, Law 12/2007, of 11 October, on social services (LSS), foresees the action of the competent public administrations in situations of vulnerability, risk or social difficulty for children and adolescents (articles 7 and 11).

Article 15.1 of the LSS determines that the public system of social services is structured into basic social services and specialized social services. Basic social services are organized territorially and include, among others, "basic equipment" (EBAS) and non-residential socio-educational intervention services for children and adolescents (art. 16.2 LSS).

Regarding the basic areas of social services, article 34 of the LSS determines:

- "1. The basic areas of social services are the primary unit of social care for the purposes of the provision of basic social services.*
- 2. The basic area of social services is organized on a minimum population of twenty thousand inhabitants, taking the municipality as a basis.*
- 3. The basic area of social services must group municipalities with less than twenty thousand inhabitants. In this case, the management corresponds to the county or the associative body created especially for this purpose.*
- 4. Municipalities with more than twenty thousand inhabitants may have more than one basic area of social services, depending on the number of inhabitants and social needs."*

Therefore, municipalities with a population of more than twenty thousand inhabitants - as would be the case of Sant Cugat del Vallés - have powers in the field of social services based on what is provided by the LSS and the Social Services Portfolio (Decree 142/2010 , of October 11). According to article 5.1 of Decree 27/2003, of 21 January, on primary social care:

*"Primary care social services of the Basic Network of Social Services of Public Responsibility are provided in the Basic Area of Social Services. The ABSS is the elementary territorial unit for programming, provision and management of social services."*

Annex 1 of the same Decree 27/2003, provides the following, in relation to the basic primary social care services:

*"Definition: an organized and coordinated set of professional actions, carried out by the respective technical team, whose purpose is to promote the mechanisms to know, prevent and intervene in people and/or families. Objectives: guarantee and improve social well-being and promote the integration of people and/or families.*

*Features:*

*Detection and prevention of situations of social risk or exclusion.*

*Reception and analysis of demands relating to the social needs of the corresponding territorial area.*

*Information, assessment, guidance and advice.*

*Application of actions or interventions to support and monitor individuals and/or families.*

*Management and coordination of the services corresponding to the first level.*

*Processing and monitoring of programs and benefits that require your intervention.*

*Community social work.*

*Processing referral proposals to social services for specialized care or other care networks.*

*Recipients: all people and/or families who live or are in the respective territorial areas and especially those people and/or families with developmental and social integration difficulties or lack of personal autonomy".*

Given that the provision of social services includes various actions in the field of protection of minors, it is also necessary to refer to the LDOIA, specifically, in relation to the management of situations of risk for minors.

In the case at hand, article 37.3 of this rule deserves special observance, which provides that 'Public administrations must ensure the protection of children and adolescents in the case of misuse of parental, guardianship or of guardianship, and also so that parents, guardians or those who have guardianship have the appropriate opportunities and means of information and training to help them fulfill their responsibilities towards children and adolescents. (...) ' .

Article 74.1 of this same rule, referring to 'General Prevention' , determines that 'Public administrations must develop the necessary actions to prevent children and adolescents from situations that are harmful to their integral development or for their well-being (...)'



And, article 99 contemplates the intervention of the local administration in the event that a situation of risk for children or adolescents is detected, and in which the appropriate measures must be adopted *to act against this situation*, from conformity with the regulation established by this law, with the regulations of the Generalitat that develops it and with the legislation in the field of social services . Likewise, articles 102 and 103 apply, in which the risk situations are defined and the interventions to be carried out by Social Services are established. In this regard, article 103 regulates the duty to adopt measures to reduce or eliminate the risk situation *'seeking the collaboration of the parents or guardians or guardians.'*

On the basis of the aforementioned precepts, it is considered that, in order to fulfill the obligations attributed to the SSB, that is to say, the assessment of the situation and the family environment of minors, as well as proposing protection measures more appropriate, this service was legitimate to provide certain information from the minors' family nucleus (of which the complainant is a part) to the complainant's sister, in order to explore the minors' family environment and thus be able to establish the appropriate measures aimed at achieving their well-being.

All in all, it must be concluded that the communication of data by the SSB to the sister of the complainant here would be lawful based on Article 6.1.e) of the RGPD, in accordance with the general principle of the best interests of the minor and in compliance with the obligations entrusted to them.

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

Therefore, I resolve:

- 1.** Archive the previous information actions number IP 236/2022, relating to the Sant Cugat del Vallès Town Council.
- 2.** Notify this resolution to the Sant Cugat del Vallès City Council and 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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