

**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 also be identified the natural persons affected.**

## File identification

Archive resolution of the previous information no. IP 240/2022, referring to the municipal group (...) of the City Council of (...)

## Background

1. 06/29/2022 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against the municipal group (...), on the grounds of an alleged breach of the regulations on personal data protection .

The complainant, who holds the status of mayor of the City Council of (...), stated that the aforementioned municipal group had posted his CV on social networks, "to make fun of him" and added that the document it would have been published incompletely, generating confusion in relation to its content.

The now complainant provided various documentation relating to the events reported. Specifically, it provided screenshots of the publications made by the municipal group on its Facebook and Instagram profile, and which allude to the mayor's *curriculum vitae* . The reference publications attach images of certain fragments of the resume of the now complainant, accompanied by the following text: "*Read the presentation of Mr. Mayor of the Town Hall of (...)! You can read and reflect. Thanks (...) (...)for Catalonia we have Mr. (...) of mayor. Blah, blah, blah the people need more deeds and less words*".

2. The Authority opened a preliminary information phase (no. IP 240/2022), 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 the dates 07/01/2022 and 07/29/2022, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint . Thus, in the check carried out on 07/01/2022, it was found that on the website of the City Council of (...), following the route specified below, you can access the curriculum vitae of the current mayor of the municipality, now complainant.

Transparencia > 1. INSTITUCIONAL\_ INSTITUCIONAL ( 338 ) > 1.2 MAYOR AND COUNCIL CURRICULUMS\_ MAYOR AND COUNCIL CURRICULUMS ( 12 ) > 2019-2023 (...)

Also, in the check carried out on 07/19/2022, it was found that on the social networks of the municipal group (...) of Facebook and Instagram, two publications dated 06/21/2022 are displayed, respectively which contain the following text: "*Read the presentation of Mr. Mayor of the Town Hall of (...)! You can read and reflect. Thanks to the (...) (...)for Catalonia we have Mr. (...) of mayor. Blah, blah, blah the people need more deeds and less words*". The

publications are accompanied by an image that contains extracts from the current complainant's curriculum vitae, referring to her work experience and academic training, and which verbatim matches what appears published on the City Council's institutional website. Also, in this check, it was found that the only difference between the document published by the City Council and the publications on the social networks of the now denounced, refers to the omission of certain information related to work experience of the reporting person during the years 1995-2015. In the document published by the aforementioned municipal group, only the following is alluded to: " 1995-205 Cap de Post Venda (...) \* (...) " and the following information is therefore omitted, which which appears in the document published by the City Council :

*"(...)of the year in Spain in After Sales Service Quality - Group (...)for 8 years (1997; 1998; 2000; 2001; 2002; 2003; 2004; 2005)  
First (...) in Catalonia to obtain the environmental seal of the Generalitat de Catalunya. (...) of the Group (...) in 1996; 1998; 2000."*

### **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.

his *curriculum vitae* on the said group's profile on the Facebook and Instagram social networks , on 06/21/2022 , and argues that would have published *"in such a way that it does not look complete, causing confusion about my resume"*.

The Inspection Area of this Authority has verified that, on 07/01/2022 and 07/29/2022, the *curriculum vitae* of the now complainant is published in the section dedicated to transparency on the website of the City Council of (...), and that the Instagram and Facebook account of the municipal group (...) contains the publications mentioned in the third antecedent, dated 06/21/2022.

In this regard, it should be noted that article 4 of the RGPD defines the processing of personal data in the terms transcribed below: " *any operation or set of operations carried out on personal data or sets of personal data, either by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction* . Based on this definition, there is no doubt that the publication of a person's professional curriculum constitutes a processing of personal data.

The aforementioned publication on the City Council's website is an obligation imposed by article 57.1 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) which, in literal terms, it provides:

*"1. The Administration, the public institutions and the bodies included in article 3.1 must publicize the criteria according to which a person is designated to occupy a high position. To this end, they must make public the curriculum with the professional and technical merits of the appointed person.*

In turn, article 54 LTC specifies that, " *the persons determined in article 4.2 are considered to be high officials*", among which, in relation to the local administration, local representatives and the holders of superior and managerial bodies, in accordance with what is established by local regime legislation .

It follows from the above that the publication of the resume of the now complainant, due to his status as mayor of the municipality, on the City Council's Transparency Portal, as he is covered by the LTC, would be in accordance with provided for in article 6.1 sections c) and e) of the RGPD, given that there is a rule with the rank of law (the LTC) that provides for this , and that the treatment obeys a mission carried out in the public interest. In this respect, below, the aforementioned sections of article 6 of the RGPD are transcribed:

*"1. The treatment will only be lawful if at least one of the following conditions is met:  
c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;  
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;*

Facebook social networks , omitting certain information, can constitute a fact that contravenes the data protection regulations .

In this regard, it is necessary to cite article 6.1 f) of the RGPD, which provides for the lawfulness of those treatments of personal data based on " *the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that on these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data (...)*"

For the case at hand, it should be borne in mind that the fundamental right to freedom of information - enshrined in Article 20 of the Spanish Constitution - constitutes a guarantee for the formation of a free public opinion, which acquires special relevance when it refers to public positions and information that the LTC itself is obliged to publish.

However, the complaining party has stated that the municipal group published their incomplete curriculum vitae on their Facebook and Instagram profiles "to make fun of them".

In this regard, it should be borne in mind that, although Organic Law 1/1982, of May 5, on civil protection of the right to honor, personal and family privacy and one's image, develops the content of the fundamental right to honor, which constitutes a limit to the exercise of freedom of expression, one cannot ignore the doctrine of the Constitutional Court which, in sentence 136/2004, argues in literal terms the following:

*" In this regard, we have established that the people who hold a position of public authority, or those who put political relief, are certainly subject to criticism in a democratic State and, although they are not deprived of being holders of the right to honor , this is weakened, proportionally , and, as an external limit of freedom of*

*expression and information, as long as its holders are public persons, exercise public functions or are involved in matters of public importance, forced therefore to bear a certain risk that their The subjective rights of the personality are affected by opinions or information of general interest, because this is what political pluralism, tolerance and the spirit of openness require, without which no democratic society would exist".*

Therefore, in accordance with the doctrine established by the Constitutional Court and in accordance with article 6.1 f) of the RGPD, in line with article 20 EC, it cannot be considered that the reference publication constituted illegal treatment ·lawfulness of personal data by the reported municipal group.

On the other hand, with regard to the accuracy of the information published on the municipal group's social media profile, according to the content of the verification procedures carried out by this Authority, it has been found that the only difference between the document published in these and the content of the document published on the municipal website, refers to the omission of certain complementary information related to the work experience of the now complainant during the years 1995-2015.

In accordance with the above, in relation to the experience of the now complainant during the years 1995-2015, the information contained in the document published on the City Council's website is as follows:

*"1995-2015 Head of After Sales (...) \* (...)  
(...)of the year in Spain in After Sales Service Quality - Group (...)for 8 years (1997; 1998;  
2000; 2001; 2002; 2003; 2004; 2005)  
First (...) in Catalonia to obtain the environmental seal of the Generalitat de Catalunya. (...)  
of the Group (...) in 1996; 1998; 2000*

Instead, the document published by the municipal group, in relation to the experience of the complainant during the years 1995-2015, only contains the following information:

*"1995-20 15 Head of After Sales (...) \* (...)"*

Well, in accordance with the principle of accuracy regulated in article 5 d) of the RGPD, the personal data must be:

*d) accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed."*

In this regard, with the elements available to this Authority, as a result of the investigative actions carried out, the existence of any element that allows imputing a violation of the principle of accuracy to the reported municipal group is not appreciated. And this because, the content published on their social networks, reproduces information contained in the document published by the City Council, by imperative of the LTC. Likewise, it should also be noted that the complainant has not questioned the veracity of the published information, or the lack of updating thereof. So things are, although the mentioned publications on social networks do not include all the information published by the City Council of (...), this fact, by itself, does not contravene the mentioned principle, considering that it does not incorporate inaccuracies in its content.

In accordance with all the above, it is necessary to conclude that the treatment carried out by the reported municipal group cannot be considered illegal given that it would be protected by article 6.1 f) of the RGPD, and that it does not contravene the principle of accuracy of the data, enshrined in article 5 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, 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: "*c) When the proven facts do not constitute, in a manifest manner, an administrative infraction;*".

Therefore, I resolve:

1. Archive the previous information actions number IP 240/2022, relating to the municipal group (...) of the City Council of (...).
2. Notify the complainant of this resolution.
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 an appeal before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with the provisions of 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,