

File identification

Archive resolution of the previous information no. IP 294/2022, referring to Viladamat Town Council.

Background

1. On 08/23/2022, the Catalan Data Protection Authority received a letter of complaint against Viladamat City Council, on the grounds of an alleged breach of the regulations on personal data protection .

The complainant stated the following:

- a) That, on 03/17/2022, he submitted three requests for access to public information (henceforth, SAIP) to the reported entity in which he requested that certain information be provided.
- b) That the reported entity responded to its requests through three letters dated 05/16/2022, referenced with the file number (...), and decided not to accept the requests for processing with the following common motivation:

"(...) the request made is abusive and not justified in accordance with the purpose of the Transparency Law, given that the same request has been submitted to different municipalities (Celrà, Viladamat, Verges, Guaiamets, Monistrol de Montserrat, Olvan) and causes the collapse of the administrative services of the City Council due to the work overload it entails."

- c) That the wording of these resolutions made him think that the Viladamat City Council had exchanged information regarding his person (specifically, the fact of having presented several SAIPs) with the councils mentioned there. For this reason and with the purpose of clarifying it, on 07/10/2022 he submitted to the reported entity a SAIP in which he requested that the identification of the person responsible for the file be facilitated (...), as well as knowing which data relating to his person had been exchanged by Viladamat City Council with these councils, and by what means.
- d) That, on 27/07/2022, the reported entity responded to this last request and indicated that in no case had its data been exchanged with other municipalities, and that it had been deduced that he had presented several SAIPs in different town halls - all of them with the CUP government team - given the specificity of the requests he had made.

The complainant ended his letter stating that he had serious doubts that Viladamat City Council had guaranteed his right to data protection, and that he suspected that he had provided his data to the councils he cited in his resolutions of 05/16 /2022. The reporting person provided the following documentation relating to the events reported:

- SAIP dated 03/17/2022, in which the reporting person asked the reported entity for a copy of all the reports and requests it had issued and addressed to any other body, authority or municipal staff since 01/01/2007 , in relation to all requests for access to public information.
 - SAIP dated 03/17/2022, in which the reporting person asked the reported entity for a list of all applications for minor works licenses and works notices entered in the municipal register between 01 /09/2002 and 11/01/2022. Also, land classified as non-developable land, undefined developable land and unplanned developable land, with indication in each case of the following data: type of action requested, administrative file number, type of land, location of the work using geographical coordinates ETR589 of the Cartographic and Geological Institute of Catalonia, date of the request, processing status of the file and meaning of the resolution.
 - SAIP dated 03/17/2022, in which the reporting person asked the reported entity for a copy in digital format of the minutes of the sessions of the plenary commissions and of the monitoring commissions of all outsourced services , from year 2000 to the present.
 - Three letters from the reported entity, all dated 05/16/2022, which responded to the SAIP presented by the reporting person and which contain the verbatim transcribed in section *b* above.
 - SAIP, dated 10/07/2022, in which the complainant requested that the City Council facilitate the identification of the person responsible for the file (...) and to know which data relating to him the City Council de Viladamat had exchanged with certain councils and by what means.
 - Request for access, made before the City Council on 17/07/2022, in which the complainant exercised his right of access "in accordance with data protection regulations", to find out which data the City Council had regarding his person, where they had been obtained and to which entities he had been able to transfer them.
 - Letter from Viladamat City Council dated 07/27/2022, in response to the two previous requests. In summary, and for what is of interest here, it was stated that they consult with other municipalities on aspects related to the processing of files, as well as with external legal advisors; that under no circumstances are personal data communicated in inquiries made to other entities and that "(...) the specificity of their requests led to the presentation being easily identified in different town halls with the government team of the CUP, and this allowed the drafting of a joint response regarding its content."
- 2.** The Authority opened a preliminary information phase (no. IP 294/2022), 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.

3. In this information phase, on 02/11/2022 the reported entity was required to indicate the circumstances in which it became aware that the reporting person would have requested public information in other municipalities (Celrà, Verges, the Guiamets, Monistrol de Montserrat and Olvan). It was also requested that the channel through which the information regarding the person making the complaint arrived in relation to each of the mentioned municipalities and the specific data that would have been provided.
4. On 4/11/2022, the reported entity responded to the aforementioned request through a letter in which it set out, among other issues, the following:
 - That, on 07/27/2022, they responded to the person making the claim and informed her that "from the town hall we were aware of the requests made to other town halls due to the particular nature of the inquiries received (...)."
 - That "at no time did we send any personal data or copies of the requests made to other councils."
 - That "the information about the requests made to other councils arrived through different channels. On the one hand, the secretary is in permanent contact with other secretaries of neighboring councils for advice and consultation. Through these secretaries, he learned that requests with the same content had been submitted to other municipalities. (...) On the other hand, the mayoress of Viladamat is part of different groups of mayors and mayoresses of the CUP, who share doubts and problems regarding government actions. Through these groups he learned that other councils with a CUP government team had received requests similar or equal to those of Viladamat. In these communications, neither personal data nor a copy of the instances, easily identifiable due to the particularity and specificity of their content, were sent. Finally, (...) we consulted the legal services of the CUP, which also received inquiries from other councils. In these inquiries, no personal data or copies of the requests were sent either (...)."
5. Still in this information phase, on 7/11/2022 the town councils cited in the resolutions of 16/05/2022 of the Viladamat Town Council (Celrà, Verges, les Guiamets, Monistrol de Montserrat and Olvan) were requested so that they report on the eventual exchange of data of the person reporting as a petitioner for access to public information. Regarding this, the different municipalities responded as follows:
 - The Celrà City Council replied that "It is not known that the Celrà City Council has communicated to the Viladamat City Council the data of the complainant in relation to the public information request file."
 - The City Council of Verges responded that "(...) was aware that a request for access to a significant volume of information was being received by other councils, in terms similar to how it had been received in own Verges Town Hall. On March 16, 2022, the Verges City Council contacted the Viladamat City Council to find out if they had received a similar access request, without informing, in any case, of the applicant's identifying data (...)."

- The Town Council of Monistrol de Montserrat responded that "(...) from January 1, 2018 to November 14, 2022, there is no entry in the General Register of the Town Hall in the name of of Mr. (...) Therefore, there is no request for the right of access to public information submitted by the interested person within this period. Likewise, (...) there is no entry in the Register of written departures or notifications addressed to Viladamat Town Council."
- The Olvan City Council responded that "The gentleman (here the complainant) submitted three requests for access to public information to the Olvan City Council, which were granted (...) The City Council of "Olvan did not provide the personal data of the complainant to the Viladamat City Council in relation to the requests for access to public information that he presented to the City Council."
- Finally, the Guiamets City Council responded that "(...) has not provided, sent or received any communication or written letter to the Viladamat City Council."

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 antecedents, it is necessary to analyze the reported facts that are the subject of this archiving decision.

Specifically, the complainant complained that Viladamat City Council could have shared his personal data, specifically the content of the various SAIPs he had formulated, with other city councils, which would have received similar requests.

It is certified that on 03/17/2022 the complainant submitted three online requests addressed to the reported entity, in which he identified himself with first and last name, ID number and email and in which he only tendered various information on the basis of the right of access to public information. The proceedings also include the letters that the Viladamat City Council sent on 05/16/2022 to the complainant, in response to their requests; in these writings, it was indicated that his requests were abusive, that they caused a collapse of the City Council's administrative services and that he had submitted the same request for information in different municipalities (Celrà, Viladamat, Verges, Guiamets , Monistrol de Montserrat, Olvan). It was precisely this last mention that made the complainant think that Viladamat City Council had provided his data to these other councils, and this was the only element on which he based the communication that was the subject of his complaint. From the rest of the information and documentation provided by the reporting person, it cannot be inferred that the reported entity had shared its personal data with other councils.

On the other hand, in the response to the request for information made by this Authority, the reported entity denied that it had provided any information about the reporting person to other municipalities, and gave a plausible explanation on how it deduced that the reporting person would have presented several SAIPs in other municipalities, without the need to share their personal data (4th precedent).

Finally, the responses to the requirements made by this Authority in the prior information phase, which it addressed to the town councils mentioned in the preceding 5th, do not allow us to deduce that data from the reporting person, in relation to any requests for access to public information that could have been submitted to them. On the contrary, these other councils have denied that the Viladamat Council provided them with any data identifying the complainant.

In view of all the above, the principle of presumption of innocence is applicable, as there is no evidence to prove the communication of the reported data. In this sense, article 53.2. *b* of Law 39/2015, of October 2, 2015 (LPAC), recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise."

3. according to with all that is set forth in the 2nd legal basis , and given that in relation with the facts that have addressed in this resolution during the performances carried out in the framework of the information no prior _ accredited none act that can be constitutive of any of the infractions provided for in the legislation on data protection , it is necessary to agree the archiving .

Article 89 of the LPAC, in accordance with articles 10.2 and 20.1 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, provides that proceedings must be archived when in the instruction of the procedure the following is highlighted: "b) When the facts are not proven".

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 294/2022, relating to the Viladamat Town Council, given that during the actions carried out within the framework of the prior information it has not been established that any act has taken place that could be constitutive of any of the offenses provided for in the legislation on data protection.
2. Notify this resolution to the Viladamat City Council and the complainant.
3. Order that the resolution be published 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 articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the interested parties may file an

appeal before the director of the Catalan Data Protection Authority, within one month from the day after 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 of Barcelona, within two months from the day after its notification, in accordance with Law 29/1998, of July 13 , regulator of administrative contentious jurisdiction.

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

The director

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