

## File identification

Archive resolution of the previous information no. IP 319/2022, referring to Barcelona City Council – Eixample District Technical Service.

## Background

1. On 09/16/2022, the Catalan Data Protection Authority received a letter from a person for which he made a complaint against the Barcelona City Council – Technical Service of the Eixample District (hereinafter, the City Council), due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant ((...)) states the following:

1.1. That the community of owners he represents, of the building on Carrer (...) in Barcelona, filed a complaint with the City Council against the neighbor of the flat (...) of the building ((...)) 'for having divided his flat into two homes without the corresponding permit or having presented any construction project'.

1.2. That, as a result of this complaint, the Barcelona City Council carried out certain administrative actions against which the owner of the said flat presented various administrative appeals.

1.3. That the (...) appeared as a witness before the Administrative Contentious Court no. (...) of Barcelona, in the framework of one of the procedures initiated as a result of one of the appeals filed by Mr. (...) against the Barcelona City Council, challenging an order to demolish the works that it had carried out on its flat (ordinary procedure no. (...)), and that in the 'act of the oral hearing, the appellant's lawyer showed him 'a handwritten record sheet, filled out by me, which I handed over to the OAC and which appears in the second file (...)', sheet in the which contained their personal data.

1.4. That, by means of an instance with registration number (...), he complained to the City Council about the fact that the said registration sheet had been provided to a third party, but that he did not obtain any written response, and that telephone they told him *that they had no evidence that they had given it to Mr. (...)*' and that 'the court could have asked for it'.

In relation to the facts related above, the complainant complains, on the one hand, that the City Council has provided a third party with the registration sheet that includes his personal data and, on the other hand, the display of this document by the lawyer of Mr. (...), in the oral hearing of the procedure referred to above.

The complainant provided various documentation together with his complaint, of which, for what is of interest here, it is necessary to highlight the controversial instance in which the complainant here, on behalf of the community of residents, requested to consult files nº (...). *To know how the files are*. This document contains the following personal data of the complainant: name, surname, ID, address, telephone and email. It also provides the certificate of summons from the Administrative Disputes Court no. (...) of Barcelona, in which Mr. (...), and as his lawyer, Mr. (...).

2. The Authority opened a preliminary information phase (no. IP 319/2022), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure for application 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 6/10/2022 the City Council was required to confirm whether the controversial document, called '*registration sheet*', was provided to Mr. (...) or to some other person or entity and that, if so, report on the circumstances in which the delivery was carried out and the legal basis that legitimized it. Likewise, he was asked to indicate whether from the Administrative Contentious Court no. (...) of Barcelona, in relation to ordinary procedure no. (...), he had been requested to provide said document.

4. On this same date, 6/10/2022, this Authority transferred the complaint and attached documentation to the Spanish Data Protection Agency, solely in relation to the reported conduct carried out by the lawyer of Mr. (...) in the oral hearing of the contentious administrative appeal no. (...), processed by the Administrative Contentious Court no. (...) of Barcelona, and to the extent that these facts are not included within the assumptions over which this Authority has jurisdiction.

5. On 19/10/2022, the City Council responded to the request through a letter in which it stated the following:

- That, after consulting the District's databases and the record of file views, no third party had been given a view or a copy of the '*registration sheet*' document.
- And that, '*From the Administrative Contentious Court no. (...) of Barcelona (ordinary procedure (...)) this District was required, in accordance with article 48 of Law 29/1998, of (...) of July, regulating the administrative contentious jurisdiction in relation to article 70.1 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, to send an indexed and folio copy of the administrative file (...).*
- That the referral of the file to the court was duly carried out by the District on 9/10/2020.

Together with its response, the City Council provided the indexed and folio copy of said file transferred to the court. It should be noted that folio 60 of the file contains the '*registration sheet*' (document indicated by the complainant in her letter of complaint - precedent 1st *in fine* - ).

## **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 explained that she was the president of the community of owners of the building on Carrer (...) in Barcelona and that on behalf of this she filed a complaint with the City Council against the neighbor of the flat (...) (Mr. (...)) 'for having divided his flat with two homes without the corresponding permit or having presented any works project'. He exposes the person making the complaint who subsequently presented an instance to the City Council, to find out the state in which the administrative files relating to the works carried out by the neighbor of the flat were (...). The complainant complained that the City Council had given this request, which contained his personal data, to a third party (allegedly, the neighbor of the flat (...) and his lawyer), and proof of this was that in the oral hearing of the judicial appeal filed by Mr. (...) in contesting the resolution ordering the demolition of the works denounced by the Community of Owners, in which she was called as a witness, her lawyer exhibited the said document.

In the framework of the previous information, the City Council has informed, first, that it did not deliver the controversial document to Mr. (...) nor to its legal representation; and, secondly, that following a request from Court no. (...) of Barcelona, in which a procedure was substantiated in which the plaintiff was Mr. (...), sent to said judicial body a copy of the administrative file in which the instance under discussion was included, something which the City Council verifies documentally (precedent 5th).

Article 48 of Law 29/1998, on administrative contentious jurisdiction (hereinafter, LJCA), the following:

" 1. *The court clerk, upon agreeing to what is provided for in paragraph 1 of the previous article, or through a diligence if publication is not necessary, must require the Administration to send him the administrative file, and he must order him to carry out the summonses within the time limit provided for in article 49. The file must be claimed to the body author of the contested provision or act or to the one to which the inactivity or de facto is imputed. You must always make a certified copy of the files processed in previous grades or phases, before returning them to their office of origin.*

(...)

3. *The file must be forwarded within the non-extendable period of twenty days, from when the judicial communication is entered in the general register of the requested body. The entry must be brought to the attention of the jurisdictional body.*

4. *The file, original or copied, must be sent complete, foliate and, where appropriate, authenticated, together with an index, also authenticated, of the documents it contains. The Administration must always keep the original or a certified copy of the files it sends. If the file is claimed by several courts or tribunals, the Administration must send them authenticated copies of the original or the copy it keeps.*

(...)

7. *Once the deadline for sending the file has passed without it being received in full, the claim must be reiterated and, if it is not sent within the ten days counted as provided in section 3, then that his responsibility is established, with the prior warning of the court clerk personally notified for the formulation of allegations, the court or tribunal must impose a coercive fine of three*

*hundred to twelve hundred euros on the responsible authority or employee.  
The fine must be repeated every twenty days, until what has been required is fulfilled.*

*If the reason for the impossibility of individual determination of the responsible authority or employee is given, the Administration is responsible for paying the fine without prejudice to the person responsible.*

*8. (...)."*

In short, the action of the City Council, with the delivery to the Court of the copy of the administrative file - which included the document with the data of the complainant here - in order to comply with a previous requirement of the judicial body, does not entail a violation of the data protection regulations by being enabled in the fulfillment of a legal obligation (art. 6.1.c of the RGPD)

Having said that, the legal representation of Mr. (...) - as a plaintiff in the judicial process - had access to a copy of the administrative file - which included the disputed instance - in accordance with article 52.1 LJCA (" 1. *Receipt the administrative file in the court or tribunal and verified, and if applicable completed, the summonses on time, the court clerk must agree that it be delivered to the appellant so that the claim can be deducted within twenty days (...)*"). Ultimately, that Mr. (...) and his legal representative, were able to have knowledge of the controversial document, not because the City Council had provided it directly to them in an unjustified way, but because the LJCA foresees the transfer of the file to the appellant, and this contained said document related to one of the actions carried out by the Community of Owners regarding the works that are the subject of the judicial appeal.

Finally, it cannot be omitted to add that this access to personal data is not without protection. In this sense, it is necessary to highlight article 236.3 quinquies of Organic Law 6/1981, on the judiciary, which provides:

*'3. The personal data that the parties know through the process must be treated by them in accordance with the general data protection regulations. This obligation also falls on the professionals who represent and assist the parties, as well as anyone else who intervenes in the procedure .*

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. File the previous information actions number IP 319/2022, 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](http://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 (...) of July, regulating the administrative contentious jurisdiction.

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

The director,