

## File identification

Archive resolution of the previous information no. IP 28/2023, referring to the Town Council of Montcada i Reixac.

## Background

1. On 16/01/2023, the Catalan Data Protection Authority received a letter of complaint against the Montcada i Reixac City Council (henceforth, the City Council), on the grounds of an alleged non-compliance with the regulations on personal data protection .

In particular, the complainant stated that on 14/11/2022 he received a certified letter from the Post Office, from the City Council, inside which he found the result of a gynecological examination, which was not inside the closed envelope of the gynecology institute where a review was carried out that was offered annually by the City Council. The person making the complaint showed that this way of acting would have meant that City Council personnel improperly accessed data relating to their health.

In order to prove these facts, the complainant provided two photographs of the front and back of an envelope with the City Council's letterhead, open. In one of the images it can be seen that a document with the letterhead of the gynecology institute with the text " gynecological examination " protrudes from the inside of the envelope i the name of the reporting person.

From the analysis of the facts, it is derived that the reporting person has the status of interested party, in accordance with article 4 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC).

2. The Authority opened a preliminary information phase (no. IP 28-2023), 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 the LPAC, to determine whether the facts were likely to motivate the initiation of a sanctioning procedure.
3. In this information phase, on 03/27/2023 the reported entity was required to confirm whether the shipment was made in the manner described by the complainant or, otherwise, to answer the following questions :
  - Set out the reasons why the results of the medical examination in question were not sent to the complainant in a sealed envelope from the medical center that issued them.
  - In the event that a person from the City Council had opened the original envelope from the medical center that would incorporate the results of the medical examination of the person making the complaint, identify that person and indicate their relationship with the City Council, as well as the reasons by which the content would have been extracted and inserted into another corporate envelope, in order to send it to the affected person.

- Indiqui is the people who would have had access to the content of the complainant's medical documentation.
  - Point out the actions taken in response to this incident, and provide documentary evidence.
4. On 31/03/2023, the City Council responded to the aforementioned request through a letter in which it attached the report that the Human Resources (HR) department had drawn up, following the request of this Authority. This report details the usual procedure that this department follows when giving its employees the results of the examinations they undergo voluntarily at the gynecology institute. As stated, this procedure would be known to all staff and it had also been followed in the case of the complainant, who at that time was in a situation of temporary incapacity. This report, in summary, concludes the following:
- The City Council receives from the gynecology institute the results of the voluntary examinations to which its employees have undergone, in a sealed envelope with the name of the employees (envelope 1).
  - The City Council gives envelope 1 to each of the people who are at their place of work.
  - To people in a situation of temporary incapacity or who no longer work at the City Council, envelope 1 is sent to them, inside another envelope with the City Council heading, also closed, by certified letter through the Postal service.
  - All HR staff are well aware of the processing of personal data and know how to act, to ensure at all times the privacy and confidentiality of the content of the letters with the results of the reviews. No person from the City Council has access to said tests at any time during the process.
  - The procedure explained is always followed and there is no evidence that any incident has ever occurred or that it has been proceeded in any other way, not even in the case of the person making the complaint.

The reported entity attached to the letter the aforementioned report and a copy of proof of delivery by Correos of the certified letter CX6DFH020 (...), addressed to the reporting person.

### **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 person concerned complained that, on 14/11/2022, he received a certified mail letter from the City Council at his address, inside which he found the result of a gynecological examination that it was not in the corresponding closed envelope of the gynecology institute where a review was carried out that was offered annually by the City Council. The person making the complaint showed that this way of acting would have meant that City Council personnel improperly accessed their health data. In order to substantiate his claims, together with the complaint, he provided two photographs, one of which, the one showing the back of the envelope, allowed us to appreciate a fragment of a document with the heading of a medical center with the text " review ginecológica ", addressed to the complainant, which came directly from the City Council's corporate envelope, meaning that the medical results would not be in a second sealed envelope from the gynecology institute.

In the framework of the investigations carried out by this Authority, the City Council has stated that, in order to deliver the results of the medical tests to the complainant - who at that time was in a situation of temporary disability -, the procedure established in these cases (4th precedent). In other words, inside the envelope from the City Council that was sent by post was another sealed envelope from the gynecology institute (envelope 1), which contained the results of the review; and affirms that at no point in the process does the City Council staff access these results. Likewise, he denied having knowledge of any incident related to the sending of the evidence that was given to the complainant.

Apart from the statements of the person making the complaint, there is no other element that corroborates that the City Council sent the person making the complaint the said medical report outside the corresponding sealed envelope from the gynecology institute. In addition, it should be emphasized that the complaint was submitted to this Authority two months after the alleged events, which would leave the complainant's testimony with probative value.

Consequently, the principle of presumption of innocence is applicable here, since there is no sufficient evidence to prove that the reported entity committed an infringement. In this sense, article 53.2. *b* of Law 39/2015, of October 1, recognizes the right "To the presumption of non-existence of administrative responsibility until proven otherwise."

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 on 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 charge sheet will be drawn up and the case file and the archive of the actions will be ordered to be dismissed when the proceedings and the tests carried out prove the absence of infringement or responsibility. This resolution will be notified to the interested parties." And article 20.1 of the same Decree determines that the suspension is appropriate: "b) When there are no rational indications that the facts that have been the cause of the initiation of the procedure have occurred."

**resolution**

Therefore, I resolve:

1. Archive the actions of prior information number IP 28/2023 , relating to the Town Council of Montcada and Reixac.
2. Notify this resolution to the Town Council of Montcada i Reixac and the person concerned.
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 February 20, which approves the Statute of the Catalan Data Protection Agency, with optional, the interested parties can 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 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, regulating the administrative contentious jurisdiction.

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

The director