

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 case of revealing the name of the affected entity, the physical persons affected could also be identified

File identification

Archive resolution of the previous information no. IP 304/2021 and IP 53/2023, referring to the General Directorate of the Police, of the Department of the Interior.

Background

1. On 07/29/2021, the Catalan Data Protection Authority received a letter in which a person filed a complaint against the General Directorate of Police (hereinafter, DGP) of the Department of the Interior of the Administration of the Generalitat, due to an alleged breach of the regulations on the protection of personal data.

Specifically, the complainant, who is a sergeant in the Generalitat-Mossos d'Esquadra Police (hereafter, MMEE), stated that on (...)/(...)/2020 he presented an instance before the City Council (...), formulated as an individual and addressed to its mayor, through which he complained about the irregular occupation of a property located in (...), just below the floor where lived the complainant, as well as about various irregular activities of the people who had occupied it (hereinafter, occupiers) and about the risk situation in which, in his opinion, the minor daughter of one of these people was occupying

On the other hand, it stated that on (...)/(...)/2020 the owner of the property where the complainant lived (hereafter, neighbor owner) had sent an email to the City Council (...), which was addressed to its mayor, and in a copy also to a third person (partner or cohabitant of the person making the complaint), in which he came to complain about the same facts arising from the occupation of the property.

With regard to the reasons for the complaint against the DGP, the complainant stated the following:

- 1.1. Firstly, he complained about the fact that the inspector of the MMEE and head of the Basic Police Area (ABP) of (...), of the Police Region (...) (henceforth, chief inspector of the ABP) had accessed the instance of (...)/(...)/2020 and the email of (...)/(...)/2020 mentioned, in an irregular manner, since both the request and the mail had been sent privately to the mayor of the City Council (...), and therefore, access to this private documentation had taken place without the consent of the three people affected (the person making the complaint, their partner or cohabitant, and the neighbor who owns the property they leased), nor the concurrence of any other legal basis.

As relevant antecedents of this reported access, it is appropriate to point out here that the said MMEE inspector accessed on 09/03/2020 the aforementioned instance and email, when he became aware that the reporting person had sent as a member of the body of MMEE an office dated 01/09/2020 to the General Directorate of Child Care and Adolescence of the Department of Social Rights (hereinafter, DGAIA), in which he made several statements referring to the behavior of those employed persons, and in the case of one of them with a police record, reasons for which he considered that the minor and daughter of one of these persons could be in a situation of helplessness and/or risk. As a result of learning about this office of the complainant, the inspector of the MMEE, he had contacted the head of the Local Police of the City

Council (...), who he would have asked to send him all the related documents with the house occupied. And as a result of this request, the City Council (...) on an undetermined date would have sent the chief inspector of the ABP an email with the aforementioned instance and email.

- 1.2. Second, the complainant complained that this MMEE inspector had used the said instance and e-mail to support a request to open a classified information against the sergeant herein complainant, made in a police report dated 03/09/2020 that he sent to his head of the Police Region (...) (hereinafter, RP(...)), which, in his opinion, violated, among others, the principle of purpose
- 1.3. Thirdly, he complained that both the said instance and the e-mail had been incorporated into a classified information (IR) that was eventually opened, as well as later into the disciplinary file arising from that IR, which DGP opened against the reporting sergeant here, which in his opinion, also violated, among others, the principle of finality.
- 1.4. As the fourth and final reason for the complaint, it stated that the inspector - or another person on his behalf - had investigated the criminal records of the person to whom the aforementioned email had been sent as a copy (partner or cohabitant of the reporting person), without having any legal basis to protect it.

The complainant did not provide the documentation he mentioned in his written complaint.

2. The Authority opened the preliminary information phase no. IP 304/2021, in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.2 of the Law 39/2015, of October 1, of the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were likely to motivate the initiation of a sanctioning procedure.

On 03/08/2021, and at the request of the Authority, the complainant amended his complaint and provided various documentation, including copies of the following documents:

- 2.1. The request that the complainant presented on 01/05/2020 before the City Council (...), addressed to its mayor, the referral of which the complainant complains.
- 2.2. The record dated (...)/(...)/2021 corresponding to the statement made by the sergeant here reporting in disciplinary procedure no. (...)/(...)-ED, initiated by the DGP against the complainant. In the first sheet, corresponding to the information on the rights of the accused person, the reasons justifying the initiation of the disciplinary file are indicated, as follows:

"You have been cited in relation to the following facts:

Possible disciplinary responsibility in the conduct of the sergeant with TIP (...) in relation to the preparation of the office with numbering (...), addressed to the General Directorate of Child Care and Adolescence (DGAIA)) and also by not having unjustifiably appeared at the summons issued by the Internal Affairs Division, despite having been summoned by a superior of the Internal Affairs Division to hear him testify under reserved information number (. . .) /20-IR."

- 2.3. The letter that the reporting sergeant sent on 09/01/2020 to the DGAIA, with the signature of the shift leader (...) of (...) (...), in which indicates as subject (affair): *"protection of minors. Minor in a situation of helplessness and/or risk"*, and in which the following is indicated:

"This letter is to bring to your attention, that this instruction has become aware that in the address located at street (...) number (...) in the town (...), there is a minor who could find -is in a situation of helplessness and/or risk, for the following reasons (...)"

- 2.4. The police report, dated 03/09/2020, issued by the chief inspector of the ABP, which was entitled *"Request for reserved information in relation to alleged disciplinary offenses that may have been committed by the sergeant with TIP (...)"*, in allusion to the reporting person, with the following content, in which it is expressly indicated that the report is accompanied by the aforementioned instance and email (the underlining is ours):

"The sergeant with TIP (...), (...) (name and surname of the complainant) has as destination (...) (...).

As of 03.09.2020 we have become aware that on 01.09.2020 they instructed proceedings with number (...) from (...) addressed to the DGAIA informing that there is a minor with an address in (...) who could be in a situation of helplessness and/or risk, and in this office a series of reasons are set forth. In the office using NIP, it is not possible to check who signs it because he does not put the TIP, but he does put Head of shift (...) (A copy of the Office is attached). I for the reasons set out below we consider that it must be the sergeant with TIP (...).

On the part of the ABP (...) we were aware that the home referred to in the letter addressed to the DGAIA had been occupied since 04/18/2020 and the identity of the two adults who had usurped the housing

Arrangements are made with PL and Social Services and we are informed that:

From the first day when they are aware of the presence of these people a the property mentioned Social Services is following up. That the address has been visited the social worker and that everything is in order and that the minor does not show any signs of risk, he even attended a camp this summer. I that last week mother goes go to a visit with Social Services, in which he reported that he no longer lived with the person who usurped the home.

On behalf of the PL they indicate that during the month of May they had information from the usurpation due to an instance presented by a neighbor and resident of the street (...), which apparently forms part of the same property as the usurped Property, who carried out a series of security checks in the area without any notable incidents.

The instance and any other complaint in relation to the house is requested from the PL. The instance is presented on 01.05.2020 in a private capacity by the sergeant with TIP (...)

(...) (name and surname of the person reporting) with address at street (...) and is addressed to the mayor of (...). In this instance, he makes an extensive presentation explaining the problems of different events as a result of the occupation of the street (...) demanding a solution, and also indicates that if no solution is put in place, they do not rule out the creation of a neighborhood platform, holding rallies, and protest actions, in order to evict people who do not respect the rights of the neighborhood (A copy of the instance is attached).

On 08.06.2020 an email was received in the mailbox of the mayor of (...) of Mr. (...) owner of the house in which the sergeant lives with TIP (...) (TIP of the reporting person) entitled "Anxiety for squatters" and where he is asking for help. Among other issues, he reports that his tenants have decided to leave to live elsewhere because of the insecurity and fear the neighborhood causes them. The mail is addressed to the mayor with a copy to "(...)" (here, C). Once the identity has been verified, it could correspond to (...) (name and surname of C), with ID (...) and address in the same house as the Sergeant with TIP (...)
(A copy of the complaint email is attached).

In short, a DGAIA office is made on behalf of the PGME from a different instruction to the ABP of (...), whose information has not been checked with us nor have we been informed of it, with a biased and partisan information for a particular interest and, which can create serious harm to the minor who wants to be protected .

On the other hand, if it is true that since the end of the state of alarm, the criminal acts in the municipality of (...) have increased, especially facts related to occupations, RFD and RVI, from the PGME together with the PL different devices have been made that have given results, and publicity has been given. From social networks, alarmism is continuously being created and pressure is being put on the town hall and, according to the information we receive, it could be that the sergeant himself was behind it in one way or another, as he indicates in the same Instance of 01.05.2020, something that does not make our work easier.

For all of the above, the opening of reserved information is requested."

3. Subsequently, on 14/09/2021, the complainant submitted a second letter of complaint, complementary to the first, in which he extended his complaint to the actions of the City Council (...), due to having handed over to the chief inspector of the ABP a copy of the aforementioned instance and email, without the consent of the three affected persons (the person making the complaint, his partner and the owner of the property), nor the concurrence of any other legal basis.

In this information phase, on 06/16/2022 the Authority required the City Council of (...) to report on several issues relating to the events reported, as it did on 07/01/2022.

4.- On 06/16/2022, the Authority required the DGP to report, in summary, on the circumstances in which the inspector had accessed the disputed instance and mail and the reasons for the access, as well as the legal basis that in his opinion protected this treatment; he was also required to report on the reasons that motivated both the opening of a reserved information against the person reporting here, as well as the subsequent disciplinary file and the legal basis that in his opinion would justify the use of these documents in said actions ; and lastly, he was required to report on several issues related to the fact reported relative to the investigation of criminal records of the recipient of the controversial mail (partner or cohabitant of the reporting person).

5.- On 18/07/2022 he received the DGP's response letter, in which the following was indicated:

"1. In relation to the facts mentioned, the complainant was the subject of a reserved investigation procedure that gave rise to a disciplinary file as a result of which different investigative procedures were carried out, duly carried out in the police report (police proceedings (...)/2021 TR DAI AD) delivered to the Dean of Courts of (...) and finally distributed to the Court of Inquiry number (...) of (...) which is investigating the criminal procedure Preliminary Diligences (...)/2021 in which the reporting person is being investigated for a crime of revealing secrets.

2. Likewise, in relation to these same events, the person reporting, (...) filed a complaint against the inspector of the Police Station of (...) to whom your letter refers and against a sergeant of the Division of Internal Affairs, as defendants, as well as against the Directorate General of Police as subsidiary civil liability. Therefore, we inform you that all the data and documentation you request are included in the above-mentioned judicial procedures subjected to processing for jurisdictional purposes."

6.- In this information phase, on 29/01/2023 the Authority received a new letter of complaint from the person reporting against the DGP, in relation to the action of the person instructing the procedure disciplinary no. (...)/21-ED that the DGP initiated against the complainant, following the content of the report dated 03/09/2020 issued by the chief inspector of the ABP.

With regard to the reason for this new complaint, the person making the complaint complained about the fact that, as part of the disciplinary procedure indicated, the instructing person agreed to the practice of a test consisting of carrying out an IT audit of the accesses carried out by the reporting person on the data of the employed persons who appeared in the police databases.

The person making the complaint stated that this evidence did not correspond to the reason that the investigating person had used in his request office to substantiate the request for said evidence to the competent administrative unit, and in which he had pointed out that the evidence had for the purpose of verifying whether the statements that the complainant had made in the office that he addressed to the DGAIA were true, regarding the existence of a police record of one of the persons employed, and their participation in the purchase and sale of narcotic substances. The complainant stated that the requested access log was not aimed at verifying said statements.

The complainant accompanied the complaint with numerous documents, which showed that, based on the report of the chief inspector of the ABP by which he requested the opening of reserved information in relation to the office dated 01/09/2020 that the reporting sergeant addressed to the DGAIA, the DGP carried out the following procedures or actions:

6.1. Reserved information no. (...) /20-IR opened by the director general of the Police against the reporting sergeant following the facts related by the chief inspector of the ABP in his report dated 09/03/2020.

6.2. Disciplinary procedure no. (...) /21-ED initiated by the DGP against the reporting person following the result of the mentioned reserved information, in order, in essence and for what is of interest here, to consider that the reporting sergeant had acted with an abuse of attributions to the detriment of a citizen

6.3. Disciplinary procedure no. (...) /21-ED initiated by the DGP against the reporting person following the result of the computer audit requested by the person instructing the disciplinary procedure no. (...) /21-ED, referring to the complainant's access to the data of the employed persons listed in the police database. The DGP would have suspended this disciplinary procedure, given the processing of the criminal procedure mentioned in the following section.

6.4. Police proceedings no. (...) /2021 TR DAI AD, issued by the person instructing the disciplinary procedure no. (...) /21-ED, following the result of the aforementioned IT audit. The Court of Inquiry number (...) of (...) would be investigating the criminal procedure Preliminary Proceedings no. (...) /2021, in which the reporting person would be being investigated for a crime of revealing secrets.

Apart from these procedures or actions of the DGP, the following actions are also recorded:

6.5. Criminal complaint filed by the reporting sergeant against the chief inspector of the ABP, and against the person instructing the disciplinary procedure no. (...) /21-ED, which would be processed in a Court of Inquiry of (...).

7.- The present file resolution is issued in relation to the complaints made against the DGP, which gave rise to the opening of preliminary information no. IP 304/2021 and no. IP 53/2023.

The complaint made against the City Council of (...), also analyzed in the framework of the previous information no. IP 304/2021, has given rise to the agreement to initiate a sanctioning procedure against this City Council for the infringement consisting in the violation of the principle of legality, for having sent the chief inspector of the ABP of (...) a copy of the aforementioned instance and email, without apparently any legal basis to the contrary.

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.

In accordance with article 57 of Law 39/2015, of October 1, of the common administrative procedure of public administrations, of analogous application, it is agreed to accumulate IP 53/2023 to IP 304/ 2021 and solve jointly the complaints against the DGP of which they have cause, given the link or the intimate connection existing between both complaints, both with regard to the facts reported and the entity reported, and the body competent to resolve - them, with the exception, as indicated in the 7th precedent, of the reported facts referring to the actions of the City Council of (...).

2. Based on the background story, it is necessary to analyze the reported events that are the subject of this archive resolution.

2.1. About the facts reported linked to IP 304/2021.

In relation to the reasons for the complaint mentioned in the 1st precedent, it should be noted that from the statements made by the person making the complaint and from the documentation collected in the framework of the two previous reports (IP 304/2021 and IP 53/2023), it cannot be inferred that the conduct of the chief inspector of the ABP consisted, in essence, of requesting the local police chief of the City Council to facilitate the aforementioned request and email, and its subsequent referral to his hierarchical superior to request the opening of reserved information against the reporting sergeant, may constitute an infringement provided for in the data protection regulations.

Certainly, the City Council of (...) attended to the inspector's request and sent him the said request and mail in terms that, at the outset, do not seem to be able to defend themselves on any legal basis, reason by which this Authority has instituted disciplinary proceedings against said City Council for an infraction consisting of an eventual infraction provided for in article 83.5.a) of the RGPD, which typifies as such the violation of: "a) the *basic principles for the treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9*", among which the principle of legality appears .

However, the fact that the inspector asked the local police to send documentation is not imputable, given that this conduct in itself does not properly constitute data processing and, therefore, does not fit into any type violator of data protection regulations. The eventual unlawful processing of personal data focuses in any case on the subsequent processing carried out by the City Council, providing the requested documentation, this matter which, as has been said, will be the subject of assessment in the procedure penalty that has been initiated at the City Council.

However, with regard to the assessment of the submission of this documentation which was subsequently carried out by the MMEE inspector to his hierarchical superior, it is necessary to take into account the functions entrusted to said inspector as head of a basic area police officer

Specifically, on the one hand, it should be borne in mind that article 60 of Decree 415/2011, of December 13, on the structure of the police function of the General Directorate of the Police, establishes that it corresponds to the basic areas police, among others, the following functions:

- "a) Carry out the prevention and prosecution of those antisocial, annoying and uncivil behaviors and activities that may result in criminal or administrative action.
(...)*
- c) Ensure protection to people and institutions that need it.*
- e) Avoid situations of risk to people or property, neutralize them and, where appropriate, determine whether the conduct is subject to criminal or administrative liability.*
- f) Seek a perception of security in the citizenry and guarantee the exercise of their rights and freedoms.*
- g) Provide care services to citizens, relations with the community, care for victims, care for people who suffer gender-based violence and care for people in custody.*
- h) Investigate illegal acts in the field of ordinary and local crime that are established."*

In view of these transcribed functions that the ABP inspector had to fulfill in his police area, and given that the inspector was head of the ABP of (...), which includes , among others, the municipality of (...) in which the building where the occupied persons resided and the minor to whom the reporting sergeant referred to - in the office that send to the DGAIA on 09/01/2020 and in the request addressed to the mayor of (...) on (...)/(...)/2020-, as the neighboring owner - in the mail he addressed to the said mayor on (...)/(...)/2020-, it seems reasonable that, once the inspector became aware of the office dated 09/01/2020 that the reporting sergeant sent to the DGAIA on facts with police relevance in his area of competence, to carry out actions to verify them.

On the other hand, it must also be taken into account that among the functions entrusted to this command by reason of its executive position, it is to direct and supervise the police units and activity corresponding to its management area (art. 19.1. b Law 10/1994, of 11 July, on the police of the Generalitat - Mossos d'Esquadra).

Within the function of supervising the police activity of the inspector of the MMEE, it is necessary to understand including the obligation of said command to bring to the attention of the competent administrative body those behaviors of the members of the police force which in their opinion may be constitutive of an infringement, and that affect their area of competence.

Within the framework of this obligation to communicate any statutory violations detected in their area of competence, the report dated 09/03/2020 that the inspector sent to the head of the RP would be framed(...) - police region entrusted with the direction and command of the ABP of (...), ex art. 59.1.b Decree 415/2011-, accompanied by the aforementioned instance and mail. In this report, the inspector indicated the following as the conclusion of what he stated:

"In short, a DGAIA office is made on behalf of the PGME from a different instruction to the ABP of (...), whose information has not been checked with us nor have we been informed of it, with biased and partisan information for a particular interest and that can create serious harm to the minor who wants to be protected."

In this context, the said inspector accompanied his report of the aforementioned instance and mail in order to substantiate both his considerations on the facts reported by the reporting

sergeant here, as well as his assessment of the appropriateness of initiating an information reserved against the reporting sergeant.

The same can be noted with respect to the identifying information that the inspector recorded in his report on the recipient of the disputed mail. It is worth saying, in any case, that the Authority is not aware that the inspector has accessed - as the person making the complaint claims - the information regarding any criminal records of said person, but only the identifying data listed in the report dated 03/09/2020, consisting of your first and last name, no. of ID and private address.

So things are, the chief inspector of the ABP, in the exercise of the public functions of command of said police force, brought to the attention of his superior (the head of the RP(...)) some facts related in his report dated 09/03/2020, referring to the behavior of the reporting sergeant, which in his opinion could constitute violations of the disciplinary regime of this police force, for its subsequent referral to the general director of the Police - as it happened - which is ultimately the body entrusted with the function of inspecting the members of said police force, "under the direction and supervision of the superior authorities" (art. 1.1 Decree 415/2011, of December 13, on the structure of the police function of the General Directorate of the Police), as well as the function of application and supervision of compliance with the statutory regime of the police force (1.2.d Decree 415/ 2011). And he accompanied his report with an instance and an email aimed at substantiating his considerations.

The communication of data of the complainant, of his partner or cohabitant, and of the neighboring owner, derived from the referral of the instance and the mail mentioned in the head of the RP(...), would be protected by the legal basis provided for in the Article 6.1.e) of the RGPD, according to which, the treatment is considered lawful when it 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 treatment.

It is worth saying that this consideration does not go into questioning whether the aforementioned instance and mail together with the police report founded a request to open an IR, nor is the origin of the disciplinary procedures analyzed here processed by the DGP. These are issues unrelated to compliance with the data protection regulations that are implemented here, and which should in any case be addressed in a jurisdictional scope.

A similar response deserves the reported facts relating to the incorporation of the instance and the mail mentioned in the reserved information file no. (...)/20-IR, and in the subsequent disciplinary procedure no. (...)/21-ED. Inasmuch as this instance and mail was documentation attached to the report dated 03/09/2020 by which the chief inspector of the ABP had requested the opening of an IR of which it was the cause of both the IR (...)/20 like the disciplinary procedure (...)/21-ED, the inclusion of this documentation in the file would be protected by the same legal basis of article 6.1.e) of RGPD

This, taking into account that article 28.1 of Decree 183/1995, of June 13, which approves the Regulation of the disciplinary regime of the police force of the Generalitat-squads, expressly provides as regards to the information gathered during the reserved information, that: *"if the instructor deems it appropriate, this information may be part of the disciplinary file by provision for this purpose"*, as considered by the person instructing the disciplinary procedure analyzed, and this is stated in factual background 3 of the disciplinary resolution, in which it is noted that: *"by provision dated February 23, 2021, the instructor stated that he*

had received notification of the director's resolution general of the Police who initiated the present disciplinary file ordered the annexation to the procedure of the reserved information number (...) /20-IR and of the documentation received until that moment (...)". On the other hand, the relevance of the instance included in the disciplinary file is clear in the fact that it forms part of the proven facts of the disciplinary resolution.

Another thing is the assessment that merits the set of facts analyzed (the evidence required by the instructing person, the subject of the inspector's report dated 03/09/2020, the procedures processed by the DGP, the referral of the result of the IT audit at the judicial body, etc.), from other points of view than the sanctioning regime provided for in the data protection regulations, and which could eventually be constitutive of administrative offenses of another nature , which in any case exceeds the object of the present actions.

For the reasons stated, it is agreed to file the complaint corresponding to IP 304/2021.

2.2. On the facts reported linked to IP 53/2023.

Next, it is necessary to analyze the letter of complaint that was received by the Authority on 29/01/2023, in which the person making the complaint complained about the action of the person instructing the disciplinary procedure no. (...) /21-ED that the DGP initiated against the complainant, following the content of the report dated 03/09/2020 issued by the chief inspector of the ABP.

The reason for the complaint lies in the fact that within the framework of the disciplinary procedure indicated, the instructing person agreed to the practice of a test consisting of carrying out an IT audit of the accesses made by the person making the complaint to the data of the persons occupations that appeared in the police databases, which, in the opinion of the reporting person, was not aimed at verifying the facts that justified the request for the audit, but actually had a different purpose, namely, investigate whether the reporting sergeant had unlawfully accessed police databases.

In order to substantiate his complaint, the person making the complaint has submitted to the Authority a copy of the provision issued on 04/13/2021 by the person investigating the disciplinary file no. (...) /21-ED, in which he pointed out the following:

"Given that in the office dated September 1, 2020 addressed to the DGAIA, the sergeant with TIP (...), among other issues, reported alleged helplessness of a minor, specifically the daughter of Ms. (...) which together with Mr. (...), they occupied the floor below the home of the file sergeant. In this office, the sergeant with TIP (...) stated explicitly the following: "(...) that Mr history of violent crimes" and that the police had intervened in this housing for several incidents related to narcotic substances. To to verify the veracity of these statements reflected by the sergeant with TIP (...) to the office addressed to the DGAIA, this instruction in accordance with article 36 of Regulation of the disciplinary regime of the Police Force of the Generalitat-Mossos d'Esquadra, provides that the Internal Audit and Security Unit be requested for one audit of queries made from the user profile of the accused sergeant

(...), in the police databases, related to Mr. (...) with ID (...) and Ms. (...) with ID (...), based on the occupancy of the flat by these citizens."

Certainly, as the complainant points out, it does not seem that the IT audit that he requested from the instructing person serves the purpose he stated in this provision dated 04/13/2021.

Now, with regard to the instruction of the disciplinary procedure of this police force, it must be taken into account that, in accordance with article 36.1 of Decree 183/1995, of June 13, the person instructing, once dictated the agreement to initiate the disciplinary procedure and before formulating the list of charges, can order *"the practice of all the acts of instruction that it considers appropriate for the determination, knowledge and verification of the data by virtue of the which the Resolution must be issued and, in particular, that of those tests and actions that lead to the clarification of the facts and to determine the responsibilities liable to sanction"*.

And given that from the facts contained in the police report dated 09/03/2020 by the ABP inspector it was already inferred that the reporting sergeant could have accessed the police databases in order to find out if the employed persons had police records, and that finally the director general of the Police agreed to initiate disciplinary proceedings against the reporting sergeant for those facts after seeing the result of the IR, a relationship can be seen between the facts that motivated the agreement of initiation of the disciplinary procedure and the requested audit evidence, which prevents the requested evidence from being considered an unjustified treatment, in the sense of being unfounded for the purpose of clarifying the facts and determining the responsibilities susceptible of sanction, and for this reason it must also be considered protected by the legal basis provided for in article 6.1.e) of the RGPD.

This, without entering into evaluations on possible administrative or other violations produced on the occasion of the request and communication of this test and the result obtained.

In accordance with the above, this second complaint against the DGP should also be filed.

3. In accordance with everything that has been set forth in the 2nd legal basis, and given that during the actions taken by this Authority, no fact has been proven, in relation to the facts that have been addressed in this resolution, that could be constitutive of any of the violations 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 charges will be drawn up and the dismissal of the file and the archive of the proceedings when the proceedings and the tests carried out prove the non-existence of infringement or responsibility. 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 actions of prior information number IP 304/2021 and number IP 53/2023, regarding the facts reported against the General Directorate of the Police of the Department of the Interior of the Generalitat.

2. Notify this resolution to the General Directorate of the Police and to the reporting person.
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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