

## File identification

Resolution of sanctioning procedure no. PS 31/2018, referring to the Municipal Finance Institute of Barcelona City Council.

## Background

1. En data 27/11/2017 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, per remissió de l'Agència Espanyola de Protecció de Dades, un escrit d'una persona pel qual formulava denúncia contra l'Institut Municipal d 'Treasury of Barcelona City Council (hereafter, IMH), due to an alleged breach of Organic Law 15/1999, of 13 December, on the protection of personal data (hereafter, LOPD). Specifically, the person making the complaint explained that the IMH tried to notify him at a different address than his (his father's) of an account garnishment order, as a result of the non-payment of a penalty in the matter of traffic. The complainant added that "it is a traffic fine that has never been notified before". Likewise, the complainant stated that he did not know how the IMH had that address and the account of which he is joint owner with his daughter. The reporting person provided various documentation relating to the events reported.

2. The Authority opened a preliminary information phase (no. IP 369/2017), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the 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 they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. As part of this information phase, by means of an official document dated 11/12/2017, the reported entity was required to, among others, provide documentary evidence of attempts to notify administrative acts derived from the disciplinary proceedings brought against the reporting person for the alleged commission of traffic violations.

4. The IMH responded to the previous request through a letter dated 12/27/2017, which set out, among others, the following:

- That the notifications were tried to be notified at the address provided by the Directorate General of Traffic (henceforth, DGT), through a telematic consultation carried out on 10/10/2015.
- That the complainant appeared on 07/11/2017 providing his current address [address different from that provided by the DGT].
- That the address of the DGT, which was listed as having no floor or door, was modified on 20/11/2017 based on the information provided by the notifier of the seizure of accounts.

- That the rest of the addresses contained in the file of the Integrated Taxpayer System (hereinafter, SIR), prior to the one provided by the DGT, have been classified as bad for notification purposes.

5. The reported entity provided various documentation with its letter.

6. By means of an email sent to the Authority on 04/09/2018, the complainant informed that the IMH had decided to cancel the penalty and return the seized amount. In this regard, the complainant complained about the fact that he was required to provide documentation stamped by the financial institution certifying ownership of the current account in which to return the embargoed penalty. In this regard, the complainant explained that the account he designated was the same one where the embargo was carried out.

The complainant provided a copy of the resolution of 01/25/2018 by which the charge corresponding to the embargo of accounts was annulled for the following reasons: "The existence of procedural defects in the processing of the sanctioning file is verified which will cause the deadlines legally provided for the continuation of the sanctioning procedure to run out as the notifications made during the same are not sufficiently accredited." In turn, the person making the complaint also provided a copy of the direct debit form to proceed with the return of the amounts unduly received that the IMH attached to him with said resolution, duly completed by the person here making the complaint and validated by the financial institution

7. In this information phase, by means of orders dated 12/07/2018 and 31/07/2018, the Provincial Traffic Prefecture of Barcelona was required to report on whether the reporting person had designated an electronic road address ; as well as to specify what was the address of this person that was in the records of the autonomous body of the Central Traffic Prefecture on 10/10/2015.

8. On 26/07/2018 and 17/08/2018, the Provincial Prefecture of Traffic of Barcelona responded to the aforementioned request through a letter in which it stated that it was not recorded that the complainant had designated a road electronic address ; as well as that on 10/10/2015 the notification address of the person making the complaint that was included in the records of the autonomous body of the Central Traffic Prefecture was: "Street (...)PL-AT PT-1, 08905 – L'Hospitalet de Llobregat".

9. On 02/11/2018, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the IMH for the alleged serious infringement provided for in article 44.3.c) in relation to article 4 LOPD. Likewise, Mr. (...), an official of the Catalan Data Protection Authority, was appointed as the person instructing the file.

10. This initiation agreement was notified to the imputed entity on 06/11/2018.

11. The initiation agreement explained the reasons why no charge was made with respect to other reported events. Firstly, with regard to the seizure of accounts, the filing decision was based on the fact that the tax regulations empowered the IMH to exercise seizures on current accounts where there is more than one owner, although the seizure can only affect the part of the balance that corresponds to the taxpayer. And secondly, with regard to the return sheet about which the reporting person also complained, the file was based on the fact that it did not appear that any conduct classified as an infringement of the regulations on protection of personal data, for the reasons set out in the initiation agreement.

12. In the initiation agreement, the accused entity was granted a period of 10 working days, counting from the day after the notification, to formulate allegations and propose the practice of evidence that it considered appropriate to defend their interests.

13. On 20/11/2018, the IMH made objections to the initiation agreement. The accused entity provided various documentation with its letter.

14. On 01/29/2019, the person instructing this procedure formulated a resolution proposal, by which it proposed that the director of the Catalan Data Protection Authority declare that the IMH had committed a serious infringement, provided for in article 44.3.c), in relation to article 4, both from the LOPD.

This resolution proposal was notified on 01/31/2019 and granted a period of 10 days to formulate allegations.

15. On 02/14/2019, the accused entity submitted a statement of objections to the resolution proposal.

proven facts

Of all the actions taken in this procedure, the facts detailed below are considered accredited.

The IMH initiated on 01/12/2015 a disciplinary procedure against the person making the complaint for an alleged traffic violation.

On 10/10/2015, in accordance with what is provided for in article 90 of Royal Legislative Decree 6/2015, of October 30, which approves the revised text of the Law on traffic, circulation of vehicles of engine and road safety (hereafter, RDL 6/2015), the IMH consulted the address of this person that appeared in the records of the autonomous body of the Central Prefecture of Traffic, in order to carry out the administrative acts derived of the sanctioning file. On that date, the Provincial Traffic Prefecture of Barcelona has certified that the following address linked to the complainant was contained in said records: "Calle (...)PL-AT PT-1, 08905 - L'Hospitalet de Llobregat" . However,

this address that the IMH consulted in said register, was incorporated into its information systems (SIR) incompletely, without specifying the floor (PL-AT) nor the door (PT-1).

When an attempt was made to notify the person here denouncing the complaint for a traffic violation at the address listed in the SIR ((...)- 08905 de l'Hospitalet de Llobregat), the notifying agent noted in the proof of receipt of notification corresponding to the attempts to notify said complaint, on 29/12/2015 and 30/12/2015, the incomplete nature of the address. Thus, apart from marking that delivery had been impossible in the two notification attempts made, in the "Observations" section, the notifying agent marked the option "No floor/door".

Despite these observations of the notifying agent, the IMH continued to treat this incomplete address for purposes of attempting to serve on the same incomplete address, the constraint provision issued on 02/06/2016. This administrative act was attempted to be notified to the complainant on 14/06/2016 and 15/06/2016, in both cases also with unsuccessful results (impossible delivery). In the proof of receipt of notification, the notifying agent (different from the one who tried to notify the complaint) also recorded that the address was incomplete due to the lack of the floor and the door.

On 09/14/2017 the IMH issued the embargo process which again tried to notify the complainant at the same incomplete address on 09/28/2017 and 09/29/2017, in both cases for absence of the addressee, finally depositing the notification in the mailbox, as stated in the corresponding receipt. In that case, the notifying agent completed the disputed address, noting the address information that was missing from the supporting document. With this indication from the notifying agent, the IMH completed the address to the SIR on 20/11/2017.

#### Fundamentals of law

1. The provisions of Law 39/2015, of October 1, on the common administrative procedure of public administrations (from now on, LPAC), are applicable to this procedure, and article 15 of Decree 278/1993, of November 9, on the sanctioning procedure for application to the areas of competence of the Generalitat, according to what is provided for in DT 2a of Law 32/2010, of 1 October, from the Catalan Data Protection Authority. In accordance with articles 5 and 8 of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The accused entity has made allegations both in the initiation agreement and in the resolution proposal. The first allegations were already analyzed in the resolution proposal. Next, the allegations made by the accused entity before the proposed resolution are analyzed, which focus on the fact that during the electronic consultation of the traffic records, an exceptional incident would have occurred which would have entailed that, with respect to the 'address of the person reporting here, neither the apartment nor the door was communicated.

The first thing to note is that the IMH limits itself to invoking a possible exceptional incidence in the electronic consultation of the traffic records, which would only have affected the address of the reporting person, although the consultations are not carried out individualized form.

The IMH bases this incidence on a hypothetical "cut in communication or misconfiguration of the data among other reasons", although the IMH recognizes in its statement of allegations that "from the Municipal Institute of Informatics have informed us of the impossibility of determining the reason".

As things stand, it should be considered that the IMH does not properly certify that in the specific case, an incident had occurred in the electronic consultation of the records of the autonomous body of the Central Traffic Prefecture.

Without prejudice to the above, as stated in the proven facts section, when an attempt was made to notify the person here denouncing the complaint for traffic violation at the address that was listed in the SIR ((...)- 08905 of the 'Hospitalet de Llobregat), the notifying agent stated in the proof of receipt of notification corresponding to the attempts to notify said complaint, on 29/12/2015 and 30/12/2015, the incompleteness of the Address. Thus, apart from marking that the delivery had been impossible in the two notification attempts made, in the "Observations" section, the notifying agent marked the option "No floor/door".

Despite these observations of the notifying agent, the IMH continued to treat this incomplete address for purposes of attempting to serve on the same incomplete address, the constraint provision issued on 02/06/2016. This administrative act was attempted to be notified to the complainant on 14/06/2016 and 15/06/2016, in both cases also with unsuccessful results (impossible delivery). In the proof of receipt of notification, the notifying agent (different from the one who tried to notify the complaint) also recorded that the address was incomplete due to the lack of the floor and the door.

And on 09/14/2017 the IMH issued the embargo process that tried again to notify the complainant at the same incomplete address on 09/28/2017 and 09/29/2017, in both cases due to the recipient's absence, finally depositing the notification in the mailbox, as stated in the corresponding receipt. In that case, the notifying agent completed the disputed address, noting the address information that was missing from the supporting document. With this indication from the notifying agent, the IMH completed the address to the SIR on 20/11/2017.

In short, and leaving aside the inaccurate collection of the reporting person's domicile that was in the records of the autonomous body of the Central Traffic Prefecture, it is considered proven that the IMH also did not act with undue diligence afterwards that the incident alleged by the IMH had occurred. In this sense, it is taken into consideration that the corresponding notifying agents left

record in the attempts to notify the complaint and the provision of restraint, that the address of the person here reporting was incomplete as the apartment and the door were missing. But despite this warning, the IMH continued to use the incomplete address to notify the integral acts of the sanctioning procedure, without taking any action to complete it.

It is for this reason that the allegations made by the IMH against the proposed resolution should be rejected.

3. In relation to the facts described in the proven facts section, relating to the processing of inaccurate data, it is necessary to refer to sections 3 and 4 in article 4 of the LOPD, which provides for the following:

"3. The personal data must be accurate and updated so that they accurately reflect the current situation of the affected person.

4. If the personal data registered are inaccurate, in whole or in part, or incomplete, they must be canceled and replaced ex officio by the corresponding rectified or completed data, without prejudice to the powers that article 16 recognizes those affected."

For its part, article 90 of RDL 6/2015, regarding the practice of notification of complaints, provides the following:

"1. The administrations with sanctioning powers in traffic matters must notify the complaints that are not delivered to the act and the other notifications that result in the sanctioning procedure to the road electronic address (DEV).

In the event that the accused does not have it, the notification must be made at the address that has been expressly indicated for the procedure and, if there is a lack, at the address that appears in the records of the autonomous body Prefecture Central Traffic."

As indicated by the instructing person, during the processing of this procedure the fact described in the proven facts section, which is constitutive of the serious infringement provided for in article 44.3.c) of the LOPD, has been duly proven, which typifies as such:

"c) Treat personal data or use them later in violation of the principles and guarantees established in article 4 of this Law and the provisions that deploy it, except when it constitutes a very serious infringement."

On the other hand, article 26 of Law 40/2015, of October 1, on the legal regime of the public sector provides for the application of the sanctioning provisions in force at the time the events occurred, except that the subsequent modification of these provisions favor the alleged infringer. That is why, in this act, the eventuality has also been taken into account

application to the present case of the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof ( RGPD). And as a result of this analysis, it is concluded that the eventual application of this rule would not alter the legal classification that is made here, and specifically would not favor the person responsible for the infringement.

4. Article 21 of Law 32/2010, in line with article 46 of the LOPD, provides that when the infractions are committed by a public administration, the resolution declaring the commission of an infraction must establish the measures to be taken so that the effects cease or are corrected. However, as explained by the instructing person in the resolution proposal, it becomes unnecessary to require any measure to correct the effects of the infringement, given that it would be an isolated event and already consummated (treatment of an incomplete address for the purposes of notifications).

resolution

For all this, I resolve:

1. Declare that the Municipal Finance Institute of Barcelona City Council has committed the serious infringement provided for in article 44.3.c) in relation to article 4; all of them from the LOPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the IMH.

3. Communicate this resolution to the Ombudsman and transfer it to him literally, as specified in the third agreement of the Collaboration Agreement between the Ombudsman of Catalonia and the Catalan Data Protection Agency, dated June 23, 2006.

4. Order that this resolution be published on the Authority's website ([www.apd.cat](http://www.apd.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, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003 , of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with what they provide

article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal 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.

If the imputed entity expresses to the Authority its intention to file an administrative contentious appeal against the final administrative decision, the decision will be provisionally suspended in the terms provided for in article 90.3 of the LPAC.

Likewise, the imputed entity can file any other appeal it deems appropriate to defend its interests.

The director,

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