

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, since in case of revealing the name of the population affected, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 24/2020, referring to the City Council of (...).

Background

1. On 08/01/2019, the Catalan Data Protection Authority received a letter in which Mr. (...) (hereafter, complainant) filed a complaint against the City Council of (...), due to an alleged breach of the regulations on the protection of personal data.

In the letter, the complainant explained that on 09/10/2018 he presented an instance to the City Council, through which he made it clear that on 12/05/2016 Ms. (...) had presented to the council an application for registration in the municipality's Register of Inhabitants - linked to an address owned by the complainant where he was registered -, and which contained two erroneous data: the date of submission of the request and the signature of the person who authorized it, which was the complainant himself, who considered that the his signature had been forged. For this reason, he requested the City Council to check the documentation that Mrs. if your suspicions about the falsity of these two pieces of information, remove Ms(...)(...) from the municipal register, that is to say, from the registration of Ms(...)(...) at the address of (...), where the complainant would also be registered.

In the letter, the complainant asked the City Council to provide him with a copy of the two documents so that he could verify the discrepancy in signatures between the two documents: the application for registration submitted by Ms(...)(...), and a copy of the identification card on which the NIE of the person making the complaint appeared (hereafter, identification card), which would appear in the municipal file processed as a result of this sole registration application.

However, the City Council did not provide the complainant with any of the documents he had requested. Specifically, he issued mayoral decree no. 2018/5295, dated 11/30/2018, by which it suspended the processing of the requests made by the complainant, at the same time agreeing to automatically initiate proceedings to remove him from the register, based on the consideration that the complainant did not disputed home - the one linked to the registration of Ms (...)(...)-. The content of this decree and the subsequent acts of the City Council and the complainant are set out in the 6th antecedent.

2. The Authority opened a preliminary information phase (no. IP 7/2019), 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. Through the Authority's letter dated 3/07/2019, the complainant was requested to clarify the terms of his complaint, in the sense that he pointed to the alleged violation of the data protection regulations he was referring to when he said: *"I denounce the fact that I refuse to request the verification of the registration of such a person by declaring myself EMPADRONADO"*, as well as when he requested: *"I request the verification of the decisions taken by this town hall in a wide and deep range"*, and in the latter case he limited the period of time to which he referred.

4. On 07/24/2019 he received a letter of response from the complainant, through which he pointed out, with reference to the City Council's response, that: *"(...) denying me access to the information requested my rights are violated. My request was made as an owner and it must be treated as such"*. On the other hand, in relation to the part of his complaint where he requested the Authority to verify the decisions taken by the City Council, he pointed out the following: *"Since the City Council only fulfilled its duties después de instancias como you guys What is in its files, I request an investigation into the attitude of this town hall since a year without specifying, referring to the violation of rights in the field of data protection"*.

5. By letter dated 08/05/2019, the Authority required the City Council of (...) to report, among other issues, on whether, following the complainant's request, the City Council had reviewed compliance to the right of registration in the municipal register of Ms(...)(...), and in particular the accuracy of the data referred to by the complainant in his request (date of request for registration and signature of the reporting person), and in the event that it had ascertained its inaccuracy, if it had carried out actions in order to amend the inaccurate data, and had communicated this to the reporting person, in response to your request dated 09/10/2018.

6. On 08/23/2019, the City Council responded to the aforementioned request in writing, accompanied by a report from the Head of the OAC, responsible for managing the municipal register of inhabitants, in the which stated the following:

- 1. The reporting person, according to data from the Real Estate Tax, is registered as the owner of the property referred to in the registration of entry dated September 10, 2018, with no. of registration (...). This fact was the same on the date on which the mayor's decree 2018(...) of November 30, 2018 was issued.*
- 2. We attach to this report the documentation of the application for registration in the Population Register of Ms. (B), dated December 5, 2016 with no. of registration (...), as well as the same documentation. It is necessary to specify that this documentation and in accordance with the*

resolution of the file (...) /2019 of the Complaints Ombudsman of Catalonia, has been delivered to the complainant by means of notification with exit registration no. 2019/(...) dated July 22, 2019.

3. As a result of the request dated September 10, 2018, the City Council of (...), as responsible for the management of the Register (...), checks the residence of the people who live in the residence owned by the complainant and a report is issued (...) in which it is detailed that the Local Police officers verify that the following people live in this residence:

- (b)*
- (C)*
- (D)*

In the residence check carried out, the person making the complaint was not located.

(...)

4. On July 12, 2019, with no. of mayoral decree 2019/(...), it is decided not to give deregistration due to improper registration in the Register of Residents to the reporting person (...).

5. On July 18, 2019, with no. of mayoral decree 2019/(...), the request submitted by the person reporting (...) is resolved

6. Other facts we want to report are: a.

That the Complaints Ombudsman of Catalonia, through resolution (...) /2019 recommends that a resolution be issued canceling the deregistration due to improper registration in the Resident Register of the person making the complaint and resolving the petitions presented by the person making the complaint dated September 10, 2018 and December 20, 2018 (...)

b. That on October 24, 2018 (...) Ms. (B) submits an application requesting that no information about him or his son (C) be given to the reporting person (...)."

The City Council accompanied its letter with various documentation, from which the following relevant facts emerged:

- On 17/12/2018 the City Council of (...) notified the complainant of decree 2018/5295, dated 30/11/2018, by which it decided to suspend the procedure for the request for leave of Ms(...)(...) of the Municipal Register -which the complainant had requested in the instance of 09/10/2018-, and this suspension affected the other requests that the complainant had formulated at his instance and that were linked to it, such as the ex officio verification of the accuracy of the data, and that of access to the documents indicated. In the same decree, it was also resolved to initiate a deregistration file of the complainant from the Municipal Register of Inhabitants, due to improper registration, based on the consideration that the City Council had detected that the complainant did not reside in the home to which referred to in his instance.

- By means of a letter dated 20/12/2018, the complainant requested the City Council, among others, to lift the suspension of his request dated 10/09/2018, and by letter of 28/12/2018 reiterated the requests to check his signature which was recorded.

- However, on 14/01/2019 the City Council issued decree 2019/120, by which it was again decided to initiate a deregistration file for improper registration of the person making the complaint, this time granting him a deadline to formulate allegations. And on 02/18/2019 he issued decree 2019/(...), whereby he decided to suspend the resolution of the requests made by the complainant - among them, the request for access - until it is resolved the aforementioned discharge file.

- On 05/09/2019 the Ombudsman issued a Resolution, following the claim that the complainant had submitted to that institution for the same facts, by which he recommended the City Council to file the deregistration file in question to the complainant, due to the expiry of the procedure, and to respond to the requests made by the complainant. In this Resolution the following was pointed out, for what is now of interest:

"The signature of the promoter of the complaint contained in the request for authorization to process the discharge of Ms. (B) on 5.12.2016 does not match the signature on his community resident card."

And with regard to the suspension of the request made by the City Council, the Ombudsman pointed out the following:

"(...) the cases in which it is possible to agree to the suspension of the maximum time to resolve are fixed in a fixed form in article 22 of Law 39/2015. The initiation of an ex officio dismissal procedure does not constitute any reason that should motivate the suspension of the information requests made by the interested party."

- Following the recommendations of the Ombudsman, on 07/18/2019 the City Council issued decree 2019/(...) (the notification is dated 07/22/2019), by which resolve, among others, to deliver to the person making the complaint a copy of the registration certificate dated 5/12/2016 of Ms(...)(...). In the above-mentioned decree, it was also agreed not to deregister Ms (...)(...) for improper registration, because the City Council had noted that this person resided in the home listed in their registration application. The person making the complaint was not informed about whether the City Council had carried out ex officio verification of the signature contained in the application for registration in the Register of this third person (B).

7. In the framework of the previous information, the Authority compared the signatures that appeared in this request for registration and the one that appeared in the letter of claim that the person making the complaint presented to the Authority, and it was found that they did not match. It was also found that in the registration registration form, the reporting person appeared as the legal representative of the person concerned (Mrs(...)(...)), in addition to stating in handwritten form that the reporting person authorized the registration of Ms(...)(...) in her home.

8. On 06/08/2020, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of (...) for an alleged infringement provided for in article 83.5.b) , in relation to article 15, both of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these (hereafter, RGPD).

This initiation agreement was notified to the imputed entity on 07/01/2020.

9. The initiation agreement explained the reasons why no imputation was made regarding the part of the written complaint where the person making the complaint requested the Authority: *"la compración de las decisionas tomadas de este town hall in a wide and deep range"*, since no specific fact was identified from which rational indications of the existence of a data protection violation could be derived.

On the other hand, the initiation agreement also pointed out the reasons that prevented it from being concluded that the signature of the person making the complaint that appeared on the registration form of Ms(...). (...) was an inaccurate data. Specifically, the following was pointed out: *"(...) the investigative actions carried out do not allow a definitive pronouncement to be made on the inaccuracy of the controversial signature that would appear in the application for registration of Ms. (...)(...), in view of the fact that the difference found between both signatures - without an expert opinion - does not allow us to conclude that this is inaccurate data, in the sense that it does not correspond to the person making the complaint, and it should be borne in mind that it is not uncommon for a person to use more than one signature in their legal relations, and that the City Council has not clarified, despite having been requested by the Authority, whether it has carried out actions in the for the purpose of checking whether the signature recorded in the registration request corresponds to the person making the complaint, and if so, what was their conclusion."*

10. In the initiation agreement, the City Council 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 the their interests

11. On 07/16/2020, the City Council made objections to the initiation agreement.

12. On 09/15/2020, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the City Council of (...) as responsible for an infringement provided for in article 83.5.b) in relation to article 15, both of the RGPD.

This resolution proposal was notified on 09/25/2020 and a period of 10 days was granted to formulate allegations.

13. On 10/14/2020, a letter of allegations from the City Council's DPD was entered in the Authority's register, which states the following:

"First. Mr. (...) received a copy of the registration application of Ms(...)(...) on April 17, 2018, as evidenced in the attached document DOC 1 DELIVERY OF DOCUMENTATION APRIL 2018. Therefore, on the date indicated, Mr. (...) he already had a copy of the authorization document containing the allegedly forged signature.

second On July 22, 2019, the City Council of (...) sent documentation by electronic means to Mr. (...) where he was told to send the documentation relating to the registration of Ms(...)(...), as evidenced in the attached document DOC 2. NOTIFICATION INCLUDES DOCUMENTATION JULY 2019.

third The shipment referred to in the allegation was rejected by Mr. (...) on August 2, 2019, as evidenced in the attached document DOC 3. EVIDENCE NOTIFICATION.

fourth On 7/29/2019 Mr. (...) collected the copy of the documentation in person, as evidenced in the attached document DOC4. PROVING PRESENT NOTIFICATION.

fifth The documentation delivered to Mr. (...) included everything related to the registration of Ms(...)(...), as evidenced in the attached document DOC5. ATTACHED DOCUMENTATION RE 2019-(...)."

proven facts

Based on all the actions taken in this procedure, the following are considered proven facts.

During a period of time between 10/09/2018 and 21/07/2019, the City Council of (...) did not facilitate the complainant's access to the identification card (NIE) - on which his signature was recorded - nor to his personal data recorded in the application for registration of a third person (Mrs. (...) (...)) that appeared in the Municipal Register of Inhabitants, and that the complainant had requested through an instance dated 09/10/2018, in order to verify that his signature that appeared in that application for registration in the Register - in the capacity of owner authorizing the registration of Ms (...)(...) linked to a home she owned - did not correspond to the signature that appeared on his identification card (NIE).

This action by the City Council prevented the complainant, during the indicated time period, from accessing his signature that appeared on the aforementioned documents, and in his case the exercise of other rights, such as the rectification or deletion of that personal data, or take the actions it considers relevant.

Fundamentals of law

1.- The provisions of the LPAC, and article 15 of Decree 278/1993, according to the provisions of DT 2a of Law 32/2010, of October 1, apply to this procedure. of the Authority

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 City Council of (...) has made objections to both the initiation agreement and the proposed resolution. The first ones were already analyzed in the proposed resolution, but even so it is considered appropriate to mention them here. The set of allegations made by the City Council are then analyzed.

2.1. On the reasons given by the complainant to substantiate his request for access.

In the statement of objections to the initiation agreement, the City Council pointed out a set of facts that, in its opinion, indicated that the access request made by the person now making the complaint was not founded in kind or certain reasons and that the registration of Ms(...)(...) was in accordance with the law, and considered that this justified the denial of the request for access to the now complainant (although in fairness the City Council only prevented her access for a period of time).

Specifically, the City Council pointed out that: *"when the complainant made the request to exercise the right of access, Mrs (...)(...) had been registered at the address for 21 months. During this period, the complainant did not go to this City Council to show his refusal to the residence of Mrs. (...)(...) at her address".* And later he also pointed out that: *"the residence of Mrs (...)(...) and her daughter at the home of the person making the complaint could be verified in a verification act carried out by the Local Police of this City Council. Therefore, the fact that Ms (...)(...) is listed as resident at this address is legal according to the purpose of the Municipal Register of Inhabitants (proving habitual residence)".*

In this regard, it should be stated that the reasons invoked by the City Council do not alter the imputation of the infringement that was carried out in the initiation agreement and that is now confirmed, and this because none of these reasons are valid for denying the access requested by the complainant. Article 15 of the RGPD recognizes the right of access of the interested person to their personal data, whatever their motivation or interest, taking into account the cases of denial of access provided for in art. 23 RGPD, which does not include the veracity of the reason for access. Therefore, it is irrelevant the goodness of the reasons given by the person now reporting when he requested access to his personal data. In other words, the assessment that the City Council could have made on the possible validity of the registration of Ms(...)(...), should not have prevented giving satisfaction to the right of access that exercised by the person now reporting.

So things are, the act of preventing the complainant during the time indicated in the proven facts section, access to his identification card (NIE) where his signature appeared, both on the basis of the reasons indicated in the mayoral decrees mentioned, as based on the reasons put forward by the City Council for the Authority's initiation agreement, are not in accordance with the law.

The same answer deserves the allegations made by the City Council about the futility of accessing the signature recorded in the registration form in the Residents' Register. The City Council pointed out that: *"The request for verification of the signature by the complainant had no relation whatsoever with the administrative act of the registration of Ms(...)(...) in his address, since there are sufficient elements to determine that he was aware of the registration situation of Mrs (...)(...) at the said address. Consequently, the alleged signature validation was of no use whatsoever. And then he also pointed out that: "the validation of this signature should be carried out, as this Authority has recognized, by a graphological specialist expert. Giving more arguments to the fact that the supposed verification of signature had (.sic) no legal validity"*.

In this regard, it should be noted that, apart from the fact that this is a new reason not adduced in the response to the access request, the utility it could have in this case for the person now denouncing the fact that he accesses his signature is something irrelevant in the assessment of the granting of access, which is governed by the provisions of art. 15 RGPD, taking into account that this assessment is not among the cases of denial of access provided for in art. 23 GDPR. It should also be said that the purpose of the access granted by the now complainant was not to verify that the address of the complainant was listed on the registration form of Ms(...)(...), but question his authorization to apply for registration based on the suspicion that the signature on the application was not his. In any case, the action of the City Council that prevented or obstructed for a certain period of time the complainant's access to his personal data, based on the reasons indicated in the aforementioned decrees, was not in accordance with the law, such as nor would it be based on the reasons presented to the Authority.

2.2. On the weighting of conflicting rights and the Authority's IAI Report 55/2019.

Also in the statement of objections to the initiation agreement, the City Council argued that in the face of the request for access, and taking into account that article 15.4 RGPD establishes that the right to obtain a copy must not negatively affect the rights and freedoms of others, *"carried out a weighting between the rights of the person reporting and the rights of Ms(...)(...)",* and that *"of as a result of this weighting, it was assessed that the complainant's access request affected the rights and freedoms of other people as the couple was in the process of separating and there was an order to keep Ms. ..)(...) against the complainant"*. He also stated that the City Council had asked Ms(...)(...) for her authorization to provide the person now denouncing the information she had requested, and that Ms(...)(...) *"stated in writing his refusal to provide any information about himself or his daughter to the person making the complaint"*. He then referred to the Authority's IAI Report 55/2019, and concluded that: *"this circumstance, together with what was previously expressed regarding the fact that the complainant was fully aware of the residence situation of Mrs (...)(...) at his home, led this City Council to reject the complainant's request for access"*.

These demonstrations by the City Council were not well received either, for the reasons indicated below.

At the outset, it was stated that the reason that the City Council was now using regarding the weighting of rights in conflict was not the reason contained in the mayoral decrees mentioned, through which it had been agreed to suspend twice (in date 30/11/2018 and in date 18/02/2019) the processing of the access request until the City Council resolves the deregistration file initiated by the City Council against the complainant. And it was pointed out that the City Council's persistence in denying the complainant access to his personal data on the basis of that reason - which was considered not in accordance with the law - was what founded the imputation in the present sanctioning procedure of the violation provided for in art. 83.5.b) RGPD.

Having said that, the City Council stated that it *"rejected the request for access"* made by the now complainant based on this new reason, but this *de facto* contradicted the events that happened, at least in part, already that the City Council finally gave the complainant a copy of the application for registration in the register of inhabitants of Ms(...)(...), with which the complainant would have had access to your signature.

In any case, and in response to the considerations made by the City Council regarding the provisions of art. 15.4 RGPD, it should be noted that the request for access made by the now complainant could be satisfied without the need to disclose the data of Ms(...)(...) and her daughter, and consequently without that their rights were affected. In this sense, the complainant's access to the copy of his identification card (NIE) did not require access to any data of Ms(...)(...) or her daughter. And with regard to access to the complainant's signature that appeared on the registration form of Ms(...)(...), although it is true that the complainant asked for a copy of the form to verify his signature, it was clear from his writing that the object of his request was access to the consigned signature. Therefore, access could also be granted, omitting the personal data of Ms(...)(...) and her daughter.

Lastly, we should refer briefly to the Authority's IAI Report 55/2019 - which mentioned the City Council - issued at the request of the Commission for the Guarantee of the Right of Access to Information Public (GAIP) in relation to the claim presented by a citizen against a town council, for having denied her access to information on the registration of her daughter's paternal address, carried out at the request of the father, without allegedly mother consented, despite having joint custody.

The mother's request for access referred to the entire registration file of her daughter, which contained data on the mother, the father and the common daughter, unlike the present case, in which only the impediment of access by the now complainant to his personal data is analyzed (not to the data of Ms(...)(...) nor to the data of his common child). The City Council was going to point out that its action preventing access obeyed the weighting of rights in conflict, which it carried out following the criterion indicated in the aforementioned report of the Authority. And then I transcribe the part of the conclusions of the report where it is pointed out the need to transfer the request for access to the father, so that he can allege if there is any circumstance that should lead to a limitation of access

In this regard, it was pointed out, first of all, that the transcription that was made of the conclusions section of the report was incomplete, since the first paragraph of the conclusions was omitted where the following is stated: *"The data protection regulations do not prevent the claimant's access to their own information and that of their minor daughter that may appear in the registration file of the latter at the paternal address, by virtue of the capacity of legal representation provided for in article 12 LOPDGDD of the LOPD, and the article in article 136-18 of the CCC."*

Indeed, with regard to the access by the mother to her own personal data, which would be the part of the report that would be similar to the present case (in which the access by the person denouncing her personal data), the Authority's report indicated the following: *"to the extent that it is information relating to herself, no unjustified effect on the right to the protection of personal data of third parties. It does not seem that the data protection regulations can cause any inconvenience to facilitate the claimant's access to said information for the purposes of complying with the obligations of the transparency legislation, especially if we take into account that, as we have explained, the right of access provided for in article 15 RGD of the LOPD would also allow him to access his own information contained in the file."*

Therefore, in the present case there was no need to weigh conflicting rights, nor did the City Council invoke this weighting and the consequent prevalence of the rights of Ms(...)(...) and/or her son, to justify the denial of access requested by the complainant. But even if that had been the case, the City Council could have decided to facilitate the complainant's access to the registration form in the Population Register of Ms(...)(...), omitting all the data personal data of Ms(...)(...) and her son. Therefore, the weighting of rights should not have prevented the access of the complainant to his personal data either.

2.3. On the delivery to the complainant of the registration request on a date prior to the alleged events.

With regard to the statement of objections to the proposed resolution, the City Council has referred to various documentation that it has provided as an attachment, and which will be analyzed below.

First of all, the City Council has provided as document no. 1 a copy of the application for registration of Mrs. (...) (...) at the complainant's home, on which a stamp from the City Council appears or it is written in handwritten form that the complainant would have received on 04/17/2018 a duplicate of the registration registration application from Mrs (...) (...) at her address.

Regarding the reason for the contribution of this document, the City Council has limited itself to pointing out as a conclusion that: *"on the indicated date - 04/07/2018 - Mr. (...) he already had a copy of the authorization document containing the allegedly forged signature"*.

At the outset, it must be emphasized that document no. 1 there is an apparent contradiction between this document and the allegations made by the City Council regarding the initiation agreement regarding the denial of access to the complainant requested on 09/10/2018 by

to protect the rights of Ms(...)(...), since document no. 1 it follows that months before (on 04/17/2018) the City Council had facilitated access to the complainant.

Secondly, it should be noted that this previous access by the complainant to the registration sheet of Ms. (...) does not alter the classification of the facts as constitutive of the infringement provided for in article 83.5.b) RGPD, for violation of the complainant's right of access. Article 12.3 RGPD obliged the City Council to respond within one month of receipt of the first request (made on 10/9/2018). Contrary to this order, the City Council issued two decrees by which it agreed to suspend the resolution of the requests made by the complainant - among them, the request for access - until other issues were resolved. And he did not decide on the requested access until 18/07/2019 -and following the recommendation of the Ombudsman-, which in itself violates the provisions of art. 12 RGPD, and is constitutive of the violation provided for in article 83.5.b) RGPD.

Having said that, if with the contribution of document no. 1 what the City Council intends is to highlight that the reason for access that the complainant gave in his requests did not correspond to the real reason (because the complainant was already in possession of the request for registration), it should be noted once again that this issue is irrelevant, in the sense that the lack of goodness of the reason given by the complainant requesting access did not exempt the City Council from the obligation to deliver a copy of the documentation (meaning personal data) requested.

In relation to the legal obligation to attend to the access request, it is appropriate to clarify the possible application in the case of articles 12.5.b) RGPD and 13.3 LOPDGDD. The art. 12.5.b) RGPD allows a request to be denied when it is "*manifestly unfounded or excessive, especially due to its repetitive nature*", and art. 13.3 LOPDGDD establishes that the exercise of the right of access on more than one occasion during the period of six months may be considered repetitive, unless there is a legitimate cause.

It could be questioned, in the first place, whether the complainant's request for access to which the alleged facts refer could be considered repetitive, and whether this consideration could justify a denial of the complainant's right of access. In document no. 1 provided by the City Council, it is noted that on 04/17/2018 the complainant would have received a copy of the registration application from Mrs (...)(...) at her address. Between 17/04/2018 and 10/09/2018 (the date of the second access request) not 6 months had passed, but almost 5 months. However, the date to be taken into account for the beginning of the calculation of the 6 months should be the date of the presentation of the first request for access to the City Council, and the City Council has not certified this date and, therefore, nor that the complainant exercised the right of access on two occasions in the same period of 6 months.

Secondly, it is appropriate to refer to the case provided for in article 12.5.b) RGPD of denial of the request when it is manifestly unfounded. In fact, this would be one of the reasons that the City Council put forward before the initiation agreement, to justify its action. Yen

this criterion would partly be supported by the fact that on 04/17/2018 the complainant had already received a copy of the registration registration application from Ms(...)(...).

In this regard, it should be noted that the two mayoral decrees by which they were *de facto* denied the access requests made by the complainant on 10/09/2018 and 20/12/2018 did not allude to the manifestly unfounded nature of the same, but to other reasons - eventual validity of the registration of the Ms(...)(...), and alleged irregularities in the complainant's registration - which are not valid for denying access, in accordance with articles 15 and 23 RGPD.

Having said that, from all the documentation provided during the processing of the sanctioning procedure - and the previous information phase that preceded it - it is not clear that the access requests made by the complainant were manifestly unfounded. Like this, this Authority does not know if the new access request made by the complainant on 09/10/2018 was due to the fact that he had lost the first copy that the City Council had given him on 04/17/2018, or for another reason which would prevent the access request from being considered manifestly unfounded. Regarding the reason put forward by the complainant, in the initiation agreement it was already noted what the doubts of this Authority were that prevented it from making a pronouncement on the accuracy of the complainant's signature that appeared on the registration sheet of the Mrs. (...). And the City Council has also not made a clear statement to the Authority on this matter, in the sense of pointing out that the signature recorded corresponds to the complainant, and that therefore the data is accurate, despite having requested it authority So the information available to the Authority does not allow the complainant's access request to be considered manifestly unfounded.

And in any case, it must be remembered that the infraction imputed to the City Council also obeys the fact that it ignored the complainant's request for access to his NIE, in order to verify his signature. And from the documentation provided by the City Council, it is clear that it did not provide him with access to this documentation until 2/08/2019, a fact that alone already confirms the constitutive fact of the imputed infraction.

Finally, it should be noted that the documents numbered 2 to 5 that the City Council has provided together with the statement of objections to the proposed resolution, do not question the maintenance of the imputed facts or their legal qualification, but they are relevant in terms of the adoption of corrective measures, and that is why they are mentioned in the 4th legal basis of this resolution.

3.- In relation to the facts described in the proven facts section, it is necessary to refer to article 12 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 (hereafter, RGPD), which provides that:

1. *The person responsible for the treatment must take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication in accordance with articles 15 to 22 and 34 relating to the treatment (...).*

2. *The person responsible for the treatment must facilitate the exercise of their rights by the interested party, in virtue of articles 15 to 22 (...).*
3. *The person in charge of the treatment must provide the interested party with information relating to their actions, if the request has been made in accordance with articles 15 to 22 and, in any case, within a month from the receipt of the request. this deadline can be extended by another two months, if necessary, taking into account the complexity and number of requests. The person in charge must inform the interested party of any of these extensions within one month of receiving the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, whenever possible the information must be provided by these same means, unless the interested party requests that it be done in another way.*
4. *If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for the his non-action and the possibility of presenting a claim before a control authority and of exercising judicial actions."*

For its part, article 15 RGPD, which regulates the right of access, determines the following:

"1. The interested party has the right to obtain from the data controller confirmation of whether personal data affecting him is being processed, and if so, he has the right to access this data (...)"

(...)

2. The controller must provide a copy of the personal data subject to processing (...)"

As indicated by the instructing person, during the processing of this procedure the fact described in the section on proven facts, which is considered constitutive of the infringement provided for in article 83.5.b) of the RGPD, has been duly proven, which typifies as such the violation of "(...) *the rights of the interested parties, in accordance with articles 12 to 22*".

Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter, LOPDGDD), in force since 12/7/2018, is also applicable, since the reporting person came to reiterate their request for access in writing dated 12/20/2018, and the City Council resolved -through decree 2019/734, of 02/18/2019-

suspend the request again, dates on which the LOPDGDD had already entered into force.

The LOPDGDD provides as a very serious infringement in article 72.1.k):

"k) Impediment or obstruction or repeated failure to exercise the rights established by articles 15 to 22 of Regulation (EU) 2016/679."

4.- Article 77.2 LOPDGDD provides that, in the case of infractions committed by those in charge or in charge listed in art. 77.1 LOPDGDD, the competent data protection authority:

"(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.

The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

In terms similar to the LOPDGDD, article 21.2 of Law 32/2010, determines the following:

"2. In the case of violations committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must issue a resolution declaring the violation and establishing the measures to be taken to correct its effects . In addition, it can propose, where appropriate, the initiation of disciplinary actions in accordance with what is established by current legislation on the disciplinary regime for personnel in the service of public administrations. This resolution must be notified to the person responsible for the file or the treatment, to the person in charge of the treatment, if applicable, to the body to which they depend and to the affected persons, if any".

As has been advanced in the legal basis 2.3, the City Council has provided together with the statement of objections to the proposed resolution, five documents of which numbers 2 to 5 should be highlighted, which correspond to: decree no. 2019/3254, of July 18, 2019, by which it is agreed, among others, "Give Mr. (...) copy of the registration certificate dated December 5, 2016 of Mrs. (...)"; the evidence of the process of notification of this decree by the eNOTUM system (made available on 07/22/2019 and rejected on 08/02/2019); the proof of in-person notification of the decree, made on 29/07/2019, and the attached documentation that would have been given to the complainant together with the aforementioned decree, including a copy of his NIE.

This documentation shows that on 29/07/2019 the complainant had access to the copy of his NIE that appeared in the registration file of Mrs. (...), as well as the application for registration of Ms. (...), as he had requested. Therefore it becomes unnecessary to require the adoption of corrective measures.

resolution

For all this, I resolve:

1. Admonish the City Council of (...) as responsible for an infringement provided for in article 83.5.b) in relation to article 15, both of the RGPD.

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 fourth legal basis.

2. Notify this resolution to the City Council of (...).
3. Communicate this resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
4. Order that this resolution be published on the Authority's website (apdcat.gencat.cat), from 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 City Council of (...) can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions of 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 administrative contentious jurisdiction.

If the City Council of (...) 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 LPAC.

Likewise, the City Council of (...) may file any other appeal it deems appropriate to defend its interests.

The director,