

File identification

Resolution of sanctioning procedure no. PS 44/2020, referring to Barcelona City Council

Background

1. On 03/04/2019, the Catalan Data Protection Authority received a letter from a person filing a complaint against Barcelona City Council, on the grounds of an alleged breach of the regulations on personal data protection.

Specifically, the complainant explained that in the proof of payment issued on 02/03/2019 by Barcelona City Council, through the Municipal Mobility and Deposit Services (hereinafter, B:SM), relating to a complaint imposed for "parking in a place where stopping is prohibited", the right to information had not been properly exercised in accordance with that established in article 14 of the European Data Protection Regulation (RGPD).

The complainant provided, among other documents, a copy of said proof of payment, which contains an information clause based on Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), which does not include all the information required by art.14 of the RGPD. The terms of the informative clause are as follows: "In accordance with Organic Law 15/1999, of December 13, on the protection of personal data, we inform you that personal data will be included in the files of Barcelona City Council: infringements of traffic regulations and municipal ordinances and integrated collection system, in order to manage sanctioning procedures. The data may be transferred to the collaborating entities in the management and to Administrations or Public Entities that require it in the use of their powers. You can exercise the rights of access, rectification and cancellation or opposition in writing addressed to the General Registry of the City Council: Pl. Sant Jaume no.2. 08002 Barcelona, indicating in the subject line: Protection of rights LOPD"

2. The Authority opened a preliminary information phase (no. IP 65/2019), 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. In this information phase, on 03/14/2019 the reported entity was required to report whether prior to or in addition to the proof of payment referenced, all the information required by article 14 of the RGPD was provided to the person making the complaint, by another means or system, and if the models of proof of payment equivalent to the one referred to in the complaint are had adapted to the RGPD.

4. On 03/26/2019, the Barcelona City Council responded to the above-mentioned request in writing, in which it set out the following:

- That "when the citizen goes to the crane depot to carry out the procedures for the withdrawal of his vehicle, two documents are issued simultaneously: The payment of fees and the proof of payment".

- That "Two additional channels have been enabled to carry out these procedures and to deliver these two documents: ATMs located in the deposits, and Via online: sending a PDF to the email address indicated by the citizen".

- Que "El primer dels documents (liquidació de taxes), és igual sigui quin sigui el canal de tràmits emprat per la sortida del vehicle, i al peu s'inclou en català i castellà informació bàsica sobre protecció de dades i es facilita l' link to a second informative layer located on the web. It is attached as annex no. 1."

- That "The second document (proof of payment) is generated in a specific and differentiated way in cases where the exit channel is not in person (ATM or online) and we have indeed been able to verify that in the informative footer there is a material error in wrongly quoting the already repealed Organic Law 15/1999. Based on your communication, this error has been corrected. See annex 2."

- That "in the weeks prior to May 25, 2018, the documentation and information related to the crane service was updated with regard to the processing of personal data, the old wording of the text already being omitted corrected in the document (proof of payment) through the non-person channel. (...)"

- That "We understand that given that the now corrected document has always been accompanied by the fee settlement sheet that incorporates updated information on data protection, the right to information established in article 14 of the European Data Protection Regulation, has taken effect (...)"

The reported entity attached the following documentation to the letter:

- The form entitled "Liquidation of fees for the provision of municipal crane services" (annex 1), relating to the fee to be paid to remove the vehicle from the municipal depot. This model includes the informative clause on data protection, in which information is provided, among others, about the person in charge of the treatment, the purpose of the treatment, the possibility of exercising the rights established in articles 15 to 22 of the RGD, and an electronic address is indicated to access the rest of the basic information (www.bsmsa.cat/avis-legal/).

- The "Complaint and proof of payment" model (annex 2), in which the details of the complaint (for parking in prohibited places) and the details to be able to make the payment in reduction of the penalty are detailed. According to the City Council, it would be the model used "based on your communication" (20/03/2019) once the information on data protection contained in the previous model has been amended.

This model includes the following information clause on data protection: "In accordance with data protection regulations, we inform you that your personal data will be processed by Barcelona City Council in the traffic fines file (code 026) with the purpose of processing sanctioning procedures, legitimized on the basis of the revised text of the Law of traffic, movement of motor vehicles and road safety. Except for legal obligation, your data will not be transferred to third parties. You have the right to access, rectify and delete your data, as well as exercise the right over the same. You can consult additional information on protection at [www.bcn.cat/ajuntament/treatment i protecciodades](http://www.bcn.cat/ajuntament/treatment_i_protecciodades)". of data in

5. On 07/05/2019, the Catalan Data Protection Authority received a second letter from the same complainant in which he made a new complaint against the Barcelona City Council, for the same facts described in the antecedent of first right of this initiation agreement. In this new letter of complaint, the complainant, in addition to the copy of the same "Proof of payment" form, dated 02/03/2019 - already provided in his first letter of complaint -, also attached a copy of the form of "Liquidation of fees for the provision of municipal crane services", dated 02/03/2019, in which the informative clause on data protection cited the LOPD, and did not include all the information required by the 'RGPD.

Likewise, he added that "my personal data could be illegally transferred between Barcelona City Council and BSM", referring to the personal data that is processed by the company B:SM, which manages the City Hall crane service. In the last one, he complained that the night security guard of the parking lot where there was the deposit of vehicles removed by the crane "had access to the data when the vehicle was delivered", despite being an employee of the private surveillance company of the municipal deposit.

6. The Authority opened a preliminary information phase (no. IP 145/2019), in accordance with the provisions of article 7 of Decree 278/1993, and article 55.2 of the LPAC, to determine if the facts 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 that occurred.

7. In this information phase, on 16/05/2019 the reported entity was required to report, among others, on the data to which the company B:SM can access when it provides the service of municipal crane, and specifically, if it acted in these actions

as the person in charge of the treatment. Finally, it was required, in relation to the collection of data from the people who come to collect the vehicle at the municipal depot, to report whether the company that manages the night surveillance of the municipal depot would act as sub-responsible for the treatment, and in such a case that the supporting documentation was provided.

8. On 05/29/2019, the Barcelona City Council responded to the aforementioned request in writing in which it set out, among others, the following:

- That "with regard to the claimant's statement regarding the vehicle depot's security guard's access to his personal data, we are pleased to inform you that at night (between 11:30 p.m. and 07:00 a.m. the following day) at Deposits of John In Miró and Sant Genís there is no BSM administrative person to deal with vehicle departure management. In this time slot, the administrative tasks related to the departure of vehicles are carried out remotely from the Badajoz Street Depot where BSM administrative staff are present. The function of the security guard in these cases is solely to inform the staff of the Badajoz Depot, via electronic means or telephone, of the documentation presented by the citizen in order to be able to collect his vehicle."
- That "This action is carried out in accordance with the prescriptions established by BSM regarding the processing of personal data by the security personnel of the company awarded the surveillance service, contained in the data processing order documents (...) held between BSM and the UTE 'Protección de patrimonios SA-IMAN Seguridad SA – Diswork, SL' for the provision of the surveillance service."
- That "the type of data to which you have access are identifying, personal/social and economic data."

The reported entity attached to the letter, among others, the following documentation:

- The form entitled "Liquidation of fees for the provision of municipal crane services" (annex 1), and the "Complaint and proof of payment" model (annex 2). Both documents had already been provided in response to the information requirement of IP 65/2019. According to the City Council, they would be the models used from 03/20/2019.
- Copy of the document "Agreement on access to personal data on behalf of third parties between Barcelona de Serveis Municipals, SA, and Protección de patrimonios SA – Iman seguridad, SA – Diswork, SL UTE Ley 18/198" (hereinafter, Company), formalized on 07/01/2016.

Clause 1a of said contract defines its object in the following subjects:

"BSM has contracted the services of the Company with the aim of providing services of

surveillance and service assistants corresponding to the Municipal Crane Depots, Control and Mobility Center, Barcelona-Nord Bus Station and Car Parks.”

- Copy of the document with the title "Addendum to contract no. (...)", addendum whose purpose is to adapt the contract cited between BSM and the Company to the RGPD data protection regime. Clauses 1a, 2a and 4a provide the following:

"1.- Purpose of the processing order By means of this clause, the PROVIDER in charge of the processing is authorized to process on behalf of B:SM, responsible for the processing, the personal data necessary to provide the described service in the contract.

2.- Identification of the affected information For the execution of the services derived from the fulfillment of the object of this contract, B:SM has made available to the SUPPLIER the necessary data for its implementation.

4.- Obligations of the person in charge of the treatment SUPPLIER, person in charge of the treatment and all his staff are obliged to:
1) Use the personal data that is the subject of treatment, or that is collected for its inclusion, only for the purpose of this assignment. Under no circumstances may you use the data for your own purposes.
2) (...)"

9. On 03/27/2020, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint .

In this regard, it was found that on the referenced website, in the document "Liquidation of fees for the provision of municipal crane services" (<https://www.bsmsa.cat/avis-legal-i-privacitat/>) , it contained all the information established by article 14 of the RGPD.

When in the "Complaint and proof of payment" model, the URL address indicated in the document (www.bcn.cat/ajuntament/protecciodades) links to the Barcelona City Council's electronic headquarters. There, you can access different boxes with the following statements: "What treatment activities does Barcelona City Council do?"; "Registry of treatments"; "What rights do I have over my data?"; "Who processes my personal data?"; "What guarantees does Barcelona City Council offer me regarding my personal data?"; "Are my data transferred to third parties?"; "How long is my data kept?"; "Who can I turn to if I am not satisfied with the answer from the Barcelona City Council?"; and "Contact with the data protection officer". When you click on each one

of these boxes opens a drop-down containing the information corresponding to the statement in each box, but it is not concise and specific due to the processing of the personal data collected in the complaints and proof of payments relating to the sanctioning files in matter of traffic and vehicle circulation. The information found there is a summary of general information on data protection and the Barcelona City Council's privacy policy.

10. On 04/06/2020, and still within the framework of the prior information phase, the Authority required the reported entity to, among others, give a concrete answer to one of the questions formulated in the first information requirement (IP 65/2019), relating to the data to which the company B:SM can access when it provides the municipal crane service, and if in these actions it acts as a data controller. If so, it was required that he provide the supporting documentation of this circumstance, that is to say the legal act formalized between the City Council and B:SM that would protect such action.

11. On 18/06/2020, the Barcelona City Council responded to the above-mentioned request in writing, in which it set out, among others, the following:

- That "The management of the municipal crane carried out by BSM.SA corresponds to a decentralization of functions in accordance with article 85 of Law 7/1985, of April 2, regulating the Basics of Local Government. In this sense, article 2 of the Statutes of BSM.SA states the following in relation to the referred service: "(i) Those related to road mobility Barcelona, including, among others: (...)
 - c) the management of the mobility support units "
- That "The data to which BSM.SA has access in the management of the municipal crane service are identifying, personal, social and economic and the measures, precautions and security mechanisms established by the City Council are adopted in all the relative to the management of personal data. In this regard, the personal data processing agreement between the City Council and BSM.SA is attached as an annex."

The reported entity provided as documentation, the document of "Agreement between the Management of Safety and Mobility Prevention of the Barcelona City Council and the Societat municipal Barcelona de services municipals, SA, for the assignment of the processing of personal data staff" (16/05/2012).

The first clause of said agreement provides that "BSM, SA, undertakes to treat the personal data to which it has access during the fulfillment of this agreement, following the instructions given by the Barcelona City Council, without in no case, can they be applied or used for a purpose other than this compliance, and will, in accordance with the applicable data protection regulations, be considered a data controller". The third clause provides that "In the event that, due to the normal development of entrusted data processing, BSM, SA, considers the need to

to subcontract personal data processing services, BSM, SA will formalize with this subcontractor a processing contract that covers all the aspects defined in the data protection regulations established in this agreement. (..)"

12. On 09/03/2020, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Barcelona City Council for an alleged infringement provided for in article 83.5.b), in relation to article 12.1; all of them from 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 movement thereof (hereinafter, RGPD). This initiation agreement was notified to the imputed entity on 09/17/2020.

13. The initiation agreement explained the reasons why no imputation was made with respect to other facts reported. First of all, regarding the possible violation of the right to information, for not providing in the documents "Liquidation of fees for the provision of municipal crane services" and "Complaint and proof of payment", dated 02/ 03/2019, all the information required in articles 13 and 14 of the RGPD, it was indicated that said infringement would have prescribed (art. 74.a. LOPDGDD), which caused the extinction of the responsibility that n could derive, and prevented the initiation of the corresponding sanctioning procedure. In the second term, in relation to the complaint of the person reporting here regarding the fact that the City Council had communicated his personal data to B:SM without his consent, from the documentation provided it was inferred that B:SM acted as the person in charge of the treatment of the City Council, and in turn the security company of the night watchman, as a subcontractor. It is for this reason that the consent of the affected person was not necessary to carry out said communication, and as a result it was also agreed to file these reported facts.

14. 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.

15. On 01/10/2020, the City Council made objections to the initiation agreement, and provided various documentation with its letter.

16. On 01/21/2021, the person instructing this procedure formulated a proposed resolution, by which it proposed that the director of the Catalan Data Protection Authority admonish the Barcelona City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 12.1 , all of them from the RGPD, although, as will be explained in more detail in the legal basis 2on of this sanctioning resolution, where it said "article 83.5.a)" should read "article 83.5.b) ", since due to a material error the correct letter was not typed.

This resolution proposal was notified on 01/28/2021, and a period of 10 days was granted to formulate allegations.

17. On 02/10/2021, the accused entity submitted a statement of objections to the resolution proposal.

proven facts

The content of the informative clause of the "Complaint and proof of payment" model, used by Barcelona City Council since 03/20/2019, and which was modified following the request for information made by the Authority, it does not include all the information required by article 14 of the RGPD.

In this regard, article 11 of the LOPDGDD allows the person affected to comply with the duties of transparency and information if the basic information mentioned there is provided, with an indication of an electronic address or other means that allows access simple to the rest of the information, the model that seems to be opted for in said clause with the following mention: www.bcn.cat/ajuntament/protecciodades. However, even so, it does not comply with what is required by the RGPD and the LOPDGDD.

On the one hand, because if the indicated URL is accessed, the information provided does not meet the requirements of being concise, transparent, intelligible and easily accessible, with clear and simple language. Indeed, in the referenced electronic address, there is a whole series of information classified in different boxes ("What treatment activities does the Barcelona City Council do?"; "Registry of treatments"; "What rights do I have regarding the my data?"; "Who processes my personal data?"; ...), but it is not concise and specific with regard to the treatment of personal data collected in complaints and proof of payments relating to disciplinary proceedings in the matter of traffic and vehicle movement. The information found there is a summary of general information on data protection and the Barcelona City Council's privacy policy. This presentation of information adds difficulty to identifying the specific information on the processing of the data of those reported in the matter of traffic and vehicle circulation, since it entails that the Internet user must sort out, from among all the information offered in in general terms, what is the information that is applicable to the processing of your personal data due to your status as a complainant, a difficulty that would be avoided, for example, if the URL contained in the "Complaint and proof of payment" model " would redirect to a single box relating to sanctioning procedures in the matter of traffic and vehicle circulation where all the information provided for in articles 13 and 14 of the RGPD could be found, in an orderly manner.

And on the other hand, it must be taken into account that in cases such as that of the person reporting here in which the sanctioning file initiated derives from a report by an official who witnesses certain events and formalizes the report without collecting the data of the affected person, we would b

faced with a case that should be subject to the provisions of art. 14 of the GDPR. Well, for this case art. 11.3 of the LOPDGDD also allows only the basic information mentioned above to be provided, but it expressly adds the information relating to the categories of data subject to treatment and the sources from which they come (art. 14.1.d and 14.2.f of the RGPD), without these extremes appearing in the information clause of the "Complaint and proof of payment" notification model. Likewise, it should be noted that in the said "Complaint and proof of payment" model, when citing the rights that the affected persons can exercise, the text lists the rights "to access, rectify and delete your data, as well as exercise the right over them", without mentioning the rest of the rights established in articles 15 to 22 of the RGPD, which are also part of the minimum content of the basic information, in accordance with article 11 of the LOPDGDD.

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, of 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 ones were already analyzed in the proposed resolution, but even so it is considered appropriate to mention them here, given that they are partly reproduced in the second ones. The set of allegations made by the accused entity are then analysed.

2.1 About the material error

In the first place, the denounced entity highlights that in the resolution proposal there is "a contradiction" between the classification of the facts denounced, collected both in the agreement initiating this procedure and in the third-party legal basis of the resolution proposal, where it is considered that the facts reported constitute an infringement provided for in "article 83.5.b)" in relation to article 12.1 of the RGPD, and what is indicated in the part dispositive of the proposed resolution, where the investigating person proposes to admonish the City Council as responsible for an infringement provided for in "article 83.5.a)" in relation to article 12.1, both of the RGPD.

In relation to the above, it should be noted that, certainly, in the dispositive part of the resolution proposal, the error indicated by the reported entity has occurred, and that it is a simple mistake at the time of type a letter. In other words, in the first paragraph of the dispositive part of the proposed resolution where it says "article 83.5.a)" it should say "article 83.5.b)". About that, you need to indicate that article 109.2 of Law 39/2015 provides for the figure for the rectification of errors. This mechanism allows public administrations to rectify at any time,

either ex officio or at the request of the persons concerned, the material, factual or arithmetic errors existing in their acts.

The rectification of this error in no way changes or alters the content or meaning of the resolution proposal, which throughout its legal foundations, clearly sets out the reported facts and their correct typification through the transcription literal of article 83.5.b) in relation to article 12.1, both of the RGPD, and also by article 74.a) of the LOPDGDD. Also, as the entity itself points out, in the initiation agreement the reported facts are typified by the same articles. To all this, we must add that, the reference to article 12.1 linked to article 83.5, can only be understood as made if the letter that complements article 83.5 is "b)", because this is where it is typified as to such the violation of "the rights of the interested parties according to articles 12 to 22", where the description of the proven facts fits.

For all the above, it is considered that the "contradiction" alleged by the entity is an indisputable material error that is considered rectified here. Without, in any case, the allegation that such an error has caused the City Council to be helpless, since the content of the proposed resolution could clearly and patently be appreciated that it was a simple error material resulting from an error in the typing of a letter, which has in no way changed the legal content of the act, as can be seen from the statement of allegations itself which is the subject of analysis in this resolution.

2.2 On the transparency of information

At this point, the entity reproduces the same allegations presented against the initiation agreement, focused only on the content and the way in which the information published at the URL address www.bcn.cat is presented [/city hall/protected](#)

That being the case, it is necessary to remember what was already indicated about these allegations in the resolution proposal. But, before entering into the assessment of the information contained in the referenced URL, it is important to remember that, as set out in the proven facts section, the "Complaint and proof of payment" document, used by The City Council also does not include all the basic information that article 11 of the LOPDGDD allows to provide as the first level of information, specifically, the extremes relating to the categories of data subject to treatment and the sources from which they come (art. 11.3 LOPDGDD), and the complete mention of the rights established in articles 15 to 22 of the RGPD (art. 11.2.c. LOPDGDD).

Given the above, it should be noted that the information given to interested parties, through the internet link referenced in the "Complaint and proof of payment" document, cannot be considered concise, transparent, and easily accessible. The requirement that the provision of information to interested parties be made in a concise and transparent manner implies that those responsible for the treatment must present the information in an efficient and succinct manner. So things are, taking into account that, in the present case, it has been chosen to provide a first level of basic information through the "Complaint and proof of payment" document, in the

which includes the indication of an electronic address where to find the rest of the information provided for in article 14 of the RGPD, this should allow the affected person to access the information online, find all the specific information about the processing of data in the sanctioning procedures in the matter of traffic, without the need to scroll through large amounts of text in search of specific aspects. In this sense, it should be emphasized that article 11 of the LOPDGDD when it offers this option, specifically refers to an electronic address that allows access "in a simple and immediate way" to the rest of the information.

The information found through the electronic link is a summary of general information on data protection and the Barcelona City Council's privacy policy.

This presentation of information entails that the interested party must select, from among all the information offered in general terms, which information is applicable to the processing of their personal data due to their status as reported.

In this regard, the entity highlights and documents that, through the referenced email address, you can access, among other informational boxes, the "Treatment record" box, which, in turn, contains a document, which by clicking on it opens a database entitled "Register of treatment activities", with all the treatment activities carried out by the City Council (27 pages). Certainly, if an active search is made within the database, treatment number 346 – Sanctioning procedure for violations of the Traffic and Road Traffic Act and the Pedestrian Traffic Ordinance is located. According to the reported entity, the information required by article 30 of the RGPD (Registry of processing activities) is presented there, along with the information required by articles 13 and 14 of the RGPD. Regarding this, it must be said that in the database, information is given on: the area of government; organ; management; treatment code; first name; purpose; transfer of data; persons affected by the treatment; legitimation; international data transfer; data typology; retention period; safety. In other words, it offers specific information on some of the items established by article 14 of the RGPD, but not on all of them.

So things are, the information to the interested person is divided between: the "Complaint and proof of payment" document - which, it must be remembered, does not comply with the minimum content established in article 11 of the LOPDGDD that allows giving a first level of basic information-; the information formulated in general terms about all the treatments carried out by the City Council, accessible through the electronic address indicated in the document ("What processing activities does Barcelona City Council do?"; "What rights do I have over my data?"; "Who processes my personal data?"; "What guarantees does Barcelona City Council offer me regarding my personal data?"; ...); and finally, the electronic document "Register of treatments", which requires several clicks to access it, and within which you must search, among all the data treatments carried out by the City Council, the specific information about the treatment that is sought, which although it is more specific, is not complete. In conclusion, it is unquestionable that the current design and arrangement of the information means that, the person affected by a sanctioning procedure in the matter

of traffic and vehicle circulation, it is difficult for you to obtain clear, orderly and detailed information about the processing of your personal data.

Finally, it should be noted that in relation to the documents that are presented, which are the same as those that were already attached with the statement of objections against the initiation agreement, related to the registration in the 'EuDatathon digital event of the Publications Service of the European Union, although they are included in this file, it is documentation that does not refer to the facts that are the object of the resolution of the present procedure, centered on whether the current system designed by the City Council to provide all the information required by articles 13 and 14 of the RGPD to the person affected in a disciplinary procedure in traffic matters, is correct. Therefore, their analysis is outside of this resolution proposal, which is limited to the facts proven here. As for the rest of the documents, currently contained in the link www.bcn.cat/ajuntament/protecciodades, it is considered that with the information presented throughout this foundation, an accurate response has already been made.

2.3 On the proposal of a new system to provide the mandatory information

Finally, the City Council proposes a new formula to provide in a clear and transparent manner all the information required by articles 13 and 14 of the RGPD, based on a two-layer information system, and for this purpose, they attach the new proposed form models.

In this respect, it is appropriate to indicate that this Authority evaluates the City Council's performance very positively. Having said that, it is also necessary to point out that the adoption of measures to correct the effects of the infringement do not distort the imputed facts, nor modify their legal qualification.

Having established the above, it is necessary to evaluate the new system presented by the City Council which, as has been said, is based on a two-layer information system. In a first layer, the citizen is offered the basic information provided for in article 11.2 of the LOPDGDD - responsible for the treatment, purpose of the treatment, and possibility to exercise the rights of articles 15 to 22 of the RGPD-, and the regulations that legitimize the treatment of data are also cited. Below is an electronic link (treatment 346 – Sanctioning procedure for violations of the Traffic and Road Traffic Act and the Pedestrian and Vehicle Traffic Ordinance (OCVV)), from which the interested person can access the

Barcelona City Council's privacy policy plan, where, in turn, you will find in the upper-central part of the screen, a box where you only have to indicate the treatment number ("treatment 346", which already contained in the first layer of information) to obtain the rest of the information provided for in the RGPD, relating to the specific treatment of your data in this area.

The first layer of information, according to the new proposal, would also include, along with the information on the possibility of exercising the rights established in articles 15 to 22 of the RGPD, a reference to the electronic address

<http://ajuntament.barcelona.cat/protecciodades>, from which the interested person can access the information formulated in general terms about all the treatments carried out by the City Council, and also the specific forms for the exercise of their rights. And finally, a link that will allow access to a direct contact form with the City Council's data protection officer.

In accordance with the above, and despite the fact that the new information proposal is quite complete, it is necessary, however, to rectify it in some points in order to be able to consider it adequate to what is established in the data protection regulations.

With regard to the content of the first layer of information, the following should be indicated: (1) there is a lack of information relating to the categories of data subject to treatment and the sources from which they come (art. 11.3 of the LOPDGDD); (2) it should be added that the processing of data is legitimate, in addition to the regulations cited there, based on the public interest or in the exercise of the public powers conferred on the person in charge of the processing (art. 6.3 RGPD) ; and (3) it is necessary to delete the reference to the right to data portability, since article 20.1 of the RGPD provides that this right is not applicable when data processing is necessary for the fulfillment of a mission carried out in the interest public or in the exercise of public powers conferred on the data controller, as is the case at hand.

With regard to the content of the second layer of information, where information is provided on all the ends provided for in article 14 of the RGPD in relation to the processing of personal data of the persons interested in a "Sanctioning procedure for infringements of the Traffic and Road Circulation Law and the Pedestrian and Vehicle Circulation Ordinance", indicate that: (1) in the "Conservation term" box, it would be necessary to specify the term referred to when it says "The data will be deleted once the legal obligations derived from the management of the activity have been fulfilled"; (2) the "Legal basis" box should be completed with the terms indicated in the previous paragraph on the legitimization of the treatment; and (3) in the "Exercise of rights" box delete the right to data portability.

3. In relation to the facts described in the proven facts section, relating to the processing of personal data, it is necessary to refer to article 12.1 of the RGPD, which provides for the following:

"The person responsible for the treatment will take the appropriate measures to provide the interested party with all the information indicated in articles 13 and 14, as well as any communication pursuant to articles 15 to 22 and 34 relating to the treatment, in a concise, transparent, intelligible and easily accessible, with a clear and simple language, in particular any information aimed specifically at a child. The information will be provided in writing or by other means, including, if appropriate, by electronic means. When requested by the interested party, the information may be provided verbally as long as the identity of the interested party is proven by other means"

In connection with article 12.1 of the RGPD, and taking into account the fact that in cases such as that of the complainant here, the personal data that undergo treatment have not been collected from the interested party, it is necessary to go to the provisions of Article 14 of the RGPD:

"1. When the personal data has not been obtained from the interested party, the person responsible for the treatment will provide the following information:

a) The identity and contact details of the person in charge and, where appropriate, of their representative; b) the contact details of the data protection officer, if applicable; c) the purposes of the treatment for which the personal data is intended, as well as the legal basis of the treatment; d) the categories of personal data in question; e) the recipients or the categories of recipients of the personal data, as the case may be; f) in its case, the intention of the person in charge to transfer personal data to a recipient in a third country or international organization and the existence or absence of an adequacy decision by the Commission, or, in the case of the transfers indicated in the articles 46 or 47 or article 49, paragraph 1, second paragraph, refers to adequate or appropriate guarantees and the means to obtain a copy of them or the fact that they have been provided.

2. In addition to the information mentioned in section 1, the data controller will provide the interested party with the following information necessary to guarantee a fair and transparent data treatment with respect to the interested party:

a) the period during which the personal data will be kept or, when that is not possible, the criteria used to determine this period; b) when the treatment is based on article 6, section 1, letter f), the legitimate interests of the person responsible for the treatment or of a third party; c) the existence of the right to request from the person in charge of the treatment access to the personal data relating to the interested party, and its rectification or deletion, or the limitation of its treatment, and to oppose the treatment, as well as the right to the portability of the data ; d) when the treatment is based on article 6, section 1, letter a), or article 9, section 2, letter a), the existence of the right to withdraw consent at any time, without it affecting the legality of the treatment based on the consent before its withdrawal;

e) the right to present a claim before a control authority; f) the source from which the personal data come and, where appropriate, if they come from publicly accessible sources; g) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party. (...)"

On the other hand, it should be noted that article 11 of the LOPDGDD foresees the possibility that the data controller can comply with the duty of information established in articles 13 and 14 of the RGPD as follows:

"1. When the personal data is obtained from the affected person, the controller can comply with the duty of information established by Article 13 of Regulation (EU) 2016/679 by providing the affected person with the basic information referred to in section below and indicating an electronic address or other means that allows you to access the rest of the information in a simple and immediate way.

2. The basic information referred to in the previous section must contain, at least: a) The identity of the data controller and his representative, if applicable. b) The purpose of the treatment. c) The possibility of exercising the rights established by articles 15 to 22 of Regulation (EU) 2016/679. (...)

3. When the personal data have not been obtained from the affected person, the person in charge can comply with the duty of information established by Article 14 of Regulation (EU) 2016/679 by providing that person with the basic information indicated in the previous section and indicating an electronic address or another means that allows you to easily and immediately access the rest of the information. In these cases, the basic information must also include: a) The categories of data subject to treatment. b) The sources from which the data come."

Well, from the investigative actions carried out, it is inferred that the "Complaint and proof of payment" document used by the City Council from 03/20/2019 and up to the time of initiating this file, would violate the provisions of the RGPD and the LOPDGDD.

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 pursuant to articles 12 to 22".

The conduct addressed here is included as a minor infraction in article 74.a) of the LOPDGDD, in the following form: "a) Breach of the principle of transparency of information or the right to information of the affected person for not providing all the information required by articles 13 and 14 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 appropriate measures to adopt because

cease the conduct or correct the effects of the offense that has been committed.

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".

By virtue of this power, it is necessary to require the City Council to modify the proposed models as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of this resolution to new forms of the first and second layer of information, in the terms indicated in the legal basis 2.3.

Likewise, it should be noted that, taking into account the request made by the City Council, due to the technical complexity required to implement the new system, the measure described in the previous paragraph refers only to the modification of the text of the models proposed as new forms, but not to their effective implementation. In this sense, the City Council is required to use the new proposed forms, which contain a first layer of information and the electronic links through which the rest of the information can be accessed, within two months from the notification of this resolution.

Once the corrective measures described have been adopted, within the period indicated, the City Council must inform the Authority within the following 10 days, without prejudice to the inspection powers of this Authority to carry out the corresponding checks .

For all this, I resolve:

1. Admonish the Barcelona City Council as responsible for an infringement provided for in article 83.5.b) in relation to article 12.1, both of the RGPD.

2. To require the Barcelona City Council to adopt the corrective measures indicated in the 4th legal basis and to accredit before this Authority the actions carried out to comply with them.

3. Notify this resolution to Barcelona City Council

4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.

5. Order that this resolution be published 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 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,