

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 1/2021, referring to the City Council of (...).

Background

1. On 02/09/2019, the Catalan Data Protection Authority received a letter in which Mr. (...) (hereinafter, complainant) filed a complaint against the Mayor of the City of (...), due to an alleged breach of the regulations on the protection of personal data. Specifically, the complainant stated that in an ordinary plenary meeting held on 07/28/2016, where he attended as an opposition councillor, the mayor of the City Council had made statements during the debate on the point of agenda corresponding to "Prayers and questions", in which he had made public the identity of the people who had filed administrative contentious appeals against resolutions issued by the City Council in urban planning matters (hereafter, appellants), among them, her identity and that of his wife, to whom the mayor had attributed the status of representatives of one of the entities that had filed one of these resources, when he was only a member.

Next, the complainant referred to a second plenary meeting held on 31/01/2019, in respect of which he stated that the mayor had again referred to him in similar terms as he had done in the plenary session of 28/07/2016.

In order to substantiate the facts complained of, the person making the complaint indicated that it was possible to access the "video minutes" of the two Plenary Sessions mentioned, both through the municipal website and through YouTube. Likewise, he provided a copy of the minutes of the Plenary meeting of 07/28/2016, which contained the following verbatim in the 21st section of "Prayers and Questions":

“ (...) (...) represented by Mr. (...) who came to present two appeals on patrimonial responsibilities of € 1,200,000 and € 600,000 respectively for refusing him to build above the permit. The Court agreed with the city council.

• Two disputes corresponding to Mr. (...) where he asked to be able to build 10 homes on a piece of land where only 3 were allowed; and the other ground that allowed only 5 also wanted to double it. A dispute was brought in defense of the general interest and the city council also won.

• And the one filed by 5 of the 7 residents of the sector (...), Mr. (...), Mr. (...), Mrs. (...), Mr. (...) and the society (...) (...) represented by Mr. (...) and Mrs. (...), where they wanted to build up to 260 of the 108 homes allowed, a dispute also won by the City Council.

- *The last of the disputes corresponds to the gentlemen (...), (...) and (...) who asked that their lands located outside the limits be included in the sector that had to be developed in (...). It is and is also won by the city council".*

2. The Authority opened a preliminary information phase (no. IP 41/2019), in accordance with the provisions of article 7 of Decree (...)78/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat, and article 55.(...) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (of hereinafter, LPAC), to determine whether the facts were likely to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 02/12/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Specifically, it was verified that, through the official website of the City Council of (...) ([http://www.\(...\).cat](http://www.(...).cat)), the minutes of the plenary session held in date 07/28/2016 (but not in the minutes of the plenary session held on 01/31/2019), as well as in the video of the session of the plenary session held on 01/31/2019). And through the YouTube portal, the recordings of the two indicated sessions were accessed. In relation to the content of the minutes and the published recordings, the following was found:

3.1.- That in the minutes of the Plenary session held on 07/28/2016, in the 21st section of "Prayers and Questions", the persons who had brought administrative appeals against the City Council, as it appeared in the copy of the minutes provided by the complainant (transcribed in part in the 1st antecedent).

3.2.- With regard to the recordings of the two plenary sessions to which the complainant referred, what is considered most relevant to the effects of the events reported is transcribed below:

3.2.1.- Recording of the ordinary meeting of 07/28/2016:

(The transcribed part corresponds to the mayor's parliament held from 2:12:00 a.m. to 2:19:23 a.m., corresponding to the debate on point 21 of the agenda, entitled "Prayers and questions")

(Mayor) "There is a question that has been sent to us by a gentleman who is on behalf of the Association of Residents of (...) (...). The question is what is the assessment of the municipal groups of the City Council of (...) of the letter from the Government team of (...) of March this year called "the sentence (...)" and of the mayor's repeated statements in plenary saying that not complying with this sentence is defending the general interest of (...)? This is the question that this gentleman has sent us (...) If any group wants to make a contribution to this question, go ahead.

(Mr. (...) (...)) "Well, we have been clear on this issue (...). When a municipality, from our point of view, receives two judgments against it, where they tell it that what it has done is contrary to the

regulation, whether we like it or not, what it should do, from our point of view, is to face the problem, sit down with those affected and find a solution. What has been done is not that, to avoid it, to throw balls away, in a forward escape that can be very expensive for us".

Then another councilor intervenes, and then the mayor intervenes again.

(Mayor) Well, I do want to make a comment. The question that this gentleman has sent us about what was the assessment of the written statement made on the sentence (...), has already been amply answered, assessed and defended in the letter itself. Anyway, we'll be iterative and we'll be back to make an assessment of it.

First of all, because it was necessary to clarify and refute a whole series of statements that had been intentionally circulated around the sentence and about it, explaining and clarifying to the citizens of (...) the entire judicial process and the content of the same, fact that the neighbors thanked us and therefore, the assessment we make is positive.

With reference to the defense of the general interest of the municipality, we want to clarify that it is not a will or not to do so but we understand that it is an obligation of all democratically elected members in the exercise of their responsibilities, whether they form or are not part of the governing team; therefore, not defending an appeal without exhausting all the legally established avenues as proposed to us is, and we qualify it again in the same way, as serious irresponsibility; even more so when in the same sentence the council was right as long as the building of commerce was allowed in the area.

On the contrary, not defending the general interest of the municipality would be a serious detriment to all the residents since municipal taxes would undoubtedly have to cover all the compensations. This defense of the general interest of the municipality is not a novelty or an exceptional case, but has also been applied in the same way in the six disputes that have been defended and won during these nine years of our group's mandate, and that each of them has represented to the municipality an average of around €8,000 in cost each, an amount that this gentleman has also asked us through an instance and that the data will be provided to them, but how are we used to, they will certainly be used in a way that is probably not very reliable.

It is worth saying that of the first three controversies that were raised, sorry, that they defended themselves, in the previous government team, and we ended up defending them. Five of these disputes corresponded to a desire to build above what is permitted, and in this case the general interest, which we have to defend, we defended the proposals not to allow this:

- *One of them, sorry, two of them, presented them (...)(...), represented by Mr. (...), who came to present two appeals, and in addition, on patrimonial responsibilities, which he asked of us 1,200,000-€ in one, and 600,000-€ in the other, and that to refuse him to build above the permit. We refused him and he presented us with a contentious appeal, and he lost it, defending the general interest.*
- *(...) Two more disputes corresponding to Mr. (...) where he asked for a power of attorney build 10 homes where only 3 were allowed; and the other ground that allowed only 5 also wanted to double it. A dispute was presented, and in defense of the general interest we also won it (...).*

- *Another filed by 5 of the 7 residents of the sector (...), Mr. (...), Mr. (...), Mr. (...), Mr. (...) and the society (...)(...) represented by Mr. (...) and Mrs. (...), where of the 108 permitted homes they wanted to build up to 260, obviously above what was permitted, a contention that also won the Town hall.*
- *The last of the disputes corresponding to Mr. (...), Mr. (...) and Mr. (...) that they asked that their lands located outside the limits be included within the urbanization sector of (...)Est. Obviously they were refused, they filed a dispute, and the city council won.*

So all of these things, not just the defense of consumption, all of this is defending the general interest, and that's what we've done and that's what we'll continue to do."

The complainant then intervenes as a councilor in the opposition, who asks to speak because his person has been mentioned. He explains that it had been said that in accordance with the data protection regulations, the name or the ID could not be said, but that when it is convenient and there is a personal interest it seems that "yes you can say the names of the people". He makes it clear that the society in which he participates was included in his state of assets when he presented himself as a councillor, and that it is public knowledge that he is a member of this society, a fact that he has no interest in hiding. That the City Council did not win the dispute, since the executive process was not exhausted. That by their own decision, they decided to stop this process because it did not suit them, and that, therefore, withdrawing from a process that does not reach the end, is not winning it, it simply stopped halfway because someone he believed so.

3.2.2.- Recording of the ordinary meeting of 01/31/2019:

(The transcribed part corresponds to the statements of Mr. (...)(...) (complainant) and the mayor president made during the debate on point 11 of the agenda, corresponding to "Prayers and questions")

"(...)

(1h 32 m) (Mr. (...)(...)) "(...) The last plenary session, if you remember, both Mr. (...) like Mr. (...), they told me "look at the newspaper archive" said Mr. (...), the newspaper archive is the written press, (...) and I went looking for newspapers, I found one from 21/03/2011, interview with (...), answer "politics also consists of to put out fires", okay, "there should be a term limit, I think it would be correct if it were only two terms, I think that is more than enough time to carry out the planned projects", ostia, excuse me, eh?, but eight years in office, we have twelve, and there are sixteen, (...), it is an interview to remember... in the profile of the interviewee it says "a film that you like ", he says "I don't like the cinema", "a book you've read", he says "I don't like reading" (...) The mandate ends, as you know I'm not running of my own volition, I had more luck than others who will not have that luck, that they have been able to corner them, therefore, I do not introduce myself and I want to say it. We have suffered, I have suffered (...) things that do not belong in court, (...) and I'm sorry that no gesture is made, I'm sorry. I'm happy to leave, the experience was positive, but I'm sorry. And what do I mean? Well, in the day

23/12/2015 (...), on the public address system of this town hall, playing Christmas carols (...) with people here in the public square, an unauthorized recording of a

my conversation (...) this is so, - let me explain Mr. (...), don't make faces-, (...), the first surprised was Mr. (...) who said "have we come this far?". (...) This happened and now I am making it public here. Man, we've been quiet, we haven't said anything, and now you continue with these... I'd say it's sick (...) I'd worry, it's a sick issue this aversion to a person, (...) I want say, you can't do that. I don't think it's good that you share travel companions and that you make a team and all that, perfect, but I don't think it's good that there isn't a little decency, with respect and consideration (...). (...)

((...)h14m) (mayor) "(...) I'm going a little towards the beginning, because of what you said, (...), (...) I tell the truth in interviews, if I don't like reading, I don't read, (...) why do I have to tell lies? Do you blame me for that? Why do I say things that are? You have to blame me for that, is it funny to bring it up in a Plenary meeting? (...) And this is spectacular to bring it out here in a Plenary (...). Look, I'm sorry, they've already said it, that you took private things from people, from (...) in particular, because from me already, (...) from my private things, they're gone said so much, as of late, on social networks; social networks (...) that some of them had made a government pact before the elections, huh? No no, you (addressing Mr. (...)(...)), had already made a government pact for when there were elections in order to be able to kick out the (...)... so these social networks... until the day I got tired of all this and here, in Plenary, and I don't remember the day, but it was in November of the year...(...)017, I think it was, that I told the truth, the truth of why, responding to the statements of (...), about why I was in politics, because he didn't like me as mayor, and then I said what I say, and it's recorded, and if you think I'll repeat it again (...): Mr. (...)(...) presented himself in politics because from here, from the town hall of (...), he presented, together with other people from (...), an urbanization project for a space that - he had every right to do so -, but which put 260 houses there and 'they could do 106, and I said, obviously from the technical services, that we denied it. It has to be said, it has to be said, but in the end you have to be told."

4. On 07/04/2019 the Authority required the City Council of (...) to report on the reasons why, in the plenary session held on 07/28/2016, the mayor had identified the people who had filed administrative appeals against the City Council of (...), and in the plenary meeting held on 31/01/2019 it had mentioned that information regarding the aforementioned councilor, as well as the rule with the rank of Law that in his opinion would enable this communication of data, in the absence of consent of the affected persons. And in relation to the information disseminated in the plenary session of 07/28/2016, he was required to provide the documents presented by a neighbor, to which the mayor had given the answer that contained the references to the administrative contentious resources.

5. On 07/18/2019 the City Council of (...) responded to the aforementioned request in writing in which it stated the following:

"As you describe in your letter, in the Ordinary Plenary Session of 07/28/2016 in the requests and questions section, the mayor reported on disputes filed against the City Council of (...), indicating only one surname of the people who had submitted them, without any other data that would allow the identification of the interested persons. No mention was made of any relation of

kinship Please be advised that instructions have been given to edit the video and remove the surnames mentioned. In the drafting of the minutes of the Plenary, accessible from the transparency portal, there is no surname but only an initial that does not match the first letter of the surname pronounced by the mayor (except in two cases).

In the Plenary meeting on 01/31/2019, the mayor referred to a person who had the status of a councillor. When drafting the Plenary Minutes, accessible from the transparency portal, the councillor's name and surname were not collected.

In relation to the legal enablement of this communication of data, in the case of people who had lodged appeals, the demonstrations were made without being able to directly or indirectly identify the persons interested, identification which would only be possible through access to the files in question but in no case by means of the data (a surname) pronounced by the mayor. The City Council would not authorize access to third parties to the aforementioned files, without first preparing the information to preserve this identity.

In relation to the legal enablement of the reference made to a councillor, identifying him by name and surname during the celebration of the Plenary, we formulate the following considerations. As is known, the local regime regulations (in particular art. 163.2 of LEGISLATIVE DECREE 2/2003, of April 28, which approves the revised text of the Municipal and Local Government Law of Catalonia), and the transparency regulations (in particular art. 56.2 LAW 19/2014, of December 29, on transparency, access to public information and good governance) determine that the patrimonial situation and the activities and interests of elected officials must be public in a certain degree, participation in companies being one of the elements to be published. The information to be provided by the elected official must be up-to-date, so that it must record the variations that may occur in the declaration initially made when taking possession of the office. In short, the link with a society or the interests of a councillor in the performance of a society, would in this context be a type of information that can or should be known by the public. During the Plenum of 07/28/2016, the councillor himself informed (made public) his affiliation with the company, indicating that he had declared this information for his record in the municipal Register of Interests.

On the other hand, the urban planning regulations require the application of measures that promote transparency as much as possible in actions promoted or approved by local bodies, also demanding transparency in cases of urban discipline, always with recognition of the action public (among others, art. 12 of LEGISLATIVE DECREE 1/2005, of July 26, which approves the revised Text of the Urbanism Law). Consequently, the reference, in the development of the Plenary of the Corporation, to links of an elected office with an urban development would be in line with the principle of transparency, consistent with the "fulfilment of a mission carried out in the public interest" in which refers to article 6.1.e of the General Data Protection Regulation (...)."

The City Council accompanied its written response to the three instances presented by Mr. (...) on 8/06/2016 (one) and 21/07/2016 (the other two), required by the Authority. In the

first instance, presented on 8/06/2016 on behalf of the neighborhood association (...), the following was noted:

"Given that the Judicial Judgment (...)/ 13 of September 2 of the Contentious-Administrative Court number (...)-became final due to the dismissal of the petitions to the contrary of the City Council by judgment (...) of TSJC - affirms verbatim that the actions of the City Council "cannot be admitted because they were exercised with abuse of right and in fraud of procedural law" and "due to the temerity of contesting the demand regarding the legality of the contested agreements, it is necessary to impose the City Council demanded the payment of half of the costs caused. What is the assessment of the municipal groups of the City Council of (...) the letter from the governing team of (...) of March this year "the sentence (...)" and the repeated affirmations of the mayor in plenary saying that not complying with this sentence is defending the general interest of (...)?"

In the other two instances presented by this person on 21/07/2016, although in these cases in a private capacity, information was requested from the City Council on the invoices approved by the Local Government Board on 03/07/ 2016, the payments made by the council to a certain person (Mr. (...)) over the last ten years, separating them by tasks, and the monthly remuneration received by councilors in the last year (in one instance), and the last five years (in the other instance).

6. On 04/22/2020, in view of the statements made by the City Council in the written response to the request, the Authority's Inspection Area made a series of checks through Internet, verifying the following:

- That in the video of the plenary session on 01/31/2019, accessible through the municipal website, the part of the recording referred to by the complainant had not been omitted.
- It was also found that the videos of the two plenary sessions of 07/28/2016 and 01/31/2019 were still accessible on the YouTube portal, and that the parts of the recordings referred to in the complainant in his written complaint. Regarding the publications on YouTube, it was found that on the institutional website it was indicated that the videos of the plenary sessions prior to 07/25/2017 could be viewed "on the YouTube channel of the City Council".
- With regard to the content of the minutes of the plenary meeting held on 07/28/2016, it was found that in the 21st section corresponding to Requests and Questions, the surnames of the persons who would have filed administrative appeals against the City Council, and that in its place there was a letter, to refer to each of these people, which, in all cases, corresponded to the initial letter of the first surname, as follows:

"It is worth saying that the first three disputes were raised during the previous government and they had to finish defending, five of these disputes corresponded to a desire to build above the permitted as is the case of:

- (...)(...) represented by Mr. C. who came to present two appeals about

patrimonial responsibilities of € 1,200,000 and € 600,000 respectively for refusing to build above the permit. The Court agreed with the city council.

- *Two disputes corresponding to Mr. B. where he asked to be able to build 10 homes on a piece of land where only 3 were allowed; and the other ground that allowed only 5 also wanted to double it. A dispute was brought in defense of the general interest and the city council also won.*

- *And the one filed by 5 of the 7 residents of the sector (...), Mr. C., Mr. C., Mrs. S., Mr. A. and the company (...)(...) represented by Mr. M. and Mrs. V., where they wanted to build up to 260 of the 108 homes allowed, a dispute also won by the City Council.*

- *The last of the disputes corresponds to Messrs. V., V. and B. who asked that their lands located outside the limits be included in the sector that was to be developed in (...)Est and is also won by the town hall."*

- That, unlike the result obtained on 12/02/2019 (3rd precedent), it was found, now, that through the official website of the City Council of (...) it was possible to access the minutes of the plenary session on 31/01/2019. In this act, in the 11th section corresponding to Requests and questions, the following is noted:

"This section is reflected in the video minutes, in the following link: [http://www.\(...\).cat/\(...\)/actes-de-plens/\(...\)/\(.. .\)/](http://www.(...).cat/(...)/actes-de-plens/(...)/(.. .)/)".

7. On 04/30/2020 the Authority's Inspection Area carried out a new verification on the internet. In particular, it found that by entering the name and surname of the councilor in the Google search engine, access was given to a document that would have been published on the electronic headquarters of the City Council, which was entitled "*Summary of the declarations of activities of the councilors of the City Council of (...)*", which contained a table with the list of councilors, among which the complainant appeared, and in the field "*% companies involved*" corresponding to this person was marked "*(...)(...),SL*".

8. On 01/21/2021, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against the City Council of (...), for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.c), 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 treatment of personal data and the free movement thereof (hereafter, RGPD). This initiation agreement was notified to the imputed entity on 02/01/2021.

9. The initiation agreement explained the reasons why no charge was made with respect to the facts reported relating to the publication by the City Council on the internet of the personal data of the person making the complaint that appeared: 1) in I minutes and the recording of the session of the Plenary held on 28/07/2016 (transcribed in background 3.2.1), and 2) in the recording of the session of the Plenary held on 31/01/2019 (transcribed in background 3.2.2.).

Below is the part of the section of reported facts not imputed of the initiation agreement, which is considered more relevant and which may have doctrinal interest:

"(...) unlike the personal data disseminated referring to the residents of the municipality, including the wife of the complainant (whom, that is to say, the mayor identifies by means of his surname, and at no time mentions either the wife of the complaining councillor), in this case the fact that part of the relevant information disseminated, in urban planning matters, was public, together with the fact that the affected person was a councillor of the City Council and that these manifestations were made in the exercise of the functions proper to the members of the Plenum, lead to a different conclusion.

Indeed, it is necessary to start from the fact that the connection of the person making the complaint with the company (...) (...), SL, was information that the person making the complaint had communicated to the City Council - due to its status as alderman-, and which the council subsequently published on its electronic headquarters (...) This means that with the statements made by the mayor in the aforementioned plenary sessions about the link between the complainant and society (...) (...) they would not have been revealed data that were not of general knowledge, and consequently, with respect to this data we cannot properly speak of data communication.

Based on this consideration, the set of personal data disseminated about society (...) (...), which are logically associated with the reporting person, must be framed in the political debate that is generated in a session of the Plenary, especially at the time of the debate corresponding to prayers and questions, which due to its open nature can give rise to a more intense debate and in which opinions are presented that cannot have a place in the debate on other points of the agenda of the session, which are clearly defined. The disclosed information refers to a political representative who, due to the nature of his representational functions and the public projection of them, is obliged to bear a greater impact on his personality rights. The Constitutional Court has expressed itself in these terms in its judgment 136/2004 (...).

The specific personal data released, referring to the association of the councillor with a company that intended to carry out a development project that the City Council would have denied because it considered the number of homes intended not to be adjusted to the law, and that would have subsequently filed a contentious appeal administrative, it has an indisputable public relevance, both because of the status of councillor of the person linked to society, and because of the connotations derived from the urban planning controversy. And the opinion expressed by the mayor in the plenary session held on 31/01/2019 about that urban project was the reason why the complainant participated in municipal politics, is part of the manifestations that the people who occupy political positions or representation of the citizenry must bear, and in any case, when it comes to opinions, they exceed the material scope of the data protection regulations.

However, like any treatment, it is necessary that the information disseminated pass the judgment of proportionality, which must be related to the principle of data minimization.

(...) the information disseminated regarding the person making the complaint is considered provided, insofar as this information forms part of the possible answers to the questions posed to the mayor, and is part of the political debate generated in the prayer and questions part of municipal meetings, in which the complainant participated as a councillor.

(...)"

10. In the initiation agreement, the City Council of (...) 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 considers appropriate to defend its interests.

11. On 08/02/2021, the City Council of (...) made objections to the initiation agreement.

12. In response to the allegations made by the City Council of (...), on 11/02/2021 the Authority carried out several checks on the Internet, in order to verify whether it was possible to identify the people who in the minutes of the plenary session of 07/28/2016 identified themselves with their surname and other information. Specifically, the surnames (...), (...) and (...) mentioned in the minutes of the meeting were selected, and the following actions were carried out:

- Regarding the identification of the person mentioned in the minutes of the meeting with the last name (...), the words "(...)(...)" + were entered into the Google search engine "(...)", and as the first result a link was obtained to a website that contained various information about the entity (...), SL, dedicated to construction, and as the sole administrator the name appeared (...) ((...)).

Secondly, the words "Town Hall of (...)" were entered into the Google search engine contentious urbanism (...)", and among the results obtained was a blog in sixth place ([https://\(...\).delaselva.wordpress.com/2011/07/13/quadernde\(...\)/](https://(...).delaselva.wordpress.com/2011/07/13/quadernde(...)/)) which contained the same first and last name ((...)).

- Regarding the identification of the person mentioned in the minutes of the meeting with the last name (...), the words "City Council of (...)+contentious+urbanisme+(...)", and as a third result, access to the blog (...) was obtained, where Mr. of (...).
- Regarding the identification of the person mentioned in the minutes of the meeting with the last name (...), the words (...) were entered in the Google search engine, and as the first result obtain a link to the blog "(...)" which mentioned Mr. (...), together with information regarding the contentious administrative appeal filed, referring to the Partial Planning Plan for sector 4 North.

On the other hand, in the same inspection act of 02/11/2021 it was verified that in the recording published on the YouTube portal about the plenary session held on 07/28/2016, there had been omitting the last name of the twelve appellants that the mayor mentioned in his parliament.

From the result obtained, the corresponding due diligence was carried out.

13. On 11/03/2021, 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.a) in relation to article 5.1.c), both of the RGPD.

This resolution proposal was notified on 03/17/2021 and a period of 10 days was granted to formulate allegations.

14. The deadline has been exceeded and no objections have been submitted.

proven facts

The City Council of (...) published on its institutional website, accessible on the open internet, the minutes of the Plenary Session of the ordinary session held on 07/28/2016, which contained personal data relating to people who had filed administrative appeals against the City Council in urban planning matters. The reference to these people - some of them neighbors of the municipality - was made through their first surname, together with data relating sometimes to their construction company or with respect to which they had a connection ((...)(. ..), (...)(...)), others in the area where their private residence would be ("*residents of the sector (...)*"), or others referring to the object of the urban plan of 'interest for the appellants ("*urbanization sector of Majorcans*").

This act was published on the municipal website on an undetermined date, but in any case on 12/02/2019 the Authority verified its publication on the municipal website with the indicated content. Subsequently, specifically on 22/04/2020, the Authority found that the minutes referred to remained published on the institutional website, although the information it contained had changed: the minutes no longer included the last names of the appellants, but only the initial letter of their first surname, together with the rest of the information about these people.

To the above it should be added that the recording of this session of the Plenary, with the full first name of the appellants and the rest of the related information, has been accessible through the YouTube portal for an indeterminate period of time, but in any case on dates 12/02/2019 and 22/04/2020 the Authority verified its publication on Youtube with the indicated content. On the institutional website there was a link to the recordings of the plenary sessions published on the YouTube portal, including the one corresponding to this session.

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, la

resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. The City Council of (...) has not formulated allegations in the proposed resolution, but it did so in the initiation agreement. Regarding this, it is considered appropriate to reiterate below the most relevant part of the motivated response of the instructing person to these allegations.

2.1. On the questioning that personal data has been disseminated.

First of all, the City Council expressed its disagreement with the initiation agreement, noting that the fact that the agreement indicated that the people who were mentioned by last name in the controversial municipal meeting were identifiable for the mere fact that the municipality of (...) has only about 6,000 inhabitants *"is an argument with little legal basis and lacks veracity"*, given that *"the people of the municipality of (...) do not all know each other nor is it easy to recognize them merely by citing a surname"*, and furthermore, not all the people cited in the controversial plenary session were residents of the municipality.

Regarding these allegations, it should be noted that in the section of the initiation agreement where this issue was mentioned (*"Juridical qualification of the imputed facts"*), reference was made not only to the number of inhabitants of the municipality - which, certainly, in cases of small municipalities like this one, increases the probability of identifying the named people - but also to the fact that the search for information on the Internet makes it easy to obtain the full name of these people. It should be remembered that *personal data* is also information about a natural person that, although it does not initially allow to identify him, can be identified, directly or indirectly (art. 4.a RGPD), without requiring efforts out of proportion

Regarding this, on 11/2/2021 the Authority has carried out several checks on the Internet - which are cited in point 12 of the background section - and has found that through the Google search engine, it is possible to identify Mr (...) and Mr. (...) who were mentioned in the municipal meeting held on 07/28/2016.

The City Council also points out, following the same reasoning, that the linking of the expression "Neighbors of the sector (...)" together with the surnames of four neighbors, does not allow their identification, since *"it is not an urbanized area, it is an area of plots, therefore there are no houses or addresses that they can be linked to neighbors"*.

Likewise, on 11/02/2021 the Authority verified that, through the Google search engine, it was possible to identify Mr. (...), who was one of the neighbors who filed the contentious administrative appeal referred to by the mayor in the controversial plenary session.

Ultimately, there is no doubt that the published data is considered personal data, which led to the rejection of this allegation.

2.2. On the allegations that revolved around the principle of guilt.

Next, the City Council alluded to its good disposition, pointing out as an example of this the fact that, just after receiving the request for information on 07/04/2019, the City Council modified the information published on its website, replacing the last name of the people mentioned in the minutes of the plenary session of 07/28/2016, with the initial of the last name of each one of them.

In this regard, it was pointed out that the City Council was referring to an action taken at a later date than the facts that were imputed in the initiation agreement. Specifically, in the initiation agreement it was detailed that the minutes of the plenary meeting held on 07/28/2016, which included the surnames of the affected persons, remained available on the municipal website from an undetermined date, but in any case the Authority verified that on 12/02/2019 it was published with the indicated content. Subsequent actions by the City Council do not alter the imputation of these facts.

But in addition, it must be said that the imputation of the infringement also obeys the dissemination of this same information through the YouTube portal, which could be accessed through the municipal website. And it is worth saying that on 22/04/2020 the Authority verified that it was still possible to access the recording of the municipal meeting, in which the surnames of the affected people were mentioned.

That is why this plea was also dismissed.

Next, the City Council argued that *"these events took place while the previous data protection regulations were in force"*, and that *"this regulation, although it contemplated the principle of data minimization, had not been worked with so much depth on the part of the control authorities in the recommendations on the publication of personal data in the minutes of the plenary session"*. And based on this consideration, he pointed out that, with the publication of the initial of the second surname of the affected persons, *"it cannot be considered that measures have not been observed and applied to respect the principle of data quality and minimization of data, in accordance with the RGPD"*.

In this regard, it was pointed out that based on the investigative actions carried out, the declared proven facts are limited to the dates on which the Authority verified that the minutes of the Plenary session held on 07/28/2016 and the recording of this session - with the indicated content - was published on the municipal website and on the YouTube portal, that is to say, from 12/02/2019, when the RGPD was fully applicable. In any case, it was stated that while Organic Law 15/1999, of December 13, on the protection of personal data was in force, the Authority issued numerous sanctioning resolutions for violation of the quality principle provided for in the article 4 LOPD against councils that had disseminated excessive data in municipal meetings, or in the minutes or public recordings of these meetings, resolutions that can be consulted through the Authority's website.

On the other hand, it was recalled that the infraction that has been imputed refers to the dissemination of the minutes of the controversial plenary including the surnames of the persons affected (and not only the initials of

surnames), and also refers to the dissemination of the recordings of this meeting on the YouTube portal, accessible through the municipal website. And to the extent that it was unnecessary to make these surnames public and that their publication allows the identification of the persons indicated, it could not consider that the City Council had observed the necessary measures to respect the principle of data minimization (previously the principle of quality).

Finally, the City Council pointed out that, in relation to the dissemination of the recording of the plenary session, following the receipt of the Authority's request, *"the video was also edited so that the surnames of the named persons"*.

Contrary to these manifestations of the City Council, it was pointed out that on 04/22/2020, the Authority verified that through the YouTube portal - also accessible from the municipal website - it was still possible to access the recording of the controversial plenary session, in which the full first names of the appellants were heard, along with other related information.

For the reasons stated, this set of allegations was dismissed.

3. Legal qualification of the facts.

With regard to the legal classification of the facts described in the proven facts section, relating to the communication of personal data, it is necessary to refer to article 5.1.c) RGPD, referring to the principle of minimization, which provides that the data personal data must be: *"Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed"*.

Without denying the public nature of the sessions of the Plenary, nor that provided for in article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector in Catalonia, on the publication of minutes of the sessions of the Plenary in the electronic headquarters, it should be noted that the authorization contained in this precept is not absolute, but it is necessary to take into account *"the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy"*, even for the case of acts debated in the Plenary.

In the case at hand, it is considered that to comply with the legal obligation established in article 10.2 of Law 29/2010, that is to say, to publicize the matters debated and agreements adopted in the Plenary, and in specific to respond to the query raised by a neighborhood association about the general interest expressed by the mayor to justify the filing of an appeal against the sentence (...)/13, of 2 September, of the JCA (...), in urban planning matters, it was not necessary to reveal the surname of the appellants in other contentious processes unrelated to that one, disclosure that together with the other published information made them identifiable. It cannot even be ruled out that the publication of the initial of the first surname together with the other information could make these people identifiable. Likewise, to respond to the query raised by the same residents' association about the fees ("the invoices") of the person who in recent years would have exercised the legal defense of the City Council

in the aforementioned judicial processes, it was also not necessary to reveal the surnames of the people who filed the contentious administrative appeals that resulted in those judicial processes.

During the processing of this procedure, the facts described in the *proven facts section have been duly proven*. Based on the documentation provided by the complainant together with his written complaint, the verification actions carried out by this Authority on 12/02/2019 and 22/04/2020 made it possible to verify the facts that were reported and that now they are subject to imputation. The allegations made by the City Council before the initiation agreement have not altered the facts that are imputed, since on 11/02/2021 it has been verified that the appellants who in the plenary session held on 28/07/2016 were identified with the surname, they are identifiable.

So things are, the communication of data that is imputed is contrary to the principle of data minimization, and is therefore constitutive of an infringement, according to the provisions of article 83.5.a) of the RGPD, which typifies as so the violation of: *"a) The basic principles for treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9"*.

The imputed conduct has been included as a very serious infringement in article 72.1.a) of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), in the following form:

"a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679."

4. Applicable penalty and corrective measures.

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 the present case, it is not considered necessary to require the adoption of corrective measures, since on 11/02/2021 the Authority has verified that, both in the minutes of the plenary meeting published on the municipal website and in the recording published on YouTube portal, the surnames of the aforementioned appellants have been omitted.

For all this, I resolve:

1. Admonish the City Council of (...) as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.c), 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 4th legal basis.

2. Notify this resolution to the City Council of (...).

3. Communicate the 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), 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 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 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,