apdcat
Autoritat Catalana de Protecció de Dades

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

File identification

Resolution of sanctioning procedure no. PS 6/2021, referring to the City Council of (...).

Background

1. On 07/14/2020, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the City Council of (...), on the grounds of an alleged non-compliance of the regulations on personal data protection. Specifically, the person making the complaint stated that the City Council had not guaranteed the confidentiality of their data during the action procedure in case of psychosocial risk, which the City Council initiated at their request, following an alleged case of moral or psychological harassment by their boss. In particular, the reporting person considered that confidentiality had been violated in the following cases:

1.1. On date (...), when information that she had provided as part of said procedure was shown to 4 people who are identified. Subsequently, by means of a letter from (...), the person making the complaint specified that in 4 interviews, the people interviewed (employees of (...), where the person making the complaint was also assigned) were asked if they recognized a WhatsApp message that had been provided by the person reporting here in the course of the procedure. The complainant added that the people interviewed were also informed that he had provided several emails.

1.2. Between (...) and (...), when a copy of the resolution of (...) on the investigation of the possible case of psychosocial risk that she had requested to initiate, and of the report drawn up on (...) by two members of the Occupational Risk Prevention Service of the City Council, which contained your personal data (name and surname, ID and the reason for the intervention request). The complainant also indicated that this documentation contained data relating to his health.

Subsequently, by means of a letter from (...), the complainant stated that in the framework of the processing of a claim that he presented to the Commission for the Guarantee of the Right of Access to Public Information (file (. ..)), the City Council of (...) had indicated that, given that on date (...) the person making the complaint had been given a copy of the resolution and the report resulting from the investigation, which "contradicts what the corresponding procedure indicates, agreed with the

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Delegates/from PRL" provide a copy to "all the staff of the two requests for action included in the same file."

1.3. On date (...), when the report was made available to 12 people (the same referred to in section 1.2 of this background) in relation to the investigation of an alleged case of harassment moral to (...) (initiated following the joint request of these 12 people), issued on (...) by two members of the City Council's Occupational Risk Prevention Service, which contained personal data relating to their person
Subsequently, by means of a letter dated (...), the complainant specified that this report would contain information about the emails he sent to the Commission of Investigation, about the emails he provided to the City Council in the framework of the procedure initiated and statements made by third parties about his person. In turn, the person making the claim pointed out that, in accordance with the procedure (page 10), the Psychosocial Working Group may be convened to discuss general issues of psychosocial risks "but without going into the application and actions derived from this procedure."

The complainant provided various documentation, including the action procedure for cases of psychosocial risk. It should be noted that the following is included in said procedure:

- That the "information generated and provided by the actions in the application of this procedure will be confidential and will only be accessible to the personnel directly involved in its processing" (paragraph 1 of the procedure).
- That "The file of the case will be of the utmost confidentiality, and access to all the information collected will be limited to the Occupational Risk Prevention Technician who is assigned the functions of Psychosociology (when he/she has participated in the investigation process), the Occupational Risk Prevention Technicians who have intervened in the specific case, the Director of Human Resources and Head of the Occupational Risk Prevention Service and the Health and Labor Authorities" (section 6.1.6 of the procedure).

ÿ That research actions could be carried out, such as interviews or tests (section 6.2).
- That in said procedure confidentiality (in the terms provided for in the law) and anonymity (section 6.3 of the procedure) are considered as one of the critical factors to be ensured.

2. The Authority opened a preliminary information phase (no. IP 208/2020), 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.

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3. In this information phase, on 07/27/2020, the complainant was requested to provide the "evidential documentation" that he claimed to have on the facts reported.

4. On (...), the reporting person responded to the previous request for information and, apart from referring to the facts reported on 07/14/2020 (in the terms set out in the antecedent 1), stated that the City Council of (...) had informed him, through an email dated (...), "that the notifications made are in an application that is accessible by more people and there is no security measure preventing access to this information."

5. On 09/28/2020 the reported entity was required to report, among others, on the reasons why, as part of the interviews, the confidentiality of the documentation provided by the person was not guaranteed here reporting (emails and WhatsApp messages); the reasons for which 12 people were notified of the resolution of (...), the report of (...) (both documents relating to the request made by the person reporting here to initiate the procedure), as well as the 'report of (...) (relating to the request made by these 12 people to start the procedure). With respect to these facts, the City Council was also required to report on what would be the legal basis that would legitimize these treatments and the circumstance provided for in article 9.2 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 d April, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, RGPD) which, in its case, would allow the processing of categories
special data

Apart from the above, the City Council was also required to (...) in order to indicate which users or user profiles were authorized to access the program used by the City Council for electronic notifications (GTM) .

6. On 13/10/2020, the City Council of (...) responded to the aforementioned request through a letter in which it set out, among others, the following:

ÿ That in the processing of the action procedure for cases of psychosocial risk, the anonymity of the person who submitted the request was guaranteed. At no time was her identity revealed, nor was she directly asked about it.
- That any reference to his person became from the answers of the people interviewed about the environment or existing conflicts in the (...).
- That the person reporting here presented with the request, a PDF document of 21 pages with WhatsApp messages from different conversations, individual and group. During the interviews carried out with the workers of (...), the Internal Commission of Investigation decided to corroborate these WhatsApp messages by showing some of these messages in the interviews carried out, to the people issuing or

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recipients of the same, eliminating if necessary the rest of the messages on the sheet that had been presented and that did not correspond to the interlocutor interviewed.

- That the person making the complaint was informed that, in order to give full legal validity for later purposes, the most suitable thing was for him to present them through a notarial act in order to certify that these messages were the ones found on his mobile phone. The City Council indicated that this fact is included in the reports of the Internal Commission of Investigation.
- In relation to the reasons for which 12 people were notified of the resolution of date (...) and the reports of dates (...) and (...), it is indicated that the person reporting here is alone apply on (...) for access to the confidential file created following your request for the procedure (...) and also in the report of the Internal Investigation Commission, both the one that was closed within the period indicated in the procedure, and the one that was carried out at the end of the actions.

ÿ That the procedure states that this documentation is only accessible by the staff of the Own Occupational Risk Prevention Service who intervene in its processing and the Health and Labor Authorities that require it.

ÿ That since his request for access did not follow the procedure established (restricted access), the Internal Commission of investigation consulted the representatives of the staff in matters of health and safety at work , Occupational Risk Prevention Delegates, within the Psychosocial Risks Working Group of the Health Safety Committee, and it was resolved to attend to the access request of the person reporting here, but giving the same treatment to all the people who had submitted a request for action.

- That for this reason copies of the reports were given to all applicants.
- That this decision, moreover, was carried out given that the rest of the workers of (...) had also initiated a psychosocial risk action procedure against the person reporting here and the Internal Commission accumulated the actions carried out in a single procedure.

- That the reports of the Internal Commission of investigation do not contain data on the health of the person making the complaint. Only the description of periods of absence from work due to incapacity benefits and the results of the assessments of fitness for the workplace in recent years carried out by Health Surveillance. Neither diagnoses nor medical data of diseases or medical history are cited.

ÿ That in relation to which users or user profiles are authorized to access the program used by the City Council for electronic notifications (GTM), the City Council indicated that in this program, when an electronic file is created, assigns the file to a Service and to a specific public employee of the City Council who has access to the documentation it contains and is also in charge of making the appropriate notifications.

- That in the specific case of confidential files, such as the psychosocial risk action procedure, the Occupational Risk Prevention unit, the unit that created the said file, is the user who can practice the notifications that are required of that file, unless the assigned worker himself designates another employee to be able to practice them.

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7. On 19/10/2020, also during this preliminary information phase, the City Council of (...) was once again required to, among others, specify the legal bases which legitimized the treatments complained of. Likewise, with respect to the electronic notifications of the controversial file, the City Council was required to report whether, aside from the people who make up the Occupational Risk Prevention unit, there were other users of the City Council who could access the notifications created by said unit.

8. On 30/10/2020, the City Council of (...) responded to the previous request through a letter in which it stated, among others, the following:

- That in relation to the 1st reported situation (showing information that the reporting person had provided as part of the procedure to 4 people), only 4 interviewees were shown messages in which the recipient of that message was the interviewee himself . They were asked if they acknowledged having had that conversation with the sender of the messages.

- That it is considered that the treatment referred to personal data that the reporting person himself had made public to the recipients of those messages and, in accordance with article 9.2.e) of the RGPD, that circumstance allowed them to be shown .
- That the rest of the messages on the sheet that had been presented and that did not correspond to the interlocutor interviewed were deleted.
- That in relation to the WhatsApp messages that contained health data shown to a certain employee, it was also the reporting person himself who addressed and made them public to this person.

- That I respect the 2nd reported situation (give 12 people a copy of the resolution of the investigation into a possible case of psychosocial risk dated (...) and the report of (...), in that resolution and report annex did not contain particularly protected health data, only a description of periods of absence from work due to disability benefits (but in no case information related to the worker's health or medical history) and the results of the evaluations of the 'fitness for the workplace carried out by Health Surveillance, that is to say, only the information that was suitable to carry out his workplace (but in no case the result of the medical tests carried out).

- That neither diagnoses nor medical data of diseases were cited, nor the worker's medical history.
- That the people who received this resolution were also considered interested parties in that process, since they had submitted a request for psychosocial risk action in the same area as that of the reporting person and the Internal Commission assessed group the two requests in the same procedure.

- That in relation to the 3rd reported situation (making available to 12 people the report in relation to the investigation of an alleged case of moral harassment issued on (...), this was also motivated by the fact that the 12 people from (...) had the status of an interested party in that process.

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- That with respect to the electronic notifications of the controversial file, the only people who could access them were the members of the Occupational Risk Prevention unit, with the exception that the person working in the assigned unit himself, designated another employee to be able to practice them or to be able to visualize them.

9. On 04/02/2021, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of (...) for an alleged infringement provided for in article 83.5.a) , in relation to article 5.1.a); all of them from the RGPD. This initiation agreement was notified to the imputed entity on 02/11/2021.

10. Also on 04/02/2021, the Director of the Authority issued a filing resolution regarding the rest of the reported conduct related to the fact that in the interviews conducted with the staff of (...) in the framework of the action procedure before
cases of psychosocial risk, the City Council shows or mentions the WhatsApp or e-mail messages that the reporting person had provided with their request (messages that had been exchanged with the people interviewed); as well as with access to electronic notifications made through the GTM application. In that resolution, the reasons that led to its archive were justified.

11. On 25/02/2021, the City Council of (...) made objections to the initiation agreement.

12. On 11/03/2021, the person instructing this procedure formulated a
proposed resolution, by which it was 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 the article 5.1.a), 6 and 9, all of them of the RGPD.

13. On 03/29/2021, the accused entity submitted a statement of objections to the resolution proposal.

proven facts

Within the framework of the action procedure for cases of psychosocial risk initiated following the request of the person reporting here from (...) for a case of alleged moral harassment by his boss, the City Council of (...) accumulated in a single procedure this request with the request made jointly by several people (between (...) and (...)) "for problems arising from the behavior" of the person making the complaint .

The accumulation of these requests in a single procedure meant that all the people who had submitted the joint request could access the resolution of (...) and the report of (...), referring to the investigation of the possible case of psychosocial risk that exclusively affected the person reporting here, who was identified.

On the other hand, the accumulation also meant that in the report dated (...) the joint request formulated by the rest of the people was resolved, but also that it continued to be addressed

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the request for action that had been formulated by the person reporting here for a case of alleged moral harassment. This report was accessed by both the person making the complaint and the people who had formulated the joint request.

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 health data.

The accused entity reiterates that in the resolution of (...) and in the reports of (...) and (...), no health data were included. Specifically, it considers that the data contained in those documents "although they are a description of periods of absence from work due to disability benefits, in no case is it information related to the worker's health (illnesses or injuries that suffered specifically) or medical history, but the description of events that had consequences in the organization of the Service (lack of a member of the service due to absence from work), and although the results of the evaluations of the suitability for the job carried out by Health Surveillance, is only in relation to showing that she was fit to carry out her job (...)." And he adds that "the information that was provided was that which the people who make up the complainant's service could already know beforehand (independently of the information provided by the City Council), given his absence from his workplace for a period for a prolonged period of time (ex: leave due to accident, fit to carry out their duties), and therefore, as workers in the same Service, they could assume that there was some health problem, so we insist, in addition to saying that he had suffered an accident on the road and that for this reason she was on leave and that she was fit to develop the workplace (a fact that does not imply having any health problems, on the other hand), no personal data was revealed or provided, and less of those of special categories of data (health) as provided for in the RGPD."

As explained by the instructing person in the resolution proposal, article 4.15) of the RGPD defines data relating to health as personal data relating "to the physical or mental health of a natural person, including the provision of services of health care, which reveal information about your state of health".

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In turn, recital 35 of the RGPD provides the following in relation to data relating to health:

> "Among the personal data relating to health must be included all the data relating to the state of health of the interested party that give information about their past, present or future state of physical or mental health. It includes the information on the natural person collected on the occasion of his registration for health care purposes, or on the occasion of the provision of such assistance, in accordance with Directive 2011/24/EU of the European Parliament and of the Council (1); any number, symbol or data assigned to a natural person that uniquely identifies him for health purposes; the information obtained from tests or examinations of a part of the body or a body substance, including that from genetic data and biological samples, and any information related, for example, to an illness, a disability, the risk of suffering from diseases , the medical history, the clinical treatment or the physiological or biomedical state of the interested party, regardless of its source, for example a doctor or other healthcare professional, a hospital, a medical device, or an in vitro diagnostic test."

In accordance with the above, it must be concluded that in the documentation accessed by the people who formulated a joint request for action in cases of psychosocial risk "due to problems arising from the behavior" of the person making the complaint , yes there were data relating to her health. As an example, as set out in the resolution proposal, this documentation indicated that the complainant was on leave due to an accident at work since (...) "due to a relapse of an accident transit in intinere that he suffered (...)" and that he was discharged on (...) (in the report of (...); or that the person had provided several reports collected in the document "Damage to Health" (in the report of (...), from which it was inferred that the reporting person had health problems). Apart from this, it cannot be overlooked that the person making the complaint submitted the corresponding request because he considered that he was the victim of psychological or moral harassment, a circumstance that is recorded in all the documents indicated above.

At this point, it should be noted that the condition of health data is not altered either by the fact that the said documents did not specify the "diseases or injuries specifically suffered" by the reporting person, nor by the fact that "the people who integrate the complainant's service they could already know beforehand" the aforementioned health data.

2.2. About the accumulation.

Next, the accused entity claims that article 57 of the LPAC provides for the accumulation when there is a "substantial identity and intimate connection". The City Council states that interpreting these indeterminate legal concepts in the sense that "this implies a

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identity in its subjects and that this connection or identity cannot be justified in any other way, is to limit the content of the regulations." Then the accused entity points out that the Internal Commission of Investigation considered that "there was this substantial identity and intimate connection in these two requests for psychosocial risk procedure, because despite the accusations they did not have crossed subjects, the situation of the two requests affected the same service, with reduced staff, where they all suffered from the same adverse work climate, due to the internal relations between its members, and where the research tasks motivated the study of the same work environment, with the same people." In turn, the accused entity admits that "there was no impediment to resolve the facts that were presented in one and another request separately."

In relation to accumulation, article 57 of the LPAC provides the following:

> "The administrative body that initiates or processes a procedure, regardless of the form of its initiation, may arrange, ex officio or at the instance of a party, its accumulation to others with whom it maintains a substantial or intimate identity connection, as long as it is the same body that has to process and solve the procedure.
> There is no appeal against the accumulation agreement."

As the City Council states in its statement of objections to the proposed resolution, the "substantial identity and intimate connection" that allow the accumulation of procedures are two indeterminate legal concepts. In these types of concepts, the rule cannot clearly and precisely determine its content, which does not mean that there is discretion here to decide freely whether or not the substantial identity or intimate connection invoked exists, but that the valid solution and fair is only one, and the determination or decision for the valid solution corresponds to be made by the competent Administration, which in this case, once the processing of the present procedure has begun, is the Catalan Authority for the Protection of data

As already indicated in the resolution proposal, the accumulation of the two requests received to initiate an action procedure in cases of psychosocial risk (the one made by the person making the complaint and the one made jointly by other employees of the (...)) illegal, meant that the people who had submitted the joint application (who were considered interested parties, but with respect to the procedure initiated following their application) could access the resolution of (...) and the report of (...), both referring to the investigation of the possible case of psychosocial risk that had been highlighted by the person reporting here (that is to say, the other sole joint application); as well as that in the report dated (...) to which the same people acceded, the request for action that had been formulated by the person here denouncing a case of alleged moral harassment was continued to be addressed, apart from the request joint complaint made by the rest of the people for "problems arising from the behavior" of the reporting person. All this, without a legal basis to legitimize this treatment and without the concurrence of any

of the circumstances provided for in article 9.2 of the RGPD, regarding the treatment of special categories of data.

As has been advanced, article 57 of the LPAC enables the accumulation of proceedings when these have a substantial identity or an intimate connection, but what is contained in the actions, specifically in the report issued on date (. ..), is that the Commission of Investigation Interna considered simply "that both requests must be joined in the same file given that the investigation actions were coincident". Therefore, it should be noted that the said Commission did not invoke a substantial identity or an intimate connection between the two procedures that were initiated, but merely considered (without any other motivation) that the actions to investigate were "coincidental".

As already indicated, the person reporting here submitted a request to start the action procedure in cases of psychosocial risk due to a case of alleged moral harassment by his boss.

On the contrary, the joint request made by several employees of (...) to also initiate a psychosocial risk procedure referred to the "problems arising from the behavior" of the person making the complaint.

So, apart from the fact that both requests (that of the reporting person and the joint request) referred to the (...), neither the person allegedly harassing, nor the people allegedly harassed were coincident; nor were there cross-harrassment allegations between the people who filed the cumulative applications.
Another thing is that the person reporting here had referred in his request to an action by the rest of the colleagues of (...), but this is not the case. In fact, it should be noted again that the complainant was only mentioning a problem with his boss. All this, without prejudice to the fact that in certain actions of investigation of the facts exposed by the person reporting here, they required the collaboration of other people from (...) other than the affected people (the person reporting here and his
none).

It is for this reason that no substantial identity or intimate connection is observed which would justify the accumulation. In turn, as the City Council itself has admitted in its statement of objections to the proposed resolution, there was no impediment to resolve the facts that were set out in one and the other request separately, avoiding so that the people who had submitted a joint request regarding the behavior of the person reporting here, were aware that he had submitted another request for a case of alleged moral harassment by his boss and the terms in which this request had been resolved.

In any case, for the negated assumption that it was considered that the procedures initiated following the two aforementioned requests met the requirements of substantial identity or intimate connection, it must be taken into account that article 40.5 of the LPAC determines that " the

public administrations can adopt the measures they consider necessary to protect the personal data contained in the resolutions and administrative acts, when these are addressed to more than one interested party."

In accordance with this precept, in the notification of the resolution of (...) and the reports of (...) and of (...), the appropriate measures should have been implemented to guarantee the right to the data protection of the person reporting here, preventing the people who made a joint request from accessing unnecessary data for the resolution of that request.

In this sense, the City Council alleges that article 40.5 of the LPAC "indicates "they can" while the proposal for the resolution of the APDCAT, based on this article, indicates that "they should have implemented", and therefore, establishing as an obligation what Law 39/2015 regulates as a possibility."

Certainly, article 40.5 of the LPAC provides that public administrations can adopt the necessary measures. However, this does not mean that the administrations can decide at their discretion whether or not to implement these measures. This precept must be brought into line with the data protection regulations, and in particular with the duty of confidentiality imposed on those responsible for the treatment (art. 5.1.f RGPD), so that it must be interpreted in the sense that the public administrations must, necessarily, implement the appropriate measures to protect the personal data contained in their resolutions and administrative acts subject to notification, when there is more than one interested person. More so when a fundamental right can be affected, such as the right to the protection of personal data.

On the other hand, the City Council also states that the two requests (that of the complainant and the joint request) resulted in "a single report and a single resolution, despite the fact that the report was subsequently complemented Therefore, the result of the two requests was unique at the level of the resulting documents, and the content of those was not unnecessary for the resolution of the joint request, since measures could not have been adopted to guarantee the right to data protection of the reporting person."

In this regard, it is enough to reiterate that in the resolution of (...) and in the report of (...), only the request made by the person making the complaint was addressed. And that the other joint request was only dealt with in the subsequent report dated (...) (where the request made by the person making the complaint was also continued to be addressed).

Having said that, the determination of the necessary measures to comply with the provisions of article 40.5 of the LPAC corresponds to the data controller. As an example, and as pointed out before, these could have consisted of hiding from the people who had submitted a joint request, those parties to whom the request made by the person making the complaint was addressed exclusively.

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2.3. About data processing.

In the last section of its statement of objections to the proposed resolution, the City Council of (...) considers that the processing of data subject to imputation was based on the consent of the affected person (art. 6.1 .to GDPR). He adds that at the time of processing the request for communication of a psychosocial risk, the reporting person signed the consent document provided for in Annex B, "which expressly and clearly states the content of the consent granted" to "analyze and study their psychosocial environment in the workplace". It also indicates that there it was reported that in "the resulting report it will be stated that the people who participated have an obligation of secrecy"

and that through this document the applicant declares that he "knows the procedure he is requesting to initiate as well as his rights and obligations."

As a starting point, it should be noted that the treatment subject to imputation is the accumulation of the two procedures, which led to the disclosure of data of the reporting person linked to his request, to the people who presented another joint request later "for problems arising from the behavior" of the person making the complaint.

Having established the above, in the documentation provided by the complainant it is stated that on (...) he signed the "Informed consent for the investigation of cases of psychosocial risk" form (Annex B), through which authorized to "study and analyze the psychosocial environment related to my workplace and my functions within the work center in which I provide services, as well as to prepare the proposals and technical recommendations that may be derived from this study, in application of the Action Procedure for Cases of Psychosocial Risk". In this form, however, the explicit consent of the affected person to treat their health data was not collected, nor was their consent for the accumulation of other procedures collected.

The above, by itself, should lead to the dismissal of the allegations made by the City Council of (...).

In any case, it should be emphasized that article 4.11 of the RGPD defines the consent of the person concerned as "any manifestation of free will, specific, informed and unequivocal by which the person concerned accepts, either through a statement or a clear affirmative action, the processing of personal data that concerns you".

Likewise, Recital 42 of the RGPD provides that "(...) Consent must not be considered freely given when the interested party does not enjoy true or free choice or cannot refuse or withdraw their consent without suffering any prejudice." And recital 43 of the RGPD provides that "To guarantee that consent has been given freely, this must not constitute a valid legal basis for the treatment of personal data in a concrete case in which there is a clear imbalance between

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the interested party and the person responsible for the treatment, in particular when said person responsible is a public authority and it is therefore unlikely that consent has been given freely in all the circumstances of said particular situation."

For its part, the European Data Protection Committee (hereinafter, CEPD) has stated in Directives 5/2020 on consent in the sense of the RGPD (adopted on 05/04/2020) that "The term " libre' implies real choice and control on the part of those concerned. As a general rule, the RGPD establishes that, if the subject is not really free to choose, feels obliged to give his consent or will suffer negative consequences if he does not give it, then the consent cannot be considered valid." And the CEPD adds that "in the context of employment there is an imbalance of power. Given the dependence that results from the relationship between the employer and the employee, it is not likely that the interested party can deny his employer consent to the treatment of data without experiencing real fear or risk that his refusal will produce harmful effects."

In accordance with the above, it must be concluded that the consent granted by the complainant for the previously transcribed purpose that appeared in the document annex B, was not free, and therefore, was not valid.

With regard to the treatment of data relating to health, the City Council of (...) invokes the following circumstances provided for in article 9.2 of the RGPD, which would allow their treatment:

> "a) the interested party gives his explicit consent for the treatment of said personal data with one or more of the specified purposes, except when the Law of the Union or of the Member States establishes that the prohibition mentioned in section 1 cannot be lifted by the interested party; (...)
>
> e) the treatment refers to personal data that the interested party has made manifestly public".

Well, in relation to consent it is necessary to reiterate what has just been explained, as well as to point out that this consent would not be explicit with regard to health data (art. 9.2.a RGPD).

And, with regard to the circumstance provided for in article 9.2.e) of the RGPD, the City Council of (...) states that the fact of being "on medical leave due to an occupational accident, this is a fact manifestly public to the colleagues of the Service in which he carries out his tasks due to his absence from the workplace for an extended period" and that the circumstance relating to that the affected person is suitable "for the basic service of carrying out the medical examinations that the City Council facilitates based on the legal obligation provided for in art. 22 Law 31/1995, it is also a manifestly public fact, therefore, for the development of the tasks you must be fit."

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In this regard, it is necessary to point out that article 9.2.e) of the RGPD establishes that it must be the interested person who has made the data manifestly public, a circumstance that has not been accredited by the City Council of (...).

In accordance with everything that has been set out, all of the allegations made by the City Council of (...) against the proposed resolution must be rejected.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 5.1.a) of the RGPD, which provides that personal data will be "treated lawfully (...)".

For its part, article 6.1 of the RGPD, regarding the legality of the treatment, provides that the treatment will only be lawful if at least one of the following conditions is met:

> "a) the interested party gives his consent for the treatment of his personal data for one or several specific purposes;
> b) the treatment is necessary for the execution of a contract in which the interested party is a party or for the application at the request of this pre-contractual measures;
>
> c) the treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment;
> d) the treatment is necessary to protect the vital interests of the interested party or another natural person;
> e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;
> f) the treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that these interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child.
> The provisions in letter f) of the first paragraph shall not apply to the processing carried out by public authorities in the exercise of their functions."

In turn, article 9.2 of the RGPD, regarding the treatment of special categories of data, states that the prohibition of their treatment does not apply if one of the following circumstances is present:

> "a) the interested party gives his explicit consent for the treatment of said personal data with one or more of the specified purposes, except when the Law of the Union or of the Member States establishes that the prohibition mentioned in section 1 cannot be lifted by the interested party;

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b) the treatment is necessary for the fulfillment of obligations and the exercise of specific rights of the person responsible for the treatment or of the interested party in the field of labor law and of social security and protection, to the extent that this is authorized by the Law of the Union of the Member States or a collective agreement in accordance with the Law of the Member States that establish adequate guarantees of respect for the fundamental rights and interests of the interested party; c) the treatment is necessary to protect the vital interests of the interested party or another natural person, in the event that the interested party is not physically or legally able to give their consent; d) the treatment is carried out, within the scope of its legitimate activities and with due guarantees, by a foundation, an association or any other non-profit organization, whose purpose is political, philosophical, religious or trade union, provided that the treatment refers exclusively to current or former members of such organizations or persons who maintain regular contact with them in relation to their purposes and provided that personal data is not communicated outside of them without the consent of the interested parties; e) the treatment refers to personal data that the interested party has made manifestly public; f) the treatment is necessary for the formulation, exercise or defense of claims or when the courts act in the exercise of their judicial function; g) the treatment is necessary for reasons of an essential public interest, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish measures adequate and specific to protect the fundamental interests and rights of the interested party; h) the treatment is necessary for the purposes of preventive or occupational medicine, evaluation of the worker's labor capacity, medical diagnosis, provision of health or social assistance or treatment, or management of health and social care systems and services, on the basis of

Law of the Union or of the Member States or by virtue of a contract with a healthcare professional and without prejudice to the conditions and guarantees contemplated in section 3; i) the treatment is necessary for reasons of public interest in the field of public health, such as protection against serious cross-border threats to health, or to guarantee high levels of quality and safety of health care and medicines or health products, on the basis of the Law of the Union or of the Member States that establishes appropriate and specific measures to protect the rights and freedoms of the interested party, in particular professional secrecy, j) the treatment is necessary for purposes of archiving in public interest , scientific or historical research purposes or statistical purposes, in accordance with

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> article 89, section 1, on the basis of the Law of the Union or of the Member States, which must be proportional to the objective pursued, essentially respect the right to data protection and establish adequate and specific measures to protect the interests and fundamental rights of the interested party."

During the processing of this procedure, the facts described in the proven facts section have been duly proven, which are constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of "the basic principles of treatment, including the conditions for consent in accordance with articles 5, 6, 7 and 9", among which the principle of legality is contemplated (art. 5.1.a RGPD).

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

> "e) The processing of personal data of the categories referred to in article 9 of Regulation (EU) 2016/679, without any of the circumstances provided for in the aforementioned precept and article 9 of this Law organic."

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

> "(...) must issue a resolution that sanctions them with a warning. The resolution must also establish the measures to be adopted so that the conduct ceases or the effects of the offense committed are corrected.
>
> The resolution must be notified to the person in charge or in charge of the treatment, to the body to which it depends hierarchically, if applicable, and to those affected who have the status of interested party, if applicable."

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

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

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In the present case, however, there is no need to make any request for measures to correct the effects of the infringement, given that it derives from facts already accomplished.

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.a), 6 and 9, all of them 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 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,