

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 11/2021, referring to the City Council of (...).

## Background

1. On 31/01/2020, the Catalan Data Protection Authority received a letter from a person, in which he filed a complaint against the City Council of (...), on the grounds of a alleged breach of the regulations on personal data protection.

In his letter, the complainant expressed his complaint about the content of a mayoral decree, dated 07/11/2019, which this City Council notified him in the same month of November. In the body of this decree, of which he provided a copy, there was a list of eleven people, against whom an agreement was initiated to initiate the *procedure for the removal of signs of fords and reserves from the public road (...)*, for having installed a plate that did not meet the technical characteristics of the City Council's official ford plate, and for not having the mandatory municipal license.

The specific reason for his complaint was that in the body of the decree these eleven people - among them, the person making the complaint - were identified by name and surname (ten of them were natural persons and the last one was a limited company), each of which was preceded by the address of a home, and that the said initiation agreement with the indicated personal data had been notified to these eleven people, with the consequent disclosure of personal data to all of them, including the information regarding the improper installation of ford indicators, and the initiation of the indicated administrative procedure. In the last one, the complainant pointed out that on 27/11/2019 he submitted a letter to the City Council, highlighting these facts, without receiving any response from the council.

2. The Authority opened a preliminary information phase (no. IP 45/2020), 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 were capable of motivating the initiation of a sanctioning procedure.

3. On 02/02/2021, the City Council of (...) was required to confirm the reported facts, indicate whether the addresses that appeared in the mayoral decree mentioned corresponded to the private homes of the people who they mentioned; he was also required to indicate the legal basis that in his opinion would protect the communication of data, to identify the

administrative procedure that was initiated with the initiation agreement that contained the mayor's decree, and which specified the time interval during which the notification of said decree took place to the interested persons. And the latter was required to indicate whether the City Council had responded to the letter of complaint dated 26/11/2019, referring to these same events, which the person making the complaint presented on 27/11/ 2019 before the council and if so, to provide a copy of the written response and of its notification to the complainant.

4. On 10/02/2021, the City Council of (...) responded to the above-mentioned request in a letter stating the following:

*"1. Regarding whether the City Council notified the mayoral decree mentioned with the personal data indicated, we inform you that the communication was made to all the people listed in the body of the decree. After speaking with the person who made the list of people and addresses to which reference is made, I consider it appropriate to clarify that the list of names corresponds to the owners of the properties to which reference is made, which may or may not coincide with your residential address. That is to say, in the list that is related in the decree, there are the owners of the farms where the alleged false ford is located.*

*The data, therefore, were taken from the Cadastral (tax) Database and not from the Population Register.*

*2. In my opinion as the Data Protection Delegate, there is no legal basis to prevent this communication. The only legal approximation would be given by the seventh additional provision of Law 3/2018, on the identification of those interested in notifications through announcements and publications of administrative acts, which refers to the cases described provision, it is possible to identify the relationship of names and surnames in the announcement or publication as long as it is not accompanied by the complete number of the national identity document, which in this case does not apply, since the notification is practice individually and electronically.*

*With regard to the procedure initiated by this decree, it is a hearing procedure in which the voluntary withdrawal of the ford plate is requested, in the event that it does not correspond to the technical characteristics that are regulated in the Municipal Regulatory Ordinance of (...), if this is not accompanied by the corresponding municipal license. And for this reason, a period of fifteen days has been opened so that the people who consider it appropriate can present the allegations and present the supporting documents they consider relevant. Likewise, it is reported that in the event of not proceeding with the removal of the plate, without having presented any allegation, the administration will proceed with the removal of the same.*

*Finally, regarding the time during which the notification of the said decree took place to the persons concerned, I must inform you that the persons concerned received a single individual notification. There are no other procedures in the notification file, nor other notifications with similar characteristics.*

3. Regarding whether the City Council responded to the letter of complaint dated 26/11/2019, referring to these same facts, that the person making the complaint presented to the council on 27/11/2019 with registration number 2019/(...), I must inform you that there is no answer in the file. As far as I have been able to verify, this letter has never been answered, just as the removal of the alleged fake ford plate has not been effective.

*I have not observed any other action in this administrative file by any municipal technician.*

*Measures taken:*

*In the coming days, all the administrative and technical staff will be given information, a reminder, on the way in which they must practice individual notifications correctly. A special reference will also be made to the sending of notifications in the upcoming training sessions on data protection, which will be held at the town hall for its employees."*

5. On 04/03/2021, 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), both of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of these (hereafter, RGPD).

This initiation agreement was notified to the imputed entity on 09/03/2021.

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

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

proven facts

The City Council notified several people, ten of them physical persons, of a mayoral decree, dated 07/11/2019, which agreed to initiate a procedure *for the removal of ford signs and reserves of the public road (...)*, for having installed each of them in a building they own, a plate that did not meet the technical characteristics of the official ford plate of the City Council, and for not have the mandatory municipal license.

The body of the said decree contained the name and surname of all ten natural persons, and of a limited company, preceded by the address of the property owned by each person where the irregular ford plate would have been installed, with the consequent disclosure of these personal data among all of them, including the information regarding the improper installation of ford indicators, and the initiation of the indicated administrative procedure.

## 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. In accordance with article 64.2.f) of the LPAC and in accordance with what is indicated in the agreement initiating this procedure, this resolution should be issued without a previous resolution proposal, given that the City Council of (...) has not made objections to the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. With regard to the proof of the facts alleged in the initiation agreement, it should be noted that the content of the complaint together with the statements made by the City Council of (...) by letter dated 10/02/2021 presented during the prior information phase, allow the notification to interested persons of the mayor's decree of 07/11/2019 with the indicated content to be considered proven. With this notification, the City Council revealed the identity of the owners of the properties where ford plates were installed that would not comply with the municipal regulations, in addition to revealing the related information (the address and ownership of the properties, the installation of irregular ford plates on their properties, and the status of interested persons in the administrative procedure initiated as a result of this fact).

As the City Council itself has recognized in the aforementioned letter, this disclosure of data is not protected by any legal basis, because while it is true that the City Council would have initiated the administrative procedure indicated in application of the applicable regulations, it should to have notified the mayor's decree of 07/11/2019 in such a way that no personal data of the persons interested among them were revealed. In this sense, article 40.5 of the LPAC establishes that: *"Public administrations can adopt the measures they consider necessary to protect the personal data contained in the resolutions and administrative acts, when these have as recipients more than one interested"*. In accordance with this precept, the City Council should have adopted the appropriate measures so that in the initiation agreement it notified, the personal data mentioned were preserved from the knowledge of others.

Based on this, it is considered that the legal assessment of the imputed fact, which in the initiation agreement was based on the principle of legality, has a better fit in the scope of the principle of confidentiality, given that the offense committed obeys not so much the fact that the initiation agreement contained personal data of all the interested persons, but the lack of adoption of the appropriate measures to avoid that when the decree was notified to the interested persons these personal data are known to all of them without distinction. The notification that was made leaves no doubt that it violated the principle of confidentiality contained in article 5.1.f)

of the RGPD, which establishes that personal data must be: *"Processed in such a way as to guarantee adequate security, including protection against unauthorized or unlawful processing and against its loss, destruction or damage accidental, through the application of appropriate technical or organizational measures"*.

Having said that, the modification made does not alter the seriousness of the infraction that was imputed in the initiation agreement, since both the violation of the principle of legality and the principle of confidentiality are constitutive of the same infraction, specifically, the provided for in article 83.5.a) of the RGPD, which typifies as such the violation of: *"a) The basic principles for treatment, including the conditions for consent, in accordance with articles 5, 6, 7 and 9"*, among which the aforementioned principle of confidentiality is included.

The conduct addressed here has been included as a very serious infringement in article 72.1.i) 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: *"The violation of the duty of confidentiality established by article 5 of this Organic Law"*.

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 the present case, the offense committed exhausted its effects with the notification of the mentioned mayor's decree, made in November 2019. And on the other hand, the City Council's data protection delegate stated for letter dated 10/02/2021 the will of the council to inform the municipal administrative and technical staff on how to make individual notifications, as well as the inclusion of this information in the upcoming training sessions on data protection . Therefore it is considered unnecessary to require the adoption of corrective measures.

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.f), 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,