

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 24/2021, referring to the City Council of (...)

Background

1. On 21/12/2020, the Catalan Data Protection Authority received a letter from Mr. (...) by which he filed a complaint against the City Council of (...) (hereinafter, the City Council), on the grounds of an alleged breach of the regulations on the protection of personal data.

The reporting person explained that he is an officer of the local police of the City Council. And that last July 30, 2020, in the ordinary session of the municipal plenary session of the City Council, a Councilor of the Corporation asked the Councilor of Governance of the City Council for explanations about the illegal occupations of properties in the municipality. The Councilor for Governance replied that he did not know the exact situation, that he had asked the agent for information (...), but that he had not answered because he had first been ill and was now on vacation.

The complainant stated that police officers have a professional identification number (TIP) to preserve their personal and family safety. And considered that the councilor should have identified him by his TIP number, instead of revealing his personal details (name and surname). Even more, he warned that the ordinary sessions of the Municipal Plenum are recorded on video, broadcasted live on the Internet and, moreover, the entire videos of these sessions can be viewed freely (in the open) for weeks on the Internet. He added that this fact is perfectly known to all the councilors of the corporation.

2. The Authority opened a preliminary information phase (no. IP 399/2020), 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 11/03/2021, also during this preliminary information phase, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the complaint. Thus, it was found that the video of the ordinary session of the Municipal Plenum dated 07/30/2020 was published on the *YouTube* channel of the City Council ([https://\(...\)](https://(...))). Specifically, from minute 03:28:32 to 04:15:32 of the recording, the data was revealed

personal data of the reporting person. The transcript of the recording in the minutes mentioned was the following:

Question from a councilwoman: *"Do we have a census of occupied houses in (...)? (...) to know how this issue was".*

The councilor's answer: *"I don't remember the exact details now (...) I, last month I sent him, well, at the beginning of the month, to the corporal (...), who in principle is the person who he is basically dealing with the procedures before the water companies, electricity, police officers, courts and such, I asked him how this situation was, after these three or four months that have passed since the state of alarm, he's been sick, he's been sick for a month and now he's on vacation, he hasn't sent me this information yet, as soon as I have it I'll let you know(...)"*.

4. In this information phase, on 12/03/2021 the reported entity was required to report on:

- The reason why the local police officer was identified by first and last name.
- Identified the legal basis for the communication of the complainant's personal data by the Councilor of the City Council, as well as its publication on the City Council's *YouTube* channel, bearing in mind that the publication was made in the open, and it was accessible to any Internet user

5. On 03/24/2021, the City Council's Data Protection Officer responded to the above-mentioned request in a letter stating the following:

- *"The identification of the corporal of the local police by his first and last name, carried out by the councilor for public safety and mobility of the City Council, in the ordinary session of the Municipal Plenum on July 30, 2020, was made by mistake and involuntarily, during the intervention of the councilor himself"*.
- *"The City Council has adopted, on March 15, 2021, the corrective measures consisting in the removal of the video from the *YouTube* channel and the municipal website. A reminder has also been carried out to all the councilors that during their interventions in the Plenary sessions of the City Council they must be respectful of the data protection regulations in the treatment of personal data, especially with the principle of minimization and avoid referring to unnecessary personal data"*.

6. On 04/06/2021 and still within the framework of this preliminary information phase, the Authority verified that the video of the ordinary session of the Municipal Plenum on 07/30/2020 had been removed from the channel from *YouTube* and from the municipal website.

7. On 04/16/2021, 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.f); 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 movement thereof (hereinafter, RGPD).

This initiation agreement was notified to the imputed entity on 04/20/2021.

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

9. On 04/29/2021, the City Council of (...) submitted a letter in which it deemed the statements made during the preliminary information phase (IP 399/2020) to be reproduced in this sanctioning procedure. Although, in purity, the aforementioned manifestations cannot be described as allegations, they will be addressed in section 2 of the legal foundations.

10. On 04/06/2021, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the City Council of (...) as responsible, in the first place, for an infringement provided for in article 83.5.a) in relation to article 5.1.f) both of the RGPD.

This resolution proposal was notified on 07/06/2021 and a period of 10 days was granted to formulate allegations. The deadline has been exceeded and no objections have been submitted.

proven facts

In the ordinary session of the Municipal Plenum on July 30, 2020, a Councilor from the City Council identified a local police officer by his first and last name. In addition, the councilor also explained that the local police officer in question had been on leave and was on vacation at the time.

Subsequently, the video of the Plenary was published publicly on the City Council's website and on the City Council's YouTube channel where it remained published from 07/31/2020 (date of publication) until at least the 15 /03/2021, the date the City Council removed the video from both the City Council website and the YouTube channel. It should be added that in both cases, the video was accessible to any Internet user

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 not made any objections to the resolution proposal, but in the initiation agreement it stated that it accepted as reproduced the statements made in the phase

of previous research. In this regard, it is considered appropriate to reiterate below the most relevant of the instructor's motivated response to these statements in the initiation agreement.

2.1. About the involuntary error.

The City Council argued that the identification of the local police officer by his first and last name, carried out by the Councilor of the City Council, in the regular session of the Municipal Plenum on July 30, 2020, was involuntary and was made by mistake.

Regarding this, in the field of personal data protection, intentionality is not a necessary requirement for the conduct to be considered culpable. The Supreme Court has ruled in this regard, among others, in the Judgment of 01/25/2006. Thus, the majority doctrine maintains that malicious conduct is not required, but *"the simple negligence or failure to fulfill the duties that the Law imposes on the persons responsible for files or data processing is sufficient to exercise extreme diligence."* (SAN of 12/11/2010, Rec 761/2009).

In short, the jurisprudence establishes that it is not necessary for the conduct to have occurred with intent or intention, but it is sufficient that negligence or lack of diligence has intervened, as would be the case analyzed here. This has been declared by the Judgment of the National Court of 02/05/2014 (RC 366/2012) issued in the matter of data protection, which maintains that the status of person responsible for processing personal data *"imposes a special duty of diligence at the time of carrying out the use or treatment of personal data or its transfer to third parties, as regards the fulfillment of the duties that the legislation on data protection establishes to guarantee the fundamental rights and public liberties of people physical, and especially his honor and personal and family privacy, whose intensity is enhanced by the relevance of the legal assets protected by those rules."*

Based on the jurisprudence presented, the allegation of the imputed entity cannot succeed. In addition, it has been proven that they did not act with due diligence, because it is well known, especially among councilors, that the Plenary Sessions are recorded and uploaded to the Internet from where anyone can access them in any time without any restrictions. And the councilors are also aware that to guarantee the safety of the police officers, these

they are never identified by their first and last names, but by their TIP number.

2.2. About the corrective measures taken.

The City Council alleged that on March 15, 2021, it removed the controversial video from the YouTube channel and the municipal website. Likewise, he added that he carried out a reminder to all the councilors that during their interventions in the Plenary sessions of the City Council they had to be respectful of the data protection regulations, especially with the principle of data minimization and avoid referring to unnecessary personal data.

On 04/06/2021 the Authority verified that the video of the ordinary session of the Municipal Plenum of 07/30/2020 had indeed been removed from the YouTube channel and the municipal website. In this regard, it must be said that the adoption of corrective measures does not distort the imputed facts, nor do they modify their legal classification. Accordingly, this plea cannot succeed. Even so, the adoption of the corrective measures taken is very positively assessed by this Authority.

3. In relation to the facts described in the proven facts section, relating to the principle of confidentiality, it is necessary to refer to article 5.1.f) of the RGPD, which provides that personal data will be treated: *"in such a way that Adequate security of personal data is guaranteed, including protection against unauthorized or illegal processing and accidental loss, destruction or damage, through the application of appropriate technical or organizational measures ("integrity and confidentiality")"*.

During the processing of this procedure, the fact described in the proven facts section, which constitutes the offense provided for in article 83.5.a) of the RGPD, which typifies the violation of *"a) the basic principles for treatment, including the conditions for consent pursuant to articles 5, 6, 7 and 9"*.

The conduct addressed here has been included as a very serious infraction in article 72.1.i) of the LOPDGDD, in the following form:

"1. Based on what is established in article 83.5 of Regulation (EU) 2016/679, infractions that involve a substantial violation of the articles mentioned therein and, in particular, the following are considered very serious and will be prescribed in three years: i) The violation of the duty of confidentiality established in 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 infractions committed in relation to publicly owned files, the director of the Catalan Data Protection Authority must dictate

a resolution that declares the infringement and establishes 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".

In this specific case, however, it is not necessary to require corrective measures to correct the effects of the infringement, given that the reported entity proceeded to remove the video from the YouTube channel and the City Council's website once it became aware of the facts object of this procedure.

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,

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