

In this resolution, the mentions of the affected entity 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 entity, the physical persons affected could also be identified.

#### File identification

Resolution of sanctioning procedure no. PS 29/2021, referring to the City Council of (...).

#### Background

1. On 11/01/2021, the Catalan Data Protection Authority received a letter from Mrs. (...) for which he filed a complaint against the City Council of (...), on the grounds of an alleged breach of the regulations on the protection of personal data.

The complainant stated in his letter of complaint that he is a non-affiliated councilor of this City Council. And that, on date (...), during the Ordinary Plenary broadcast live and recorded for later consultation, the Councilor for Territory, Sustainability and Business of the City Council addressed the complainant, warning him that he would soon receive a penalty for having found a package with his personal data outside the container where it was supposed to be deposited.

The complainant complained that the councilor had made improper use of his personal information, which he would have accessed in his capacity as a councilor of the City Council.

It contributed to the publication of the video about the events reported.

2. The Authority opened a preliminary information phase (no. IP 13/2021), 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. In this information phase, on 04/01/2021, the reported entity was required to report on the reason why the councilor made public, in the Ordinary General Meeting on (...), the information on the alleged sanction of the reporting person; that indicate the legal basis that would enable this communication of personal data by the councilor of the City Council; as well as the legal basis that would justify the publication of the recording of the Plenary session with the personal data of the complainant on the City Council's YouTube channel, bearing in mind that the publication was accessible to any internet user.

4. On 04/01/2021, 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 when accessing the municipal website of the City Council

([https://\(...\).cat](https://(...).cat)), in the "Live Plenary" section, there is the "View Plenary Channel" subsection, which forwards to the City Council's YouTube channel:

((...))

On this channel you can see several videos, among which is the video of the telematic Ordinary Municipal Plenum of the day (...):

(...).

Secondly, the recording of the Plenary Session was heard, specifically the part referring to the events reported. The disclosure of the personal data of the reporting person occurs from the minute (...) to the minute (...) approximately, when the councilor addresses the reporting person, saying:

*"In fact, take advantage, since you say and claim sanctions, tell him that soon you will receive one, because you are on the list of those who have been stuck with a package out of place with a purchase made by Amazon and, therefore, with your data in the package store and, therefore, you will probably soon receive this request (...)"*

5. On 04/19/2021, the City Council responded to the aforementioned request in writing in which it stated the following:

- Regarding the reason why the councilor made public the data relating to the sanction and the facts that would have motivated it, the City Council explains that: *the context for which the councilor reported is following an intervention by the councilwoman who questions the new campaign to improve the selective collection of waste which consists of two actions, one is the pointing out of the waste clearly indicating that it is not in its place, and the other action consists of letting the people who are 'has detected a residue of his on the public road outside the corresponding container a warning informative regarding the penalties that may result from carrying out these attitudes. In this sense, it can be seen in the intervention of the councilor that she doubts the effectiveness of the campaigns, and it is in this context that the councilor replies that the system works because they found some of his waste. However, the councilor has been required for these purposes to formulate the relevant justification for his intervention in the plenary on date (...), and which is subject to review by the Catalan Data Protection Authority.*
- Regarding the legal basis for the communication of data in the Ordinary Plenary Session, the City Council states that the councilor made use of his right to speak under the protection of the Municipal Organic Regulation itself and in accordance with the agenda where the requests and questions are arranged, and in this sense, it is not considered that any precept of the data protection regulations has been violated by responding to a political debate between two councilors of the City Council. In fact, the councilor does not even mention what type of offense has been committed, nor what type of penalty.
- With regard to the publication of the video with the personal data of the complainant, the City Council cites article 70.1 of Law 7/1985, of April 2, regulating the bases of the scheme

local establishes that the sessions of the Plenum of the Local Corporations are public. However, the debate and voting of those matters that may affect the fundamental right of citizens referred to in article 18.1 of the Constitution may be secret, when so agreed by an absolute majority. It also cites article 156 of Legislative Decree 2/2003, of April 28, which approves the Revised Text of the Urban Planning Law

- That *"The publication and dissemination of the acts of the municipal plenum, and the possibility of recording the sessions of the plenum, are issues that the Catalan Data Protection Authority has analyzed, among others, in opinions 10/2016, 54/2015, 44/2015, 60/2013, 43/2013, 16/2013, 5/2013, 32/2012, or 40/2009, among others. In this same sense, the City Council can agree to the recording, live broadcast or making available on the municipal website of the sessions of the plenary session, as well as the dissemination of information that is discussed there. In this regard, the City Council agreed at the Municipal Plenum to stream the municipal plenary sessions."*

- *"In the same way, the fact of being able to broadcast the plenary sessions gives the possibility of giving publicity to the plenary sessions that since the declaration of the state of alarm as a result of the health crisis arising from the disease of the COVID19, and by virtue of what is established in article 46.3 of Law 7/1985, of April 2, regulating the bases of the local regime, the plenary sessions from March 14 are held electronically."*

6. On 28/04/2021, also during this preliminary information phase, following the demonstrations made by the City Council, the Authority's Inspection Area accessed the YouTube channel of the City Council of (...), specifically in the section corresponding to videos: ([https://www.youtube.com/\(...\)](https://www.youtube.com/(...))). He then verified that the video of the telematic Ordinary Municipal Plenum of (...), which can be found at the following url: (...) was still published, and the recording was listened to, specifically from minute (...) to the minute (...), corresponding to the interventions relating to the two councilors in relation to the subject of the complaint. His interventions are transcribed below:

Intervention of the councilor Ms. (...) (minutes (...) to (...))

*"We have a series of questions to address to the government team, I don't know how many days ago they put into practice their method of "sticking" to the andromines that appear scattered throughout the Town, but it seems obvious, from what we have been able to witness personally and from the photographs that have been sent to us by different neighbors, which at the moment has not served much for much except to have even more days of andrómines palplanted in our streets. When do you expect results? How much time does this government team estimate it needs to verify the effectiveness or failure of its method? To put it plainly and in Catalan: how much longer do we have to live with incivility, dirt and neglect, fighting it only with "stickers", instead of financial sanctions?"*

Intervention of the councilor, Mr. (...), (minutes (...) to (...))

*"Basically for allusions, as far as the campaign of "(...)" is concerned, it is a campaign that has been implemented in other municipalities and, in fact, still today*

*I was talking to the brigade manager saying that it has given a good result and that it has given an optimal and correct result. In fact, take advantage, since you say and claim penalties, tell him that soon you will receive one because you are on the list of those who have been stuck with a package out of place with a purchase made by Amazon and, therefore, with his data in the package store and, therefore, he will surely receive this request very soon and, in the same line, therefore, with the rest of all the people who have already raised files and, therefore, we ask for this civility, this respect for the people who have to make these collections that for them it is also not pleasant to have to make all these collections outside places and without (inaudible) Therefore, now starting the year, will all these people receive these requirements and all these posters that have been raised acts by all the people responsible for the elements, packages out of place.*

*We will start this 2021 with this whole string of instances in which, as I told you, you are part of."*

Intervention of Ms. (...) (minutes (...) to (...))

*"Just for hints, I have not left any package outside the container neither I nor anyone in my house, we will investigate whatever they have done. It's very appropriate that curiously they found a package of mine outside, I guess someone convinced them, obviously we hadn't left it and we'll do whatever it takes and, in addition, don't tell me that your method works because to put a example, in (...) you can barely walk on the sidewalk. It seems unfortunate to me that, in addition to not recognizing the failure of this campaign, they still want to make us see that it has worked because it has not, and for allusions as well, obviously this has been taken out of the package sleeve We want to see photographs, obviously we haven't left it out. If it is a cardboard box, maybe someone has taken it out of the container, we are very clear that we have not committed this infringement, we are sufficiently vigilant and therefore we will take whatever action is necessary."*

7. On 07/05/2021, 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); all of them from Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereinafter, RGPD).

This initiation agreement was notified to the imputed entity on 05/10/2021.

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 05/25/2021, the City Council of (...) formulated objections to the initiation agreement, which are addressed in section 2 of the legal foundations.

10. On 31/05/2021, the Authority's Inspection Area accessed the City Council's website, [https://\(...\).cat/](https://(...).cat/), specifically in the section "Actes del Plen" from where the minutes of the Plenary of date (...) were downloaded in pdf format, from the following link:

[http://media.seu-e.cat/\(...\).pdf](http://media.seu-e.cat/(...).pdf)

In the 12th section Prayers and questions the following text is transcribed:

*"Question posed by the councilor (...), a councilor not affiliated to any municipal group: The councilor (...), referring to the tapestry of andromines that appear scattered around the town, considers that it has not served for nothing except to have more days of andromines palplanted in the streets, and asks when results are expected and how much time is needed to see the failure of his method? When we have to live with incivility, dirt and negligence for a long time, fighting it with stickers instead of financial sanctions (...).*

*Answer given by the government team. Councilor Mr. (...) responds in relation to the campaign of (...) it is a campaign that has been implemented in other municipalities and he recently spoke with the head of the cleaning brigade saying that it is giving good results. On the other hand, the councilor Mr. (...) takes the opportunity to tell the councilwoman that she will soon receive a penalty since she is on the list in which a package was found out of place following a purchase made by Amazon and therefore with your data and you will surely receive the request, and with the same line with the rest of the people who have started files, and that is why this civility and respect is requested, for the people who have to make these collections since it is not at all pleasant to do it outside places. The councilor comments that from 2021 this process will begin.*

*Councilor Mrs. (...) comments that she has not left any package outside the container, neither she nor anyone at home, and she thinks that it was very timely that a package of hers was found and she believes that she has convinced someone and will appeal whatever it takes, and he doesn't think his method works, since in the (...) hardly anyone walks on the sidewalk, and he finds it unfortunate that in addition to not acknowledging the failure of the campaign, they are trying to pretend that it has worked. With regard to the package they found outside, he believes that someone has taken it from its place since it is always monitored and will do whatever it takes. The councilor Mr. (...) comments that he is part of the list of people who have found packages outside the container and has been the only councilor of this town hall who has been found with this circumstance and appeals to his cynicism and the ethics he is saying, he could help more."*

11. On 09/28/2021, 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.f); both of the RGPD.

This resolution proposal was notified on 28/09/2021 and a period of 10 days was granted to formulate allegations.

12. On 13/10/2021, the accused entity submitted a statement of objections to the proposed resolution.

proven facts

The City Council published on its electronic headquarters and on the official YouTube channel of the City Council the minutes and the video of the session of the Municipal Plenum dated (...), respectively. Both publications contained data from the complainant, who was an opposition councillor, related to infringing behavior and the eventual imposition of an administrative sanction.

During the ordinary session of the aforementioned Plenary, the complainant questioned the effectiveness of a waste collection campaign implemented by the City Council, which consisted of attaching a sticker to objects left on the public road or that were outside the container that belonged to them. A councillor from the government team responded to the criticism of the complainant by stating the following: *"take advantage, since you say and claim sanctions, tell him that you will soon receive one, because you are on the list of those who 'has stuck with a package outside the site with a purchase made by Amazon and, therefore, with his data in the package store and, therefore, surely very soon he will receive this request and, in the same line, therefore, with the rest of all the people who have already filed cases."*

The video was broadcast live, recorded and then the City Council published it on its YouTube channel, from where any Internet user could view it, since the channel is open. On 05/25/2021, the City Council notified the Authority that it had proceeded with its withdrawal.

On 31/05/2021, the Authority verified that the City Council had also published the minutes of the Plenary in question, which contained the transcript of the intervention of the person reporting and the response of the councillor in the same terms as those that were in the video. The minutes remain accessible from the electronic headquarters of the City Council.

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.

Before analyzing the allegations made by the City Council, it is convenient to deal with an issue that the City Council stated in the preliminary information phase and which is necessary to focus the object of this sanctioning procedure.

In order to justify the publication of the personal data of the complainant, the City Council cited the general principle of publicity of the plenary sessions of local corporations, specifically that the dissemination of the data takes place in the context of a space for public debate such as the Ordinary Municipal Plenum. And he cited some opinions of the APDCAT on the possibility that the City Council may agree to the recording, live broadcast or making available on the municipal website of the plenary sessions, as well as the dissemination of information that they deal with. Indeed, the APDCAT has dealt with this issue on several occasions, among others, in opinion CNS 54/2015, cited by the City Council. Precisely, the principle of data minimization applicable to the publication of the recordings and minutes of the Plenary Session is interesting in particular. As stated in this opinion: *"the fundamental right to inform about municipal matters of interest to the population is not an absolute right either, so it should be exercised taking into account the rest of the rights involved, in this case the right to the protection of personal data and the right to privacy. From the aspect of the right to the protection of personal data, it will be necessary to take into account, especially in this sense, the principle of data quality and, from this, the principle of proportionality, (article 4 LOPD)".*

In accordance with this, *"in those cases where personal information may appear during the debate that is unnecessary to know the political activity of the City Council, it is established that only a summary will be disseminated where only the relevant fragments appear. From this point of view, the option to subsequently broadcast the recordings appears as an option that offers greater guarantees in order to comply with the requirements of current legislation both in terms of the protection of rights to honor, privacy and one's own image as regards the protection of other personal data".* The principle of proportionality is comparable to the current principle of data minimization, which is included in article 4.1.d) of the RGPD, and according to which those responsible for the treatment will have to process only the data that is appropriate, relevant and limited to what is necessary in relation to the purposes of the treatment. In short, when the recordings of the sessions and the acts of the Plenary are published, the principles and guarantees established by the data protection regulations and also those referring to the protection of the right to honor must be taken into account and intimacy

Regarding the publication of the Plenary proceedings on the municipal website, article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector, establishes that: *"Local entities they must publish the minutes of the plenary sessions on their electronic website. In their publication, the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy must be taken into account. For these purposes, personal data may be included without the consent of the person concerned, if it is data referring to acts debated in the plenary session of the corporation"*

*or provisions subject to publication in the corresponding official bulletin. In the rest of the cases, without prejudice to the provisions of other laws, publication is only possible if the consent of the interested person is obtained or the data cannot, in any case, be linked to the interested person himself".*

Consequently, the existence of legal authorization for the publication of personal data is not absolute no matter how much a certain matter has been discussed in the Plenary of the City Council on the occasion of the approval of an agreement or provision. And with regard to the questions, motions and interpellations that may have occurred in the Plenary, but which are not linked to an act or provision adopted in the plenary, publication is only possible if you have the consent of the interested person or the data cannot, under any circumstances, be linked to the same interested person.

In accordance with what has been said so far, and without denying the public nature of the plenary sessions, nor what is provided for in article 10.2 of Law 29/2010, of August 3, on the use of the electronic media of the public sector in Catalonia, on the publication of the minutes of the sessions of the Plenum, it is necessary to agree that the authorization contained in this precept is not absolute, and that 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"*.

The allegations made by the City Council are analyzed below.

#### 2.1. About the application of the RGPD.

Both in the initial agreement and in the proposed resolution, the City Council questioned the application of the RGPD to the facts that are the subject of the present sanctioning procedure.

First of all, the City Council argued that the purpose of the "(...)" campaign was not to collect personal data to sanction, but to raise awareness among the population by placing stickers on objects that have been abandoned in the public road without prior notice, and which will remain on the public road until the next collection day. As he explained, it was a question of pointing out the waste, clearly indicating that it is not in its place, and then the people who had detected a waste of theirs on the public road were sent an informative notice regarding the penalties that could be applied. The informational notice is only sent when the object contained your personal data (for example, because they did not remove the label that was on the package).

Based on what has been set out in the previous paragraph, the City Council considers: *"that the RGPD is not applicable to the events that are the subject of this procedure, since the notices that can exceptionally be sent to specific people, we cannot say that they constitute a file structured according to specific criteria relating to people, which allow easy access to their personal data"*.

It should be clarified that, as stated in the section corresponding to "Proven facts, the present sanctioning procedure does not have as its object the processing of data relating to the campaign "(...)"



but the publication by the City Council of the personal data of the reporting person contained in the video and in the minutes of the municipal meeting on YouTube and in the electronic Headquarters of the City Council, respectively.

Regarding the definitions of personal data and data processing, it is necessary to go to article 4.1) and 2) of the RGPD:

*"1) "personal data": all information about an identified or identifiable natural person ("the interested party"); Any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, such as a number, an identification number, location data, an online identifier or one or more elements of identity, shall be considered an identifiable physical person physical, physiological, genetic, psychological, economic, cultural or social of said person;*

*2) "treatment": any operation or set of operations carried out on personal data or sets of personal data, whether by automated procedures or not, such as collection, registration, organization, structuring, conservation, adaptation or modification, extraction, consultation, use, communication by transmission, diffusion or any other form of enabling access, comparison or interconnection, limitation, deletion or destruction;*

Well, the treatment that is the subject of this sanctioning procedure fits the definition of treatment established in article 4.1 of the RGPD, since personal data has been processed consisting of the dissemination of this data by automated means. In particular, the personal data of the complainant "related to infringing conduct and the eventual imposition of an administrative sanction" has been published on the City Council's website. And aside from whether or not the City Council effectively imposed a penalty on the person making the complaint, it is an objective and established fact that the Councilor for Territory, Sustainability and Business of the City Council disclosed data relating to infringing behavior and the City Council published them. This is so because the published data refer to an infringing behavior that is included in the Municipal Ordinance on civility and public coexistence of March 26, 2019, of the City Council of (...), which prohibits leaving any waste or object on the public road (article 103.e)). And that it qualifies as a minor infraction "*depositing waste outside the designated places (containers, waste bins, rubbish bins)*", in accordance with article 135.34 of this ordinance. Well, in accordance with article 138, this infringement is punishable by a fine of up to a maximum amount of 750.00 euros.

## 2.2 On the objective responsibility of the data controller.

Next, the City Council alleges that the City Council should not be sanctioned for the dissemination of information carried out by any person who intervenes in the municipal meeting. Again, it must be emphasized that the facts attributed to him are those relating to the publication of personal data. Indeed, the City Council, as data controller, is the one who decides whether or not to publish the video and the minutes of the meeting in full. Well, regarding the publication of the minutes of the plenary session, it is necessary to take into account article 10.2 of Law 29/2010 of August 3, on the use of electronic media in

public sector of Catalonia, which is the rule that enables local entities to publish the minutes of plenary sessions on their electronic headquarters. However, this qualification is not an absolute qualification, but obliges to take into account in the publication the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy. In this sense, it is not possible to accept what the City Council claims that *"objective responsibility cannot be attributed to the City Council for any manifestation, dissemination or breach of the duty of confidentiality of any of the people who intervene in any processing phase"*, because as has been said, at the same time as publishing the information, the City Council should have assessed the risks of publishing personal information and, depending on the result of the analysis, should have applied appropriate technical and organizational measures to minimize these risks. But clearly he didn't. Therefore, in this particular case the responsibility of the City Council derives from breach of its obligations as data controller, on the other hand, for breach of the principle of confidentiality. Indeed, the responsibility of the data controller is included in article 24 of the RGPD and is configured as a proactive responsibility, according to which the data controller must analyze the risks of the data processing that may affect rights and freedoms of people and apply technical or organizational measures (such as the publication of an extract from the minutes or the video or anonymizing personal data) in order to guarantee and must be able to demonstrate that the treatment is in accordance with the Regulation. Well, in this case, the City Council has not demonstrated that it has applied any measures to avoid publishing the data of the reporting person, nor has it provided any evidence to show that despite complying with its obligations as data controller, the infringement (the publication) was imputable to a third party and should not be attributed to the City Council.

With respect to this issue, it is necessary to cite the doctrine established by the Supreme Court and reiterated in the recent judgment dated 15/02/2021 (ECLI:ES:TS:2021:705) which resolves the administrative contentious cassation appeal (LO 7 /2015), number 1916/2020 (hereinafter, STS 705/2021), which is pronounced on the responsibility of a City Council for violations committed by its employees or by municipal officials.

*"(...) it can also be said here that, given the existence of the conduct that gave rise to the sanctioning procedure, it was up to the City Council itself to provide the administrative bodies that have intervened in the substantiation of the file with a principle of proof, at least that out, which would allow them to think that the infraction of the rule was not reprehensible".*

And in the same sentence, the Supreme Court recalls that the data controller cannot excuse himself when the person who committed the offense was an employee or a position:

*FJ 5è: "Well, starting from the constitutional doctrine and the jurisprudence that we have reviewed in the fourth legal foundation, we fully share the opinion of the Trial Chamber when it points out (FJ 6º of the appealed sentence) that << (. .) the responsibility of the Administration holding and in charge of the file [City Council ...] cannot be excused in its diligent action, separately*

*of the performance of its employees or positions, but rather it is the "culpable" performance of these, as a result of the violation of the aforementioned obligations to protect the reserved character of personal data that grounds the responsibility of the former in the disciplinary scope of whose application is concerned; by acts "own" by their employees or positions, not by third parties,..."*

The truth is that in the case at hand, the City Council could have avoided publishing those parts that contained the data of the person making the complaint and did not do so.

Regarding the objective responsibility, the Supreme Court denies that an objective responsibility is attributed to the person in charge of the treatment and believes that the responsibility of the person in charge of the treatment derives from the legal good protected by the norm that is violated and the need for the protection of personal data is really effective. Thus, it is expressed in the 5th FJ:

*"The above does not mean, of course, that we are projecting on the appellant City Council a principle of objective responsibility, nor that the principle of presumption of innocence is being violated, nor that we are giving for good luck a reversal of the burden of proof. It simply happens that, being admitted in our Administrative Law, the direct responsibility of legal persons, to them that, therefore, infringing capacity is recognized, the subjective element of the offense is embodied in these cases in a different way to how it happens with respect to physical persons, so that, as indicated by the constitutional doctrine that we have reviewed before -SsTC STC 246 / 1991, of December 19 (FJ 2) and 129/2003, of June 30 (FJ 8) - the direct blameworthiness derives from the legal property protected by the rule that is violated and the need for said protection to be really effective and for the risk that, consequently, must be assumed by the legal entity that is subject to compliance with said rule."*

Nor is it admissible what the City Council claims that the data ceased to be confidential when the councillor in question made them public in the plenary session. Because the fact that the councillor, in breach of his duty of confidentiality, had made public some data of which he had knowledge due to his position, does not make the data public. In addition, it should be borne in mind that the publication of this data on the Internet gives more publicity to the data, something that the City Council could have avoided if it had fulfilled its obligations as data controller.

### 2.3. About the content of the councillor's expressions.

The City Council claims that the information disseminated was not a penalty, but *"the sending of an informative notice to those people who have left their data in the object as has been the case."* That no information was made public about any alleged sanction of the person making the complaint, *"but when the councillor said, following the intervention of the councillor"*

*asking for more sanctions and criticizing the ineffectiveness of the campaign, which (the councilwoman) would soon receive a request, she was referring to the information notice and not to any sanction."*

However, from the video of the session and the minutes of the Plenary meeting, it has been proven that the councilor says verbatim that the person making the complaint will receive a sanction. According to the City Council in its statement of objections, this data was incorrect, because the people who had been identified as allegedly responsible for having left objects on the public street had not been sanctioned, it was only said that they would receive informative notices. Contrary to what the City Council says, the councilor's words confirm the facts: *"since you say and claim sanctions, tell him that you will soon receive one, because you are on the list of those who have been stuck with a package off-site with a purchase made by Amazon and, therefore, with your data in the package store and, therefore, you will probably soon receive this request and, in the same line, therefore, with the rest of all the people who already files have been opened."*

Even, in the hypothetical case in which no reference had been made to a possible sanction, the councilor would also have disclosed confidential data about the actions of a non-cardinable councilor in her personal sphere, which she would have accessed in the exercise of his office. Certainly, the councilor revealed information that he would have been aware of in his position, specifically: *"you are on the list of those who have been stuck with a package out of place with a purchase made by Amazon and, therefore, with his data in the package store and, therefore, he will surely receive this request very soon and, in the same vein, therefore, with the rest of all the people who have already filed files"*.

2.4. On the context and content of the councilor's expressions and the prevalence of the right to communicate truthful information.

The City Council states that the context in which the councilor disseminated the information, which is part of the debate between political representatives, must be taken into account. That plenary sessions are public and their dissemination fulfills the mandate required by article 70 of the LBRL.

Again, it is necessary to focus on the issue under analysis, which is not the plenary session, but the publication of the video and the minutes of the session. Therefore, the rule that applies to the publication of the minutes is article 10.2 of Law 29/2010 which states that *"in their publication, the principles and guarantees that establishes the data protection regulations and the protection of the right to honor and privacy"*.

In addition, to discredit the argument held by the City Council on the prevalence of freedom of expression and information over the right to data protection, it is necessary to cite Sentence 171/1990, of November 12, in the which the Constitutional Court addressed the collision of the fundamental right to freedom of information with the right to privacy and honor. in the following sense: *"Such preferential value, however, cannot be configured as absolute, since, if it is recognized as a guarantee of public opinion, it can only legitimize the intromissions in other fundamental rights that are consistent with that purpose, that is to say , what*

*they are relevant for the formation of public opinion on matters of general interest, lacking such a legitimizing effect, when the freedoms of expression and information are exercised in an excessive and exorbitant way for the purpose in view of which the Constitution grants its preferential protection."*

In this case, on the one hand, the councilor's statements are excessive and involve a clear intrusion into the personal and family sphere of the person making the complaint and, on the other hand, they are not relevant for the formation of citizens' opinion regarding the actions of the government team in relation to the waste collection campaign, which in the words of the City Council does not aim to *"sanction infringing behaviour, but "make the population aware of the abandonment of furniture and old junk in the street and that these behaviors are prohibited according to the Municipal Ordinance on civility and citizen coexistence"*.

Nor is the City Council's statement admissible, which adds that if the complaining councilor considers that the information does not correspond to reality, she has other relevant procedural avenues for such purposes, from civil to criminal. In this regard, it should be remembered that the APDCAT holds the powers that article 58 of the RGPD grants to the Control Authorities, among others the powers of investigation and corrections. In addition, article 5 of Law 32/2020, of October 1, of the Catalan Data Protection Authority attributes to APDCAT the function of ensuring compliance with personal data protection legislation, that of exercising the power of inspection and sanctioning in its scope of action in accordance with the provisions of article 3 of the same law. This is why the path chosen by the reporting person is perfectly relevant to defend their right to the protection of personal data.

## 2.5 On the violation of confidentiality by the City Council

The City Council denies the violation of the principle of confidentiality arguing that the information published is minimal, relevant and truthful as well as transcendent due to the debate that was held in plenary and does not affect the free exercise of their rights and freedoms.

As seen above, the personal data published were completely unnecessary to answer the questions posed by the councilor in the plenary session. The information disseminated is also not relevant in the context of the debate, because the City Council could have provided aggregate data on the number of people who had contravened the rule, without the need to reveal the personal data of the complainant. Finally, as stated in the previous section, the publication affected the personal and family sphere of the complainant.

## 2.6 On the contradiction when assessing the facts, the incorrect assessment of the evidence by the APDCAT and the violation of the presumption of non-administrative responsibility.

With regard to the assessment of the facts and the evidence, the City Council claims that the APDCAT contradicts itself. Thus, he states: *"It is contrary to the most elementary principles regarding the assessment of evidence in any administrative or jurisdictional procedure, that on the same facts two opposite conclusions are reached. The same expression of the Councilor cannot be valued, for*

*on the one hand, as evidence that proves that data relating to infringements or sanctions were indeed revealed, contrary to what was declared and duly certified by the City Council and, at the same time, that the Councilor's expression be valued by the APDCAT itself as information "wrong" precisely because the City Council has stated that no sanctioning procedure was processed nor was this the aim of such a campaign".*

First of all, regarding the assessment of the facts, it must be emphasized that it is not the APDCAT that reaches the conclusion that erroneous information was published (which is not mentioned in the section on proven facts), but that it is the City Council who, in the preliminary information phase, alleged that the published information was erroneous, because no disciplinary action had been taken against the person making the complaint and, moreover, that the objective of the collection campaign of waste was not to sanction offending behaviour, but to raise awareness among the population. But, in addition, if the City Council argued that the councilor's statements related to infringing behavior and, as recognized by the City Council itself, this behavior is prohibited by the Municipal Ordinance on civility and citizen coexistence.

Secondly, regarding the evaluation of the evidence, contrary to what the City Council understands, in this case the evidence is not about the veracity of the councilor's statements, but about the publication of confidential personal data of the person making the complaint by the City Council.

In effect, the video and the minutes of the plenary session containing the statements of the councilor in question. Well, the evaluation of the test is limited to the publication of the data by the City Council. And on this issue, it is analyzed whether the City Council, as responsible for the aforementioned publication, and in application of proactive responsibility, applied the appropriate measures to avoid contravening the principle of confidentiality of the data of the reporting person and it is obvious that he did not and has not provided any evidence in this regard. For example, it could have removed those parts of the recording and the minutes that contained the details of the reporting person.

Regarding the violation of the principle of non-administrative responsibility, the City Council alleges that the Authority has relied exclusively on the statements of the councilor and has assumed that he had access to the information because of his position. In this regard, the City Council has not provided any evidence that distorts the above. And he adds that the information could come from other sources, such as because the councilman could have passed by the street and seen the sticker that is attached to the andromines left out of place. However, this argument cannot be accepted for several reasons: firstly, because it is the councilor for Territory, Sustainability and Enterprise, who is responsible for the daily management and planning of the municipality's road cleaning; secondly, because his statements refer to a list of people who have left packages out of place, in the literal words of the councilor, *"since you say and claim sanctions, tell him that soon you will receive one because you are within the list of those who have been stuck with an off-site package with a purchase made by Amazon (...), therefore, surely very soon you will receive this request and, in the same way, therefore, with the rest of all the people who have already raised files"*. It becomes clear, therefore, that these data are municipal information that he can only know because of his position, and not as the City Council says, because it is a

information that can be accessed by any neighbor who passed by on the street and saw the councilwoman's package outside the container.

2.7 On the contradictory sanctioning criteria of the APDCAT for identical or similar facts.

The City Council claims that the APDCAT's decision in this case is contradictory to other resolutions of the same authority. And it specifically cites the resolution of PS 1/2021, in particular point 9 relating to the antecedents of facts that motivate, precisely, the non-imputation of the reported facts relating to the publication of personal data by a city council both of the minutes of the plenary session as well as the publication of the recording thereof.

The City Council considers that these are identical or similar events, which the Authority does not share for the following reasons:

a) Because, contrary to what happens in the case at hand, in the case cited, part of the information disseminated was public by legal obligation and, therefore, common knowledge.

In accordance with article 75.7 of the LBRL, it is the obligation of local representatives, as well as the non-elected members of the Local Government Board, to make a declaration of their assets and participation in companies of all types, with information on the companies participated by these (...). These declarations must be registered in the interest registers that are public.

As the cited resolution argues, in that case the information was published by legal imperative and the councilor had provided it to the City Council. *"In effect, it is necessary to start from the fact that the connection of the person making the complaint with the company Mavasils, SL, was information that the person making the complaint had communicated to the City Council - due to his status as a councillor-, and that subsequently the council 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 the Mavasils society, no data that was not of general knowledge would have been revealed".*

b) Because it was information of public relevance related to the possible causes of incompatibilities that affect the councillors. On the other hand, in the case at hand we are dealing with data about conduct that affects the strictly personal sphere of the reporting person

In the aforementioned resolution, the following is argued: *"The specific personal data released, referring to the association of the councilor with a company that intended to carry out an urbanization project that the City Council would have denied because it considered the number of 'housing intended, and which would later have filed an administrative appeal, has indisputable public relevance, both because of the status of councilor 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 01/31/2019 that such a project*

*urbanism was the reason why the complainant participated in municipal politics, it is part of the demonstrations that people who hold political positions or represent the public must endure, and in any case, when it comes to opinions, exceed the material scope of the data protection regulations". That is why this contention cannot succeed.*

2.8 On the corrective measures proposed by the Authority in the resolution proposal.

In its statement of objections to the initiation agreement, the City reported that it removed the recording of the plenary session from the website. The Authority made a series of checks and noted that the video of the Plenary session was not accessible.

In the allegations made in the proposed resolution, the City Council reported that it had adopted measures in order to make inaccessible to the public those parts of the minutes of the Plenary that are published in the electronic headquarters that contained the data relating to the person making the complaint. However, on 21/10/2021 the Authority made a series of checks in this regard and to be able to verify that the record with the personal data of the person making the complaint is still published in the electronic headquarters of the City Council, and a due diligence was carried out of these facts.

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 must be treated *"f) of in such a way that an adequate security of personal data is guaranteed, including protection against unauthorized or illegal processing and against accidental loss, destruction or damage, through the application of appropriate technical and 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, according 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 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".*

On 05/31/2021, the Authority made a series of checks and found that the video of the controversial Plenary session was no longer accessible. He also verified that the City Council had published on its electronic headquarters the minutes of the same Plenary meeting with the details of the person making the complaint. Despite the fact that the City Council stated in its statement of objections that it had modified the minutes in the sense of making inaccessible those parts of the minutes that contained the data of the person making the complaint, on 10/21/2021 , the Authority was able to verify that the data was still accessible from the City Council's electronic headquarters.

By virtue of the power attributed to the Director of the Authority, it is proposed to require the City Council to as soon as possible, and in any case within a maximum period of 10 days from the day after the notification of the resolution issued in this procedure, carry out the following action:

- That it establishes the necessary technical and organizational measures to make inaccessible to the general public those parts of the minutes of the Plenary that are published in the electronic headquarters and that contain the data relating to the person making the complaint.

Once the corrective measure described has been adopted, within the specified period, the City Council of (...) must inform the Authority within the following 10 days, without prejudice to its inspection powers Authority to carry out the corresponding checks.

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.
2. To require the City Council of (...) to adopt the corrective measures indicated in the 4th legal basis and accredit before this Authority the actions carried out by fulfill them
3. Notify this resolution to the City Council of (...).
4. Communicate the resolution to the Ombudsman, in accordance with the provisions of article 77.5 of the LOPDGDD.
5. Order that this resolution be published on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the imputed entity can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority Data, within one month from the day after its notification, in accordance with 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,