

## File identification

Resolution of sanctioning procedure no. PS 19/2022, referring to Barcelona City Council

## Background

1. 05/01/2021 , the Catalan Data Protection Authority received a letter from a person filing a complaint against Barcelona City Council, on the grounds of an alleged breach of data protection regulations of personal data .

The complainant stated that, on 15/09/2020, in the exercise of his professional duties as administrator of a property located in c/Rosselló de Barcelona (...), he sent a complaint by certified mail addressed to the City Council regarding the use of the housing license for tourist use granted to a flat in this property. In this regard, the person making the complaint complained that, despite the fact that in said letter he indicated the address of his professional address (c/Rocafort (...)) as the address for notification purposes, which he also stated in the sender of the envelope with which the complaint was sent to the City Council, the council's response, dated 12/16/2020, was notified to him at his private address. In relation to this, he complained about possible improper access to the municipal register.

The reporting person provided documentation related to the facts reported, specifically, the following:

- Copy of the letter, dated 09/15/2020, addressed to Barcelona City Council, in which the complainant identifies herself as the administrator of the estate of c. Rosselló (...), and requests that an inspection be carried out on one of the flats of the estate and that the license for housing for tourist use (" *the HUTS licence* ") be withdrawn from the owner of the flat.

At the beginning of the application, the person reporting here identifies himself through first and last name and ID, and continues with the following text: "(...) with professional address in (...) Barcelona, Rocafort, (...) in the capacity of administrator of CP Rosselló (...) of (...) Barcelona, with NIF XXXX ".

In the header of the request, in the upper right part, there is the identifier logo of the sender " *Administración Fines. (...)* ", and under the professional contact details, including the address located at c. Rocafort (...) of Barcelona.

- Copy of proof from the Post Office of sending the application dated 15/09/2020, which lists Barcelona City Council as the addressee, and as the sender " (...) *Fines Administration, C. Rocafort (...), (...) Barcelona* ".
- Copy of the response letter from the City Council, dated 16/12/2020, addressed to the person making the complaint here at a postal address located at c/Rosselló (...) in Barcelona. In said letter, information is given on the file of the file opened as a result of the referenced request.

2. The Authority opened a preliminary information phase (no. IP 5/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure

for application to 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 susceptible to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 03/16/2021, the reported entity was required to report on the reasons that would justify that the statement, dated 12/16/2020, which was sent to the reporting as a response to the complaint filed as administrator of a certain property, it was notified at her private address and not at the professional address that she indicated in the letter of complaint. Also, it was required to report on the source of the data relating to the private address of the person making the complaint, which were used to send said communication, and specifically, if the municipal register was accessed to search for this information, and in this case, the legal basis that would legitimize this processing of personal data.

4. On 03/25/2021, the City Council responded to the aforementioned request through a letter in which it stated the following:

- That " *enclosed is a complaint received and registered with number (...) by the Eixample Citizen Service Office, which is where the certified mail arrives and is registered as a citizen's complaint where the address is specified for the purposes of notifications, the private address of the complainant and the letter of complaint is sent to the Directorate of Inspection Services .* "
- That " *it is accompanied by a letter from the complainant in which she states her status as administrator of the estate but does not provide any document that reliably identifies this status as administrator and informs of her professional address but does not specify that it is the address for notification purposes .* "
- That " *Nevertheless, it is verified that she is a neighbor of the property where the reported housing is located and as a person interested in her status as a neighbor, the inspection procedure is initiated to verify that the housing for tourist use complies with all the requirements demanded by Law 13/2002 on Tourism of Catalonia and Decree 159/2012 on accommodation and housing for tourist use.*  "
- That " *the inspection report dated 12/16/2020 be prepared with archive results for no anomalies, notifying this result at her private address, given that the complainant has the status of an interested person as a neighbor, not as a professional .* "
- That " *The data for the purposes of notification are effectively the data of the register given that even though this check is initiated at the request of an interested person, it is done as a neighbor and not as an administrator and therefore a representative of the estate .* "
- That " *Given that his representation was not accredited but if his status as an interested person as a neighbor is verified, he will be notified at his registered address .* " In this regard, the entity invokes article 5 of Law 39/2015, of October 1, relating to "Representation".
- That " *Article 41.4 of Law 39/2015, although it refers to procedures initiated ex officio, says only for the purposes of their initiation, public administrations can request, through a query*

*in the databases of the National Institute of Statistics, the data on the residence of the interested party collected in the municipal register, sent by the local entities in application of the provisions of Law 7/1985, of April 2, regulating the bases of the local regime .”*

- That " *Article 16 of the same law - a reference that must be understood to be made in Law 7/1985, of April 2 - says that the Municipal Register is the administrative register where the residents of a municipality and their data constitutes proof of residence in the municipality and of the usual address of the same. The same article in its point 2 specifies which data must be included in the Municipal Register and in its section f, specifically specifies the NIF of the registered person.*
- That "*Given that the complainant acts as an interested person as a neighbor and does not certify her representation, her domicile for the purposes of notifications as an interested person as a neighbor is her registered address.*"

The reported entity attached with the letter, a copy of the letter from the City Council, dated 09/21/2020, in which it is stated that the Citizen Service Office identifies the complaint submitted by the complainant here with a registration number ((...)) and file number (...). The header of said letter states that it is a " *specimen for the Administration* ", and is addressed to the Directorate of Inspection Services. The text states that a complaint has been submitted " *on behalf of COMMUNITY OF OWNERS with CIF no. XXXX* ", in relation to a house for tourist use located at c/Rosselló (...) and a copy of the application submitted by the person making the complaint, dated 09/15/2021, is attached.

**5.** On 06/04/2022, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the Barcelona City Council for an alleged infringement provided for in article 83.5.a) in relation to the article 5.1.a); 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). Likewise, he appointed Mrs. (...), an employee of the Catalan Data Protection Authority, as the person instructing the file. This initiation agreement was notified to the imputed entity on 04/06/2022.

In the initiation agreement, the accused entity was granted a period of 10 working days 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 Barcelona City Council, on an undetermined date, but located in the period between 15/09/2020 and 16/12/2020, consulted the municipal register for the address of the private address of the person here complainant, and used it in order to send a response to the complaint submitted by the complainant in the exercise of his professional duties as an estate administrator, even though his address was clearly identified in the request made professional

### **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 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 accused entity has not made allegations in the initiation agreement. This agreement contained a precise statement of the imputed liability.

3. In relation to the facts described in the proven facts section, it is necessary to go to article 5.1.a) of the RGPD, which provides that personal data must be treated " *in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency")* ).

In this sense, the RGPD provides that all processing of personal data must be lawful (Article 5.1.a.) and, in relation to this, establishes a system for legitimizing the processing of data which is based on the need for it to any of the legal bases established in its article 6.1.

In this respect, it should be noted that, even though the person making the complaint here was a neighbor of the estate whose representation he also exercised in the exercise of his professional duties as administrator of the estate, and that with the request had not proven this condition of representative, the action of the City Council to consult the data of his private address and use it in order to send him the answer, would not be covered by any of the authorizations provided for in the article 6 of the GDPR. At this point, it is necessary to emphasize the fact that the complainant in the complaint addressed to the City Council regarding the use of the housing license for tourist use, had indicated his professional address, which is therefore the that the entity should have taken into account when notifying the response to said complaint.

During the processing of this procedure, the fact described in the section on proven facts has been duly proven, which is constitutive of the violation provided for in article 83.5.a) of the RGPD, which typifies the violation of " *the principles basics for treatment (...)* ".

The conduct that is addressed here has been collected as a very serious infringement in article 72.1.a) of the LOPDGDD, in the following form: " *The treatment of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679* ", in relation to the principle of legality established in article 5.1.a) of the same RGPD .

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".*

In the present case, however, it becomes unnecessary to require corrective measures for the effects of the infringement given that the infringing conduct refers to a single fact and already accomplished, the consultation in the municipal registry of the address of the private home of the person making the complaint, although in his writing he had already indicated a specific professional address, for the purposes of notifications. So things are, it is a treatment, which due to its instantaneous nature cannot be corrected by the application of corrective measures.

For all this, I resolve:

**1.** Warn the Barcelona City Council as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.a), 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 legal basis 4rt.

**2.** Notify this resolution to Barcelona City Council.

**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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