

File identification

Resolution of sanctioning procedure no. PS 44/2022, referring to Barcelona City Council.

Background

1. 10/06/2021 , the Catalan Data Protection Authority received a letter from a person who filed a complaint against Barcelona City Council, on the grounds of an alleged breach of the regulations on protection of personal data .

Specifically, the person making the complaint stated, in relation to the door-to-door waste collection service in the Sant Andreu de Palomar neighborhood of Barcelona, the following:

- That in order to obtain the kit for door-to-door collection (bags, buckets or keys to open the community waste mailboxes), it was necessary to register in a door-to-door database, so that people who did not want to provide their personal data could not have access to the materials needed for door-to-door collection.
- That the personal data provided was linked to an individual code associated with the chip in the garbage bags and bins given to the people using the service. These people had to deposit on the public road the bags that incorporated this chip, and which were transparent in order to make it easier for operatives to check their contents. According to the whistleblower, any person or organization with the appropriate technology could associate the contents of the bags with the person using the chip, which would allow the collection of special categories of data (ideology, sexual orientation, etc.).
- That there were other waste collection systems that did not violate the rights of users, nor did they endanger their privacy with the collection of data, such as the installation of smart containers.

2. The Authority opened a preliminary information phase (no. IP 248/2021), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure applied 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 dates 05/10/2021, 28/10/2021 and 12/05/2022 , the Authority's Inspection Area made a series of checks via the Internet on the facts subject to complaint. Thus, the following was established:

- That in order to register in the door-to-door application (web App), it was necessary to fill in a form where certain personal data were requested.
- That in the data protection policy that had to be accepted to process the form, it was reported that the purpose of the treatment was that *"users of the web- app application can view and manage from their mobile phone all the functionalities that the project puts in place"* , as well as that the legality of the treatment was based on informed and explicit consent, among other points that were the subject of information.
- That in the frequently asked questions section of the Sant Andreu de Palomar door to door website (<https://ajuntament.barcelona.cat/ecologiaurbana/ca/residu-zero/recollida-selectiva/porta-a-porta-sant-andreu>), you could download a PDF document that stated the following:

"Why does the door to door account for contributions?"

The main objective is to encourage maximum transparency and personalization and to prepare the model for launching pay-by-generation systems.

The code is the waste counter. This is a process that begins with the implementation of the new service and, later, when the analyzed data is available, propose a system of incentives, bonuses, etc.

Is it mandatory to remove the waste with approved bags?

Yes, refuse and recyclables must be removed in the approved bag. Organics can be removed with any bag as long as it is compostable.

What if I make a mistake on the day or take out the wrongly separated waste?

They will leave a notice in your bag informing you of the error and follow-up educators will contact you to resolve any doubts or incompatibilities.

door-to-door Web App , you will also receive notification of the incident through the established channel. The aim of this protocol is to solve all the incidents detected and to accompany the neighbors with as much information as possible in order to guarantee the correct participation in the service.

What if I take out the waste with a different bag?

Waste that is not removed with the approved bag or, in the case of organics, with a non-compostable bag or without a bucket, will not be collected, will be left on the public road and will be marked with a sticker to inform of incidence and corrective action

Will they open the bags to check if we do it right? How can they know if they don't open them?

Bags will never be opened to assess correct separation. The bags are semi-transparent to facilitate visual inspection by operators and detect the presence of mixed waste.

Will we be penalized if we do it wrong?

Under no circumstances will those who do it wrong be penalized.

What information does the bag and bucket code contain?

Bag and bucket codes are the technological evolution of barcodes. They are passive elements that only contain information relating to an alphanumeric code, which is the code sent to you with the receipt when you collect the material for contribution. If an attempt is made to read the identifier, only the alphanumeric code will be displayed and in no case any information related to the linked address.

The code allows contributions to be counted, which is the information collected to register participation.

In addition, the identifier guarantees the traceability and transparency of the service. Through the citizen Web App, citizens can check their participation in real time, which also contributes to shared responsibility.

What is the use of giving my data at the time of collecting the material?

The data given at the time of collecting the material is only used for service communications, such as personalized notices or notifications, among others, always to improve selective collection.

What is the data protection notice related to door to door?

The data collected at the time of delivery of the contribution material are the first and last names, as well as the contact details of the person collecting the material. This information will never be passed on to third parties and will only be used for the door to door project. The full text of the notice is detailed below.

DATA PROTECTION INFORMATION NOTICE

*Data controller: Barcelona City Council. Pl. Sant Jaume, 1, 08002 – Barcelona
Data Protection Delegate: -cio-de-datas/contact-with-delegat- protection - dadesAv . Diagonal, 220, floor 4, 08018 – Barcelona*

Purpose of treatment: Manage and exploit the data collected through the door-to-door waste collection service.

Legitimation of the treatment: Fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge, in the terms provided for in article 6.1.e) of the RGPD. The Municipal and Local Regime Law of Catalonia establishes in its article 66.3.l) that the municipality has its own powers in matters of waste collection and treatment.

Recipients: There are no planned transfers.

People's rights: You can exercise the rights of access, rectification, deletion, opposition and limitation on your data through the following link: -cio-de-dades/what-rights-do-I-have-on-my-data.

Data retention period: The data will be deleted once the legal obligations arising from the management of the activity have been fulfilled.

International transfers: They are not planned.”

- That in the "Guide for door to door in Sant Andreu de Palomar" (https://ajuntament.barcelona.cat/ecologiaurbana/sites/default/files/PaP_bulleti_santandreu-Maig2021.pdf) it was indicated that door-to-door collection It started on 05/24/2021, in a first phase of the two planned. The first phase affected the area between Avinguda Meridiana, Riera de Sant Andreu, Carrer Fabra i Coats, Carrer Gran de Sant Andreu and Passeig de Fabra i Puig.
- 4. On 14/10/2021 and still within the framework of this preliminary information phase, an inspector from the Authority traveled, between 8:45 and 10:30 a.m., to the Sant Andreu neighborhood of Palomar de Barcelona and found the following:
 - That at the door of the single-family or multi-family homes of a few neighbors there were brown 20-liter buckets identified as "Organic", which had a QR code and a numerical code attached.

- That at the door of multi-family homes there were larger yellow or brown buckets. In other multi-family homes, it was observed that there were mailboxes for depositing organic trash that were accessed with a key.
- That in some multi-family homes there were bins to deposit cardboard and paper.

5. On 10/28/2021 , Barcelona City Council was required to report on certain aspects related to the door-to-door collection system that was being implemented in the Sant Andreu de Palomar neighborhood .

6. On 11/12/2021, Barcelona City Council responded to the aforementioned request through a letter in which it set out the following:

- That a letter was addressed to all the homes in the area where the door-to-door waste collection service was to be implemented, without specifying identifying data of the people who lived there, informing them of the new service and indicating- those who would visit the home again to distribute the necessary materials or, in the event of not locating them that day, they could pick it up in a certain place.
- That when each user went to pick up the "kit" (elements needed to be able to participate in the selective waste collection service), or this was delivered to their own home, they were asked if they had completed the form to collect their personal data. The City Council certified that in this form it was informed, among others, that the purpose of the treatment was *"Manage and exploit the data collected through the Door-to-Door Waste Collection service"* and that the legitimation of the treatment was the *"fulfilment of a mission carried out in the exercise of public powers conferred on the person in charge, in the terms provided for in article 6.1.e) of the RGPD. The Local Government Municipal Law of Catalonia establishes in its article 66.3.l) that the municipality has its own powers in matters of waste collection and treatment."*
- That this data is used to provide the waste collection service and to send the necessary notices or communications by email or mobile phone.
- That no individualized or personalized data is collected from each home. There is only one global check to see if the triage is being done correctly. The people who collect the waste do not and cannot know which house each bag or bin belongs to because they all come with an encrypted code.
- That the application of bonuses is foreseen through a transitory provision to the waste rate [this transitory provision foresees the possibility of applying tariff reductions of the rate indirectly, through the analysis of results at district or district level neighborhood]. In the future, it is planned to approve a tax ordinance that applies the *"fair waste rate"* , which will subsidize the rate for people who make a correct contribution of waste, according to the technical criteria that can be established.
- That the purposes of the data collected for the door-to-door waste collection service are only related to said service that is carried out in the exercise of a jurisdiction specific to the municipality.
- That the processing of personal data is based on the fulfillment of a mission in the public interest or the exercise of public powers in accordance with the provisions of Article 6.1.e) of Regulation (EU) 2016/ 679 of the Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95/46/ CE (hereinafter, RGPD). This, in accordance with articles 25 and 26 of Law 7/1985, of April 2, regulating the bases of local regime and 66 and 67 of the Consolidated Text of the Municipal and Local Regime Law of Catalonia, approved by Legislative Decree 2/2003, of April 28, which

provides that the municipalities must provide the waste collection service; in article 12 of the State Law 22/2011, of July 28, on waste and contaminated soil, which contemplates that it corresponds to local entities, as a mandatory service, the collection, transport and treatment of the domestic waste generated in homes, shops and services; to the revised text of the Waste Regulatory Law (hereinafter, TRLR), approved by Legislative Decree 1/2009, of July 21 (articles 42 and 53), which also establish the competence of municipalities in waste management, favoring the recycling and the material assessment of municipal waste by providing the service of selective collection of the various fractions of waste, using the separation and collection systems that have been shown to be more efficient; and article 103 of Law 22/1998, of December 30, of the Barcelona Municipal Charter, which provides that Barcelona City Council has powers for the collection, transport and treatment of urban and industrial waste and the promotion of waste minimization and selective collection.

- That the City Council guarantees that no one has the obligation to provide their identification data in order to collect or obtain the "kit" with all the necessary elements to be able to participate in this service, as can be verified at having distributed material without the interested person having given their identification data. The only essential data is the postal address of the home, data that the City Council already has in the exercise of its powers.
- That in relation to the chip in the bags and bins, the "tags" (labels) inserted in the different items of contribution distributed in the neighborhood of Sant Andreu de Palomar, are coded with a 12-digit code that specifies the municipality, the capacity and the type of waste provided, for example: B0020O000001, where B = Barcelona, 0020= 20 liters, O= Organic and 000001 is equivalent to a correlative numerical code for each "tag".
- That the platform through which the database of code readings is crossed with the database of users is only accessible by a user code and a password.
- That if someone tries to read a "tag" with a TAGS RFID UHF reader, what they will read is a 32-digit code called EPC, which is the code of the "tag" without decoding.
- That an impact assessment has been carried out regarding the protection of personal data (hereafter, AIPD).

The reported entity attached various documentation to the letter.

7. On 05/18/2022, the Barcelona City Council was once again required to report on whether the final part (the last 6 digits) of the 12-digit code that appears on the labels incorporated in the waste contribution elements is it configures randomly, or it is linked to the address of the user; if the 12-digit code incorporated in each of the elements of contribution delivered to the people using the service, is always the same or changes every time new material is delivered to contribute the same fraction of waste; and if the 32-digit EPC code, which can be obtained by reading the 12-digit labels, is unique for each person using the service.

This requirement was reiterated on 07/06/2022.

8. On 06/14/2022, Barcelona City Council responded to the aforementioned request through a letter in which it set out the following:

- That the final part of the 12-digit code corresponds to a correlative numerical code when programming, but when associating the buckets to the different users there is no correlation but rather a random association, so that in the The user of street A number 1 can dial the code 000001 and the user of street A number 2 can dial the code 004250.

- That the buckets are distributed randomly, therefore the code of their neighbors cannot be inferred. In addition, the material kits are made at random, so a user may have the organic bucket code number 000025 and the remainder bag code 002523.
- That the 12-digit code changes every time new material is delivered to contribute the same fraction of waste. Programmed codes are not repeatable, so if a user loses an item, the lost item will be removed and a new item will be assigned with a completely different code than the previous one.
- That the EPC code is a transcription from ASCII to Hexadecimal, so each 12-digit code has a unique EPC code. So if you change the 12-digit code, it changes the EPC code.

Barcelona City Council provided a copy of the latest AIPD carried out on 03/03/2022. Among others, this AIPD stated that the new Fiscal Ordinance no. 3.18 relating to the *"Fee for the collection service of municipal waste generated in private homes"*, establishes the following:

"Additional transitional provision. Reductions for regular participation in the selective collection of organic fraction in areas with individualized collection"

1. In order to increase selective collection, individualized collection systems are implemented in different areas of the city. In these areas, the participation of all taxpayers is mandatory. In these areas, a temporary reduction in the rate is recognized for taxable persons who make 40 or more annual uses of the selective collection service of the organic fraction, in accordance with the conditions established in this tax ordinance. The reduction percentage to be applied is indicated in the following table:

Year (*)	Reduction percentage
Implementation year/fraction (**)	20%
second year	20%
third year	20%
fourth year	20%

** For the purposes of applying this reduction, in all areas of the city that, prior to the publication of this provision, have already implemented an individualized waste collection system will be considered as an implementation exercise, the exercise 2022.*

*** In the event that the reduction is enjoyed for a fraction of the financial year, the same reduction will be applied during the following financial year.*

2. In the case of areas with door-to-door collection, the uses will be calculated based on the readings of the buckets supplied by Barcelona City Council for the contribution of the organic fraction at the time of being emptied by the collection service municipal

3. In the case of taxable persons who use mailboxes or containers with identification for the delivery of the organic fraction, the uses will be counted from the readings of the cards or identifiers used to open them. The readings of the various cards that may be linked will be assigned to the liable subject.

4. In the case of taxable persons associated with the use of community bins, the reduction would apply when this bin reaches 70 or more uses.

5. The number of uses begins to be counted from the beginning of the tax period, or from the implementation date of the individualized collection if this was later than the beginning of the tax period.

6. The reduction is applied from the achievement of the usage threshold defined in sections 1 and 4. If the implementation date of the individualized collection was after the beginning of the tax period, the usage thresholds defined in sections 1 and 4 will be reduced proportionally to the period of the year in which the individualized collection was applied. Once this threshold is reached, the provider of the domestic water supply service will be notified and the reduction will be applied for a period of 12 months."

It is worth saying that according to the text of said ordinance published in the Official Gazette of the Province of Barcelona (hereinafter, BOPB) on 12/24/2021, this provision that has been transcribed is contained in additional provision 2a. The text published in the BOPB coincides with what is transcribed in the AIPD of 03/03/2022, except for the reduction percentages stated in the box, which are 30% (in the AIPD it is transcribed that these percentages are 20%).

9. On 06/07/2022, 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 83.4.a), in relation to article 35; all of them from the RGPD. This initiation agreement was notified to the imputed entity on 07/12/2022.

On the other hand, on the same date, an archive resolution was also issued regarding the rest of the reported conduct related to the legal basis that legitimized the processing of data of the people who use the waste collection service in order to have access the materials necessary to use the service (bags, buckets or access keys to the community waste mailboxes) ; as well as regarding the eventual linking of the waste with the user through the chip . In that resolution, the reasons that had led to its filing were justified.

10. On 25/07/2022, Barcelona City Council made objections to the initiation agreement.

11. On 23/09/2022, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the Barcelona City Council as responsible for a violation provided for in article 83.4.a) in relation to article 35, all of them of the RGPD.

This resolution proposal was notified on 09/23/2022 and a period of 10 days was granted to formulate allegations.

12. On 10/10/2022, the accused entity submitted a statement of objections to the resolution proposal.

proven facts

The processing of personal data within the framework of the door-to-door waste collection system, implemented in the Sant Andreu de Palomar neighborhood of Barcelona, involves a high risk for the rights and freedoms of the people who use the waste collection service.

The AIPD carried out by Barcelona City Council on 15/07/2021, once the treatment had already started (24/05/2021), did not include an assessment of all the risks according to the nature of the treatment, the scope, context or purposes, especially when using new technologies.

Specifically, in the AIPD carried out by the City Council, certain risks were not taken into account such as profiling, access to waste by third parties while on the public road, the use of semi-transparent bags (in particular, with regard to users who live in single-family homes) or the risk of re-identification .

In the subsequent AIPD carried out by the City Council on 03/03/2022, these risks were not considered either.

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. The accused entity has made allegations both in the initiation agreement and in the resolution proposal. The first ones were already analyzed in the proposed resolution, but even so it is considered appropriate to mention them here, given that they are partly reproduced in the second ones. The set of allegations made by the accused entity are then analysed.

2.1. About the AIPD.

In the first set of allegations from the City Council against the proposed resolution, the accused entity states that the processing of personal data that entailed the implementation of the door-to-door waste collection system did not involve a high risk in a start (i.e. before applying the fair rate system), so an AIPD was not necessary as indicated in the first AIPD carried out on 15/07/2021.

The accused entity adds that once it was decided to apply the fair rate, then it was indeed required to carry out an AIPD, as was recorded in the second AIPD carried out on 03/03/2022.

Well, article 35.3.a) of the RGPD determines the obligation to carry out an AIPD when there is one:

"a) Systematic and comprehensive assessment of personal aspects of natural persons based on automated processing, such as profiling, on the basis of which decisions are taken that produce legal effects for natural persons or that significantly affect them similarly."

Certainly, until the application of the fair rate, as indicated in the proposed resolution, there were no significant or legal effects on the people affected. For this reason, until the fair rate was applied, the circumstance provided for in article 35.3.a) of the RGPD did not apply (at the time of its application, this circumstance did exist).

However, the fact that none of the circumstances provided for in article 35.3 of the RGPD are applicable, does not mean that it cannot be equally required to carry out an AIPD.

In this regard, it should be borne in mind that article 28.2 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter LOPDGDD) lists some cases in which it is understood probable the existence of a high risk for people's rights and freedoms, among which, the following should be highlighted in the present case:

- When the treatment may generate situations of discrimination, identity theft or fraud, financial losses, damage to reputation, loss of confidentiality of data subject to professional secrecy, unauthorized reversal of pseudonymization or any other economic, moral or social harm significant for those affected (art. 28.2.a LOPDGDD).
- When the treatment involves an evaluation of personal aspects of those affected in order to create or use personal profiles of them, in particular through the analysis or prediction of aspects related to their performance at work, their economic situation, their health, their personal preferences or interests, their reliability or behavior, their financial solvency, their location or their movements (art. 28.2.d LOPDGDD).

Also, in accordance with what is established in article 35.4 of the RGPD, the Authority published on 06/05/2019 the *"list of types of data processing that require an impact assessment regarding the protection of data"* prior to its start. As indicated in said document, when the treatment meets two or more of the criteria included in said list, in principle it may be necessary to make an AIPD. The more criteria the treatment in question meets, the greater the risk this treatment entails and the greater the certainty of the need to carry out an AIPD. In the present case, it is considered that the treatment would meet, at least, the following criteria:

- Treatments that involve profiling or assessment of subjects, including the collection of data on the subject in multiple areas of his life (performance at work, personality and behavior), which cover various aspects of his personality or his habits (criterion number 1).
- Treatments that involve the use of data on a large scale (criterion 7).
- Treatments that involve the use of new technologies or an innovative use of established technologies, including the use of technologies on a new scale, with a new objective or combined with others, so that it involves new forms of data collection and use with risk for rights and freedoms of people (criterion number 10).

Therefore, it must be concluded that before the controversial treatment began, it was necessary to carry out an AIPD, even if initially the application of a fair rate system had not been contemplated.

2.2. About the processing of personal data.

The accused entity reiterates that the data generated as a result of the waste collection system is not associated with a natural person, but that in its judgment the waste generation data is associated only with a home or a commercial establishment .

In this regard, it should be highlighted that article 4.1 of the RGPD, which defines the concept of personal data, indicates that *"an identifiable natural person will be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number, location data, an online identifier or*

one or several elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person".

Therefore, even if the affected person is not directly identified, but indirectly through the postal address, the person is identified. In addition, it is important to remember that this identification by means of the address in no case implies disproportionate efforts for a town hall. On the contrary, as the Consistory recognized in its letter of 12/11/2021 in response to the first request made by the Authority, the City Council guaranteed that no one had the obligation to provide their data to collect the kit for participate in the collection service, since the only *"essential data is the postal address of the home, data that the City Council already has in the exercise of its powers."*

This consideration regarding the processing of personal data is not altered by the fact that, in certain cases, the data collected from the door-to-door system do not match the waste generator. And this, because the City Council can also identify who is the person generating the waste through the Municipal Register. So, what is relevant is that the City Council can link the information it collects with the home and, consequently, with the people who occupy it.

The City Council adds again that even if there was a profile, the aim would not be to evaluate personal aspects, but to promote selective collection and the reduction of waste.

Well, as indicated by the instructing person in the proposed resolution, the previous consideration cannot be shared, since the implementation of a door-to-door waste collection system involves evaluating certain aspects of the behavior of the users, such as his habit. Specifically, from the analysis of the data generated by the door-to-door collection system, the routines and preferences of the people affected in the use of the service can be established (which waste is recycled more or less easily, with what frequency, etc.) and/or information on lifestyles depending on the waste generated. In other words, evaluate certain aspects of their behavior and lifestyle habits.

2.3. About the risks.

In relation to the risks to rights and freedoms implied by the processing of personal data for the provision of the waste collection service, the City Council emphasizes the fact that there is no closed or official catalog of the specific risks to be taken into account when analyzing a certain treatment activity.

It is true, as indicated by the City Council, that there is no catalog of risks for the rights and freedoms of natural persons, but as indicated by the instructing person in the proposed resolution, this did not exempt him that in the framework of the AIPD assesses all the risks present in the intended treatment, since this risk assessment is part of the minimum content of the AIPD in accordance with article 35.7 of the RGPD.

Therefore, in the AIPD all risks had to be assessed, including those involving profiling, access to waste by third parties while on the public road, the use of semi-transparent bags and the risk of re-identification. These risks, however, were not assessed in the two AIPDs carried out by Barcelona City Council.

In relation to the above, the Barcelona City Council begins to analyze in its statement of objections to the proposed resolution the risks of access to the waste by third parties while they are on the public road; as well as the risk of re-identification. On the other hand, with regard to the risks linked to the use of semi-transparent bags or the creation of profiles, it does not make any statement to refute the considerations of this Authority.

a) About access to waste by third parties while they are on the public road.

With reference to this risk, the City Council points out that the AIPD carried out took into account, as a threat, the *"Unauthorized handling of the bags during the time they remain on the public road before being removed by the collection service, as this could affect the actual amount of waste emitted by a home or business that will be registered in the system."*

Well, this circumstance was already included in the initiation agreement, where it was also recorded that the City Council did not take into account the fact that a third person could access the contents of the waste.

At this point, it should be remembered that in its statement of objections to the initiation agreement, the Barcelona City Council stated that *"the fact that a third person can access the contents of the waste previously deposited by another person (be it a bag, a bucket or a large container) is not a specific risk of door-to-door systems, but is inherent in the very existence of waste on the public road (whether in a bag, bucket or large container) capacity)"* and acknowledged that *"Today it is not uncommon to see people accessing waste that has just been deposited in large capacity containers or buckets located on the streets, not necessarily within the framework of a door-to-door system."*

So, as the instructing person indicated in the proposed resolution, the City Council was aware that there is this risk during the time that the waste remains on the public road, but this was not evaluated in the AIPD.

In relation to this same risk, in opinion CNS 60/2021, this Authority pointed out that a door-to-door waste collection model *"allows (while the bin remains on the public road) that anyone can have access or obtain various information of the generator of the waste which, both alone and as a whole, can be of special sensitivity (type of waste, amount and, therefore, also possible number of residents, habits, preferences and even possible diseases, etc.). Its disclosure could have important consequences for the intimate or private sphere of the user, it could even cause social harm."*

So, this risk is inherent in the door-to-door waste collection system because the waste is deposited directly on the public road in front of the house, so that its origin can be determined. And it increases, significantly, in the case of single-family homes.

Therefore, access to the waste by third parties while they are on the public road is an inherent risk in the waste collection model that was implemented, which affected the rights and freedoms of the users, so it also had to be subject to evaluation.

b) About the risk of re-identification.

In this respect, the City Council adds that the bags that are deposited in front of the homes (currently, only the packaging and waste bags) do not have any code printed on them, but

have a radio frequency identification label. This chip is associated with an encoded alphanumeric code (12-digit code).

The Barcelona City Council provides an image of a bag from the packaging section, which certainly does not have any printed code.

However, even if the bags did not have the 12-digit code printed on them, it should be pointed out that on 14/10/2021, the Authority's inspection staff found that the organic fraction buckets had a QR code and a code number attached (12 digits). Therefore, the 12-digit code was printed on the said buckets, as can be seen from the photographs taken by the inspection staff.

It is worth saying that the accused entity stated in its statement of objections to the initiation agreement that, from January 2022, the organic contribution system will be modified, so that it was not collected door-to-door (in other words, the individual buckets were no longer used), but from that moment on this fraction had to be thrown into smart containers or community mailboxes.

Well, in any case until January 2022, and with regard to the organic fraction, one of the risks of the treatment was the re-identification of the user based on the 12-digit code that was printed on the buckets of the fraction organic, which was always the same. Therefore, the risk of re-identification for this fraction of waste (organic) through said code printed on the buckets should have been assessed in the AIPD that had to be carried out before starting the treatment and, in any case, in the first AIPD carried out by the City Council on 15/07/2021 (carried out once the treatment had started).

At the same time, you should also keep in mind that the 32-digit EPC code, which can be obtained by reading the tags with a UHF RFID TAGS reader, is always the same (the EPC code only changes if you change the 12-digit code associated with the chip).

So things are, as indicated by the instructing person, it is clear that there is a risk that the person using the service can be re-identified from the 12-digit pseudonymized code that incorporated the cube of the organic fraction or the EPC code that could obtain by reading the chip incorporated in said bucket or even in the bags of the rest of the fractions.

In this last sense, the fact that in the opinion of the City Council it is unlikely that a third person can read the chip on the bags (where no code is printed) and thus obtain the EPC code, is a present risk and that should evaluate

Finally, the Barcelona City Council invokes the archive resolution of the previous information no. IP 282/2018, referring to another local entity. In this regard, it is sufficient to indicate that that resolution was limited to analyzing the lawfulness of the processing of personal data in the framework of the provision of the waste collection service. In turn, it is necessary to point out that there it was not verified that the labels of the bags or the buckets had the 12-digit code printed on them, which did happen in the present case with regard to the bucket of the organic fraction that the Barcelona City Council initially delivered to the users of the service; nor that the reading of the chip allowed a code to be obtained (in the present case, the EPC code is obtained).

In short, the allegations made by Barcelona City Council against the proposed resolution must be rejected.

3. In relation to the facts described in the proven facts section, it is necessary to refer to article 35 of the RGPD, which regulates the AIPD in the following terms:

" 1. When it is likely that a type of treatment, in particular if it uses new technologies, by its nature, scope, context or purposes, entails a high risk for the rights and freedoms of physical persons, the person responsible for the treatment will, before of the treatment, an evaluation of the impact of the treatment operations on the protection of personal data. A single evaluation may address a series of similar treatment operations that involve similar high risks.

2. The data controller will seek the advice of the data protection officer, if appointed, when carrying out the data protection impact assessment.

3. The data protection impact assessment referred to in section 1 will be required in particular in the event of:

- a) systematic and comprehensive evaluation of personal aspects of natural persons that is based on automated processing, such as the creation of profiles, and on the basis of which decisions are taken that produce legal effects for natural persons or that significantly affect them in a similar way;*
- b) large-scale processing of the special categories of data referred to in article 9, paragraph 1, or of personal data relating to convictions and criminal offenses referred to in article 10, or*
- c) large-scale systematic observation of a public access area.*

4. The control authority will establish and publish a list of the types of processing operations that require an impact assessment related to data protection in accordance with section 1. The control authority will communicate those lists to the Committee in question article 68.

(...) 7. The evaluation must include at least:

- a) a systematic description of the planned treatment operations and the purposes of the treatment, including, when applicable, the legitimate interest pursued by the person responsible for the treatment;*
- b) an evaluation of the necessity and proportionality of the treatment operations with respect to their purpose;*
- c) an evaluation of the risks for the rights and freedoms of the interested parties referred to in section 1, y*
- d) the measures foreseen to face the risks, including guarantees, security measures and mechanisms that guarantee the protection of personal data, and to demonstrate compliance with this Regulation, taking into account the rights and legitimate interests of the interested parties and other persons affected*

(...) 9. When appropriate, the person in charge will obtain the opinion of the interested parties or their representatives in relation to the planned treatment, without prejudice to the protection of public or commercial interests or the security of the treatment operations.

10. When the treatment in accordance with article 6, section 1, letters c) oe), has its legal basis in the Law of the Union or in the Law of the Member State that applies to the person responsible for the treatment, such Law regulates the specific treatment operation or set of operations in question, and an impact

assessment relating to data protection has already been carried out as part of a general impact assessment in the context of the adoption of said legal basis, sections 1 to 7 they will not apply except if the Member States consider it necessary to carry out said evaluation prior to treatment activities.

11. If necessary, the person in charge will examine whether the treatment complies with the data protection impact assessment, at least when there is a change in the risk represented by the treatment operations."

Having said that, in relation to the eventual risks that may arise from the treatment, it should be borne in mind that article 35 of the RGPD provides that there is a type of treatment, due to its nature, scope, context or purposes, especially if it uses new technologies, may entail a high risk for the rights and freedoms of natural persons, before the treatment the person in charge must assess the impact of the treatment operations on the protection of personal data.

Article 35.3 of the RGPD adds that this AIPD becomes necessary in certain cases that, in appearance, would not apply in the present case. In particular, at the time the complaint was made, as has been advanced, it is not considered that the circumstance provided for in article 35.3.a) of the RGPD, which refers to the systematic evaluation, was applicable here and exhaustive of personal aspects of natural persons based on automated processing, such as profiling, on the basis of which decisions are taken that produce legal effects for natural persons or that significantly affect them in a similar way. And this, because at that time a fair rate system was not applied, which could lead to profiles being drawn up automatically that would have an impact on the amount on the waste collection rate.

As it has been explained in the antecedents, after the events reported, and for the organic fraction, Fiscal Ordinance no. 3.18 relating to the "*Fee for the collection service of municipal waste generated in private homes*", which foresees for the year 2022 a fair fee system based on payment by participation (PxP) depending on whether 40 or more annual uses of the selective collection service of the organic fraction, which involves an automated treatment, consisting of a profiling that produces legal effects that affect the person concerned. This treatment is based on Law 7/2022, of April 8, on waste and contaminated soil for a circular economy, which provides that among the collection models for the fractions of waste established by local entities, to prioritize the most efficient collection models, such as door-to-door or the use of closed or smart containers that guarantee similar collection ratios (art. 22.2.b RGPD).

So things are, from the approval of said Ordinance, the circumstance provided for in article 35.3.a) of the RGPD, which determines the obligation to carry out an AIPD, occurs.

Regarding the need to carry out an AIPD before Law 7/2022, as explained, it should be borne in mind that article 28.2 of the LOPDGDD lists some cases in which it is considered probable existence of a high risk for people's rights and freedoms. In the present case, as has already been explained, the assumptions described in letters "a" and "d", which have been transcribed before, met.

In turn, as has been advanced, from the "*list of types of data processing that require an impact assessment related to data protection*" prior to its commencement, which was published by this Authority on 06/ 05/2019, the treatment analyzed here met, at least, criteria numbers 1, 7 and 10 that entail the need to carry out an AIPD.

Therefore, it must be concluded that before Law 7/2022, it also became necessary to carry out prior to the choice of the selective collection model in question (among the possible existing alternatives to provide the collection service waste), an AIPD that would make it possible to know the impact on data protection that could result from opting for one or another of the available models.

Likewise, it should be borne in mind that the AIPD carried out by the Barcelona City Council on 15/07/2021 and 03/03/2022, both once the treatment had already started (24/05/2021), they did not assess all existing risks as required by article 35.7.c) of the GDPR.

In short, in accordance with article 35.1 of the RGPD, Barcelona City Council had to carry out an AIPD before starting the treatment. And in accordance with article 35.7.c) of the RGPD, the AIPD that the City Council drew up later, had to include an assessment of all the risks to the rights and freedoms of the interested parties.

During the processing of this procedure, the conduct described in the proven facts section, which is considered constitutive of the violation provided for in article 83.4.a) of the RGPD, which typifies as such the violation of " *the obligations of the person in charge and of the person in charge pursuant to articles 8, 11, 25 to 39, 42 and 43*" , among which is included in article 35 of the RGPD (AIPD).

The conduct addressed here has been included as a serious infraction in article 73.t) of the LOPDGDD, in the following form:

" t) The processing of personal data without having carried out the assessment of the impact of the processing operations on the protection of personal data in the cases in which it is required."

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".

By virtue of this power, the Barcelona City Council must be required to modify the last AIPD or draw up a new one, in order to assess the risks identified in the proven facts section, which were not previously taken into account. Specifically, the creation of profiles, access to waste by third parties while they are on the public road, the use of semi-transparent bags and the risk of re-identification .

Once the corrective measure described has been adopted, within the period indicated, the Barcelona City Council must inform the Authority within the following 10 days, without prejudice to the authority's inspection powers to carry out the corresponding checks.

For all this, I resolve:

1. Warn the Barcelona City Council as responsible for an infringement provided for in article 83.4.a) in relation to article 35, both of the RGPD.
2. Request Barcelona City Council to adopt the corrective measures indicated in the 4th legal basis and certify to this Authority the actions taken to comply with them.
3. Notify this resolution to Barcelona City Council.
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,