

## File identification

Dismissal resolution of sanctioning procedure no. PS 47/2022, referring to the Municipal Finance Institute of Barcelona City Council

## Background

1. On 5/10/2021, the Authority received a letter in which a person made a complaint against the Municipal Institute of Finance of Barcelona City Council (hereafter, the IMH), on the grounds of 'an alleged breach of the regulations on the protection of personal data. Specifically, the complainant complained that the IMH notified a communication addressed to the entity it represented, the Ens d'Abastament d'Aigua Ter Llobregat (hereafter, EAATL), at its private address, without that this data had been provided.

In the complaint it was made clear that in the tax procedure (...), referred to the EAATL, the IMH made the first notification, consisting of a request, at the address of the EAATL; and when he complied with the request by means of a letter of 23/07/2022, the representative - here the complainant - expressly provided the address of the EAATL for the purposes of subsequent notifications, this address which, as has been said, was in the that the first notification of the procedure was carried out.

Along with the complaint, he provided the resolution consisting of a ' *Communication to the interested party* ', served at the private address of the complainant here and in which it was reported: " *Regarding the reference letter in response to the request (...), I inform you that: the aforementioned request is granted and the actions are considered concluded* .

2. The Authority opened a preliminary information phase (no. IP 399/2021), 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 05/25/2022 , a request for information was made to the complainant in order to provide the documents cited in the complaint but which had not been provided. These documents are:

- Notification dated 07/9/2021, of the request directed by the IMH to the EAATL (tax file ref. (...), addressed to the address of the EAATL) .
- from the EAATL, dated 07/23/2021, in response to the previous request.

4. On 06/10/2022, the complainant answered the request and provided the notification of 07/09/2021 and the letter of 07/23/2021 referred to in the previous antecedent.

5. On 06/17/2022, also in the midst of this phase, the Authority's Inspection Area required the IMH to report on how it obtained the private address of the person reporting here, and the base legal basis that would justify the notification of the communication at the private address of the reporting person.

6. On 4/07/2022, the IMH responded to the aforementioned request through a letter in which it stated the following:

- That the private address of the complainant here was obtained through the IMH databases.
- That the legal basis that justified the notification of the communication at the private address of the person reporting, at the same time, representative of the entity to which it was addressed, is article 110.2 of Law 58/2003, of December 17, General Tax (hereafter, LGT), which regulates the practice of notifications in procedures initiated ex officio in the tax field.
- That the tax procedure in question had been initiated ex officio by the IMH and that, therefore, since the person making the complaint had the status of representative, the notification was in accordance with law.
- He also cited articles 48 and 7.2 LGT and alleged that "*article 48 of the LGT states that the tax domicile of natural persons is the place where they have their habitual residence. Therefore, in the present case, the IMH has adjusted to the provisions of the applicable tax law. When in the sources of the tax legal system, article 7.2 of Law 58/2003, of December 17 (LGT), provides that the tax procedures are governed by the LGT, by the rules of rights and guarantees of taxpayers, by the Laws specific to taxes and the rest of the rules dictated in their development and, in addition to the tax rules, the general provisions of administrative law and precepts of common law*".

7. On 12/07/2022, the director of the Catalan Data Protection Authority agreed to initiate a sanctioning procedure against IMH for an alleged infringement provided for in article 83.5.a), in relation to article 5.1 .a); both of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free 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 07/14/2022.

8. 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.

9. On 27/07/2022, the IMH made allegations to the initiation agreement , which are addressed in section 3 of the legal foundations.

### **Fundamentals of law**

1. The provisions of the LPAC and article 15 of Decree 278/1993 apply to this procedure, according to the provisions of DT 2a of Law 32/2010, of October 1, of the Authority Catalan Data Protection Authority. In accordance with articles 5.k) and 8.2.j) of Law 32/2010, the resolution of the sanctioning procedure corresponds to the director of the Catalan Data Protection Authority.

2. As stated in the preceding 7th, this Authority agreed to initiate a sanctioning procedure against the IMH, for an alleged infringement provided for in article 83.5.a), in relation to article 5.1.a) RGPD , considering the following facts as proven:

In the tax procedure (ref. (...)) referring to the EAATL entity, the IMH made a first notification, consisting of a request, at the address of the entity. In the written response to said request, the person making the complaint, in his capacity as a representative of the EAATL, expressly stated the same address of the body for the purposes of notifications. However, on 07/09/2021, the IMH notified the communication that concluded the actions of the procedure at the private address of the person making the complaint.

3. The IMH has made allegations against the initiation agreement with which it shows that its action in the practice of the notification at the address of the representative of the EAATL, is in accordance with the law.

The accused entity invokes article 6 RGPD, which regulates the legality of the treatment, as an enabling rule for its action, and specifically cites its sections c) and e) [*" c) the treatment is necessary to fulfill a legal obligation applicable to the data controller; (...) e) the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment"*]; in connection with the provisions of article 8 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter, LOPDGDD) which provides: *"Data processing due to legal obligation, public interest or exercise of public powers. 1. The processing of personal data can only be considered based on the fulfillment of a legal obligation payable to the person in charge, in the terms provided for in article 6.1.c) of Regulation (EU) 2016/679, when rule of law of the European Union or a rule with the rank of law, which can determine the general conditions of the treatment and the types of data subject to this as the transfers that are appropriate as a result of the fulfillment of the legal obligation. This rule may also impose special conditions on treatment, such as the adoption of additional security measures or others established in Chapter IV of Regulation (EU) 2016/679. 2. The processing of personal data can only be considered based on the 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 Regulation (EU) 2016/679, when it derives from a competence attributed by a rule with the rank of law."*

It explains that the actions carried out by the IMH respond to the competence attributed to the tax administration in order to apply taxes and that it is developed *" through the administrative procedures of management, inspection and collection and others provided for in this title "* in accordance with article 83.3 LGT, and highlights that the case we are dealing with concerns a tax procedure initiated ex officio on the *control of declarations, self-assessments and communications of data relating to the tax on economic activities and the price of collection of commercial and industrial waste ' . All in all, it considers that the treatment is lawful given that it is protected by sections c) and e) of article 6 RGPD and ' that these data have been used by the IMH in the exercise of its functions and powers of Tax Administration at the service of the public interest for tax purposes and in compliance with a legal obligation'.*

Next, the IMH invokes, in defense of its action, article 110.2 LGT, which on the *"place of practice of notifications"* provides that *" in procedures initiated ex officio, notification can be*

*practiced at the domicile fiscal of the taxpayer or his representative, in the work center, in the place where the economic activity is carried out or in any other suitable for this purpose"; as well as article 48 LGT, which states that the tax domicile of natural persons is the place where they have their habitual residence. And based on these precepts, it considers that the notification is in accordance with law.*

Finally, he points out that *' when in the sources of the tax legal system, article 7.2 of Law 58/2003, of December 17 (LGT) provides that tax procedures are governed by the LGT, by the regulations of rights and guarantees of taxpayers, by the Laws specific to taxes and the rest of the rules dictated in their development and, in addition to the tax rules, the general provisions of administrative law and precepts of common law".*

In view of the previous allegations in the initiation agreement, after examining the documentation included in the file, and carefully analyzing the regulatory framework of application, it must be concluded that the facts initially imputed in the present case cannot be considered constitutive of an administrative infraction.

Thus, it is necessary to take into account the literalness of article 110.2 LGT invoked by the IMH, relating to the *' practice place of notifications'* which provides that: *"In procedures initiated ex officio, notification can be practiced in the fiscal domicile of the taxpayer or his representative, in the work center, in the place where the economic activity is carried out or in any other suitable for this purpose".* This precept therefore expressly contemplates the possibility of making notifications in tax proceedings initiated ex officio, as is the case of the procedure in question, in the fiscal domicile of the representative of the taxpayer.

Otherwise, after analyzing the tax regulations, this does not provide any nuances with respect to the possible case, as in the case at hand, that the taxpayer, in his first intervention in the procedure initiated ex officio, provides a domicile for the purposes of notifications.

It also takes into account what is established in article 7.2 of the same LGT, in relation to the source of the tax system, and the supplementary application of the general provisions of administrative law.

Therefore, even though the person reporting here, representative of the EAATL, designated an address for the purposes of notifications and that, in addition, the IMH notified the first resolution of the procedure at the address of the EAATL, given the literalness of the aforementioned legal precepts, it cannot be considered that the action of the IMH constitutes an infringement, as there is a legal rule that expressly enables the possibility of notifying the tax rulings of the procedures initiated ex officio in the tax domicile of the representative of the taxpayer.

In this way, the processing of personal data that is the subject of a complaint would be protected by the legal bases of sections c) and e) of article 6.1 of the RGPD, which determine the legality of those treatments that, as is the case, have basis in the fulfillment of a legal obligation and in the exercise of public powers conferred on the person in charge.

However, it is not superfluous to highlight that the right to the protection of personal data is a fundamental right and that the regulations that regulate it have, by their very definition, a transversal character, so that every rule, whatever the scope ( in this case, tax), must always be interpreted in the light of the guarantees and principles enshrined in the regulations

governing that right, so that when a specific address is provided for the purposes of notifications, the processing of personal data more respectful of said regulations is the practice of notifications at the domicile expressly designated for these purposes, by the taxpayer or his representative, with preference to the other alternatives provided for in article 110.2 LGT.

For all that has been said, in view of the specific circumstances of the case that is the subject of this resolution and the regulations analyzed, it is not appropriate to sustain the imputation initially formulated against the IMH. Consequently, it is appropriate to postpone the present procedure in accordance with article 20.1.a) of Decree 278/1993, of November 9, on the sanctioning procedure applied to the areas of competence of the Generalitat of Catalonia.

For all this, I resolve:

1. Declare the dismissal of sanctioning procedure 47/2022, relating to the IMH.
2. Notify this resolution to the IMH and the person making the complaint.
3. Order that the 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 interested parties can file, on an optional basis, an appeal for reinstatement before the director of the Catalan Data Protection Authority , within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC. An administrative contentious appeal can also be filed directly 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, governing the contentious administrative jurisdiction.

Likewise, interested parties may file any other appeal they deem appropriate to defend their interests.

The director