

File identification

Resolution of sanctioning procedure no. PS 94/2022, referring to the Municipal Institute of Finance of Barcelona.

Background

1. On 6/11/2021, the Catalan Data Protection Authority received a letter from a person for which he is filing a complaint against the Municipal Institute of Finance of Barcelona (hereafter, IMH), with reason for an alleged breach of the regulations on the protection of personal data .

The complainant states that in the framework of the disciplinary procedure no. (...) processed by the IMH, notifications would have been sent to addresses where he no longer resides. Specifically, and although at first the IMH would have sent the traffic violation notification to your correct address (street (...)), later the enforcement notifications would have been made to an address old (street (...)), where he claims he has not lived there for more than 20 years. In addition, in the payment document attached to the provision of constraint, the address of "the person obliged to pay" was identified as Carrer (...), when in the payment document attached to the notice of complaint for infringement of circulation the current address of the person making the complaint had been stated. According to the complainant, his data is "*updated as it appears in the Register of the General Directorate of Traffic, which is the source of information on which the communication of the sanctioning procedure is based*".

Along with the complaint, provide the copies of the notifications made by the IMH in said sanctioning procedure.

2. The Authority opened a preliminary information phase (no. IP 449/2021), 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 19/11/2021 the IMH was required to report on the following points:

- The origin of the address to which the IMH would have sent the constraint provision (street (...)).
- The origin of the address that the IMH recorded in the payment document attached to the constraint provision (street (...)).
- The reason why the IMH sent the traffic violation notification to the reporting person's current address (on street (...)), and the restraint provision to a different address (on street (. ...)).
- The reason why the IMH stated in the payment document attached to the traffic violation notification the current address of the person making the complaint (at street

(...), and in the payment document attached to the constraint provision a different address (that of the street (...)).

4. On 7/12/2021, the IMH responded to the aforementioned request through a letter in which it stated the following:

- That " *the notification of complaint in disciplinary procedure (...) was sent to street (...), number (...) by virtue of the provisions of article 90 and SS of Legislative Decree 6/2015, of 30 October, whereby the Revised Text of the Law on traffic, motor vehicle circulation and road safety is approved, that is to say at the address that was in the General Directorate of Traffic (DGT). This notification was absent in both attempts, proceeding to publish the corresponding announcement in the BOE (02/01/2020). Once the voluntary payment period ended without the payment of the penalty (public right income), the coercion route was initiated by means of the corresponding coercion provision, governing us from here on as provided by the tax regulations regarding the system of notifications in the executive period (...)*".
- That, during the executive period, action was taken in accordance with articles 109 and 110.2 of Law 58/2003, of December 17, General Taxation (hereinafter, LGT), "the notification of the *required constraint provision was sent at Carrer (...), 101 de (...), considering that it was the best-qualified address at the time of the events, following the notification with a positive result that had been carried out to the same interested party, in another sanctioning procedure and vehicle*".
- That " *the address (...), (...) originates from the fiscal address that was recorded in our databases at the time of the events, following the information coming from the DGT through another vehicle*".
- That, on 4/10/2021, the Councilor for Commerce, Markets, Consumption, Internal Affairs and Finance of Barcelona City Council issued a resolution partially upholding the appeal filed by the interested person - here complainant - against the constraint provision, insofar as this had been attempted to be notified at the street address (...) of (...), address that the same resolution qualifies as a wrong address.

5. On 05/20/2022, also during this preliminary information phase, the Authority's Inspection Area again requested the IMH to provide additional information regarding two of the addresses used.

6. On 3/06/2022, and still within the framework of this preliminary information phase, the IMH responded to the previous request by means of a letter in which, for what is of interest here, it stated:

Regarding the street address (...) of (...):

- That the procedure in which this address is protected is another sanctioning procedure (...), and it is the one that was listed as the fiscal address in the General Directorate of Traffic (hereinafter DGT) for another vehicle of the person here reporting . That the date of notification with a positive result in the framework of this procedure is 2/08/2007.

- That the activity that covers the processing of the aforementioned address is the penalty procedure for traffic violations and that the purpose of the processing is the "*management of the Barcelona City Council's traffic fine collection procedure*".

Regarding the address of (...):

- That "*the database shows the year 1997*", "*traffic fine*".
- That this address was listed as the tax address in the DGT for another vehicle of the person reporting here.
- Regarding the activity and purpose of the treatment, reproduce the answer given in the previous section.

In accordance with the antecedents that have been related so far and with the result of the investigative actions carried out in the framework of the previous information, it is agreed to initiate this sanctioning procedure. In the following sections, all the information required by article 64.2 of the LPAC is indicated.

7. On 20/12/2022, the director of the Catalan Data Protection 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.d); both articles 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).

8. On 16/01/2023, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the Municipal Institute of Finance as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.d), both of the RGPD.

This resolution proposal was notified on the same date, 16/01/2023, and a period of 10 days was granted to formulate allegations.

9. On 01/30/2023, the accused entity submitted a statement of objections to the resolution proposal.

proven facts

In a sanctioning procedure for a traffic violation (ref. (...)) , the IMH made a first notification, consisting of the complaint for a traffic violation, at the current postal address of the person concerned - here the complainant - at street (...) of (...), and which is the one that would appear in the database of the General Directorate of Traffic.

Subsequently, once the period for voluntary payment had expired without the person concerned proceeding to make the payment, the IMH started the coercion route and tried to notify him of the coercion provision together with a letter of payment to a different postal address (in the street (...) in (...)) and, in addition, the payment letter contained another postal address (in the street (...) in Blanes). These two addresses would have been obtained from

their own database, in which they were listed, according to the IMH, as tax addresses for other vehicles of the person making the complaint.

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, which are analyzed together given the identity of their content.

Thus, in the allegations in the initiation agreement, the IMH defended, in summary, that the reported event had occurred within the framework of a collection procedure that is regulated by the tax regulations and that, according to with article 110.2 LGT, the notification of the constraint provision could be practiced in any address " *suitable for that purpose* ". On the basis of this legal precept, it chose to carry out the notification of the constraint provision in one of the addresses that was listed in its own database since 2007, bypassing the address that was listed in the DGT in relation to the sanctioned vehicle and which was the one used by the administration that had processed the sanctioning procedure prior to the coercion. In the statement of objections to the proposed resolution, he reiterates the previous allegations and adds that ' *In the present case it has been established that the interested party was aware of the content of the document that has given rise to the present complaint (constraint provision), as can be verified from the contents of your file (ACPD), so the notification would be fully valid and effective* '.

Well, the allegations presented in the proposal phase do not allow the imputed facts to be distorted for reasons already stated by the instructor of the file at the time of rebutting the allegations in the initiation agreement. In this sense, and with regard to the invoked application of article 110.2 LGT, it must be reiterated that even though the fact reported occurred within the framework of a procedure in the way of constraint to which, in accordance with article 110.2 of Legislative Decree 6/2015, of October 30, approving the Revised Text of the Law on traffic, motor vehicle circulation and road safety, tax regulations apply; this provision does not involve, at the time of the practice of the notifications, bypassing the regulations governing the procedure from which the constraint provision in question derives, which in this case it must be remembered does not correspond to the collection of a tax, but is related to a traffic fine, nor to be unaware of the principles and obligations that the regulations on data protection impose on all those responsible and in charge of processing personal data.

Thus article 90 LSV provides that " *Administrations with sanctioning competences in traffic matters will notify the complaints that are not delivered in the act and the other notifications that result in the sanctioning procedure in the Electronic Road Directorate (DEV). In the event that the accused does not have it, the notification will be made at the address that was expressly indicated for the procedure, and failing that, at the address that appears in the records of the autonomous body Head of Traffic. (...)* ".

In turn, and in accordance with the provisions of article 5.1.d) of the RGPD, the personal data will be " *accurate and, if necessary, updated; all reasonable measures will be adopted to delete or rectify without delay the personal data that are inaccurate with respect to the*

purposes for which they are treated ("accuracy")", which requires the use of accurate data, in the sense of correct, for the purpose for which they are used, and without it being superfluous to add that, as pointed out in the proposal, the right to the protection of personal data is a fundamental right, and the regulations that regulate it have, for own definition, transversal character, so that the application of any rule must always be interpreted in the light of the guarantees and principles enshrined in the regulations that regulate that right.

Having said that, and despite the fact that the DGT's database contained an address for the purposes of notification in sanctioning procedures related to the vehicle subject to a sanction, the IMH notified the restriction provision at a different address, as it has stated, because during the year 2007, a notification was made at said address with a positive result for another penalty and vehicle, and it also dealt with a third address, which it stated in the payment document attached to the provision, adding that this had been in its database since 1997 for another vehicle.

In accordance with the above, it must be concluded that the treatment of those two addresses recorded in its database by other vehicles in relation to the actions of 2007 and 1997, violated the principle of data accuracy personal, given that they did not correspond to the address listed as the address related to the vehicle now sanctioned in the DGT records in accordance with the provision of article 90 LVS and that, in fact, this is where the first notification of the sanctioning procedure.

Finally, with regard to the allegation that the interested party was aware of the content of the constraint provision, it must be pointed out that, regardless of whether the notification of that provision had, or not, validity and administrative effectiveness, so of interest here, it has been established that the treatment of the street address (...) of (...) (where said notification was attempted), did not respect the principle of accuracy, and so it is also reflected in the resolution of 4/10/2021 (previously 4th), of the Councilor for Commerce, Markets, Consumption, Interior and Finance of the Barcelona City Council, when it declares that the notification was made at an incorrect address .

3. In relation to the fact described in the section on proven facts, relating to the principle of accuracy, it is necessary to go to article 5.1.d) of the RGPD, which provides that the personal data will be *" accurate and, if necessary, updated; all reasonable measures will be taken to delete or rectify without delay the personal data that are inaccurate with respect to the purposes for which they are processed ("accuracy")*" .

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

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

"b) The treatment of personal data in violation of the principles and guarantees established in article 5 of Regulation (EU) 2016/679."

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 the present case, given that it is a timely and consummated event, it is considered unnecessary to propose the adoption of corrective measures.

For all this, I resolve:

1. Admonish the Barcelona Municipal Tax Institute as responsible for an infringement provided for in article 83.5.a) in relation to article 5.1.d), both of the RGPD.

It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 4th legal basis.

2. Notify this resolution to the Municipal Finance Institute of Barcelona.

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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