

File identification

Resolution of sanctioning procedure no. PS 8/2023, reference a the Institute Municipal Treasury of Barcelona City Council.

Background

1. On 09/15/2022, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Municipal Finance Institute of the City Council of Barcelona (in come in, the IMH), with reason of one presumptuous breach of the regulations on personal data protection.

In specific, the person complainant exposes what the past 22/07/2022, the imh him go to notify a resolution in relation to a coercion procedure for a traffic penalty to an address that is neither your usual address, nor the " *place of vehicle registration, Pamplona*", but " *the place that is registered with the City Council of Sitges como de mi propiedad para el cobro de Bienes Muebles* ".

Together with the complaint, provide the notification of the " *Payment document and information request*" , of date 07/14/2022, with " *Number of received: (...)*" , directed at the postal address " (...), *Sitges* ".

2. The Authority opened a preliminary information phase (no. IP 322/2022), in accordance with the provisions the article 7 from Decree 278/1993, of 9 of November, about the procedure sanctioning application to the areas of competition of the Generalitat, i the article 55.2 of the law 39/2015, of October 1, of the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts were likely to motivate the initiation of a sanctioning procedure.

3. In this information phase, on 3/10/2022 the IMH was required to report on how go get the address postcard of the person here reporting (" (...) *Sitges* "), in the what go to practice the notification; i which one it would be the base legal which in his opinion would justify the treatment of said postal address.

4. In date 14/10/2022, the imh go to answer the mentioned requirement a through of one written in which he stated the following:

- That the aforementioned address is the one listed " *as the fiscal address at the DGT for another vehicle of the person interested, the which no tax for none concept a the city from Barcelona* ",
- What the base legal what justified the treatment of the said Address postcard of the person reporting here is:
 - Regarding the " *sanctioning procedure for violations of the Law of Traffic and Circulation avenue i the ordinance of Circulation of Pedestrians i of vehicles (OCVV)*" with the purpose of " *managing the Barcelona City Council's traffic fines collection procedure* ", the legitimization of the treatment is the " *Traffic Law, Municipal Traffic Ordinances, Local Finance Law, Tax Law, Law*

1/2006 of regime special of Barcelona, letter municipal of Barcelona, LRMC, Law 39/2015".

- respect from "*Procedure of management, collection, inspection i review of revenues under public law*" with the purpose of "*management of the management procedure, collection, inspection and review of revenues of public law*", the legitimacy of the treatment is the "*Local Finance Law, Tax LG, Law 1/2006 of the Barcelona Special Regime, Barcelona Municipal Charter, LRMC, Law 39/2015*".

5. On 11/01/2023, also during this preliminary information phase, the Authority's Inspection Area again requested the IMH to confirm that on the basis of data from the DGT did not contain any address specifically linked to the sanctioned vehicle, nor any other address of the person who owns this vehicle. Likewise, for the case in which they were recorded others domiciles, es required a the imh because exhibits the reason by which go practice the notification at the address in Sitges.

6. In date 01/24/2023, the imh go to give answer a the previous one requirement through one written in which he stated the following:

- What a the base of data of the DGT "*yes it is known one (unique) Address of notifications and prosecutor of the reported vehicle: that of (...)Pamplona, where the complaint and the penalty were notified against which no letter or claim was submitted*".
- What in road executive the regulations applicable is the tax i what according to the article 110.2 of Law 58/2003, of December 17, General Taxation (hereinafter, LGT), "*in the bear procedures initiated of trade, the notification will be able practiced in the tax domicile of the taxpayer or his representative, in the workplace, in the place where the economic activity is carried out or in any another suitable for that purpose.*"
- What, a month, it is known accredited what the interested party go have knowledge from content of the "*payment and information request document*" and that, for that reason, the notification is fully valid and effective.

7. On 02/02/2023, the director of the Catalan Data Protection Authority agreed to initiate disciplinary proceedings against the IMH for an alleged infringement provided for in article 83.5.a), in relation to article 5.1 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), which provides that personal data must be lawful and accurate in relation to the purposes for which they are processed.

8. On 02/16/2023, the IMH made allegations to the initiation agreement , which are addressed in section 2 of the legal foundations.

9 . On 03/03/2023, the person instructing this procedure formulated a resolution proposal, by which he proposed that the director of the Catalan Data Protection Authority admonish the IMH 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 and a period of 10 days was granted to formulate allegations.

10. On 03/17/2023, the accused entity submitted a statement of objections to the resolution proposal.

proven facts

In a procedure of constraint derived from a penalty for one violation of the regulations of traffic, the imh go to notify the " *Document of payment i requirement of information* " (" *Receipt number: (...)* ", " *Concept: Traffic Fines* " and " *Collection Procedure Code - (...)* ") in a postal address that would not correspond to the address linked to the sanctioned vehicle that it appears in the DGT's records, nor with the driver's usual address.

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.

In the preliminary information phase, the IMH recognized, on the one hand, that the address in which the notification was made ("(...)Sitges ") was the one listed " *as the fiscal address in the DGT for another vehicle of the person concerned* ' and, on the other hand, that in said database "there is a **(single) notification and fiscal address of the reported vehicle** : that of (...)Pamplona " .

In the process of objections to the initiation agreement, he argued that it was a coercion procedure and that, therefore, the tax regulations were applicable. Based on this, he justified the practice of notification at the address that he considered ' *adequate for that purpose* ' , in accordance with article 110.2 LGT in relation to article 7.2 LGT *administrative and the precepts of common law* ") .

In the statement of objections to the proposed resolution, he again invokes the aforementioned precepts and adds that article 110.2 of Legislative Decree 6/2015, of October 30, which approves the Revised Text of the Law on traffic, movement of motor vehicles and road safety (henceforth, LSV), expressly provides that "2. **The organs and procedures of the executive collection will be those established in the applicable tax regulations, according to the authorities that have imposed them** . The IMH states that " *the traffic regulations themselves state that in the executive collection phase the tax regulations will apply* ". Finally, he concludes that a different interpretation " *would be bypassing what is provided by the regulation that is of specific application in the present case* " .

Well, as the person instructing the present sanctioning procedure highlighted in the resolution proposal, even though article 110.2 LVS expressly contemplates that in the collection process the bodies and procedures " *shall be those established in the tax regulations that sea de aplicació* ", this legal provision does not enable, at the time of the implementation of the notifications in an executive way, to bypass the regulatory regulations of the sanctioning procedure from which the sanction that is the object of the constraint provision in question derives. Thus, in the present case, it is necessary to take into account the precept of the traffic regulations in which the place of practice of traffic notifications is regulated.

That is to say, despite the executive collection procedure being the one provided for in the tax regulations, as provided for in the aforementioned article 110.2 LVS, the provisions of the traffic regulations cannot be ignored, which is the applicable one in this case given that we are before a procedure to enforce a traffic fine, and not a tax.

Having said that, it should be noted that article 110.2 LGT invoked by the IMH, regulates ' *tax notifications* '. This is clear from said precept, which refers to notifications addressed to ' *the taxpayer* '. Likewise, article 7.2 LGT, also invoked by the IMH, provides for the sources of the tax system and, therefore, refers solely and exclusively to those of the tax procedures. That's the way things are, given that, in the case we're dealing with, we're not dealing with a tax, it's necessary to comply with the regulations that regulate the practice of notifications related to penalties for traffic violations.

Specifically, article 90 LSV provides " *Administrations with sanctioning powers 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 Direcció Electrónica Vial (DEV). In the event that the accused does not have it, the notification will be made **at the address expressly indicated for the procedure, and failing that, at the address that appears in the records of the autonomous body Central Traffic Headquarters** . (...) "*

The previous precept must be put in relation to article 5.1.d) of the RGPD, which provides that 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")* ". At this point, it should be emphasized that the right to personal data protection is a fundamental right and that the regulations that regulate it have, by their very definition, a transversal nature, so that the application of all regulations must always interpret in the light of the guarantees and principles enshrined in the regulations governing that right.

In accordance with these legal regulations, it is not necessary to practice the notifications of traffic penalties or that it is in the way of coercion, in any place " *suitable for that purpose* ", when the IMH has the correct address that sets the regulations of 'applicable for the practice of notifications which, in the present case, is what appears in the DGT database in relation to the penalized vehicle.

Having said that, the truth is that despite the fact that the address specifically linked to the sanctioned vehicle was listed in the DGT database, the IMH notified the provision of restraint at another different address which, as the accused entity itself has acknowledged, is " *as tax address in the DGT for another vehicle of the person interested* " .

For all the above, it must be concluded that the treatment of that postal address that was recorded by another vehicle in the records of the DGT involves the violation of the principle of accuracy of personal data in relation to the purposes of this specific treatment, given that the IMH could not ignore the postal address that also appeared in said records referring to the sanctioned vehicle and that was the correct one for notification purposes.

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. To warn the Municipal Institute of Finance of Barcelona 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 Institute of Finance 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,