In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.

File identification

Resolution of sanctioning procedure no. PS 14/2023, referring to the City Council (...).

Background

1. On 29/07/2021, the Catalan Data Protection Authority received a letter of complaint against the Directorate General of Police (DGP) of the Department of the Interior of the Administration of the Generalitat, on the grounds of 'an alleged breach of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 April, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (RGPD). Subsequently, on 14/09/2021, the complainant submitted a second supplementary letter to the first, in which a complaint against the City Council (...) .

2. In relation to the part of the complaint related to the actions of the City Council (...) , the person making the complaint - who is (...) from the Police of the Generalitat-Mossos d'Esquadra (of henceforth, ME)- explained that, on 01/05/2020, he presented a private request addressed to the mayor of (...) , through which he made a complaint about the irregular employment of a property located on the floor below the floor where the complainant lived, as a tenant. It also exposed various irregular activities of the people who occupied it and about the risk situation in which the minor daughter of these people was. Likewise, he stated that on 08/06/2020 the owner of the property where he lived sent an email to the mayor of the City Council (...) , with a copy to a third person (the complainant's partner), in which he also denounced the same facts regarding the occupied property.

   The reason for the complaint made against the City Council (...) before the Authority was the fact that this city council had given a copy of the request and the email it had received to the ME inspector, and none of the 'Basic Police Area (ABP) of (...) , of the Police Region (...) (henceforth, inspector), without the consent of the three affected persons (the reporting person, his partner and the owner of the property), nor the concurrence of any other legal basis.

   As proof of the facts reported, he stated that, after this referral made by the City Council, the inspector of the ME had forwarded the request and the mail received to the head of the Police Region (...), together with a police report in which he requested that a reserved information be opened against the (...) complainant. And he also pointed out that the instance and the mail had been included in reserved information and in the subsequent disciplinary file that the DGP processed against the (...) complainant.

   On 03/08/2021, and at the request of the Authority, the complainant amended his complaint by providing various documentation, including the following:

- Copy of the request that the complainant presented on 01/05/2020 before the City Council (...) , addressed to the mayor, about the referral of which the complainant complained.

- Copy of the letter that the (...) complainant sent on 09/01/2020 to the General Directorate of Child Care and Adolescence (DGAIA), signed by the head of shift of (...) (...), which had as its subject: "protection of minors. Minor in a situation of helplessness and/or risk", and in which the following was noted:

  "This letter is to inform you that this instruction has become aware that in the address located at street (...) number (...) in the town (...) , there is a minor who could find- in a situation of helplessness and/or risk, for the following reasons (...)."

- Copy of the police report dated 03/09/2020, issued by the chief inspector of the ABP (...) of the ME, which was entitled "Request for reserved information in relation to alleged disciplinary offenses that may have been committed by (...) with TIP (...), referring to the complainant. The content of the report is as follows (the bold is from the APDCAT):

  "The (...) with TIP (...), (...) (name and surname of the complainant) has as destination (...) (...).
  As of 09/03/2020, we have become aware that on 09/01/2020 proceedings were initiated with number (...) /20 (...) from the Unit (...) to the DGAIA informing that there a minor with address in (...) who could be in a situation of helplessness and/or risk, a series of reasons are set out in this office. In the office using NIP, it is not possible to check who signs it because he does not put the TIP, but he does put Head of shift (...) (A copy of the Office is attached). I for the reasons explained below we consider that it must be the (...) with TIP (...) .

  On the part of the ABP (...) we were aware that the house referred to in the letter addressed to the DGAIA had been occupied since 04/18/2020 and the identity of the two adults who had usurped the housing

  Arrangements are made with PL and Social Services and we are informed that:

  From the first day when they became aware of the presence of these people in the aforementioned property, Social Services has been following up. That the home has been visited by the social worker and that everything is in order and that the minor does not show any signs of risk, she even attended a home this summer. I that last week the mother went to a visit with Social Services, in which she reported that she no longer lived with the person who usurped the home.

  On behalf of the PL they indicate that during the month of May they had information about the usurpation on the occasion of an instance presented by a neighbor and resident of the street (...) , (...) , which apparently is part of

from the same property as the usurped Property, who carried out a series of security checks in the area without any notable incidents.

The instance and any other complaint in relation to the house is requested from the PL . The instance is presented on 01.05.2020 in a private capacity by (...) with TIP (...) (...) (name and surname of the person reporting) with address at street (...) and goes addressed to the mayor of (...) . In this instance, he makes an extensive presentation explaining the problems of different events as a result of the occupation of the street (...) demanding a solution, and also indicates that if no solution is put in place, they do not rule out the creation of a neighborhood platform, holding rallies , and protest actions, in order to evict people who do not respect the rights of the neighborhood (**A copy of the instance is attached**).

On 08.06.2020 an email from Mr. (...) owner of the house in which the (...) lives with TIP (...) (TIP of the reporting person) entitled "Anxiety for squatters" and in which he is asking for help. Among other issues, he reports that his tenants have decided to leave to live elsewhere because of the insecurity and fear the neighborhood causes them. The mail is addressed to the mayor in copy to '(...)' (here, C). Once the identity has been verified, it could correspond to (...) (name and surname of C), with ID (...) and address in the same house as (...) with TIP (...)
(**A copy of the complaint email is attached**).

In short, an office is made at the DGAIA on behalf of the PGME from a different instruction from the ABP (...) , whose information has not been checked with us nor have we been informed of it, with a biased and partisan information for a particular interest and, which can create serious harm to the minor who wants to be protected.

On the other hand, if it is true that since the end of the state of alarm, criminal acts in the municipality (...) have increased, especially acts related to occupations, RFD and RVI, from the PGME together with the PL has made different devices that have given results, and it has been advertised. From social networks, alarmism is continuously being created and pressure is being put on the town hall and, according to the information we receive, it could be that the same person was behind it (...) in one way or another, just like him indicates in the same instance of 01.05.2020, something that does not make our work easier.

For all of the above, the opening of reserved information is requested."

- The minutes of the 25/03/2021 statement of the (...) complainant on the occasion of disciplinary file no. (...) -ED, initiated by the DGP against the complainant. On the first sheet, corresponding to the information on the rights of the accused person, the following is indicated:

"You have been cited in relation to the following events:
Possible disciplinary liability in the conduct of (...) with TIP (...) in relation to the preparation of the trade with numbering (...) /20 (...) (...) , addressed to the

General Directorate of Child Care and Adolescence (DGAIA) and also for having unjustifiably failed to appear at the summons issued by the Internal Affairs Division, despite having been summoned by a superior hierarchy of the Division of Internal Affairs to hear him in a statement under the reserved information number (...) / (...) -IR."

3. The Authority opened a preliminary information phase (no. IP 304/2021), 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 (LPAC), to determine whether the facts were likely to motivate the initiation of 'a sanctioning procedure.

4. In this information phase, on 16/06/2022 the City Council (...) was required to report on several issues relating to the events reported.

5. On 01/07/2022, the City Council (...) responded to the request with a letter in which it stated the following (the bold is from the APDCAT):

"1. That Mr. X, today's complainant before this authority, presented the day 1/5/2020 at 12:03 p.m., electronic request addressed to Mr. Mayor of (...), in which he communicated, in summary, the situation of an occupied property located at Street (...) of (...) (DOC n 1).

2. On 8/6/2020, Mr. Z, owner of the property occupied on street (...) no. (...) of (...), sent an email to Mr. Mayor of (...), communicating that the tenants of the flat of his property, which is on the floor immediately above the occupied building which has an entrance from street (...) no. (...), they left the flat because of the insecurity and inconvenience caused by the occupants of the lower floor.
Mr. Z, asks for help from Mr. Mayor to try to solve the situation of public insecurity (DOC n 2).

3. **That on 3/9/2020 the Chief Inspector of the ABP of (...), given the serious indications that Mr. X (** (...) **of the Mossos d'Esquadra Corps destined to (...), has been making use of the information systems of the Mossos d'Esquadra for private and particular matters, decides to open reserved information.**
(...)

That with reference to the second point of the request, we must say that **between 1/05/2020 and before 3/9/2020, the commissioner of the ABP of Mossos (Basic Police Area of** (...) **), requires by corporate e-mail the sub-inspector acting as head of the Local Police of** (...) **, the instance presented by Mr. X (DOC. 1) which is sent to you through the same channel.**

In this case we cannot provide a copy of the emails since the Sub-Inspector of that one
at the moment, he is on commission of services in another municipality since 01/01/2021 and his corporate email account was cancelled. In any case, the ABP of (...) will have a copy of the request and send it.

That in reference to the third point of the request, the reasons why the Deputy Inspector
since then he delivered a copy of the request and the e-mail, despite doing so on his own behalf and without consulting the DPD at that time, we understand that it was based on the legal basis of art 6.1.c) i) of RGPD 2016/679 with correspondence with art. 22 in force of the repealed LO 15/1999. Currently it would be based on what is established in art. 1 et seq . of LO 7/2021.

We must bear in mind that the Police Basic Area Police Station of (...) had reasonable indications that some agent could have made use of access to Mossos information systems for particular reasons, as can be check with the report dated 3/9/2020. (DOC No. 7)

That with reference to the fourth point of the request, the usual procedure when an instance is addressed to Mr. The Mayor is to address it to the department(s) affected depending on the matter dealt with so that they issue the corresponding reports and prepare the corresponding resolution proposals to deal with the matter or take the appropriate actions according to the circumstances of each case and respond to the citizen. In this case the instance was transferred to the Local Police, and the legal basis that protects it is art 6.1.aie of the RGPD 2016/679.

That in response to the fifth point of the request, we want to emphasize that the documentation that was sent to the Police Station of the Basic Police Area of (...), was made at the request of the Chief Inspector of this our Sub-Inspector at that time with functions of Chief of the Local Police of (...). This request is made by corporate e-mail from the Generalitat, **and is circumscribed within the scope of previous investigations related to Internal Affairs, in which Mr. X was involved** .

These preliminary investigative actions end with the opening of a disciplinary file by the Internal Affairs Division of the Mossos d'Esquadra against Mr. X.
Therefore, the referral of the instance and the mail, does not obey an ordinary procedure and
usual reporting of incidents, but is circumscribed, to an exceptional request in order to investigate the misuse of the information systems of the Mossos d'Esquadra body by an agent of the body."

The City Council of (...) provided various documentation.

6. On the other hand, on 06/16/2022, the Authority required the DGP to answer several questions related to the events reported. On 07/18/2022, the DGP presented a letter in which it stated the following:

"1. In relation to the facts mentioned, the complainant was the subject of a reserved investigation procedure that gave rise to a disciplinary file as a result of which different investigative procedures were carried out, duly carried out in the police report (police proceedings (...) /20 (...) (...)) delivered to the Dean of Courts of (...) and distributed, finally, to the Court of Inquiry number (...) of (...) which is investigating the criminal procedure Preliminary Diligences (.. .) /20 (...) in which the reporting person is being investigated for a crime of revealing secrets.

2. Likewise, in relation to these same events, the person reporting, (...) filed a complaint against the inspector of the Police Station of (...) to whom your letter refers and against a (.. .) of the Division of Internal Affairs, as defendants, as well as against the General Directorate of the Police as a subsidiary civil officer.

   Therefore, we inform you that all the data and documentation you request are included in the above-mentioned judicial procedures subjected to treatment for jurisdictional purposes."

7. On 02/03/2023, the director of the Catalan Data Protection Authority agreed to initiate a disciplinary procedure against the City Council of (...) , for an infringement provided for in article 83.5. *a* in relation to article 5.1. *a* , both of the RGPD. This initiation agreement was notified to the City Council of (...) on 08/03/2023.

8. In the initiation agreement, the City Council of (...) was granted a period of 10 working days to formulate allegations and propose the practice of the tests it considered appropriate to defend its interests.

9. On 03/22/2023, the City Council of (...) formulated objections to the initiation agreement.

10. On 08/06/2023, the person instructing this procedure formulated a proposed resolution, by which he proposed that the director of the Catalan Data Protection Authority admonish the City Council of (...) , as to responsible for an infringement provided for in article 83.5. *a* in relation to article 5.1. *a* , both of the RGPD.

This resolution proposal was notified on 06/14/2023 and a period of 10 days was granted to formulate allegations.

11. On 06/28/2023 , the City Council of (...) submitted a letter of objections to the proposed resolution, which are addressed in section 2 of the legal foundations.

proven facts

On 03/09/2020 (or, in any case, on a date between 01/05/2020 and 03/09/2020), a sub-inspector and then head of the Local Police of the City Council of (...) sent the Chief Inspector of the Basic Police Area of (...) of the ME an email containing the following two documents, which this inspector had requested:

- An instance that the (...) of the ME and complainant had presented in a private capacity before the City Council of (...) on 01/05/2020, addressed to the mayor.

- An email that the owner of a property in (...) - where the complainant lived as a tenant together with his partner or cohabitant - sent in a private capacity to the City Council on 06/08/2020, addressed also to the mayor.

The sending of these documents resulted in the City Council revealing to the ME inspector the personal data contained in these two documents, which were as follows:

- The instance of the (...) of the MEs contained their identifying data, such as first and last name, no. of ID, address, no. particular phone number and email address, as well as other data relating to the facts that he related at his instance.

- The e-mail from the owner of the property contained personal identification data of the person sending the e-mail (name and surname, private e-mail address), as well as data of this person referring to problems of various kinds that he suffered as a result of the occupation of the property located below that of his property. Likewise, given that the sender of the mail put in a copy (CC) a third person (partner or cohabitant of the (...) complainant), the copy of the mail also displayed the name and surname of this third person, as well as information regarding the will of the lessees (the (...) complainant and his partner), to terminate the lease for the reason of insecurity indicated.

In the previous phase, in its response to the Authority's request, the City Council of (...) recognized that the sending of the aforementioned instance and mail "does not comply with an ordinary and usual procedure for sending 'incidents'", and he justified it by pointing out that this shipment "is circumscribed within the scope of previous investigations related to Internal Affairs, in which Mr. X (referring to the (...) complainant here) was involved."

However, the City Council sent the mail with the indicated documentation before the DGP opened a reserved information against the (...) complainant.

On the other hand, the sending of this documentation to the ME inspector also did not comply with the existence of a real danger to public safety or the investigation and prosecution of a crime.

Fundamentals of law

1. LPAC and article 15 of Decree 278/1993, according to DT 2a of Law 32/2010, of October 1, of the Catalan Protection Authority, apply to this procedure of Data. 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 City Council of (...) has made objections to both the initiation agreement and the proposed resolution. 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 City Council are then analyzed.

2.1. On criminal bias

In the first allegation of the letter issued before the initiation agreement, the City Council asserted the concurrence of criminal prejudiciality, and pointed out that the Court of Inquiry no. (...) of (...) was instructing the preliminary proceedings no. (...) /20 (...) , referring to the same facts as those imputed in this sanctioning procedure. Based on this consideration, he requested, as proof, that the Authority ask the aforementioned Court to report on the state of the judicial procedure and, at the same time, suspend the processing of this sanctioning procedure . On the other hand, in the letter issued in response to the proposed resolution, he reiterated these allegations, and added the following:

- That he was aware that the aforementioned court was inhibited in favor of the Court of Instruction no. (...) of (...) (mentioned by the same Court), who would handle the abbreviated procedure no. (...) /20 (...) .

- That the latter court could formulate an indictment of a crime other than that of discovery and disclosure of secrets.

- That in accordance with the principle of consistency, the administrative procedure should be suspended until the criminal procedure is resolved, and he cites article 77.4 of the LPAC.

These allegations cannot be appreciated, given that the judicial process referred to by the City Council deals with different facts and that they can be separated from the facts imputed to it in this sanctioning procedure.

In this sanctioning procedure, the City Council is accused of sending an e-mail to an ME inspector on 03/09/2020 (or earlier) containing the request of the complainant and an e-mail from the owner of the property where the complainant lived. The purpose of the transmission was to inform the inspector of the complaints that the City Council had received about the home where a minor lived, so that he could investigate whether what the complainant had informed the DGAIA was true - that the minor could be in a situation of risk or helplessness-, since it was a matter of the competence of the ABP that led the inspector. This was reflected by the ME inspector in his report dated 09/03/2020, just after receiving the request and the email sent to him by the City Council's chief inspector.

On the other hand, the legal proceedings that the City Council mentions refer to a different fact, which was discovered after the City Council sent that documentation. Specifically, once the ME inspector reviewed the documentation, he decided to request the competent body of the DGP to open reserved information, because he considered that what the complainant had communicated to the DGAIA was not true and that, moreover, the complainant had carried it out "from a different instruction to the ABP of (...) , whose information has not been checked with us nor have we been informed of the same, with a biased and partisan information for a particular interest and that can create serious harm to the minor who wants to be protected."

In his police report, the ME inspector did not mention the complainant's illegal access to police databases, nor the crime of discovery and disclosure of secrets, since the investigation into access to police databases was be later, once disciplinary procedure no. (...) / (...) -ED.

Indeed, in the test phase of that disciplinary procedure, the instructor agreed to the practice of a test consisting of the execution of an IT audit whose purpose was to "verify the veracity of the statements reflected by (. ..) with TIP (...) to the office addressed to the DGAIA", on the fact that one of the people who had occupied the disputed property had a history of violent crimes and that the police had intervened in this house , for several incidents related to narcotic substances.

In the letter dated 04/13/2021 requesting this audit, the instructor, however, requested an IT audit on the accesses made by the person reporting to the data of the employed persons listed in the police databases.

The result of the audit revealed that the complainant had accessed the police databases for reasons that the instructor considered unjustified. The instructor concluded that the complainant could have given data to third parties and that this could constitute a crime of discovery and disclosure of secrets and, on 07/20/2021, brought it to the attention of the investigating court with guard functions in (...) . This led to the opening of preliminary proceedings no. 193/2021 to which the City Council refers.

From what has been presented, the following emerges:

- That the object of the judicial process invoked by the City Council is different.

- That the e-mail sent by the City Council on 09/03/2020 - which is the subject of this sanctioning procedure - was not intended to find out whether the complainant had illicitly accessed the police data and whether he had committed a crime of discovery and disclosure of secrets.

- That in order to solve this sanctioning procedure it is not essential to know the result of the aforementioned instructional procedure.

Thus, regarding the latter, in the hypothetical case that the competent court of inquiry concluded that the complainant had illegally accessed the police database and that he would have transferred police information to third parties to the detriment of the persons consulted, this would not affect the imputation that is made in this sanctioning procedure against the City Council, since this conclusion would not prevent maintaining that the City Council communicated data of the person making the complaint, without their consent and without any other legal basis (for the reasons 'explain later). For the same reasons, the specific wrongdoing that could be imputed to the reporting person in court is irrelevant, as is the judicial body that finally instructs him.

Having said that, it should be borne in mind that the imputation carried out here is not only based on the communication of data by the complainant, but also by the communication of data by his partner and the owner of the leased property, who have even less relation to the court order against the complainant. This shows even more that it is not relevant to suspend this sanctioning procedure, since the imputation of the infringement would remain even if the communication of the complainant's data was avoided in the imputed facts.

This is why this allegation cannot be accepted and, consequently, the request to suspend the procedure must be rejected.

2.2. On the legitimacy of the treatment carried out

In the letter issued before the initiation agreement, the City Council of (...) also stated that sending the disputed instance and mail to the ME inspector does not constitute any infringement, since the communication of data was protected by the legal bases provided for in article 6.1. *c* (relating to the treatment necessary to fulfill a legal obligation) and 6.1. *e* (referring to the treatment necessary to fulfill a mission carried out in the public interest or in the exercise of public powers), both of the RGPD, in relation to article 22 of the former LOPD (relating to the files and treatments carried out by the Forces and the Security Forces). Consequently, he requested the filing of the sanctioning procedure. And in the letter issued before the proposal, the City Council has reiterated these allegations, which are analyzed

below .

- On the one hand, the City Council alleges that it transferred the instance to the Local Police because it referred to "a real danger, and in any case creating social alarm in relation to public security (...)" , which "also reported criminal situations that should obviously be investigated (...)" and which referred to "the commission of extremely serious acts in a home in this municipality."

- On the other hand, he stated that he sent the request and the mail to the ME inspector because he was obliged to provide assistance to the security forces and bodies, in the investigation and prosecution of crimes. Also, because it must act in accordance with the principle of reciprocal cooperation and coordination, and because of the judicial police functions that the local police have.

- In the last one, he stated that "the commission of facts constituting a criminal offense by the complainant cannot give rise to administrative offenses by the City Council", and that the data communicated "were known among all the parts and not (it was) sensitive data."

These allegations cannot be appreciated, for the reasons set out below.

In the previous phase, through the letter dated 06/30/2022, the City Council stated that the sending of the documentation to the ME inspector "is circumscribed within the scope of previous investigative actions related to Internal Affairs, in which Mr. X (the complainant) was involved", and also that "on 3/09/2020 the chief inspector of the ABP of (...) , given the serious indications that Mr. X (...) has been using the Mossos d'Esquadra information systems for private and particular matters, decides to open reserved information."

But this is not true, since, at the outset, the competent person to agree to the opening of reserved information was not the ME inspector, but the general director of the ME Police, who did not agree to the 'opening of reserved information no. (...) / (...) -IR until 10/20/2020. On the other hand, the controversial communication that the City Council made to the ME inspector and that is sanctioned here took place earlier, specifically on 03/09/2020 (or in any case on a date prior to this). That is to say, when the City Council sent the request and the mail to the ME inspector, there was no ongoing investigation regarding the complainant. Therefore, there was no investigation that could prevent the sending of the mail.

In addition, the ME inspector did not ask the City Council to send him information from the complainant as part of an investigation into the commission of a crime, but to send him the complaints he had received regarding the home where the minor lived, to assess whether she was in a situation of risk or helplessness as the complainant had pointed out in the letter he addressed to the DGAIA.

On the other hand, in order to determine the applicable regulatory framework, it is necessary to refer to the police report that the ME inspector issued on 09/03/2020, in which he requested that the a reserved information against the complainant. In this report, the following was noted:

> "As of 09/03/2020, we have become aware that on 09/01/2020 proceedings were initiated with number (...) from (...) addressed to the DGAIA informing that there is a minor with an address at (. ..) , who could be in a situation of helplessness and/or risk, and in this office a series of reasons are set out.

(...)
Arrangements are made with PL and Social Services and we are informed that:

From the first day they became aware of the presence of these people in the aforementioned building, Social Services has been following up (...)

On behalf of the PL they indicate that during the month of May they had information about the usurpation due to an instance presented by a neighbor living in the street (...) which apparently forms part of the same estate as the property usurped, who carried out a series of security checks in the area without any notable incidents.
(...)
The PL is requested for the instance and any other complaint in relation to the house.
(...)
In short, a DGAIA office is made on behalf of the PGME from a different instruction to the ABP of (...) , whose information has not been checked with us nor have we been informed of the same, with biased and partisan information for a particular interest and that can create serious harm to the minor who wants to be protected.

(...)
For all of the above, the opening of reserved information is requested."

From the content transcribed, it is clear that the email sent by the head of the Local Police with the controversial documentation was not part of any open police investigation, but that on the same day 09/03/2023, in which the inspector of the ME was aware of the communication to the DGAIA, it limited itself to carrying out mere actions to verify the circumstances in which the minor was living, which consisted of contacting the social services and the Local Police of the City Council of (...) . **These contacts were not part of any specific investigation aimed at investigating criminal actions by the occupants of the building** .

On the other hand, with regard to the functions of the judicial police, the applicable regulations provide for the communication to the judicial authority of the actions taken. Specifically and for what is of interest here, article 549.1. *a* of the Organic Law of the Judicial Power (LOPJ) provides that one of the functions of the judicial police is "the investigation of those responsible and the circumstances of the criminal acts and the arrest of the first, **reporting immediately to the judicial authority and fiscal** , in accordance with the provisions of the laws." And article 282 of the Law of criminal prosecution (LECrim) establishes that the judicial police has as its object "to find out the public crimes committed in its territory or demarcation; carry out, according to their attributions, the necessary diligence to check and discover the criminals, and collect all the effects, instruments or evidence of the crime whose disappearance there would be danger, making them available to the judicial authority **.** "

In this case, however, from all the documentation provided, it is clear that, once the inspector received the request and the mail, he did not immediately communicate any facts to an investigating court or to the Public Prosecutor's Office or the Juvenile Prosecutor's Office (art. 549.1. *to* LOPJ and art. 282 LECrim) about the situation in which the minor was or about facts committed by any other person linked to the facts. And with his report the inspector implied that it was unnecessary to initiate any police investigation, because the information that the complainant had communicated to the DGAIA was not true. It follows that he did not act as judicial police.

This is why the regulations applicable to the imputed data processing are the RGPD, without prejudice to what is indicated later.

Based on this premise, the allegations in which the sending of the instance and the mail is justified on the basis of the exercise of judicial police functions cannot be appreciated, since as has been pointed out we are not dealing with this assumption.

For the same reason, the sending of documentation cannot be justified on the basis of the duty to provide the forces and security forces with the necessary assistance to investigate and prosecute crimes (art. 4.1. Organic Law 2/1986, of March 13 , of security forces and bodies, LOFCS). Apart from the fact that this precept is **not** applicable to the specific case (because the RGPD applies and not the police regulations), if it were it could not protect the communication of data that the City Council made, since the article 22.2 of the old LOPD - applicable for temporary reasons, if the communication was framed in the police and criminal judicial sphere - requires that the treatment is necessary to prevent a real danger to public security or to repress criminal offences. However, in this case the purpose of sending the request and the mail was neither to prevent a real danger to public safety nor to repress criminal offences.

In this regard, the police report issued on 09/03/2020 by the ME inspector is illustrative, which includes the assessment made by the local police at that time, regarding the occupants of the home where he resided the minor The terms used in the report show that the City Council did not detect facts relevant to the police, as follows:

> "On behalf of the PL (Local Police) they indicate that during the month of May they had information about the usurpation on the occasion of an instance (...) that they made a series of security checks in the area without any notable **incidents** ."

With regard to the specific situation of the minor - which we remember was the reason why the ME inspector required the City Council to send him the complaints related to the house - in the report of 16/ 12/2020 that the City Council issued within the framework of reserved information no. (...) / (...) -IR noted the following:

> "On the part of the agents who have provided surveillance or control services, no evidence of situations of risk for the minor has been observed, nor any situation of helplessness."

On the other hand, the principles of collaboration and coordination between security forces and bodies cannot translate into an obligation for the person in charge to communicate any information that is requested. When this required information contains personal data, the communication of personal information constitutes data processing and is therefore subject to data protection regulations, that is the RGPD and Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD). Consequently, the communication of data must be lawful or respectful of the principle of lawfulness (art. 5.1. *GDPR*). In this sense, article 6 of the RGPD establishes that the treatment is only considered lawful if it meets any of the conditions listed (legal bases), among which there are the two cases listed by the City Council, which they are: (art. 6.1. *c*) that the treatment is necessary to fulfill a legal obligation applicable to the person responsible for the treatment;

and (art. 6.1. *e*) that the treatment is necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment.

However, none of these legal bases are applicable to this case, since, on the one hand, there was no rule with the rank of law obliging the City Council to send the disputed instance and mail to the inspector of ME; and, on the other hand, the sending of this documentation by e-mail and on the sidelines of any open investigation cannot be protected in the exercise of public powers, because this exercise is subject to specific conditions and assumptions, guaranteeing the implied rights, which are not mere formal requirements.

Thus, the City Council could have provided information regarding the reasons for the complaint it had received about the occupants of the home where the minor lived, without the need to send the request and the email they had addressed to the mayor , and without having to reveal the identity of the people who had sent these letters or their other personal data.

On the other hand, with regard to the allegations referring to the illegal acts that, according to the instructor of the disciplinary procedure, the complainant could have committed, it should be noted that the possible accusation of a criminal offense against the complainant case would legitimize an action by the City Council that is considered to constitute an infringement.

Finally, with regard to the allegations referring to the fact that the inspector already knew the details of the instance and of the mail that the City Council sent him, it should be noted that these manifestations are not credible in the eyes of the facts reported and the documentation analyzed, since it does not seem reasonable to infer that the inspector already had the same documents and information that he requested from the City Council. The police report issued by this inspector on 03/09/2020 does not support the statement made by the City Council, which is also not accompanied by any evidentiary support. And apart from that, it should be borne in mind that if there had not been a proper communication of data, this would not prevent the processing carried out to be considered illegitimate and, consequently, constituting an infringement.

2.3. On the classification of the facts as a very serious offence

As a subsidiary request to the dismissal or suspension of the procedure, the City Council requests that it be charged with a minor infringement, instead of a very serious one. In his opinion, the imputation of a very serious infringement violates the principle of proportionality, because the fact of sending the request by email "can only amount to a mere formal non-compliance", and the City Council acted in this way " to give agility to another public administration that required information for the investigation of the commission of reported crimes, and which therefore affected public safety and tranquility, in addition to obeying the need for prosecution of these facts."

These allegations cannot be estimated either, since the applicable tax rate - which is set out in the following rationale - qualifies the imputed facts as a very serious infringement, and not a minor one.

For the same reason, this classification of the imputed facts cannot be altered by the fact that the communication was a specific event and not repeated over time. Equally, the

classification of the facts as a very serious offense does not necessarily require that they be linked to a certain behavior that merits the Authority proposing disciplinary actions against the person who authored the communication.

In any case, and in joint response to certain allegations, it should be pointed out that the sanctioning regime provided for public administrations, and therefore applicable to the City Council, foresees the end of the procedure with a warning (and, from 9 /05/2023, with a declaration of infringement). Therefore, it does not provide for the imposition of a pecuniary penalty, whether a minor, serious or very serious offense is charged.

For this reason, it is necessary to dismiss the allegations in the proposal referring to several criteria for grading the sanction, such as the lack of grief or recidivism, since the sanction that is imposed to consider that the facts are constitutive of very serious offense (a warning) is the same as would be imposed if the facts were classified as a minor offence.

2.4. About the proposed test

The City Council has requested the practice of two tests:

- First, a test consisting of the Authority asking the Court of Inquiry no. (...) of (...) to report on the processing status of preliminary proceedings no. (...) /20 (...) . In the statement of objections to the proposal, he adds that, if the opening of the oral trial has been declared against the person making the complaint, the criminal type under which the accusation has been made should be indicated. Derived from this request, requests the suspension of this sanctioning procedure.

  Regarding this, it is necessary to refer to the agreement that the instructor adopted on 05/29/2023, which is partially transcribed below (legal basis 2n):

  > "(...) the evidence proposed by the City Council of (...) is unnecessary for the resolution of this procedure, since the judicial process referred to by the City Council deals with different facts that can be separated from facts that are imputed to the City Council in this sanctioning procedure. In other words, in order to solve the present procedure it is not essential to know whether the reporting person illegally accessed the police data and whether he committed a crime of discovery and disclosure of secrets, issues that are the subject of instruction in the judicial process mentioned This information would not contribute to clarifying the facts that are the subject of this procedure, nor would it alter the list of charges made at the City Council."

- Secondly, in the statement of objections to the proposal, the City Council has requested that the Authority ask the DGP to confirm that on 01/06/2021 it requested the City Council of (...) copy of the disputed instance and mail, and that provides a copy of the office; also, to confirm that he had previously requested the same documentation and to indicate the reason for which he requested it.

  This request for evidence is extemporaneous, since it should have been proposed in the evidence phase and not in the pleadings procedure before the proposal, so it must be rejected . Notwithstanding this, it should be noted that the proposed test is not considered relevant because it is unnecessary, for the reasons set out below.

In this procedure it is not disputed that the ME inspector requested the head of the Local Police of the City Council of (...) to send him the complaints that the City Council had received about the house where he lived . However, nothing prevented the City Council from providing him with the information without sending the referred request and email, and without identifying the affected persons.

Nor is it contested that, on a date subsequent to the imputed facts (that is, after 03/09/2020), the DGP required the City Council to provide the contested instance and mail. In that other case - unlike the present one - the communication was part of an open police investigation and had the purpose of sending the documentation to a judicial body. Specifically, and as indicated in the official dated 01/06/2021 that the DGP mentions - which is not disputed-, the Internal Affairs Division of the DGP requested this documentation from the City Council in the framework of the police proceedings (...) / (...) (...) , with the purpose of referring it to the court, to whom on 07/20/2021 the instructor of one of the disciplinary procedures had communicated certain facts that he considered could constitute a crime of discovery and revelation of secrets. It is worth saying that the legitimacy in which this second communication of data took place does not make the first, which was not based on any legal basis and which served a different purpose, legitimate.

3. Legal qualification of the facts imputed and now proven

In relation to the conduct described in the proven facts section, it is necessary to go to article 5.1. *a* of RGPD, which includes the principle of lawfulness and establishes that: " 1. Personal data will be: a) treated in a lawful, fair and transparent manner in relation to the interested party ("lawfulness, loyalty and transparency"). "

In order to consider a treatment lawful, one of the legal bases provided for in article 6 of the RGPD must be present. As stated in the 2nd legal basis, from the set of facts and documents analyzed, the concurrence of any legal basis provided for in this precept cannot be seen. Therefore, the communication of data carried out by the City Council of (...) is considered an illegitimate treatment, and specifically constitutive of the infringement 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. "

The conduct addressed here has been included as a very serious offense in article 72.1. *a* of the LOPDGDD, as follows: " a) The processing of personal data that violates the principles and guarantees established by article 5 of Regulation (EU) 2016/679 ."

4. penalty

Article 77.2 of the LOPDGDD provides that, in the case of infractions committed by those responsible or in charge listed in article 77.1 of the same law, the competent data protection authority:

> "(...) must issue a resolution that sanctions them with a warning (...).
>
> 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."

Article 21.2 of Law 32/2010 is pronounced in similar terms .

5. Corrective measures

Faced with the finding of the violations provided for in article 83 of the RGPD, article 77.2 of the LOPDGDD provides that the resolution that is issued: "must also establish the appropriate measures to be adopted so that the conduct ceases or correct the effects of the offense that has been committed." And article 21.3 of Law 32/2010 is pronounced in the same sense.

In this case, the imputed facts refer to a specific event which, although it has led to a succession of subsequent events, has its origin in the subsequent action of the ME inspector. Therefore, it is not considered necessary for the City Council to adopt corrective measures.

resolution

For all this, I resolve:

1. Admonish the City Council of (...) as responsible for an infringement provided for in article 83.5. *a* in relation to article 5.1. *a* , both of the RGPD.

   It is not necessary to require corrective measures to correct the effects of the infringement, in accordance with what has been set out in the 5th legal basis.

2. Notify this resolution to the City Council of (...) .

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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the accused entity can file an appeal 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 Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of the Law 29/1998, of July 13, regulating 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 under 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