

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

RESOLUTION of the rights protection procedure no. PT 1/2018, urged (...) against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 08/01/2018 it was registered with the Catalan Data Protection Authority, a letter from Mr. (...) (hereinafter, the person claiming), for which he formulated a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the General Directorate of the Police of the Department of 'Interior.

Specifically, the person making the claim stated that through a letter submitted on 01/12/2017 he had requested from the DGP access to his personal data contained in the Police Information System file of the Generalitat de natural persons (SIP PF), and that this body had not given him a response to his request for access at the time of formulating the present claim. The claimant provided a copy of the certification as he had submitted the access request to the DGP on 12/01/2017.

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on data protection of personal character (hereafter, RLOPD and LOPD, respectively), by means of an official letter dated 09/01/2018 the claim was transferred to the DGP so that within 15 days it could formulate the allegations that relevant estimates

3.- The DGP made allegations by means of a letter dated 01/25/2018, -received by the Authority on the same date- in which it stated literally that: "on December 28, 2017, the sole request made by the interested person."

The claimed entity provided, together with its statement of objections, a copy of the request for access presented by the claimant here, as well as of the resolution adopted by the DGP regarding the request presented, and of proof of notification of the same to the person making the claim.

Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2.- Article 15 of the LOPD, in relation to the right of access, determines the following: "1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.

2. The information can be obtained by simply consulting the data through visualization, or indicating the data that is the subject of treatment through

written, copy, telecopy or photocopy, certified or not, in a legible and intelligible form, without using keys or codes that require the use of specific mechanical devices.

3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

For its part, article 27 of the RLOPD, in its first and second sections, provides the following regarding the right of access:

"1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications made or planned for this data.

2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.

However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD establishes the following:

"1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request. After the deadline has passed without an express response to the access request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.

In the event that it does not have the personal data of those affected, it must also notify them within the same period.

2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.

3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

Finally, article 18 of the LOPD, regarding the protection of rights of access, rectification, opposition and cancellation, establishes in its sections 1 and 2 the following:

"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.

2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable, of the competent body of each

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

autonomous community, which must make sure of the origin or impropriety of the denial."

In line with the above, article 16.1 of Law 32/2010 provides:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP notified the corresponding resolution regarding the request for access presented by the person making the claim on 01/12/2017, since precisely the reason for the complaint of the person who initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In accordance with article 29 of the RLOPD, the DGP had to resolve and notify the request for access within a maximum period of one month from the date of receipt of the request.

In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the request of a party - as is the case - it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least have occurred the duly accredited notification attempt (art. 40.4 LPAC).

In this respect, it is certified that in relation to the access request made on 12/01/2017 before the DGP, this body resolved in an estimated sense on 12/28/2017, which was referred to the affected by means of office of 29/12/2017, which was not, however, registered as of departure until 12/01/2018, and notified to the interested party on 16/01/2018, i.e. once had exceeded the maximum period of one month provided for the purpose, and when the person concerned had already submitted the claim to this Authority.

Consequently, the assessment of the claim for formal issues proceeds, which was based precisely on the lack of response to the request to exercise the right of access, since the DGP did not resolve and notify in the form and time said request submitted by the affected person.

4.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the manager of the file must be required so that in the term of 10 days make effective the exercise of

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

right In the present case, however, it is proven that the DGP has already made effective the right of access that is the subject of the claim, even if it was extemporaneously. This is why it is not necessary to make any request to the DGP.

5.- However, as a result of the analysis of the content of the DGP's response to the access request, it is considered appropriate to make a recommendation. Indeed, it has been noted in the response of the DGP that it has recorded data relating to the identification of the claimant here in 2010. In this regard, it must be taken into account that art. 16.3 of Organic Law 4/2015, of March 30, on the protection of public safety, establishes the ex officio cancellation of the entries made in the identification register books, once three years have passed since settlement, a deadline that would have already been exceeded by far. This is why the DGP is recommended to proceed with the cancellation of said information.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mr. (...) against the Management General of the Police of the Department of the Interior for formal reasons, without it being necessary to make any request in accordance with the provisions of the 4th legal basis, without prejudice to the recommendation made in the 5th legal basis.

Second.- Notify this resolution to the General Directorate of the Police of the Department of the Interior and to the person making the claim.

Third.- Order the publication of the Resolution on the Authority's website (www.apd.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 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal 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 Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)

Machine Translated