

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

RESOLUTION of the rights protection procedure no. PT 9/2018, urged by Mr. (...) against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 09/02/2018 it was registered with the Catalan Data Protection Authority, a letter from Mr. Carles Herrera Plana on behalf of Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access he had previously exercised before the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia (hereinafter, the DGP).

Specifically, the claimant complained that through a letter submitted by administrative mail on 03/07/2017 he had requested access to his personal data contained in the Police Information System file before the DGP of the Generalitat for natural persons (SIP PF), in order to subsequently request its cancellation, and that this body had not given him a response to his request for access at the time of formulating this claim The claimant provided a copy of the access request submitted to the DGP.

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 nature (hereafter, RLOPD and LOPD, respectively), by means of official notice dated 02/13/2018 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 through a letter dated 08/03/2018, in which it literally stated that "In response to your office, in which you give us a transfer of a letter presented by Mr. (...) [person here claiming], and you grant us time to make allegations, I must inform you that on August 9, 2017, the request made by the person concerned was resolved" (...).

The claimed entity provided together with its statement of objections, a copy of the access request submitted with entry registration to the DGP on 07/07/2017, of the resolution adopted on 09/08/2017 with respect to the application submitted, together with the notification of the same with an exit registration dated 08/23/2017, as well as the proof of notification of the same on 09/07/2017, to the address of the legal representative specified in the access request.

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:

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

- "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 through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, 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:

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

"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 autonomous community, which must make sure of the validity or inadmissibility of the refusal."

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 resolved and notified the claimant's request for access, since precisely the reason for the complaint of the person who initiated the present guardianship procedure rights was the fact of not having obtained a response to his request for access at the time of presenting the claim that initiated the present procedure.

In this respect, it is certified that on 07/07/2017 the DGP received the letter of the person here claiming that he exercised his right of access to his personal data; and it is also certified that the DGP resolved the request for access in an estimated sense, which was notified on 07/09/2017 to the postal address provided for that purpose by the representative of the claimant here.

So, contrary to what was claimed in the claim presented on 9/02/2018 before this Authority, months earlier the DGP had notified the claimant of the resolution of the access request, although when did so, the maximum period of one month foreseen for the purpose had been slightly exceeded, non-compliance which obliges the present claim to be considered in part, for formal reasons. It must be emphasized, however, that the present claim was based on the fact that the DGP had not responded to the request, when in reality the resolution had been notified long before this claim was presented. In any case, in the event that neither the affected person nor their representative have the resolution of the DGP with which the right of access was made effective, it is considered appropriate to send a copy with the notification of this resolution

For all that has been exposed,

RESOLVED

First.- Estimate in part, for formal reasons, the guardianship claim made by Mr. (...) against the General Directorate of the Police of the Department of the Interior, and dismiss as to the merits given that when the claim was presented to the Authority, it had already been notified of the resolution of the request in which the right was exercised.

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

Second.- Notify this resolution to the General Directorate of the Police of the Department of the Interior and the person claiming, in the latter case, together with a copy of the resolution of the DGP dated 08/09/2017 by which loved the right of access.

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)