

Carrer Rosselló, 214, Esc. A, 1r 1a
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RESOLUTION of the rights protection procedure no. PT 25/2018, urged against the City Council of l'Hospitalet del Llobregat.

Background

1.- On 5/19/2018 it was submitted to the Catalan Data Protection Authority, a letter from 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 City Council of l'Hospitalet de Llobregat (hereinafter, the City Council) . Specifically, the person making the claim raised the claim in the following terms: "(...) that this past day 03-09-2018, and through instance with registration number (...) I requested the Social Services copy of a report in which it is recognized that I was waiting for food for 29 consecutive days. So

I myself request a copy of the instance by which I requested that basic food aid from Hospitalet's social services. AND UNTIL THE DATE (...) THE REQUEST HAS BEEN FULFILLED BY THE SOCIAL SERVICES OF THE LLOBREGAT HOSPITAL COUNCIL. (...)"

The person claiming provided a copy of a report dated 19/12/2012 from the City Council of l'Hospitalet de Llobregat regarding the "situation of Mr. Social."

2.- On 5/25/2018 this Authority required the claimant to amend his application dated 5/19/2018 since it was not duly signed, which he did on 5/31/ 2018, when he also brought a copy of the request dated 9/3/2018, registered at the City Council on the same day, through which the person had exercised the right of access before formulating the present claim

3.- On 4/6/2018, the person making the claim submitted to this Authority a copy of an April 2018 office by which the City resolved his request for access dated 9/3 /2018. Regarding this office of the City Council, which according to the complainant had been notified on 27/5/2018, the complainant stated the following: "(...) que como ustedes verán se niegan to rectify the report (se niegan to state in the report that it took 29 days to receive basic food) as well as to hand over the request for basic food (...)

We remind the public employees of Social Services who have exceeded the time limit regarding their resolution as well as that it lacks of administrative validity even though it lacks a register of departure from Ayuntamiento de Hospitalet. (...) Please note that the petition is being resolved 2 and a half months after the request was submitted and in a negative sense to the entirety of the petition."

4.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, whereby the Regulation for the deployment of Organic Law 15/1999, of 13 December, on the protection of personal data (hereafter, RLOPD and LOPD, respectively), by means of an official document dated 6/18/2018, the

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claim to the City Council so that within 15 days it formulates the allegations it deems pertinent.

5.- The City Council made allegations by means of a letter dated 6/26/2018, registered at the Authority on 7/4/2018, in which it set out, in summary, the following:

- That: "Mr. (...) requests a copy of the October 2012 power request instance from your instance, consulted the file of your instances, there is no instance of October 2012 that refers on request for food."

- That: "he also requests a report issued by the Social Services and sent to the Ombudsman on January 4, 2013 and which is the same as attached to his request."

ÿ That: "what follows from his writings, what he requests is not copied from the report, since he is attaching it, but rather a rectification of the said report in which it is made clear literally "que transcurrieron 29 días para recibir the food aid that was requested in that year.(...)"

ÿ That: "as a result, what you are requesting is not access to data but a rectification of the content of the social services report, a request that is not considered pertinent. (...)"

- That: "Given that Mr. (...) he has made repeated requests which have been answered on countless occasions and he has always been provided with a copy of everything he has asked for.

In view of everything that has been presented, we consider that at no time has the right of access to your data been violated and that what you are requesting is not access to personal data."

Along with the allegations, the City Council provided the following documentation:

- 1) Copy of a request dated 4/6/2018, registered on the same day at the City Council, through which the claimant requested "a copy of the instance by which he requested basic food in October 2012 (...).
Report dated 04/1/2018 is attached."
- 2) Office of April 2018 by means of which the City Council answered the request of the claimant here dated 9/3/2018 as follows: "In response to your request number (...), dated March 9, 2018, in relation to the request for documents.

We inform you that your request has already been made repeatedly on other occasions and has been answered.

The documentation you request is the same that you attached to the present instance, so this report is already in your power."

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.- This resolution is issued in accordance with the provisions of the LOPD and the RLOPD, as these are the rules applicable at the time when the right of access that is the subject of the claim was exercised. Therefore, the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data and the free movement of these (RGPD). In any case, it is worth saying that the eventual application of the RGPD to the present case would not alter the pronouncement made in the dispositive part of this resolution.

3.- 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 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.

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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 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."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the City Council resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely one of the reasons for the complaint of the person who initiated the present rights protection procedure was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 9/3/2018 a letter was entered in the City Hall Registry by the person here claiming, through which he exercised his right of access to "a copy of my request for basic food of 10-14-2012 and report on the reason that this social aid (social emergency) was obtained on 11-13-2012 with the result that it took 29 days to receive the food aid requested that year." It is worth noting that in this request the claimant indicated the address of his representative for notification purposes.

In accordance with article 29 of the RLOPD, the City Council had to resolve and notify the access request 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 administrations

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public authorities of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party - as is the case - begins from the date on which the request was entered in the registration 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 produced the duly accredited notification attempt (art. 40.4 LPAC).

Well, the City Council has proven to have responded to the request for access made by the now claimant through a formal letter in April 2018 - without specifying the date. Regarding the notification date of this response office, the City Council has provided a document from the courier company called "Certified letters with acknowledgment of receipt", dated 05/09/2018, and in which it appears stamped the date of 11/05/2018, as the date that the notification could have been made. In this regard, however, the person making the claim has stated that he received this office on 05/27/2018. Be that as it may, in both cases the one-month deadline that began on 03/09/2018 when the City Council received the access request would have been exceeded by far.

Consequently, at this point, the estimate of the claim proceeds, which was based on the lack of response to the request to exercise the right of access, since the City Council did not resolve and notify in a timely manner said request submitted by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

5.- Once the above has been established, it is appropriate to analyze the substance of the claim, that is to say, if the response given by the City Council to the request of the now claimant, conformed to the precepts transcribed in the foundation of third right. Indeed, it is necessary to go into the substance because the claimant here expresses his disagreement with the response received from the City Council.

As a starting point, it should be borne in mind that articles 15 of the LOPD and 27.1 of the RLOPD configure the right of access as the right of the affected person to obtain information about their own personal data that is being processed and, if applicable, on the purpose of the treatment, as well as the information available on the origin of the aforementioned data and the communications made or planned.

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of cancellation, rectification or opposition.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

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It is proven in the procedure that the person claiming on 9/3/2018 exercised the right of access in the following terms: "Por medio de este escrito I come to request the following documents that are in my file: copy of my request for food basic of 10-14-2012 and report that motivated that this social aid (social emergency) was obtained on 11-13-2012 with the result that 29 days passed to receive the food aid that was requested that year."

It is also recorded that the City Council resolved this request by means of an official letter of April 2018 as follows: "In response to your request number (...), dated March 9, 2018, in relation to to the request for documents.

We inform you that your request has already been made repeatedly on other occasions and has been answered.

The documentation you request is the same that you attached to the present instance, so this report is already in your power."

With respect to this response from the City Council, the claimant here, by means of a letter dated 4/6/2018, expressed his disagreement with this Authority in the following sense: "(...) que como ustedes verán se niegan a rectify the report (they refuse to state in the report that it took 29 days to receive basic food) as well as to hand over the request for basic food and for which it was scheduled for 10-29-2012 (visits are scheduled for 15 days).

The request for remedy and rectification was carried out on March 9, 2018 with registration number (...).(..."

For its part, the City Council, during the hearing procedure granted in this procedure, has expressed respect to the request of the claimant here: (...)"consulting the file of its instances, there is no instance of October 2012 that refers to food request.

That he also requests a report issued by the Social Services and sent to the Grievance Ombudsman on January 4, 2013 and which is the same as attached to his request.

That what emerges from his writings, what he requests is not copied from the report, since he is attaching it, but rather a rectification of the said report in which it is literally made clear "que transcurrieron 29 días para recibir la ayuda de food that was requested in that year."

(...) Consequently, what he is requesting is not access to data but a rectification of the content of the social services report, a request that is not considered pertinent. (...)

Given that Mr. (...)he has made repeated requests which have been answered on countless occasions and he has always been provided with a copy of everything he has asked for.

In view of everything that has been presented, we consider that at no time has the right of access to your data been violated and that what you are requesting is not access to personal data."

Having expressed the positions of the parties, and once the documentation provided during this procedure has been reviewed, this Authority makes the following considerations.

The first thing to note is that from the literal tenor of the request dated 9/3/2018 it can be inferred that the person claiming exercised the right of access provided for in the LOPD, given that in the request he requested two documents that contained information relating to his person: the first, a request dated 10/14/2012 through which the claimant asked for "basic food" and the second, a "report that motivated that This social aid (social emergency) was obtained on 11-13-2012 with the result that 29 days passed to receive the food aid that was requested that year."

In relation to the first of the documents requested by the claimant here ("copy of my request for basic food of 14-10-2012"), the City Council has stated in the hearing procedure that in its files no there is such a document, which should be noted, if it had existed, it would have been generated 8 years ago. Therefore, in accordance with the provisions of article 29 of the RLOPD, for cases in which the person in charge (the City Council) does not have the personal data of those affected, what was relevant was notify the applicant of this deficiency, which the City Council did not do in the April 2018 extemporaneous response service.

Regarding the second of the documents requested, that is, "report that motivated that this social aid (social emergency) was obtained on 11-13-2012 with the result that 29 days passed to receive the food aid que se solicitó dicho año", from the response given by the City Council it can be inferred that this report was the one that the claimant himself had attached in his request dated 9/3/2018.

It seems, however, that the person claiming is not asking for access to a report from the City Council that he already had in his possession, but what he wants (according to the person making the claim himself in the letter dated 4/6/2018 addressed to this Authority) is for the City Council to modify the content of the report. That is why the claimant here complains in the following terms: "Que como ustedes verán se negan a rectificación de report (they refuse to expose in the report that it took 29 days to receive basic food) (...) The petition for remedial action and rectification was carried out on March 9, 2018 with registration number (...)."

That being the case, the first thing to say is that this claim to modify the report has no place in the right of access, which, as explained above, allows access to the personal data available to the person in charge. What does not protect this right is to require the person in charge (City Council) to draw up a certificate in certain terms.

On the possibility that the claim falls within the right of rectification regulated in art. 16 of the LOPD and 31 of the RLOPD, the first thing to say is that, contrary to what the claimant states, in the request dated 9/3/2018 with registration number (...), no this request for rectification is noted. In any case, it is worth saying that an eventual request for rectification in the sense expressed by the claimant here would not fall within the right of rectification regulated by articles 16 LOPD and 31.1 RLOPD, given that the object of this right is the modification of those personal data that are inaccurate or incomplete so as not to accurately reflect the current situation of the affected person. This is not what is happening here, as the rectification sought by the claimant here

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consisting of stating "that it took 29 days to receive basic nutrition", would fall within the authority of the corresponding administrative body to issue the certificates it is entitled to issue. The problem here is not that the City Council has recorded erroneous or inaccurate personal data regarding the now claimant, but rather that the latter wants the certificate to have more detailed content. Consequently, it is not up to this Authority to pronounce on the matter, in accordance with what is determined by article 31 of the Statute of Autonomy of Catalonia and article 1 of Law 32/2010.

In short, from a substantive perspective of the regulated right of access to the LOPD and the RLOPD, as far as the substance is concerned, the present claim must be partially assessed, given that in relation to the request for "a copy of my request for basic food of 14-10-2012", the City Council had to expressly reply that it did not have such a request, which it did not do. On the contrary, it is appropriate to dismiss the claim on the merits regarding the claim relating to the modification of the City Council's report, for the reasons just stated.

6.- 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 -even if it is partial-, the person in charge of the file so that within 10 days the exercise of the right becomes effective. However, it is considered that in the present case it is not appropriate to make such a request, first of all, because with respect to the formal estimate for not answering the access request in time, it is known that the City Council would have answered the request of access by means of office of April 2018 which the claimant himself claims to have received, even if it was after he had urged the present claim. And secondly, because in the estimated part from a substantive point of view, for not having communicated to the claimant that he did not have the 2012 food request instance, it is unnecessary to require the City Council to inform the interested party, who will already be aware of it through the notification of this resolution.

For all that has been exposed,

RESOLVED

First.- Partially estimate the guardianship claim made by Mr. (...) against the City Council of Hospitalet de Llobregat, for the reasons indicated in the 4th and 5th grounds of law, without the need to make a request in accordance with what has been indicated in the 6th ground of law.

Second.- Notify this resolution to the City Council of l'Hospitalet de Llobregat and 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 Authority for the Protection of

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Data and 14.3 of Decree 48/2003, of February 20, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties may file, as an option, an appeal for reinstatement 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 or file an appeal directly administrative litigation before the administrative litigation 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, regulator of the administrative contentious jurisdiction.

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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)

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