

Carrer Rosselló, 214, Esc. A, 1r 1a
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RESOLUTION of the rights protection procedure no. PT 26/2018, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 28/5/2018 it was submitted to the Catalan Data Protection Authority, a letter from Mr. (...) (hereinafter, claimant) for which he made a claim for the alleged neglect of the right of cancellation, which he had exercised previously before the General Directorate of Police (hereinafter, DGP) of the Department of the Interior of the Generalitat of Catalonia. Specifically, the claimant requested that his personal data included in the SIP PF file be deleted.

The claim was formulated in the following terms: "That on 05.02.2018 I requested the General Directorate of the Police to exercise my right to cancel the data contained in the SIP file (...)

The aforementioned cancellation request was sent on 05.02.2018 by certified letter with acknowledgment of receipt (...), and was received on 07.02.2018 by the Management General of the Police, without to date having been expressly resolved to my cancellation request in accordance with the content of art.32 of Royal Decree 1720/2007 and Art. 17 of Instruction 12/2010, of September 28, 2010, having passed the legally established term to resolve my data cancellation request, without my request having been answered expressly, reason for which the present claim for protection of rights is appropriate in order to make effective my right of access.(...)"

Along with the claim, the claimant provided various documentation regarding the exercise of this right:

1) Copy of the request dated 5/2/2018 through which the claimant exercised the right of cancellation before the DGP as well as the documentation that attached to the same.

2) Receipt from the company Correos certifying the sending of the application dated 5/2/2018 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 an official letter dated 5/29/2018, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations that I thought relevant.

3.- The DGP made allegations by means of a letter dated 12/6/2018, in which it set out, in summary, the following:

- That: "(...) I must inform you that on May 22, 2018, the request made by the interested person was resolved. As you requested, I am sending you a copy of the following documentation:

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1. Copy of the cancellation request submitted.
2. Copy of the resolution of the submitted request, by which the cancellation was estimated with respect to some of the personal data, while the cancellation was rejected with respect to the data related to the police proceedings that resulted in a procedure processed by the Court of Inquiry no. 3 of Sant Feliu de Guíxols.

3. Copy of the notification of the resolution.

Regarding the proof of receipt of the notification of the resolution, we do not yet have this document. That and this, I inform you that the notification was registered at the post office with the reference (...) and according to the website of this company it was notified on June 6, 2018. We attach to this report, supporting documentation from this end."

As the DGP announced, along with the allegations, a copy of the following documentation was provided:

- 1) Copy of the request dated 5/2/2018, initially registered with the DGP on 7/2/2018, through which the claimant exercised the right of cancellation before the DGP.
- 2) Copy of the resolution dated 5/22/2018 by means of which the DGP partially estimated the right of cancellation exercised by the claimant on 5/2/2018.
- 3) Copy of the official document dated 1/6/2018, registered for departure on 5/6/2018, by means of which the DGP notified the claimant of its resolution dated 22/5/2018.
- 4) Proof from the website of the company Correos by means of which it is certified that the shipment with code (...) was delivered to its recipient on 6/6/2018.

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 cancellation that is the object of the claim was exercised.

3.- Article 16 of the LOPD, relating to the right of cancellation, determines the following:

"1. The person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.

2. The personal data whose treatment does not comply with the provisions of this Law must be rectified or cancelled, where appropriate, and, in particular, when these data are inaccurate or incomplete.

3. The cancellation results in the blocking of the data, and they must only be kept at the disposal of public administrations, judges and courts, for the attention of the possible responsibilities arising from the treatment, during the term of

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prescription of these responsibilities. Completion of this term, the deletion must proceed.

4. If the rectified or canceled data has been previously communicated, the person in charge of the treatment must notify the person to whom they were communicated of the rectification or cancellation, in the event that the latter maintains the treatment, who must also proceed to cancellation.

5. Personal data must be kept for the periods provided for in the applicable provisions or, where applicable, the contractual relationships between the person or entity responsible for the treatment and the interested party."

The present case refers to the cancellation of data included in a police file, which is why the provisions of art. 22.4 and 23 of the LOPD, which provide the following:

"4. Personal data recorded for police purposes must be deleted when they are no longer necessary for the investigations that have motivated their storage.

For these purposes, the age of the affected person and the nature of the data stored, the need to keep the data until the conclusion of an investigation or a specific procedure, the final judicial decision, especially acquittal, pardon, rehabilitation and limitation of liability.

Article 23. Exceptions to the rights of access, rectification and cancellation.

1. Those responsible for the files that contain the data referred to in sections 2, 3 and 4 of the previous article may refuse access, rectification or cancellation depending on the dangers that may arise for the defense of the State or public security, the protection of the rights and freedoms of third parties or the needs of the investigations that are being carried out.(...)"

For its part, article 31.2 of the RLOPD, provides the following:

"2. Exercising the right of cancellation results in the deletion of data that is inadequate or excessive, without prejudice to the blocking duty in accordance with these Regulations. (...)"

Article 32 of the RLOPD, sections 1 and 2, determines the following:

"1. (...)

In the cancellation request, the interested party must indicate which data they are referring to, and must provide the documentation that justifies it, if applicable.

2. The person in charge of the file must decide on the request for rectification or cancellation within a maximum period of ten days from the receipt of the request. After the deadline has passed without an express response to the 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 the affected person, it must also be communicated within the same period."

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

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"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, of the Catalan Data Protection Authority, provides the following:

"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, first of all, whether the DGP has resolved and notified, within the period provided for by the applicable regulations, the right of cancellation exercised by the person making the claim, since precisely the reason for complaint by 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 7/2/2018 a letter was entered in the Registry of the DGP from the person here claiming, through which he exercised his right to cancel his personal data that appeared in the file SIP PF.

In accordance with articles 16 LOPD and 32 RLOPD, the DGP had to resolve and notify the request for cancellation within a maximum period of ten days 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).

Well, according to the proceedings, the DGP issued a resolution on date 22/5/2018, which was not notified to the person now claiming until 6/6/2018, in accordance with what the DGP has certified during the hearing procedure, so the deadline was exceeded regulations established for the purpose.

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Consequently, the estimate of the claim proceeds, which was based on the lack of response to the request to exercise the right of cancellation, since the DGP did not resolve and notify the affected person in the form and time frame of said request. This notwithstanding what will be said below regarding the substance of the claim.

5.- As seen in the background, the resolution dated 5/22/2018 of the DGP estimated the cancellation regarding some of the personal data of the claimant here, while rejecting the cancellation regarding the data related to the police proceedings (number 624902/2015) which resulted in a procedure processed by the Court of Inquiry no. 3 of Sant Feliu de Guíxols.

In this regard, it is worth saying that a rights protection procedure (No. PT 57/2016) requested by the claimant here and which aimed to elucidate the origin or not of the denial was already processed and resolved in this Authority of the right of cancellation with respect to the data related to the same police proceedings (number (...)/2015) mentioned in the previous paragraph. In the resolution issued in that procedure on 12/22/2016, it was indicated that the intended cancellation did not proceed, given that the applicable limitation period did not seem to have passed, since the proceedings were from 2015. However, in order to reconcile the right to the protection of the data of the affected person and the needs derived from police investigations, in that same resolution the DGP was required to make a note in the controversial police proceedings, clearly visible, the provisional dismissal decreed by means of a firm interlocutory, noting that the DGP carried out, as stated in the official of the DGP dated 11/1/2017 by means of which, this entity notified the Authority of compliance with the request made in that resolution dated 12/22/2016.

Therefore, as regards the substantive issue of the present claim, this Authority had already given its opinion in the aforementioned procedure, without the time that has passed allowing the considerations made there to be distorted regarding the non-prescription of the facts investigated in those proceedings. In this respect, the affected person has not expressed any circumstances that would lead to modifying the considerations made in the previous statement, which is why it is appropriate to refer to what was argued there.

(...)
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 protection of rights, the person in charge of the file must be required so that within 10 days the exercise of the right becomes effective. However, in the present case, even if the claim is partially accepted, for formal reasons, it is not appropriate to request the DGP in this regard, given that the claimed entity would have already notified the resolution to the cancellation request, despite having done it extemporaneously. On the other hand, as announced in the previous legal basis, it is not appropriate to require the DGP in order to accredit the notation relating to the provisional dismissal decreed by means of a final interlocutory notice given that it has already done so following the procedure of protection of rights no. PT 57/2016.

For all that has been exposed,

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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, for not having responded to the request for data cancellation within the period established by the applicable regulations.

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)