

Carrer Rosselló, 214, Esc. A, 1r 1a
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RESOLUTION of the rights protection procedure no. PT 33/2018, urged by Ms. (...) against Arenys de Mar City Council.

Background

1.- On 15/6/2018 it was submitted to the Catalan Data Protection Authority, a letter from Ms. (...) (hereafter, claimant), for which he made a claim for the alleged neglect of the right of cancellation that he had previously exercised, on 4/8/2017, before the Arenys de Mar City Council (henceforth, the City Council). Specifically, the claimant requested that the processing of his data contained in the Minutes of the Plenary of date (...)2013 and which were published in the link (...) cease

The claimant provided various documentation relating to the exercise of this right:

- 1) Copy of the instance dated 4/8/2017 through which the claimant exercised the right of cancellation before the Arenys de Mar City Council.
- 2) Copy of the official document dated 8/14/2017 by means of which the City Council replied to the person claiming his request of 8/4/2017.
- 3) Printout of a screen showing that the Google search engine indexes the Minutes of (...)2013 that contained the personal data of the claimant here.
- 4) Copy of the Minutes of the Plenary meeting dated (...)2013.

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 6/27/2018 the claim was transferred to the City Council, so that within 15 days it formulated the legations that he considered relevant.

3.- The City Council made allegations by means of a letter dated 11/7/2018, in which it set out, in summary, the following:

ÿ That: "Arenys de Mar City Council received the claimant's request to exercise the right of cancellation on August 4, 2017, in which cancellation was requested. lation of the information relating to the name and surname of the claimant from the Minutes of the Plenary Session of January 21, 2013 contained in the link (...)
The information contained in the link that was provided in the request was removed, being replaced by that contained in the following link, the information being anonymized before its publication (DOCUMENT 1).
[https://seuelectronica.arenysdemar.cat/ARXIUS/2013/SECRETARIA/\(...\)](https://seuelectronica.arenysdemar.cat/ARXIUS/2013/SECRETARIA/(...))
As can be seen in the metadata of DOCUMENT 1, the City Council proceeded to anonymize the data contained in the first link within the deadline for responding to the request for the right of cancellation, specifically on August 9 2017 (DOCUMENT 2).

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Once the Plenary Minutes (DOCUMENT 1) were anonymized, the City Council proceeded to communicate the result of the cancellation carried out on August 18, 2017, as can be seen in the exit log of DOCUMENT 3, complying with the deadlines established by the LOPD and Royal Decree 1720/2007, of December 21, which approves the Development Regulations of the LOPD (hereafter RLOPD), since the 15th and 17th are public holidays (not skilled), respectively, throughout the State and in the municipality of Arenys de Mar, with regard to the calculation of administrative deadlines.

That being the case, and through the acknowledgment of receipt and reading, Arenys de Mar City Council states that the communication of DOCUMENT 3 was opened on August 22, 2017."

ÿ That: "The link that is the subject of the current claim before this Authority is a different link from the one that was the subject of the cancellation request of August 4, 2017, this City Council was not aware of the same until the receipt of the letter from this Authority."

ÿ That: "(...) being aware of the existence of the previous link, Arenys de Mar Council has proceeded to request the Open Administration Consortium of Catalonia (Consorti AOC) to remove it (DOCUMENT 4), since the page where the Plenary Minutes are located does not depend on the City Council but on this entity.
(...)

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

- 1) Copy of the Minutes of the Plenary of the City Council dated (...)2013 in which it is verified that the name and surname of the person here claiming, by their initials, operation that at the discretion of of the City Council involved the anonymization of the controversial data.
- 2) Printing of a screen through which the properties of the document containing the disputed Plenary Minutes are visualized.
- 3) Copy of the official document dated 8/14/2017 by means of which the City Council contested the right exercised by the claimant on 8/4/2017.
- 4) Printing of the email dated 3/7/2018 through which the City Council addressed the Open Administration Consortium of Catalonia (Consorti AOC) in order for it to delete the personal data of the claimant here.

4.- On 2/10/2018, the person making the claim submitted two letters to this Authority. In the first of them, she stated that her published data was still listed in the link (...). In the second of the letters, the person making the claim pointed out that: "the same plenary minutes of January 21 are uploaded in a different format, first they uploaded it in .pdf and now it is in .doc."

Along with this last letter, the claimant provided a copy of the Minutes of the plenary session of 01/21/2013 in .doc format.

5.- On 29/11/2018 from the Authority's Inspection Area it has been verified that the Minutes of the Arenys de Mar Plenary Meeting dated (...)2018 are still published on the internet at the link: <http://media.seu-e.cat/acteca/800600000/2013/> (...)

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Likewise, it has also been verified that in the City Council's Transparency Portal of Arenys de Mar, it appears published in the link (...), the Act of 21/01/2013 which contains personal data of the person here claiming.

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.- At the time when this resolution is issued, 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 treatment of personal data and the free circulation thereof (RGPD). However, this resolution is issued in accordance with the provisions of the LOPD and RLOPD, as these are the rules applicable at the time (before 05/25/2018) when the right of cancellation was exercised which is here object of claim.

3.- Having explained the antecedents, it is necessary to refer first of all to the fact that the present claim has been made under the protection of the right of cancellation, and it had done so previously when addressed to the City Council. However, in view of the terms in which the claimant formulated his claim before the City Council, it is established that it consisted in the City Council not disseminating on the internet the personal data relating to allegations and/or claims that had formulated against the municipal budget and the staff for the year 2013 that were included in the Minutes of the Plenum dated (...)2013.

This being the case, it must be concluded that the person now claiming did not want his personal data that the City Council has as data controller to be deleted, but what he was doing was opposing that his data contained in the Minutes of the Plenary of date (...)2013 figures in accessible on the internet.

Consequently, it must be considered that the person claiming exercised the right of opposition, since his will was to oppose a certain treatment, an option expressly included in article 6.4 of the LOPD, and which differs from right of cancellation since the exercise of the latter entails that the personal data whose cancellation is sought to be deleted from the file that covers the treatment, while in the opposition only the data of the treatment to which the affected person opposes (in this case, dissemination via the internet).

4.- In accordance with the above, it is necessary to analyze the present protection of rights from the perspective of the right of opposition, which is why it is appropriate to invoke the precepts that regulate it. Thus, article 6.4 of the LOPD provides the following:

"4. In cases where the consent of the affected person is not necessary for the processing of personal data, and as long as a law does not provide otherwise, the latter may object to its processing when there are reasonable and legitimate reasons for this to a specific personal situation. In this case, the person in charge of the file must exclude the data relating to the affected person from the processing."

Likewise, the regulation of the right of opposition and its exercise is completed with articles 34 and 35 of the RLOPD, in which the following is determined:

"Article 34. Right of opposition

The right of opposition is the right of the affected person so that the processing of their personal data is not carried out or that this processing ceases in the following cases:

- a) When your consent is not necessary for the treatment, as a result of there being a legitimate and well-founded reason, referring to your specific personal situation, that justifies it, provided that a law does not provide otherwise.
- b) When it comes to files whose purpose is to carry out advertising and commercial prospecting activities, in the terms provided for in article 51 of this Regulation, regardless of the company responsible for their creation.
- c) When the purpose of the treatment is the adoption of a decision referring to the affected person and based solely on an automated treatment of their personal data, in the terms provided for in article 36 of this Regulation.

Article 35. Exercise of the right of opposition

1. The right of opposition must be exercised through a request addressed to the data controller.

When the opposition is made based on letter a) of the previous article, the request must state the well-founded and legitimate reasons, relating to a specific personal situation of the affected person, which justify the exercise of this right.

2. The person in charge of the file must decide on the opposition request 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 those affected, it must also notify them within the same period.

3. The person responsible for the file or treatment must exclude from the treatment the data relating to the affected person who exercises his right of opposition or deny the interested party's request with reasons within the period provided for in section 2 d 'this article."

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:

"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."

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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."

5.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the City Council, faced with the opposition request of the person now claiming, acted according to the provisions of the rules transcribed in the previous legal basis.

As a starting point, it should be borne in mind that articles 6.4 of the LOPD and 34 of the RLOPD regulate the right of opposition as the right of the affected person to avoid the processing of their personal data or the cessation of this in certain cases, unless there is a law that provides otherwise.

The consequence that follows from articles 6.4 of the LOPD and 34 of the RLOPD, is the obligation of the person who exercises his right of opposition to accredit the concurrence of a legitimate and well-founded reason, referring to his specific situation personal, which justifies the cessation of the processing of their personal data. However, in those cases in which the treatment is unlawful, the legitimate and well-founded reason would become the unlawfulness itself.

In view of the above, it will be necessary to determine, first of all, whether in the specific case at hand we are dealing with a case in which the consent of the affected person is not necessary for the processing of their data. In other words, it is necessary to clarify whether we are faced with a case in which the treatment carried out by the person in charge of the file is lawful in accordance with the rules governing the fundamental right to the protection of personal data.

In the present case, it is certified that on 4/8/2017 a letter of the same date was entered in the City Council Register by the person here claiming, through which he exercised his right of opposition regarding his personal data that appeared published in the Minutes of the Plenary meeting dated (...)2013, which was found at the link (...)

The City Council, by official letter dated 8/14/2017, resolved the opposition/cancellation request dated 8/4/2017 in the following sense: "we have proceeded in accordance with articles 31 and 32 of the Royal Decree 1720/2007, which approves the Regulations for the development of Law 15/1999 to anonymize your personal data from municipal files." As has been done in the antecedents, what the City Council did to "anonymize" the controversial data, was to replace the name and surname of the claimant here, with his initials.

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The claimant also complains about the fact that it was possible to continue accessing a version of the Minutes in which it was identified with its name and surname, through the link (...), an end that this Authority has confirmed on 29/11/2018.

In this regard, the City Council has stated - in the hearing procedure granted during the processing of this rights protection procedure - on the one hand that, the Minutes of the Plenary Session dated (...)2013 published in the 'link (...) was replaced by another version in which the personal data of the claimant here would have been anonymized (by replacing the first and last names with their initials. This new version was published in 'link (...).

Regarding the other URL address referred to by the complainant, the City Council stated the following: "it is a different link from the one that was the subject of the cancellation request of August 4 of 2017, this city council had no record of the same until receiving the letter from this Authority." And in this regard he adds that "the Arenys de Mar City Council has proceeded to request the Administration consortium Oberta de Catalunya (AOC consortium) to remove it, since the page where the Plenary Minutes are published does not depend on the City Council but on this entity."

Having exposed the different positions of the parties, it is necessary to start from the base because the City Council decided to estimate the claim of the claimant here, so that there is no controversy on this point. The disagreement lies in whether the City Council executed its estimation decision correctly, that is to say, whether the right exercised has been fully satisfied. (...)

When dealing with the object of the complaint about the disclosure of personal data, it is not out of place to point out that this type of dissemination, even if it is not addressed to specific people but to an indeterminate plurality, must be considered as a communication of personal data, under the terms of article 11 of the LOPD, so that in order to consider this processing of personal data lawful, it is necessary to have the consent of the persons concerned, or a legal authorization.

In this regard, article 11 of the LOPD, when it regulates the communication of data, determines the following:

"1. The personal data subject to treatment can only be communicated to a third party for the fulfillment of purposes directly related to the legitimate functions of the assignor and the assignee with the prior consent of the interested party.

2. The consent required by the previous section is not necessary

a) When the assignment is authorized in a law (...)"

In accordance with this, given that it is inferred that the person making the claim had not given their consent for the controversial dissemination, it is necessary to determine if there was a rule with the rank of Law that enabled the publication of the data without the consent of the persons affected In this sense, and given that the personal data of the claimant here were included in the minutes of the plenary session, it is necessary to refer to the provisions of article 10.2 of Law 29/2010, of August 3, on the use of electronic media in the public sector of Catalonia.

This precept contains an express authorization for the Councils to publish

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at its electronic headquarters the proceedings of the plenary sessions. However, this authorization is not absolute given that the precept itself determines that in the publication of the minutes of the plenary sessions "the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy".

This provision must be supplemented with article 4 of the LOPD, which establishes the principle of data quality, under which only data that are "adequate, relevant and not excessive in relation to the scope and the specific, explicit and legitimate purposes for which they have been obtained".

The aforementioned precept enshrines the principle of relevance or limitation in the processing of personal data, a principle that prevents the processing of those data when they are not necessary or provided for the purpose that justifies the processing, and in accordance with which the processing of excessive data will have to be limited or it will have to be deleted. In addition, in its aspect of proportionality, the principle of data quality also means that the dissemination of personal data is temporarily limited to the period of time necessary to achieve the purpose that justifies the publication.

That's how things are, and on the basis of this principle of data quality - or minimization, as provided for in art. 5.1.c) of the new General Data Protection Regulation (EU) - it is considered that the publication of the disputed minutes, with identification (with names and surnames) of the claimant here as the affected person who had formulated some allegations and/or claim against the municipal budget and the workforce for the year 2013, could be contrary to the principle of data quality, given that the purpose of the publication could be achieved without the need to reveal the identity of the person making the claim. In other words, the identification with the name and surname of the person making the claim here was irrelevant for the purposes of publicizing the result of allegations and/or claims made against the municipal budget and the staff for the year 2013. In addition, for the decision to be made here on the provenance of the right exercised, it is also necessary to take into account the time elapsed since the publication of the controversial minutes (year 2013). The application of the principle of proportionality, in its temporal aspect, would also lead to considering the maintenance of the first and last name unnecessary along with her status as an employee of the City Council.

Be that as it may, the fact is that Arenys de Mar City Council has not questioned the provenance of the right of the claimant here, and in fact expressly upheld it on 8/14/2017. But as it has been advanced, the divergence is in the effectiveness of this estimative decision. (...)

In this regard, it should be borne in mind that in accordance with the provisions of article 35.3 of the RLOPD, the consequence of the estimation of the right of opposition is that the person responsible - the City Council - must exclude from the processing the data regarding in which the right of opposition has been exercised within the same period of 10 days that is granted to resolve and notify the opposition request, something that would not have been done here yet completely

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On the one hand, because the substitution of the name and surname of the person making the claim here with their initials in the minutes of the meeting dated (...)2013, does not prevent the identification of the affected person, especially taking into account her status as an employee of the City Council, which is clearly inferred from the rest of the information that has been kept in this version of the minutes. And on the other hand, because the first version of the disputed minutes (with the name and surname of the claimant here) still appears published at the URL (...), which can be accessed from the City Council's website, and specifically, from its Transparency Portal.

As a result, the estimate of the claim proceeds, since despite the fact that the City Council had estimated the initial request on 14/8/2017, with the actions carried out in order to execute that decision, it cannot be considered that the right had been fully exercised.

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, the controller must be required so that in the period of 10 days makes the exercise of the right effective. In accordance with this, it is necessary to require the claimed entity so that within 10 counting days from the day after the notification of this resolution, carry out the necessary actions so that the personal data of the person affected here that are contained in the Plenary Minutes of the date

21/01/2013 cease to be accessible on the internet, taking into account what has been indicated in the 5th legal basis. Once the right of opposition has become effective in the terms set forth, the City Council must notify the person making the claim, and within the same period of 10 days, the City Council must report it to the Authority.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Ms. (...)against Arenys de Mar City Council.

Second.- Request the City Council of Arenys de Mar so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of opposition exercised by the person claiming, in the form indicated in the 6th foundation of law. Once the right of opposition has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to Arenys de Mar City Council and the person making the claim.

Fourth.- 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 the 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.

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)