

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

RESOLUTION of the rights protection procedure no. PT 35/2018, petition against the Cervelló City Council

Background

1.- On 18/07/2018 it was reported to the Catalan Data Protection Authority, a letter from Ms. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged disregard of the right of access to his personal data, which he exercised before the Cervelló City Council following the notification of a complaint from this City Council for violation of traffic regulations. The claimant provided various documentation relating to the exercise of this right.

The City Council responded to the access request by means of a response letter dated 03/26/2018, in which he stated the following:

"(...) In relation to your request dated February 27, 2018, with registration identification number E/000554-2018 on the EACAT platform.

We inform you that your personal data is being processed for the purpose of managing and processing disciplinary proceedings under the jurisdiction of the City Council. The data are part of the file "Sanctioning records" of public ownership and responsibility of the Cervelló City Council.

File name: Sanctioning files.

Purpose: Management and processing of sanctioning files under the jurisdiction of the City Council.

Address: (...)

<http://www.apd.cat/ca/reqistre> (...)

We inform you that the personal data used to process the file are:

First and last name

identity card

Home address

Vehicle registration

phone

Email address"

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 document dated 07/20/2018, the claim was transferred to the Cervelló City Council so that within 15 days it would formulate the allegations that you consider relevant.

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3.- The Cervelló City Council made allegations in a letter dated 08/06/2018, in which it set out, in summary, the following:

"(...) in reference to the entry of e-TRAM by EACAT (...), exercise of the right of access, on 03/27/2018 was deposited through the e-Notum application of Consorci Administració Oberta de Catalunya (AOC) the documentation with the subject "Response to instance (...) of 27/2/2018" the response letter (...). The e-Notum evidence (...) indicates that this deposited documentation was accessed by Mrs (...) on 04/10/2018.

As a complement to the information already provided on the right of access, the following information is provided:

- 1) The computerized corporate applications with databases owned by the Cervelló City Council are the General Municipal Register and the Police Records Manager (GESPOL). We indicate the personal data stored in Cervelló Town Hall: (...).
- 2) The Cervelló City Council, in accordance with the interoperability framework agreement and for the exercise of its functions and powers, has access to databases owned by other organizations that contain the personal data of the lady (...). We indicate the personal data consulted that were the subject of the treatment, and of which there is a paper copy for the file, are the following: (...)."

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.- In relation to the regulatory framework, it should be borne in mind that on the date that the person making the claim presented the request for access to Cervelló City Council, on 02/27/2018, it was still in force 'LOPD and the RLOPD, so that these rules apply, and in particular, the precepts cited below:

Article 15 of the LOPD, in relation to the right of access, determined 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.

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."

Lastly, article 18 of the LOPD, regarding the protection of the rights of access, rectification, opposition and cancellation, established 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.

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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.- Next, the substance of the claim will be analyzed, that is to say, if the response given by the Cervelló City Council to the request of the now claimant conformed to the precepts transcribed in the previous legal basis.

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.

It is proven in the procedure that the Cervelló City Council resolved in an estimative sense, through a letter dated 03/26/2018, the request for access made by the person claiming by means of a letter submitted on 02/27 /2018 through the electronic headquarters of the City Council.

In the letter of complaint presented to the Authority, the person making the claim stated that with its response the City Council had not complied with its right of access, as it had omitted the information regarding which personal data it was dealing with, as well such as its origin and the communications made.

With respect to the reason for the complaint, reading the letter of response from the City Council, it is clear that the person making the complaint is right. Indeed, in the letter dated 03/26/2018, the City Council limited itself to informing him about the file containing its

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data, the person responsible for it and the purpose of the treatment. He was not informed about the origin of the data, nor about the communications made or planned. And, what is more relevant, you will not be provided with a copy of the same personal data that is being processed. Regarding the latter, it should be noted that it is not enough to refer to the type of personal data or generic data (DNI, name and surname, etc.), but it is necessary to provide access to the data itself, in order that the affected person knows what data is being processed, so it was necessary to identify the full ID number, first and last name, etc.

In the statement of objections that the City Council presented to the Authority following the transfer of the statement of claim, the council provided additional information to that provided to the person making the claim. Specifically, he provided the information mentioned in point 3 of the background section, referring, on the one hand (1), to the City Council databases containing personal data of the person making the claim; and on the other hand (2), in the databases of other entities, where personal data of the person making the claim would also appear and to which the City Council has access.

With regard to the right of access, and in accordance with the applicable regulations, what is relevant to comply with the exercise of the right is the information relating to the personal data processed by the City Council (regardless of its origin, that is to say, whatever the ownership of the database), as well as the purposes of the treatment(s), the origin of the data (the entity from which they come), and the intended communications. Without forgetting the data resulting from these.

On the other hand, the information regarding the file where the data is collected (according to the definition of file provided for in art. 3.b LOPD, and which does not necessarily have to coincide with a database), as well as the identity of the person in charge of the file, is information that is not part of the material object of the right of access, but of the right of information in the collection of data, which was provided for in art. 5 of the LOPD, and to which the Cervelló City Council also had to give satisfaction at the time of collection, although with respect to this right it is not appropriate to make any pronouncement, to exceed the object of the present procedure of tutelage

Therefore, from the information that the City Council brought to the attention of the Authority, it is necessary to specify which of this forms part of the right of access. And subsequently, the City Council must provide this information to the person making the claim.

That being the case, it is clear from the above that the City Council of Cervelló did not properly comply with the right of access exercised by the person making the claim, as a result the information you provided was insufficient, so your claim should be upheld.

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 period of 10 days makes the exercise of the right effective.

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In accordance with this, it is necessary to require the Cervelló City Council to provide the claimant with access to their personal data within 10 calendar days from the day after the notification of this resolution which are object of the present claim and which has not yet been provided, in the terms and scope set out in the 3rd legal basis. Once the right of access has taken effect in the terms set out, within the same period of 10 days the claimed entity must report to the Authority.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Ms. (...) against the Cervelló City Council.

Second.- Request the Cervelló City Council so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access exercised by the person making the claim, in the manner indicated in foundations of law 3rd and 4th. Once the right of access has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to the Cervelló 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 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

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Barcelona, (on the date of the electronic signature)

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