

RESOLUTION of the rights protection procedure no. PT 40/2018, urged by Mr. (...) against the General Directorate of the Police.

Background

1.- On 3/8/2018 the Catalan Data Protection Authority received a letter from Mr. (...), for which a claim was made for the alleged disregard of the right of cancellation, which he had previously exercised before the General Directorate of the Police (hereinafter, DGP) of the Department of the Interior of the Generalitat of Catalonia . Specifically, the person making the claim requested that their personal data be deleted from the Police Information System of the Generalitat de Catalunya for natural persons (SIP PF).

The claimant provided a copy of the request dated 10/25/2017, registered on the same date with the Department of Labor, Social Affairs and Families, through which the claimant exercised the right of cancellation against 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 9/18/2018, 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 17/10/2018, in which it set out, in summary, the following:

ÿ That: "on 02/06/2017, the aforementioned person registered a request for the cancellation of personal data, this request was reiterated on 10/25/2017 informing us, in addition in addition, a change of address to make notifications in relation to this procedure."

ÿ That: "On 10/26/2017, the General Directorate of the Police resolved the request submitted and agreed to cancel the personal data of the person concerned."

ÿ That: "On 10/11/2017, the notification of the resolution referred to in the previous point was registered as outgoing."

ÿ That: "On 11/14/2017, the postal service attempted to notify the resolution to the address indicated by the person concerned. According to the acknowledgment of receipt of the notification, the result of this notification attempt was that the person concerned was unknown at the address he had indicated.

However, and taking into account that the address that the interested person states in the claim that he has submitted to your Authority is the same that he stated in his request for the cancellation of data from

- personal nature, a new attempt will be made to notify the cancellation decision by post to this address."
- That: "Finally and as you requested, I am sending you a copy of the documentation following:
- a) Copy of the first pages of the requests made by the interested person. b) Copy of the resolution of the cancellation request. c) Copy of the notification of the resolution. d) Copy of the proof of the attempt to notify the resolution."

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, the personal data that were the subject of processing by the DGP and to which the request for deletion referred, the Directive (EU) would apply 2016/680, 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 by the competent authority for the purposes of prevention, investigation, detection or prosecution of infringements criminal or enforcement of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), in accordance with what is established in its article 1. In this regard, it should be emphasized that the Directive (EU) 2016/680, has not been transposed into national internal law within the period provided for that purpose (05/06/2018), but transitional provision 4a of Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD), also in force at the time of issuing the in this resolution, provides that data processing that is subject to Directive (EU) 2016/680 will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes into Spanish law the provisions of the aforementioned directive does not enter into force, in accordance with what has been provided for in the LOPDGDD.

Therefore, in accordance with what has been explained, this resolution is issued in accordance with the provisions of the LOPD and the RLOPD, as these are the rules applicable at this time but also at the time when it was exercised the right of cancellation (6/2/2017 and 25/10/2017) which is the object of the claim here.

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 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."

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:

"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 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 the complaint of the person who initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 6/2/2017 the claimant exercised the right of cancellation in relation to his personal data that appeared in the Natural Persons Police Information System file of the Generalitat of Catalonia (SIP PF). Later, specifically on 25/10/2017, he exercised his right again, apparently because he did not receive any response from the DGP to the first request.

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 requests.

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, in relation to the first request dated 6/2/2017, there is no record that the DGP resolved and notified said request within the 10-day period indicated. Thus, faced with the silence of the DGP, the claimant here reiterated his request on 10/25/2017. And it was in front of this new request when the DGP resolved on 10/26/2017 in an estimated sense the right of cancellation exercised on 10/25/2017. However, as indicated in the previous paragraph, to consider that the 10-day deadline has been met, apart from resolving within the deadline, the DGP must duly notify the resolution, or at least that the duly accredited notification attempt has taken place (art. 40.4 LPAC). In this sense, it appears in the actions that the DGP tried to notify the resolution on 14/11/2017 with an "unknown" result, that is to say, once the 10-day deadline had already been exceeded. That aside

that there is no subsequent action by the DGP in this regard, either to find out the correct address to make the personal notification, or in his case, to proceed with the notification by edicts, as required by the administrative procedure legislation.

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.

5.- 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. In the case at hand, it appears in the proceedings that the DGP resolved the request in an estimated sense, even if it was extemporaneously, which has led to the estimation of this claim, for formal reasons. On this last issue relating to the lack of notification in time of the resolution, during the hearing procedure granted for the purpose the DGP has stated that "a new attempt will be made to notify the cancellation resolution by post to this address". This Authority considers it necessary to require the DGP so that, within 10 counting days from the day after the notification of this resolution, it carries out the necessary actions in order to properly notify the estimated resolution dated 26/10/ 2018 to the claimant, following the provisions of the arts. 40 et seq. of the LPAC; and that once the above has been carried out, within the same period of 10 days the entity claimed by the DGP reports to the Authority.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mr. (...)against the Management General of the Police of the Department of the Interior of the Generalitat of Catalonia.

Second.- Request the General Directorate of the Police so that within 10 counting days from the day after the notification of this resolution it notifies the resolution it had issued in response to the cancellation request , in the form indicated in the 5th legal basis. Once the resolution issued on the right of cancellation has been notified, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to the General Directorate of the Police and to 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,