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RESOLUTION of the procedure for protection of access and rectification rights no.  
PT 45/2018, petition against the Pere Mitjans Foundation

#### Background

1.- On 28/08/2018 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), on behalf of his son (...), for which he made a claim for the alleged neglect of the rights of access and rectification that he had exercised, on behalf of his minor son, before the Pere Mitjans Foundation (hereinafter, the Foundation).

With regard to the right of access, the complainant stated that in the response given by the Foundation to his request for access, he had not been given a copy of a letter or an email, referring to the his minor son, which the Foundation would have sent to the Department of Work, Social Affairs and Family (hereinafter, TSF Department) on an undetermined date, but in any case close to 05/25/2018.

With regard to the right to rectification, the person making the claim stated that the Foundation had not responded to his request to correct a telephone number.

The claimant provided the following documentation relating to the exercise of these rights:

- Copy of the instance, submitted to the Post Office on 06/22/2018, through which the claimant here exercised the right of access before the Foundation, stating the following:

"In accordance with the provisions of Article 15 of Regulation (EU) 2016/679 (...) I request that you indicate whether my personal data is the subject of treatment.

If so, I ask that you indicate, in a clear and intelligible manner, the following: the purpose of the treatment, the categories of data that are treated; the recipients or categories of recipients (...).

On the other hand, I also request a free copy of the personal data being processed.

(...)

And especially that the answer includes a copy of the letter and/or email in relation to our son (...) addressed to the Territorial Services of the Department of Work, Social Affairs and Family made during the month of May in around the 25th (...)"

- Copy of an email dated 05/25/2018, with the subject "conversation with the (...) and agreed shared document", through which the Technical Directorate of Housing of the Foundation expressed the Next:

"(...) I just spoke with the (...).

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Regarding the change, he tells me that we agreed that we would do it together with a document and that he thinks it is good to do so (...).

The (...) has informed us that she will also write a letter explaining the situation.

The (...) says that the changes must be requested in writing, even on the Department's website, as you know, there is a model for families to fill in who ask for change.

At the same time, it is true that talks have started to materialize the change.

If, as you told me yesterday on the phone, you don't want to make the joint document, the (...) says that we as an entity do do it (...)."

- Copy of the part of the Foundation's written response to the access request presented by the claimant here, in which the recipients to whom personal data have been communicated or will be communicated are indicated.
- Copy of the instance, submitted to the Post Office on 07/25/2018, through which the claimant here exercised the right of rectification before the Foundation, stating the following:

"(...) That the rectification of personal data be agreed upon  
(...)

Data about which I request the right of rectification.

PERSONAL DATA OBJECT OF TREATMENT.

THE TELEPHONE NUMBER IN THE PERE MITJANS FOUNDATION IS NOT THE

CORRECT NUMBER IT IS THE FOLLOWING (...)

AND WHAT MUST BE STATED IS THE (...) (...)."

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approved 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 09/11/2018 the claim was transferred to the Foundation so that within 15 days it could formulate the allegations that relevant estimates

3.- The Foundation made allegations by means of a letter dated 27/11/2018, in which it stated the following, providing a copy of the documentation indicated as documents no. 1 to 6:

"First. In relation to the request to exercise the right of access made by Mr. (...) on behalf of his son (...) before the Pere Mitjans Foundation, this party received said request on June 25, 2018.

Attached is a copy of the access request letter received, as DOCUMENT NO. 1.

The Pere Mitjans Foundation responded to the exercise of the right of access contained in article 15 of EU Regulation 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons in what concerns the processing of personal data and the freedom

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circulation of this data (hereafter RGPD), within the legally established deadline of July 20, 2018. Attached is a copy of the letter of response to the exercise of the right of access sent, as DOCUMENT

NUMBER 2.

Finally, regarding the accreditation of the notification to the claimant, a copy of the Post Office certificate dated July 20, 2018, of sending the certified letter to Mr. (...), as DOCUMENT NO. 3.

second In relation to the request to exercise the right of rectification made by Mr. (...) before the Pere Mitjans Foundation, this party received said request on July 25, 2018. Attached is a copy of the written request for rectification received, as DOCUMENT NO. 4.

The Pere Mitjans Foundation responded to the exercise of the right of rectification contained in article 16 of the RGPD, within the legally established deadline of August 21, 2018. Due to a transcription error, the letter shows in its heading the date August 24, 2018, but this document was signed and sent on August 21, 2018 as evidenced in the following section. A copy of the reply brief is attached

the exercise of the right of rectification sent, as DOCUMENT NO. 5.

Finally, regarding the accreditation of the notification to the claimant, a copy of the Post Office certificate dated August 21, 2018, of sending the certified letter to Mr. (...), as DOCUMENT NO. . 6.

third Regarding the documentation requested in the request of the APDCAT in its third paragraph, these documents are provided by the Pere Mitjans Foundation together with this letter numbered from 1 to 6, in relation to the requests to exercise the right of 'access, and also exercise the right of rectification formulated by Mr. (...)".

4.- Given that in the previous statement of objections the Foundation stated that in the act of notification of the claim carried out by the Authority it had not been sent a copy of the statement of claim - even though the Authority had it as an attached document - by means of an official letter dated 11/29/2018 this documentation was sent to him again and he was granted a new additional deadline so that, in view of the same, he formulated the allegations that he considered relevant.

5.- The Foundation made allegations in a letter dated 13/12/2018, which ratified the allegations made in the letter dated 27/11/2018.

#### 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.- The claim that is resolved here was formulated with respect to two exercise requests of access and rectification rights, which had been presented to the Pere Foundation

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Between 25/06/2018 and 25/07/2018, respectively, when Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons, was already fully applicable regarding the processing of personal data and the free movement thereof (RGPD).

Regarding the right of access, Article 15 of the RGPD determines the following:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;
- b) the categories of personal data in question;
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;
- f) the right to present a claim before a control authority;
- g) when the personal data has not been obtained from the interested party, any available information about its origin;
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

Regarding the right of rectification, article 16 of the RGPD determines the following:

"The interested party has the right to obtain from the data controller the rectification of inaccurate personal data affecting him, without undue delay. Taking into account the purposes of the treatment, the interested party has the right to have incomplete personal data completed, even by means of an additional declaration."

Also, on the rights contemplated in articles 15 to 22 of the RGPD, article 12, apparatus 3, 4 and 5 of the RGPD establishes the following:

"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of requests. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.

5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:

- a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or
- b) refuse to act in respect of the request.

The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request. (...)"

In relation to the above, article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, 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 period, they can submit a claim to the Catalan Data Protection Authority.

2. The Catalan Data Protection Authority must expressly decide on the merits or inadmissibility of the claim referred to in paragraph 1 within six months, with the prior hearing of the person responsible for the file and also of the interested persons if the result of the first hearing procedure makes it necessary. Once this term has passed, if the Authority has not notified the resolution of the claim, it is understood that it has been rejected.

3. The resolution of total or partial estimation of the protection of a right must establish the term in which it must take effect.

4. If the request to exercise the right before the person responsible for the file is estimated, in part or in full, but the right has not been made effective in the form and the deadlines required in accordance with the applicable regulations, the interested parties can bring it to the attention of the Catalan Data Protection Authority so that the corresponding sanctioning actions are carried out."

3.- Having explained the applicable regulatory framework, it should first be noted that, although it is true that the rights of access and rectification regulated in the RGPD are rights of a very personal nature, so that they can be exercised by the affected person himself, in the case of minors under 14 years of age (Article 13 of the RLOPD) and disabled persons, the legal representative is entitled to exercise the rights of access and rectification, which is why it must be understood that when the claimant here alone requested access and rectification of his son's personal data, he did so on his behalf. It is worth saying that the new Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereafter, LOPDGDD) has maintained the age of 14 set by the RLOPD in its article 13.

4.- With regard to the reasons for the claim relating to formal issues, it is necessary to analyze whether the Foundation resolved and notified, within the period provided for by the applicable regulations, the request for the right of rectification presented by the person making the claim, already that precisely the reason for the complaint regarding the neglect of the right of rectification was the fact of not having obtained a response within the period provided for the purpose. With regard to the right of access, the person making the claim has not made any complaint on formal issues, so the part of the claim referring to the possible neglect of this right will be analyzed in the following legal basis, referring to the substance of the matter.

Regarding the eventual neglect of the right to rectification, in accordance with article 12.3 of the RGPD, the Foundation had to resolve and notify the request for rectification within a maximum period of one month from date of receipt of the request. It is worth saying that this term can be extended by another 2 months (3 in total), taking into account the complexity or number of 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 (hereinafter, LRJPCat), on the one hand, the calculation of the term

maximum 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 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).

In this regard, it is stated in the proceedings that the person making the claim sent the rectification request to the Foundation by regular mail on 07/25/2018. For its part, the Foundation has stated that it received the request on the same date, and has certified that it responded to it in writing, which it sent to the person making the claim on 08/21 / 2018, by certified mail. In this regard, although the claimant submitted his claim to the Authority on 08/28/2018, in which he stated that he had not yet received the response to the request for rectification, the Foundation has only certified that he has deposited to the post office on 08/21/2018 a shipment addressed to the claimant here and which would contain the response letter in which it was indicated that the requested rectification had already been made effective in the telephone number of the here claiming, which makes it unnecessary to make any substantive pronouncement in this regard, because the right has already been served. The deposit of the shipment at the post office on 08/21/2018 (Tuesday) raises doubts about whether notification had been made or an attempt to be made (40.4 LPAC) within the maximum period of one month provided for the purpose, but the truth is that the Foundation has not documented such extreme, and in fact the person claiming states that on 08/28/2018 when he presented the claim, had not received a response to the rectification request.

5.- Below will be analyzed, from a substantive perspective, the response given by the Foundation to the request for access made by the person making the claim.

(...)As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data - in the present case, those relating to the child he represents- that they are object of treatment and, in such case, access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of detailed information in article 15.1 of the RGPD.

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 rectification, deletion, limitation, portability 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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With regard to the response given by the Foundation to the request for access by the claimant here, the file states that the Foundation did indeed respond by means of a letter dated 07/20/2018, in which the information provided for in article 15 of the RGPD is included.

However, in the letter of claim, the person making the claim complains about the fact that the Foundation did not give him a copy of the letter or email that he identified in his access request, referring to his minor son age, which the Foundation would have sent "around 05/25/2018" to the Territorial Services of the TSF Department. In order to identify the aforementioned letter or email, the now claimant has provided an email that the Foundation would have sent him on 05/25/2018, in which mention is made of the fact that if the claimant does not produce a certain document, "we as an entity do." Despite the fact that the claimant has not specified more, it can be understood that when in the access request he referred to the letter or email sent around 05/25/2018, he could be referring to this document that eventually formalized the Foundation.

Well, on this matter, the Foundation has not made any statement in its allegations to the claim in the hearing process, nor did it in its response letter addressed to the now claimant. In this regard, it must be specified that if there was no document that matched the circumstances indicated by the claimant here, what the Foundation had to do was to reply to him in this regard.

(...)In accordance with the above, from the perspective of the right of access regulated by the RGPD and the rest of the applicable personal data protection regulations, it is necessary to estimate the part of the claim referring to the right of access to the document referred to by the person now claiming.

6.- In accordance with what is established in articles 58.2.c) of the RGPD and 16.3 of Law 32/2010, in cases of estimation of the claim for the protection of rights, the controller must be required so that within 10 days the exercise of the right becomes effective. In accordance with this, it proceeds to require the Foundation so that within the term of 10 counting days from the day after the notification of this resolution, give an answer to the person here claiming about the request for access to the disputed document and that has been indicated in the previous legal basis, in the sense to deliver a copy of the same, or if such a document does not exist, to inform him of this circumstance. Once the request for access has been answered in the terms indicated, within the same period of 10 days the Foundation must report to the Authority. Regarding the right of rectification, in which the Foundation has not proven that it has notified here claiming the response within the one-month period provided for the purpose, it is not appropriate to make any request, given that outside of the period it would have already been notified of such resolution, in the sense of estimating the requested rectification.

For all that has been exposed,

RESOLVED



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First.- Estimate, for formal reasons, the claim for protection of the right of rectification formulated by Mr. (...), on behalf of his son (...), against the Pere Mitjans Foundation, for the reasons indicated in the 4th legal basis, although it is not necessary to make any request because the right has already been taken care of.

Second.- Estimate the claim for protection of the right of access formulated by Mr. (...), on behalf of his son (...), against the Pere Mitjans Foundation, for the reasons indicated in the 5th legal basis.

Third.- To require the Pere Mitjans Foundation to respond to the request for access made by the person making the claim within 10 calendar days from the day after the notification of this resolution, in accordance with what has been exposed in the foundations of law 5th and 6th. Once the response has been notified to the person making the claim, within the same period of 10 days the Foundation must report to the Authority.

Fourth.- Notify this resolution to the Pere Mitjans Foundation and the person making the claim.

Fifth.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://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,