

## File identification

Resolution of the rights protection procedure no. PT 50/2018, urged by Ms. (...) against the General Directorate of Child and Adolescent Care of the Department of Social and Family Welfare.

## Background

1.- En data 06/09/2018 va tenir entrada a l'Autoritat Catalana de Protecció de Dades, provinent de l'Agència Espanyola de Protecció de Dades, un escrit de la Sra. (...), (henceforth, claimant), for which he made a claim against the Management General of Child and Adolescent Care of the Department of Social Welfare and Family (hereinafter, DGAIA), for the alleged neglect of the right of access to various information that would appear in the archives of this General Directorate. In particular, he stated that: "there has been no response within a month since the receipt of the request", and also that: "I am claiming several times the files of my children in the dgaia" and that they would never have given him information of any kind

The person making the claim submitted, in order to certify the prior exercise of the right of access before the data controller, a letter dated 07/24/2018 with a stamp of the same date, from the entry register of Barcelona City Council (Nou Barris district). The request, in which the DGAIA was identified as the person responsible for the treatment, corresponded, however, to a form entitled "exercise of the right of rectification", and there was no note in the section of the request handwritten

2.- By official letter dated 12/10/2018 from the Authority, the person making the claim was requested to confirm that their complaint referred to the alleged neglect of the right of access, and not to the right of rectification, and that therefore the form he had used when exercising the right obeyed a mere mistake.

3.- On 12/27/2018, the Authority received the response letter from the person making the claim, from which it was clear that their request and subsequent claim referred to the right of access ("...presento mi escrito...para pedir...los expedientes de mis hijos por desamparos ilegal y concealment of reports").

4.- On 03/14/2019 the claim was transferred to the DGAIA, so that within 15 days it could formulate the allegations it deemed relevant.

5.- On 04/05/2019 the Authority received a letter from the DGAIA, whereby asked for an extension of the deadline granted to submit allegations, a request that was granted by agreement of the instructing person.

6.- On 04/16/2019, the Authority received the DGAIA's statement of allegations, accompanied by various documentation, in which the following was noted:

"1. The lady (...) has three biological children whose adoption was established by means of interlocutory agreements, all of them already firm, dated (...) of 2006 (Court of 1st instance of Barcelona), (...) of 2007 (Court of 1st instance of Barcelona) and (...) of 2012 (Court of 1st instance no. 16 of Barcelona), respectively.

2. Access to the files of the DGAIA are regulated in Law 14/2010, of 27 May, on the rights and opportunities in childhood and adolescence.

In article 25.2 of the aforementioned Law, it is determined that in accessing and using the information and management system in childhood and adolescence, the privacy of constitutionally and legally protected personal data must always be guaranteed.

3. With regard to the administrative procedure regulations and in relation to the right of access to the administrative files that the interested persons have, article 53 of Law 39/2015, of October 1, on the administrative procedure common of public administrations established in section 1  
a) that (...).

- For this purpose, it is also necessary to take into account the provisions of article 26 of Law 26/2010, of 3 August, on the legal regime and procedure of the administrations where, with respect to access to files administrative, "(...)".

- In accordance with Article 4.1 a) of Law 39/2015, of October 1, previously mentioned, they are considered interested (...).

- Without prejudice to what is established in the civil code of Catalonia, to which reference will be made below, on the termination of kinship between the adopted child and his family of origin, in accordance with the administrative regulations this mother would have lost her status of interested party, since its claim is to access documentation to files that belong to closed administrative procedures in respect of which it can no longer claim any right or legitimate interest that may be affected by these closed procedures.

4. Law 25/2010, of July 29, of the second book of the Civil Code of Catalonia contains the following provisions:

- article 235-37 which establishes that "The people who take part in the establishment of pre-adoptive care or adoption, whether they provide services in the competent public entity or collaborating institutions or not provide, they are obliged to keep secret the information they obtain and the affiliation data of the fostered or adopted, and they must avoid, in particular, that the family of origin knows the host or adoptive".

In accordance with the same body of law (art. 235-39) the adoption must be established through a reasoned judicial decision and taking into account the interest of the adopted.

- article 235-47.2 establishes that adoption extinguishes the kinship between the adopted person and his family of origin, except for the cases referred to in article 235-32 1 a) ib), which do not coincide in this case - article 235-51 provides that "1. Adoption is irrevocable. 2. The judicial authority can establish the termination of the adoption in the interest of the adopted in the following cases: a) if the parents have not intervened, in accordance with the law, in the adoption file by a cause that is not imputable to them and contest the adoption within two years from the moment it is established. b) If the causes that the law establishes for the revision of the final judgments occur.

All guardianship files, once the adoption became final, were closed.

5. Except for a first request, dated April 21, 2005, made through a person who identifies himself as his lawyer, through which the file relating to his second daughter before the adoption took place, all the other requests for access to the files made by the Lady (...) and recorded in this entity have been raised since 2015, that is to say, when the three adoptions had already been established and had

became firm It can also be seen that practically all their requests are formulated jointly by the three children.

Attached is a copy of the requests for access to the files made by Mrs. (...) presented on various dates, of the answers that have been provided by the DGAIA, and of the corresponding accusations of receipt. The documentation, despite being largely identical, is grouped into three separate annexes, each of them corresponding to each biological child.

All the responses to the requests made, except for the previously mentioned one of April 21, 2005 to which the corresponding procedure was given, have taken into account the legal provisions mentioned in the previous points and the fact of the constitution of the adoption of their children as well as their firmness.

Otherwise, it should be remembered that, in any case, the adopters' right to privacy must be guaranteed.

6. Finally, and with regard to the copy of the letter that has been sent to the Department along with other documentation through which Ms. (...) exercised, on July 24, 2018, a right of rectification and that was referred to the Department of Work, Social Affairs and Families where it had access on August 7, 2018, it is highlight that it has not been possible to verify that an answer has been given. For this reason, and by means of a letter dated April 3 of this year, it has been required to specify the personal data on which the rectification is intended for the purposes of, if necessary, being able to proceed with it . "

## 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.- Regulation (EU) no. 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95 /46/CE (hereinafter, RGPD) regulates in article 15 the right of access, and determines the following:

"1. The interested party has the right to obtain from the controller confirmation of whether personal data affecting him is being processed, and if so, he has the right to access this 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 have been communicated or will be communicated, in particular recipients in third countries or in international organizations.
- d) The planned retention period for personal data. If this is not possible, the criteria used to determine this term.
- e) The right to request from the person in charge of the treatment access to the personal data relating to the interested party, to rectify or delete them, to limit the treatment or to oppose it, as well as the right to data portability.
- 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 the elaboration of profiles, referred to in article 22, sections 1 and 4, and at least in these cases, it must provide significant information about the logic applied as well as the importance and expected consequences of this treatment for the interested party.

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

3. The controller must provide a copy of the personal data subject to processing. For any other copy requested by the interested party, the controller has the right to charge a reasonable fee based on administrative costs. When the interested party submits the request by electronic means, and unless the latter requests that it be done in another way, the information must be provided in a commonly used electronic format.

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

On the other hand, article 12 of the RGPD establishes the following in sections 3 and 4:

"3. The person responsible for the treatment must provide the interested party with information related to their actions, if the request has been made in accordance with articles 15 to 22 and, in any case, within one month of from the receipt of the request. this deadline can be extended by another two months, if necessary, taking into account the complexity and number of requests. The person in charge must inform the interested party of any of these extensions within one month of receiving the request, indicating the reasons for the delay.

When the interested party submits the request by electronic means, whenever possible the information must be provided by these same means, unless the interested party requests that it be done in another way.

4. If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for the his non-action and the possibility of presenting a claim before a control authority and of exercising judicial actions."

Article 77 of the RGPD, entitled "Right to present a claim before a control authority", establishes the following:

"1. Without prejudice to any other administrative recourse or judicial action, any interested party has the right to submit a claim to a supervisory authority, in particular in the Member State in which he has his habitual residence, place of work or place of has produced the alleged infringement, if it considers that the processing of personal data affecting it infringes this Regulation.

2. The control authority before which the claim has been submitted must inform the claimant about the course and result of the claim, including the possibility of accessing judicial protection under the provisions of the article 78."

Finally, article 16.1 of Law 32/2010, 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."

3.- Having explained the applicable regulatory framework, prior to the analysis of the reasons for the complaint of the person making the claim, it is appropriate to refer to the object of the claim of access that the person making the claim now holds. At this point it should be noted that

claim of access had not been expressly formulated in the request addressed to the DGAIA, through a form referring to the right of rectification. It was not until the second letter presented to the Authority, at its request, that the person making the claim clarified that his request and subsequent claim referred to the possible neglect of the right of access. This circumstance could lead to the inadmissibility of the claim for having been linked to a previous application before the DGAIA in which a different right was exercised, but in accordance with the principle of procedural economy, and taking into account that with prior to this request, the claimant had repeatedly made requests for access to the DGAIA with the same purpose, and that in all cases he did not obtain an estimated response from the DGAIA, as well as the fact that it has been processed the procedure for the protection of the right and that with the transfer of the claim the DGAIA has become aware of this claim, it is considered appropriate to address the issue of the right of access here.

It can be inferred from the documentation used in the proceedings that the claimant intends to access information relating to his biological children. Indeed, in the letter that the claimant submitted to the Authority on 12/27/2018 in response to the request addressed to him in order to clarify his claim, he stated that "I present my letter...to request... the files of my children for illegal desamparos [sic] and concealment of reports".

Faced with this, it is necessary to consider first of all whether the person making the claim here could exercise the right of access to data relating to their biological children, on their behalf. But such an option must be ruled out based on the circumstances presented and proven by the DGAIA. Indeed, the DGAIA has accredited the constitution of the adoption of its three biological children, through interlocutory orders from the Court of First Instance of Barcelona dated (...)/2006, (...)/2007 and (...)/2012. Well, as determined by articles 236-18 and 235.47 of Law 25/2010, of July 29, of book two of the Civil Code of Catalonia (hereafter, CCCat), the parental authority that would entail the legal representation of minor children, is extinguished by adoption. Therefore, the legal representation that the claimant here had with respect to his biological children, would have been extinguished from the firmness of the adoption judicial resolutions, firmness that occurred long before the request for access which is the object of the claim here.

The right of access to one's own data is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. This very personal nature of the right does not prevent exercising it through a representative, an option that cannot be recognized in the case of the claimant here regarding the data of his biological children, for the reasons indicated.

Consequently, the claim for access maintained here could only fit the right of access regulated by the legislation transcribed in the 2nd legal basis of this resolution, in what refers to the personal data related to the person making the claim here. In this regard, it should be borne in mind that the documentation provided by the DGAIA contains copies of requests made years earlier by the claimant here



(specifically on 19/11/2015) in which he requested access not only to his children's file but also to "mine".

4.- The claim is based on a formal issue such as the lack of response, so it is necessary to analyze if, as the person making the claim points out in the letter of claim, the DGAIA did not resolve and notify, within the stipulated period by the applicable regulations, the request submitted by the claimant on 07/24/2018 to a Barcelona City Council register, and which would have reached the Department of which the DGAIA is a part - as indicated in the letter of allegations from this entity - on 08/07/2018.

In accordance with article 12.3 of the RGPD, the deadline for resolving requests to exercise rights is one month from the date of receipt of the request (08/07/2018), term that can be extended for another 2 months (3 in total), taking into account the complexity or number of requests. It should be noted, however, that the aforementioned request had been made with a form corresponding to the exercise of the right of rectification, without specifying in its content that the right of access was actually being exercised, a pretense that was carried out in the claim made later before this Authority.

In this regard, the DGAIA has admitted that it has no record of having given a response to the request, so that at this point it is appropriate to estimate the claim, given that even in the case of considering that the request was confusing for not specifying the data it sought to rectify, the DGAIA had to require the amendment or improvement of the request, in accordance with art. 68 of the LPAC. This is what the DGAIA would have finally done while the present claim was already being processed, by means of a letter dated 3/4/2019 addressed to the person making the claim, in which he was asked to specify "what are the personal data on which the rectification is intended for the purposes of, if applicable, being able to proceed with it."

5.- With regard to the substance of the claim, that is to say, whether access to the claimant's data is warranted, which, as advanced in the third-party legal basis, is addressed for reasons of procedural economy, article 15.4 of the RGPD provides for the restriction of this right if it negatively affects the rights and freedoms of other people, as could be the case of their biological and now adopted children, or of the people who adopted them. Outside of these cases of restriction, it is necessary to recognize here claiming the right of access to data that refer to your person, with the scope determined by article 15 of the RGPD transcribed in the 2nd legal basis, which which would include indirect references or aspects that affected him.

6.- In accordance with what is established in articles 16.3 of Law 32/2010, in cases of estimation of the claim for the protection of rights, the person in charge of the file must be required to, within 10 days, make effective exercise of the right. In the present case the estimate obeys strictly formal reasons, because the DGAIA did not respond within the deadline to the request for rectification, although it did so extemporaneously once this procedure had started, so that at this point it would not be appropriate to make any request. However, given that the claim made in the context of this claim refers to the right of access, and it is not known that the DGAIA has made it effective in the terms indicated above, it is necessary to request the DGAIA in order to

within a period of 10 days, counting from the day after the notification of this resolution, facilitate the person claiming access to the data that refer to their person, with the scope indicated in the legal basis 5th 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 for formal reasons the claim for protection of the right of access formulated by Ms. (...)against the General Directorate of Child Care and Adolescence of the Department of Social and Family Welfare (hereinafter, DGAIA), given that the DGAIA did not respond to the request made by the claimant. I regarding the substance, estimate the claim regarding access to the data that refers to the person making the claim, for the reasons and with the scope indicated in the 5th legal basis.

Second.- Request the DGAIA 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 the fundamentals of law 5th and 6th Once the right of access has taken effect, within the same period of 10 days the DGAIA must report to the Authority.

Third.- Notify this resolution to the DGAIA and the person making the claim.

Fourth.- 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,