Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

RESOLUTION of the rights protection procedure no. PT 59/2018, petition against the Department of Labor, Social Affairs and Families.

Background

1.- On 07/12/2018 it was registered with the Catalan Data Protection Authority, a letter from Mr. (...) (hereinafter, the claimant), on behalf of his son (...), for which he made a claim for the alleged neglect of the right of access that he had previously exercised before the Territorial Services of the Department of Work, Social Affairs and Families (hereinafter, TSF Department).

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

- Copy of the instance, registered on date (...) in the Department of TSF, through which the claimant here exercised the right of access before the Territorial Services of this Department, stating that We tenido conocimiento por parte de Dirección Técnica de la Fundación Pere Mitjans that on date (...), sent a letter via electronic mail to these territorial services in relation to our son (...). WE REQUEST that we be provided with a copy of the email sent to these Territorial Services by the Technical Directorate of the Pere Mitjans Foundation and those sent by the Social Services Consortium issued by Ms. (...)everything related to the Assistance Service";

- Copy of an email sent in (...) by the person here claiming to the Director of Territorial Services of TSF, who acted as mediator in a mediation procedure between the person here claiming and the Pere Mitjans Foundation, relating to the previous day's mediation and in which he asks "that we be sent or, failing that, on the day of the next call, the email/report sent by the technical direction of the Pere Mitjans Foundation to the Territorial Services around the (...)";

- Copy of an e-mail from (...) by means of which the director of the Territorial Services of TSF replied to the complainant in the following way: "yesterday you committed to us and now to coadyuvar al buen end of the ongoing mediation, not to promote with more actions the procedures initiated while the negotiations are alive and not to initiate new ones (......). As for what this e-mail asks of me, I must also remind him of the role of the mediator and the nature of all mediation to those we referred to yesterday";

- Copy of the e-mail from (...) by means of which the person making the claim answered the e-mail referred to in the previous point stating: "We are still committed to not push more actions (the requested was prior to yesterday's meeting and the access to the data also), therefore no new actions have been taken and while the mediation lasts they will not be done I repeat they will not be done. The reason for the porque has been requested was to know the reasons and

Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

fundamentals of why the Foundation wants a change of entity to materialize, because we believe that there must be consolidated arguments to be able to analyze the situation globally. (…). Having said the above, I have to apologize because it is true that, at the moment, he is acting as a mediator and not as a director (..)";

- Copy of the office that the Pere Mitjans Foundation directs to the Consumer Arbitration Board of the Barcelona City Council, and which is registered as of entry on date (...). In the letter, they recount some oversights that have occurred in monitoring the medication guidelines of the son of the person making the claim, whom the Pere Mitjans Foundation has been attending to since 2016. They also list the series of meetings that the Fundació Pere Mitjans has maintained with different public entities, and departments of the Generalitat de Catalunya, among them the Department of TSF, in order to deal with the events that happened.

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 character (hereafter, RLOPD and LOPD, respectively), by means of an office dated 11/12/2018 and through the EACAT platform, the claim was transferred to the Department of TSF so that within 15 days formulated the allegations that he considered relevant.

3.- The TSF Department made allegations in a letter dated 01/14/2019, in which it set out, in summary, the following:

- That "Mr. (...)requests a copy of a coordination email between an entity and these Territorial Services, therefore and in accordance with the previous point (refers to the literal transcription of the article 70 of Law 39/2015, of October 1, relating to the administrative file), an email is not part of the administrative file and the requested copy cannot be delivered to him"
- That "aware of the lack of understanding between the family (...) and the management of the center where their son is admitted, (...), proceeded to start a mediation process in a plenary session with assistance of the parties in conflict and with the presence of the Barcelona Social Services Consortium. (...)."
- That "the Department, through the mediation process, tried to clarify and reassure the family by responding to their request"
- That the referred mediation procedure is currently "at a point death".

The claimed entity provided various documentation: the various letters of complaint from 2017 and 2018 presented by the person making the claim before the TSF Department, relating to the care received by his son from the Pere Mitjans Foundation; the Act of (...) of the Commission to Guarantee Access to Public Information; the complaint presented by the person making the claim before the Barcelona Grievance Board on 11/29/2018; the Report of the Social Services Consortium of Barcelona of date (...); the Report relating to the civil information proceedings (...) issued by the General Directorate of Social Protection of the TSF Department relating to the

Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

"Claims presented by the legal representatives of Mr. (...)"; among other documents that evidence the lack of understanding between the parties

in conflict, the procedures opened in court, and the various failed attempts to reach an agreement between the parties through a mediation procedure.

4.- The TSF Department formulated complementary allegations by means of a letter dated 01/17/2019, in which it set out, in summary, the following:

- That "coincides with the assessment of the technicians of both the Department and the Consortium of Social Services of Barcelona who know about the various vicissitudes and antecedents of Mr. (...), of which Mr. (...), he is his father and guardian".

The claimed entity provided new documentation, in particular, the "Social Services Inspection Report" issued in (...) by the Directorate of Services of the TSF Department, and "the Report on the information file opened from the complaint of Mr. (...) towards the Pere Mitjans Foundation" issued by the General Directorate of Professional Organization and Health Regulation of the Department of Health and sent on date (...) to the Social Services Inspection of the Department of TSF.

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 a request to exercise the right of access that had been presented to the Territorial Services of TSF on 06/06/2018, when it was already fully applicable 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 processing of personal data and the free movement thereof (RGPD), which in relation to the right of access, determines the following in its article 15:

> "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;

Machine Translated

Machine Translated by Google

apdcat
Autoritat Catalana de Protecció de Dades

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

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."

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

Machine Translated

Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

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 is then necessary to analyze whether the TSF Department resolved and notified, within the period provided for by the applicable regulations, the resolution of the right of access exercised by the person making the claim, since precisely the reason of complaint of the person who initiated the present rights protection procedure was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on date (...) a letter was entered in the Registry of the TSF Department by the person here claiming, through which he exercised his right of access in relation to his son's personal data
contained in the "email sent to these Territorial Services by the Technical Directorate of the Pere Mitjans Foundation and those that have been transmitted

Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

by the Consortium of Social Services issued by Ms. (...)everything related to the Assistance Service".

In accordance with article 12.3 of the RGPD, the TSF Department had to resolve and notify the access request within a maximum period of one month from the 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 (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, the TSF Department has not proven to have responded to the request for access made by the now claimant, neither within the one-month period provided for that purpose, nor subsequently.

The claimant also refers to the fact that after his first request, and specifically on date (...), he also sent an email to the director of Territorial Services in Barcelona of TSF, in the following terms: "Please send us the email/report sent by the technical director of the Pere Mitjans Foundation to Territorial Services around (...) on the day of the next call. In this regard, it is relevant to indicate that the e-mail referred to was sent at a time when a mediation procedure was being carried out between the person here claiming and the Pere Mitjans Foundation regarding the assistance received by the child of the claimant here, and that precisely the director of Territorial Services in Barcelona of TSF to whom the aforementioned e-mail was sent, was acting as a mediator. He responded to this email the same day (...) also with an email, in which he invoked the commitment adopted by the claimant here to "not push forward with more actions the procedures initiated while the negotiations are still alive and not initiate otros nuevos", and reminded him that he was acting as a mediator "I also have to remind him of the role of mediator and the nature of all mediation".

In response to this email from the mediator, the person making the claim also stated by email of the same day, that "We remain committed to not pushing more actions (the requested was prior to yesterday's meeting and the access to the data also), therefore no new actions have been taken and while the mediation lasts they will not be done, I repeat they will not be done. (…). Having said the above, I have to apologize because it is true that, at the moment, he is acting as a mediator and not as a director (..)".

Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

In this regard, regardless of whether the e-mails exchanged in (...) were included in the framework of a mediation procedure, it should be noted that it would be irrelevant to determine whether or not they could be considered requests for access, given that it is proven that the claimant here had previously made such a request before the Department, specifically by means of a letter registered on 06/06/2018.

In relation to this letter that had been submitted by registration and in which it was clearly requested to have access to a copy of a document that was specified there, the estimation of the present claim proceeds, given that the Department of TSF did not resolve and notify the affected person in the form and deadline of said request. This notwithstanding what will be said below regarding the substance of the claim.

4.- 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, the 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. In this respect, it should be noted that during the hearing procedure granted to the claimed entity, it did not invoke any of the cases established in article 23 of the RGPD, which establishes the limits to the exercise of rights established in articles 12 to 22 of the RGPD.

As has been progressed, it is proven in the procedure that the claimant here, by means of a written document registered on (...) before the TSF Department, exercised the right of access in the following terms: "We had knowledge on the part of the Technical Directorate of the Pere Mitjans Foundation that dated (...), sent a letter by electronic mail to these territorial services regarding our son (...). WE REQUEST that we be provided with a copy of the email sent to these Territorial Services by the Technical Directorate of the Pere Mitjans Foundation and those sent by the Social Services Consortium issued by Mrs. (...)everything related to the Assistance Service".

On the other hand, the TSF Department in the hearing procedure, justifies the rejection of access on the fact that "an email is not part of

Machine Translated

Machine Translated by Google

apdcat
Autoritat Catalana de Protecció de Dades

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

the administrative file and he cannot be given the requested copy", protecting himself with article 70 of the LPAC, which in its sections 1 and 4, determines the following:

"Article 70. Administrative file

1. The administrative file is understood as the ordered set of documents and actions that serve as antecedent and basis for the administrative resolution, as well as the proceedings aimed at executing it.
(...)
4. Information of an auxiliary or supporting nature, such as that contained in applications, files and computer databases, notes, drafts, opinions, summaries, communications and internal reports or between bodies or entities, is not part of the administrative file administrative, as well as value judgments issued by public administrations, unless they are reports, mandatory and optional, requested before the administrative resolution that puts an end to the procedure".

In accordance with this, the claimed entity considers that the e-mails to which the person making the claim is requesting access would not properly form part of the administrative file, and, therefore, access is denied.

From this allegation it can be inferred that the Department would come to admit that the document in respect of which the claim is concerned contained personal data of the claimant here or of his son whom he represents, and the circumstance that such document formed whether or not it is part of an ongoing procedure, is completely irrelevant from the perspective of the GDPR right of access. What Article 15 of the RGPD recognizes is the right of every person to access the information that concerns them and that is the subject of treatment by the data controller, as a manifestation of the fundamental right to data protection (article 18.4 EC), by which every person is guaranteed control over their data (STC 94/1998 and 292/2000, among others).

In this sense, article 15.1 of the RGPD establishes that the interested person can obtain not only the direct information about his person (or his representatives), but also the origin of the information and any communications that are have done, as well as the purpose of the treatment, the categories of personal data being processed, and the recipients to whom this data will be communicated, among others. In accordance with this, the right of access to personal data recognized in article 15 of the RGPD means that the person making the claim here has the right to access, in any case, the information contained in the email/ report sent to the TSF Department from the technical direction of the Pere Mitjans Foundation on (...), as well as the other emails whose access is also claimed, and which were sent from the Consortium of Social Services in the TSF Department. This, as long as said documents contain data relating to the person making the claim or their child that are the subject of treatment, without prejudice to the fact that any of the limitations provided for in article 23 of the RGPD may apply, which means they have not been invoked by the TSF Department.

Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

In short, and returning to the Department's allegation regarding the fact that the information requested was not part of an administrative file, it must be specified that the right of access to personal data provided for in article 15 of the RGPD has a different scope and nature to the right of any person who holds the status of interested party (article 4 of the LPAC), to access the documentation that is part of an ongoing procedure in which he holds such condition (article 53.1.a LPAC). Therefore, regardless of whether or not you have the status of an interested person in an ongoing procedure, or whether or not the e-mails are part of the administrative file under the terms of article 70 LPAC, every natural person - and here the person making the claim - has the right to access personal information about himself or those people he represents, in accordance with article 15 RGPD.

Consequently, from the perspective of the right of access regulated in the RGPD and the rest of the applicable personal data protection regulations, the present claim for protection of the right of access should be assessed, also from a substantive perspective .

5.- 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 is necessary to require the entity claimed here so that within 10 counting days from the day after the notification of this resolution, facilitate the person making the claim access to their personal data which is the subject of this claim. Once the right of access has been made effective in the terms set out, within the same period of 10 days the claimed entity must report to the Authority.

Machine Translated

For all that has been exposed,

RESOLVED

First.- Estimate the claim for protection of the right of access formulated by Mr. (...), on behalf of his son (...), against the TSF Department.

Second.- Request the Department of TSF so that, within 10 counting days from the day after the notification of this resolution, make effective the right of access exercised by the person making the claim, taking into account what indicated the legal basis of this resolution. 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 TSF Department 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 February 20, by which the Statute of

Machine Translated by Google

Carrer Rosselló, 214, Esc. A, 1st 1st
08008 Barcelona

the Catalan Data Protection Agency, the interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within a period of one month from the day after the its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or to 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,

Machine Translated