

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

RESOLUTION of the rights protection procedure no. PT 60/2018, brought against the Barcelona Social Services Consortium.

#### Background

1.- On 08/12/2019 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 which he had previously exercised before the Barcelona Social Services Consortium (hereafter, CSSB).

The person claiming added that the right of access had also previously been requested before an entity different from the one claimed here, specifically, before the Territorial Services of the Department of Work, Social Affairs and Families (hereinafter, Department of TSF). In relation to this, only to indicate that the neglect of this first request is the subject of the resolution of another file for the protection of rights, which is why it will not be assessed in this file.

The claimant provided various documentation relating to the exercise of this right. Specifically, what is of interest here was accompanied by the following:

- Copy of the instance, registered on date (...) in the Department of TSF and addressed to the CSSB, through which they stated that "we have evidence that the (...) has made a report in relation to a user of the coexistence unit of the home-residence, (...), of the Pere Mitjans Foundation", and in this regard they requested "this management of the Consorci de Serveis Socials de Barcelona to provide us with a literal copy of said report that was addressed to the Department of Labor, Social Affairs and Family. That said request be granted."
- Copy of the instance, registered in (...) at the Department of TSF and addressed to the CSSB, through which they stated that "en fecha (...)mediant escrito registrado con numero (...) it was requested to the director of the Consorci de Serveis Socials de Barcelona the opening of an information file. In which this party is interested in identifying itself as interested in all actions", in reference to the above-mentioned letter.

In the letter, the claimant requests that "by submitting this letter, together with the accompanying documents, be presented to the parents of (...) as interested in the present procedure, and consequently in view of what has been done, we communicate/ notify you of each of the incidences, actions, actions and/or diligences, or resolutions that subsequently occur or are adopted, we are given a hearing before the resolution is issued and we are notify this".

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 character (hereinafter, RLOPD and LOPD, respectively), by means of an official document dated 12/12/2018, a transfer was made from the

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complaint to the CSSB so that within 15 days it formulates the allegations it deems relevant.

3.- The CSSB made allegations through a letter dated 12/20/2018, in which it stated, in summary, the following:

ÿ That "In relation to the request to exercise the right of access alleged by the (...) (...) before the Consorci de Serveis Social de Barcelona, this party declares that it is not aware having received any written submission by (...) (...) in 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 with regard to the processing of personal data and the free movement of such data (hereafter, RGPD)";

- That they had not been sent a copy of all the documentation provided by the person making the claim with their letter of claim with the transfer of the claim.

On 01/15/2019, this Authority once again transferred the documentation attached to the claim to the CSSB, and a new deadline was granted for it to formulate the allegations it deemed relevant. The CSSB formulated new allegations by means of a letter dated 01/16/2019, in which it set out, in summary, the following:

- That he denied having received any letter presented by the claimant here in exercise of the right of access contained in article 15 of the RGPD, reproducing the same words as in his previous letter of allegations, dated 20 /12/2018, and for this reason "the Consorci de Serveis Social de Barcelona has not to be impersonated to the interested parties with these regulations".

- That "with respect to the documentation presented by the claimant relating to requests made before the Consorci de Serveis Social de Barcelona, 1) letter dated (...) in which the claimant in his capacity as father and guardian of Mr. (...) requests that a verbatim copy of a report be provided, and 2) writing dated (...) in which the person claiming in the same capacity requests to be considered as person and interested in an administrative procedure, the Consorci de Serveis Social de Barcelona responded to the aforementioned requests by means of a letter dated (...), with (...) by which it was informed of the non-existence of any report or the opening of any information file relating to the entity Fundació Pere Mitjans".

The claimed entity provided as attached documentation, a copy of the CSSB's reference dated (...) by means of which it was communicated to the person here claiming that "in relation to the different petitions formulated by ustedes, which you have entry into this Consortium on date (...), regarding the possibility of opening an information file, we inform you that from this Consortium no file will be initiated at the Fundació Pere Mitjans Entity. (...) All of them

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actions that you relate in your report have been widely shared, discussed, informed and countered with you and with the entity itself, with the head of the service for persons with disabilities of the Consortium and even with the Territorial services of the Department of Labor, Social Affairs and Families of the Generalitat de Catalunya".

## 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 CSSB on (...), when the 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 circulation thereof (RGPD), which in relation to the right to '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;
- 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 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. The interested persons who are denied, in part or in full, the exercise of the rights of access, rectification, cancellation

or of 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 CSSB resolved and notified, within the period provided for by the applicable regulations, the right of access 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.

As a first consideration, it is necessary to refer to the allegation made by the CSSB in the sense of stating that "it is not aware of any document presented by (...) in exercise of the right of access contained in the article 15 of Regulation EU 2016/679 of the European Parliament and of the Council, of April 27, (...)". However, in the same statement of objections, the CSSB admits to having received the two letters dated (...) and (...) from the person making the claim, regarding which the CSSB states that "responded to the aforementioned requests by means of a letter dated (...), (...), by which he was informed of the non-existence of any report or the opening of any information file relating to the Foundation entity Pere Mitjans".

Therefore, from the allegations presented by the CSSB in the hearing procedure, it can be inferred that what the CSSB is claiming is not that it had not been aware of the two letters that the claimant had addressed to it, but that the claims made there to access certain documents would not fit into the right of access regulated in article 15 of the RGPD. Well, in relation to these allegations, it must be specified that from the point of view of the right of access to one's own data regulated by the personal data protection legislation, it is completely irrelevant that in the letter with which this right of access is exercised, whether or not the interested party expressly invokes article 15 of the RGPD. In other words, the determination of whether or not what is being requested fits into the mentioned right of access does not depend on the qualification that the interested party makes of his writing or the precepts he cites, but on the claim that is specifically made. In this sense, the referenced writing of date (...) is clearly

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a request to exercise the right of access regulated in article 15 of the RGPD, since the person now claiming requested, as the legal representative of his son, "provide us with a literal copy of that report that was addressed to the department of (...)".

On the other hand, regarding the right of access to the file requested by the person making the complaint through the letter addressed to the CSSB dated (...), with which it was requested that he be considered in a certain procedure, and then asked "se le de vista de lo actuado", (...(...)) certainly the claim formulated here would fit in the right of access to the file that every person who holds the status of an interested party in such a file, recognized in the administrative procedure legislation (art. 26 of Law 26/2010 and 53.1.a of Law 39/2015), since it focused on the claim that it was given "view" of the performances. This other right of access allows the interested person to access the documents that are part of the file in which they have such a condition, and not only their data and/or personal information. The purpose of this right is that the interested person can access the content of the file, to defend their rights and/or interests, without prejudice to the eventual presence of limits to access, as established by the legislation of administrative procedure. This, without prejudice to the possibility that the person who holds the status of person interested in a proceeding in progress, may also request access to documents with personal data - of the applicant here or of his child whom he represents- relying on article 15 of the RGPD, so that in such a case this right would act concurrently with the right of access provided for in article 53.1.a of Law 39/2015.

In accordance with the above, the second letter submitted on (...) cannot be considered as a request for access to the applicant's data - given the terms in which it was presented - so that it is not up to this Authority to protect any breach of its right provided for in the administrative procedure legislation. Consequently, such a request is left out of the scope of this resolution, which therefore focuses on the first request for access made on (...), which as has been said, does fit in the right of access regulated in art. 15 of the GDPR.

With regard to this request to exercise the right of access made by the person here claiming on date (...), the requesting person had the right to receive a response from the person in charge of the treatment, within the stipulated period in article 12.3 of the RGPD, specifically 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 to resolve and notify

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(article 21 of the LPAC), so that before the end of this period the resolution must have been notified, or at the very least a duly accredited notification attempt has taken place (art. 40.4 LPAC).

(...)

Well, in relation to this first request of the person here claiming, made on date (...), and through which he requested "this management of the Consorcio de Servicios Sociales de Barcelona to provide us with a copy verbatim of said report that was sent to the department of Trabajo, asuntos Sociales y Familia", the CSSB comes to admit that it would not have given a particular answer within the maximum period of one month, but seems to include it in the one given by (...) on the occasion of the second request.

Consequently, based on what has been argued up to this point, the estimate of the claim proceeds, which was based on the lack of response to the request to exercise the right of access, since the CSSB did not solve and notify in form and time the request for access presented by the affected person on (...), (...)

4.- Apart from what has been argued in the preceding legal basis on the formal issues, it is now necessary to approach the claim from a substantive point of view. 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, also those relating to the son to whom 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 it has progressed, it is proven in the procedure that the claimant here, by means of a letter registered on date (...) before the Department of TSF, and addressed to the CSSB, exercised the right of access in the terms following: "WE REQUEST this management of the Consorcio de Servicios Sociales de Barcelona to provide us with a literal copy of said report - referring to the report issued by Ms. (...) in relation to the son of the person here claiming - who was directed to the Department of Work, Asuntos

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Social and Family That said request be granted". Request with which the right of access regulated in art. 15 of the RGPD, as has already been advanced. This precept recognizes the right of every person to access the information that concerns him and that is the subject of treatment by the person in charge of treatment, as a manifestation of the fundamental right to data protection (Article 18.4 EC), which guarantees to every person the 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 addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

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 report or document referred to by the person making the claim. This, as long as the said report contains data relating to the person making the claim or their child who are the subject of treatment, and without prejudice to any of the limitations provided for in article 23 of the RGPD, which applies to dir have not been invoked at any time by the CSSB.

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

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 are the subject of the present claim, specifically the report previously identified. 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 claim for protection of the right of access formulated by Mr. (...)against the Barcelona Social Services Consortium.



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Second.- Request the Consorci de Serveis Social de Barcelona 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 form pointed out to 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 Social Services Consortium of Barcelona 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,