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RESOLUTION of the rights protection procedure no. PT 2/2019, urged against the City Council of Piera.

Background

1.- On 3/01/2019 it was registered with the Catalan Data Protection Authority, a letter from Ms. (...) (hereinafter, the person claiming), for which he formulated a claim for the alleged disregard of the right of access to his personal data, which he had previously exercised before the Piera Town Council. The affected person based his claim on art. 15 of 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 (hereinafter, RGPD) .

The claimant provided various documentation relating to the exercise of this right, in particular, a copy of the proof of presentation of the instance registered on 01/10/2018 at the Piera City Council, identified in the settlement corresponding to the description "request data protection information".

2.- By official letter dated 01/22/2019, the claim was transferred to the City Council of Piera so that within 15 days it formulates the allegations it deems pertinent.

3.- The Piera City Council made allegations in a letter dated 02/15/2019, in which it set out, in summary, the following:

- That "On February 11, 2019, the City Council of Piera, by agreement of the Local Government Board, resolved the request to exercise the right of access made by the person making the claim."
- That "The resolution of the request to exercise the right of access was advanced to the person claiming, by means of email, on February 12, 2019 and, after making two notification attempts, which proved unsuccessful on February 12 and 13, 2019, in the second attempt the Local Police collected from the person who was at the home, the statement that the person making the claim no longer resides there."

The claimed entity provided as attached documentation, a copy of the "Certificate of Agreement from the Board of Governors", which certifies that on 02/11/2019 it was agreed to estimate the request to exercise the right of access of the affected person, and all the information related to "the data contained in the processing carried out by the Piera City Council" was communicated; copy of the annexes to the Governing Board Agreement relating to the personal data of the person making the claim processed by the City Council; screen printout of the email sent to the claimant on 02/12/2019, through which it is communicated that the request to exercise the right of access has been resolved and the aforementioned Agreement is attached as to attached document; and two communiqués from the City Council in which they report that, once the personal notification of the Governing Board Agreement was attempted, both notifications (on 02/11/2019 and 02/13/2019) have been unsuccessful.

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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 City Council of Piera on 1/10/2018, when it was already fully applicable the 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;
- 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 submits the request by electronic means, and unless he requests that

otherwise facilitated, 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 applications. 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 validity or inadmissibility of the claim

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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 City Council of Piera 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 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 respect, it is certified that on 1/10/2018 a letter was entered in the Registry of the City Council of Piera by the person here claiming, through which he exercised his right of access to all that information relating to the your personal data processed by the City Council of Piera.

In accordance with article 12.3 of the RGPD, the Piera City Council 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 City Council of Piera has not proven to have responded to the request for access made by the now claimant within the one-month period provided for the purpose, since the City Council itself states that until the day 11/02/2019 - that is to say this once Authority had given him a transfer of the claim in the hearing procedure - he did not dictate

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the Agreement of the Board of Governors by which the request to exercise the right of access of the person making the claim is estimated, a copy of which has been provided in the hearing procedure. So, even in the case - neither invoked nor accredited by the City Council - that the circumstances had arisen to be able to extend the deadline to resolve, from one month to two more months (3 in total), as provided for article 12.3 of the RGPD, the deadline would also have been exceeded.

Consequently, the assessment of the claim proceeds from this formal perspective, given that the City Council of Piera did not resolve and notify the said request presented to the affected person in a timely manner.

Regarding the merits of the claim, given that the City Council has agreed to consider the request for access to personal data presented by the person making the claim, it is not considered necessary to make further considerations in this regard, without prejudice to the case that the person making the claim considers that his right of access has not been fully exercised, he may bring this to the attention of this Authority. Indeed, from the documentation presented in the hearing procedure it is evident that the City Council, once it became aware of the present claim through the transfer carried out by this Authority, has tried on two occasions to personally notify the address indicated by the person claiming for the purposes of notifications, although both attempts (on 12/02/2019 and 13/02/2019) were unsuccessful, and in the last attempt it was recorded that the person concerned already did not reside at the indicated address.

Likewise, the City Council has also provided a screen print of the email addressed to the person making the claim through which they were informed that their request had been resolved and for these purposes a copy of the resolution was attached, with the indication that "the original of this document has been sent to the address you designated in your request (...), as the notification address". This email was sent by the City Council to the email address that the affected person had provided in his complaint to the Authority, a copy of which was forwarded to the City Council.

4.- 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. However, in the present case the estimate obeys the fact that the City Council he had not attended to the right of access in time, but he did so extemporaneously, once the present procedure had been initiated. This is why it is not appropriate to request the Piera City Council in this regard.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mrs (...) against the Piera Town Council.

Second.- Notify this resolution to the City Council of Piera 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 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,