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File identification

Resolution of the rights protection procedure no. PT 4/2019, urged by Mrs (...) against the Municipal Finance Institute of Barcelona City Council.

Background

1.- On 08/02/2019 it was registered with the Catalan Data Protection Authority, a letter from Mrs. (...) (from now on, the person making the claim), in which she made a claim for the alleged neglect of the right of access to her personal data, which she had previously exercised before the 'Municipal Finance Institute of Barcelona City Council (henceforth, IMH).

The person making the claim provided documentation relating to the exercise of this right, specifically, a copy of the "Request for a copy of all the expedient to proceed to his defense before tribunals, report to the Catalan Data Protection Authority and to make a complaint to the Grievance Ombudsman", registered as of entry on 07/06/2018 before the IMH, through which he requested a copy of all the documentation relating to the file "Recurso de alzada contra procedido de apremio y objeto de resource (...)".

2.- By official letter dated 02/12/2019, the claim was transferred to the IMH so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 07/03/2019, the IMH formulated allegations in which, in summary, it set out the Next:

- That by virtue of a traffic fine imposed by the Barcelona City Council (file no. (...)), which was not settled by the claimant here and the sanctioned there within the deadline to that effect, the IMH "issued a provision of constraint receipt number (...) (..) ". This coercion procedure was challenged by the claimant here, and the IMH decided to dismiss the appeal filed.
- That the notifications that have been made throughout the processing of the file have been made in accordance with "the appropriate procedure for notification of complaints", and in particular mention of Royal Legislative Decree 6/2015, of 30 d October, by which the Law on Traffic, Circulation of Motor Vehicles and Road Safety is approved.
- That the claimant "states that he has received the decision rejecting his appeal, that he does not agree with it and that his personal data has been incorrectly processed, without specifying anything else about it.
Finally, he requests a hearing of the file to file a contentious administrative appeal, a complaint to the Catalan Data Protection Authority and a complaint to the Ombudsman.
Having not proceeded the Municipal Institute of Finance a

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to view the file, the interested party presented the claim that is the subject of this letter on February 8, alleging that no response has been given to the right of access she exercised, and on February 11 she presented the instance number (...) before the Municipal Institute of Finance where he again requests a view of the file and a copy of all his personal information that it has.

These three instances are the only ones on record presented by the lady (...);

- That the IMH "has made good use of the data of the interested party in relation to the initiation, notification and development of the previously referenced procedure";
- That "this Administration wishes to clarify that it was not until last February 11 that the interested party exercised before the Municipal Institute of Finance the right of access to their personal data recognized in article 15 of the Regulation (EU) 2016/679, of the European Parliament, of April 27, 2016 and in article 13 of Organic Law 3/2018, of December 5, Protection of personal data and guarantee of digital rights. As stated before, in the letter of June 7, 2018, which we assume originated the claim before the Catalan Data Protection Authority, the interested party only requested a copy of the entire file, right which is recognized by article 53.1.a) of Law 39/2015, of October 1, on the Common Administrative Procedure of Public Administrations";
- That "From the instance filed on June 7, 2018, it cannot be deduced that what the interested party is exercising is the right of access to their personal data, but rather the right of access to the file recognized in the article 53.1.a) of Law 39/2015, (..), since the only thing he requests, and we quote verbatim, is "a copy of the entire file to proceed with his defense and convey communications and complaints before other bodies";
- That "we inform you that the Municipal Institute of Finance will proceed, within the legally established deadline, to respond to the request for access to your personal data made by the interested party on February 11, 2019 and to deliver a copy of the "administrative file responding to your request"

The claimed entity provided as attached documentation, a copy of "the most relevant actions of the aforementioned disciplinary file", a screen printout of the "DGT records query" and of the "Residence data" query formulated by the IMH, and a copy of the Resolution of the IMH, dated 03/06/2019, by which it is decided to grant access to the claimant's personal data and to transfer the copy of file number (. ..).

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.- As a first question, it is necessary to determine whether the claim we are dealing with should be resolved based on the right of access regulated by data protection legislation. In this regard, the IMH states that the request submitted on 07/06/2018 had to be processed in accordance with the provisions established in article 53.1.a) of Law 39/2015, of 1 d October, of the common administrative procedure of public administrations (LPAC), given that the wording of the request submitted in which it was requested "a copy of all the file to proceed to its defense and vehicular communications and complaints to other bodies" it could not be interpreted that the person making the claim was exercising the right of access of Article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons for which it concerns the processing of personal data and the free movement thereof (hereafter, RGPD).

In the claim presented to this Authority, the affected person provided a copy of that request presented to the IMH on 06/07/2018, in which he identified an administrative file of coercion in what he considered to have occurred " un incorrecto tratamiento de sus personales data" and asked for "a copy of the entire file" in order to go to this Authority, among other institutions, although it must be admitted that it was not indicated that the right of access should be exercised to your data. It was not until after having gone to this Authority on 08/02/2019 that the claimant here would have requested access to his personal data before the IMH, through an instance presented on 02/11/2019 according to states the IMH. It is therefore necessary to consider whether this circumstance should lead to the inadmissibility of the present claim, for having formulated the claim prematurely, when the right of access to the own data had not even been formally exercised before the imh

In relation to this, it must be clarified that from the point of view of the right of access to one's own data regulated by the legislation on the protection of personal data, it is not essential that in the writing with which this right of access is exercised access, whether or not the interested person expressly invokes article 15 of the RGPD or the regulations for the protection of personal data - an invocation that the claimant here had made, although not linked to the specific right of access. 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 the present case, the claimant had requested on 06/07/2018 access to the entire file, and it is worth saying that certainly, the terms in which the request had been made allowed it to be interpreted that it was made in the 'protects the right of access to the file as an interested party of the procedure, in accordance with the previously indicated precepts of the legislation on administrative procedure, request for access that does not appear to have obtained any

response from the IMH. In any case, it is clear that among the data contained in that file there was personal data relating to the person there requesting and here claiming, and it is necessary to insist that in that letter it referred to eventual incorrect treatments of their personal data and expressly mentioned this Authority as the institution before which he intended to go. In short, that natural persons who hold the status of interested parties in an administrative procedure have two rights that can be concurrent and that are not incompatible with each other. In one case it refers to the right of access to the documentation included in the file, and in the other to access to your own data contained in the file. All of the above makes it possible to approach this claim from the point of view of the right of access regulated by data protection legislation, in accordance with the principles of speed and pro action.

In this regard, article 15 of the RGPD determines the following:

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

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

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

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee for any other copy requested by the interested party

based on administrative costs. 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 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 presents the request by electronic means, the information will be provided by electronic means when 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

if 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.- Once it has been determined that the present claim would have its place in the right of access regulated by the RGPD and this regulation has been set out, the present claim will therefore be resolved from this point of view.

As relevant background, it is certified that on 07/06/2018 a letter was entered in the IMH Registry by the person here claiming in which he requested a copy of a file that he identified and that had been processed against the his person

As indicated, the IMH maintains that with such a request the right of access regulated in art. 15 of the RGPD but the right of access of the interested party to the pending file in which he holds such a condition, regulated by the administrative procedure legislation. The fact is that the IMH has admitted that it had not given an answer and therefore that it had not facilitated access to the file in application of this right of access to the file, which if - if carried out, it would have allowed to consider that the right of access to your data had also been taken care of.

From the point of view of Article 12.3 of the RGPD, the IMH 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 for another 2 months (3 in total), taking into account the complexity or number of requests. In relation to the issue of the term, it should be borne in mind that in accordance with article 21.3 b) of the LPAC and article 41.7 of the LRJPCat, on the one hand, the calculation of the maximum term in procedures initiated at the instance of part - as is the case - 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).

As it has progressed, the IMH itself admits that it did not respond to that request of 07/06/2018, and that it would not have done so until 06/03/2019, that is to say once it had already received the second request dated 11/02/2019 and when this Authority had already transferred the present claim. In this extemporaneous response, the IMH appreciated the request and provided a copy of the file that included the claimant's data. Consequently, the assessment of the claim proceeds from this formal perspective, given that the IMH did not resolve and notify the submitted application in a timely manner.

5.- Aside from what has been argued in the preceding legal foundations 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 that is the subject 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 the information detailed 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 view of the documentation provided by the claimed entity, it is proven that The IMH issued the resolution by which the claimant's request for the right of access was accepted, and specifically, the copy of all the documentation related to the sanctioning administrative file was transferred (...).

Regarding the content of the IMH resolution, it should be noted that article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the documents containing the personal data subject to processing, and therefore, regardless of whether or not the administrative acts contained in the corresponding administrative file have been properly notified, and whether or not the claimant already has the required information, none of this exempts the IMH from the obligation to facilitate it again. Apart from this, with regard to the information that must be provided to the applicant for access to the data itself, it should be stated that, in addition to the copy of the requested documentation, the article 15.1 of the RGPD establishes that it is also necessary to inform about other extremes, and in particular about

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the origin of the information and the eventual recipients of the data, as well as the purpose of the treatment, the categories of personal data being treated.

Finally, in view of the allegations made by the IMH in its written response to the hearing procedure, it is considered appropriate to specify that it is not the subject of this resolution of the rights protection procedure, enter to the analysis of whether the notifications made throughout the sanctioning procedure and the coercion procedure were made correctly or not, since the object of the present procedure focuses on determining whether the right of access to the personal data regulated in article 15 of the RGPD, since this is how the affected person defined it before this Authority.

6.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the manager of the file must be required so that in the period of 10 days makes the exercise of the right effective. However, in the present case the estimation obeys the fact that the IMH had not attended to the right of access in time, but did so extemporaneously, once the present procedure had been initiated. That is why it is not appropriate to require the IMH in this regard.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mrs (...) against the Municipal Institute of Finance of Barcelona City Council.

Second.- Notify this resolution to the Municipal Finance Institute of Barcelona City Council and to 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,

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