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File identification

Resolution of the rights protection procedure no. PT 11/2019, urged by Mr. (...)I against the General Directorate of Police of the Department of the Interior.

Background

1.- On 25/04/2019 it was registered with the Catalan Data Protection Authority, a letter from Mr. (...)I (henceforth, the claimant), in which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia (hereafter, DGP).

The person making the claim, who is an officer of the Generalitat Police-Mossos d'Esquadra (PG-ME), provided various documentation relating to the exercise of this right, among others:

- a) Letter dated 06/13/2018 entitled "Request for Information in relation to access to your personal data processed on police bases. To the Major of the police force of the Esquadra", in which the person claiming here asked to know the identity of those people in the service of the PG-ME body who would have acceded to certain police and judicial proceedings of which he was part, when this access would not be justified by its functions.

This document does not include any stamp of entry to any body or organ; rather, there is only a handwritten signature, a number and a date (14/06/2018) - also handwritten - which, according to the claimant here, would correspond to the "Chief Sub-Inspector of the Comisaria del cuerpo de los Mossos d'Esquadra de (...)" to whom, according to the claimant here, he delivered this document to him on that date.

- b) Letter dated 18/10/2018 entitled "To the General Directorate of Police of the Mossos. Request status of a judicial procedure". Despite the title of this document, it is clear from its content that the claimant here reiterated the access request he had previously made.

This document does contain an entry stamp dated 10/18/2018 in the Police Region (...).

2.- On 04/30/2019 the claim was transferred to the DGP so that within 15 days it could formulate the allegations it deemed relevant.

3.- The DGP has made allegations by means of a letter dated 07/05/2019, in which it set out, in summary, the following:

Carrer Rosselló, 214, Esc. A, 1r 1a
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- That "according to the Mossos d'Esquadra officer who is claiming and stated in the documentation he provides, on 06/14/2018 he handed over the request he refers to to his superior (...). According to the content of the document and the fact that this request was not submitted by any of the means established in article 16.4 of Law 39/2015, of October 1, on common administrative procedure of public administrations, this letter was not treated as a request to exercise the right of access contained in article 15 of Organic Law 15/1999, of December 13, on the Protection of Personal Data".
- That since this Authority had "considered the letter submitted by the claimant as a request to exercise the right of access, a resolution was issued to access personal data" on 06/14 /2019, which office of notification to the person here claiming was registered as of departure on 06/25/2019.

Along with its statement of objections, the DGP provided a copy of the resolution it had issued on 14/06/2019, in relation to the right of access exercised by the claimant here. In this resolution - in which it is decided to "enforce the right of access" - it is recorded, in the 1st antecedent, that the claimant here had requested "access to his personal data contained in the file Information System of the Generalitat police for physical persons (SIP PF) managed by the General Directorate of the Police of the Department of the Interior"; and then, in the background, 2nd of said resolution, details of the claimant's data contained in the aforementioned file (SIP PF) are detailed.

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.- For temporary reasons, Directive (EU) 2016/680, 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 by the competent authority for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of such data (Directive (EU) 2016/680), in accordance with what is established in its article 1, which provides in its article 14 the right of access.

In this regard, it should be noted that Directive (EU) 2016/680 has not been transposed into national law within the deadline set for that purpose (05/06/2018), and consequently individuals can directly invoke European law before the courts, regardless of whether or not they have been transposed into national law. Thus, in accordance with the doctrine of the Court of Justice of the Union

European, individuals will be able to invoke the direct effect of the directive's precepts when they confer rights in an unconditional and sufficiently clear and precise way before public administrations. The access request analyzed here was therefore presented before the entry into force of Organic Law 3/2018, of December 5, on the Protection of Personal Data and guarantee of digital rights (LOPDGDD), which repealed the Organic Law 15/1999, of December 13, of

protection of personal data (LOPD). In any case, with regard to the processing of data that is subject to Directive (EU) 2016/680 - such as the request for access resulting from this claim - it should be noted that the transitional provision 4a of the LOPDGDD foresees that they will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes into Spanish law the provisions of the aforementioned Directive enters into force.

3.- In accordance with the above, firstly, it is necessary to go to article 15 of the LOPD, which in relation to the right of access determines the following:

- "1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.
2. The information can be obtained through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, without using keys or codes that require the use of specific mechanical devices.
3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

For its part, article 27 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter, RLOPD), in its first and second sections provides the following regarding the right of access:

- "1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications made or planned for this data.
2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.
However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD establishes the following:

- "1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request.
Elapsed term without expressly responding to

the request for access, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.

In the event that it does not have the personal data of those affected, it must also notify them within the same period.

2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.

3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

Lastly, and since the right that is the subject of this resolution refers to a treatment carried out by the forces and security forces, it is necessary to refer to the specific regulation for these cases provided for in article 23, sections 1 and 3, of the LOPD, which determine the following:

Article 23. Exceptions to the rights of access, rectification and cancellation

1. Those responsible for the files that contain the data referred to in sections 2, 3 and 4 of the previous article may deny access, rectification or cancellation depending on the dangers that may arise for the defense of the State or public security, the protection of the rights and freedoms of third parties or the needs of the investigations being carried out. (...)

3. The person affected who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring this to the attention of the director of the Data Protection Agency or the competent body of each autonomous community in the case of files maintained by the police forces of these communities, or by the autonomous tax administrations, which must make sure of the origin or impropriety of the denial."

In line with the above, article 16.1 of Law 32/2010 provides:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

4.- Having explained the applicable regulatory framework, it is then necessary to analyze in the first place whether the DGP resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim.

First of all, it should be noted that the document dated 06/13/2018 provided by the claimant here (letter a of the 1st antecedent) would not contain those elements that would allow prove its presentation in an official register. Indeed, in this document there is only a handwritten signature, a number and a date (14/06/2018) - also handwritten - which, according to the claimant here, would correspond to the "Chief Sub-Inspector of the Comisaria del cuerpo de los Mossos d'Esquadra de (...)" to whom, according to the claimant here, he delivered this document to him on that date; but there is no stamp that certifies its presentation in the official register.

Despite the above, it is worth saying that in its letter of allegations the DGP admits that it received this letter when it states that it was not treated as a request for access to the extent that "no it was submitted by any of the means established in article 16.4 of Law 39/2015".

In this regard, it is necessary to mention here the provisions of article 24.5 of the RLOPD:

"The person in charge of the file or treatment must attend to the request for access, rectification, cancellation or opposition exercised by the person affected even if the latter has not used the procedure established specifically for that purpose, always that the interested party has used a means that allows the sending and receipt of the request to be proven, and that the same request contains the elements indicated in paragraph 1 of the following article".

Therefore, if the letter formulated by the claimant here contained all the elements provided for in article 25 of the RLOPD, the right of access had to be considered validly exercised.

On the other hand, it should be noted that it is certified that on 18/10/2018 a letter from the person here claiming was entered in the Registry of the Police Region of (...), by means of which - and leaving aside the lack of clarity of the title contained in said letter - he exercised his right of access to know the identity of those people in the service of the body of the PG-ME who would have accessed certain police and judicial proceedings of which he was a party, when this access would not be justified by his functions - always at the discretion of the claimant here-. It should be noted that the DGP does not make any mention of this document in its statement of objections.

In accordance with article 29.1 of the RLOPD, the DGP had to resolve and notify the request for access within a maximum period of one month from the date of receipt of the request.

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 the Law

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08008 Barcelona

26/2010, of August 3, on the legal and procedural regime of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party - such as 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).

It is certified that the DGP resolved the access request on 06/14/2019 (3rd precedent), once it had received the transfer of the claim by this Authority. Therefore, whether the date of presentation of the first brief (13/06/2018) or that of the second brief (18/10/2018) is taken as "days a quo", the truth is that the DGP resolved and notify clearly outside the one month period provided for in the rule.

Consequently, the claim is assessed for formal reasons, since the DGP did not resolve and notify the said access request submitted by the affected person in a timely manner. This notwithstanding what will be said below regarding the substance of the claim.

4.- Once the above has been established, it is appropriate to analyze the merits of the claim, that is, whether the person making the claim has the right to have the DGP provide him with the requested information, that is, the identity of those people who provide service to the DGP and who would have accessed the police/judicial proceedings of which the person making the claim was a party, without this access being justified by reason of service.

At this point it should be noted that in the resolution of 06/14/2019 the DGP not only does not analyze, but does not even mention the specific request of the claimant here, since it is simply limited to detailing the data that They are contained in the "SIP PF" file.

It is then necessary to analyze the specific request for access made by the claimant here and to which, as has been said, the DGP did not respond with its resolution of 06/14/2019. In this regard, it should be noted that, as this Authority has reiterated on numerous occasions, the right of access does not include the right to know the information relating to the identity of those persons assigned to the person in charge of the file or treatment who accessed the data personal, not having the consideration of data communications. This criterion has been maintained by this Authority in several resolutions (for all, no. PT 16/2017), many of them referring to access to the medical history, but which conclusions are extrapolated to the case at hand. Likewise, this criterion has also been confirmed by the jurisprudence in several judgments, among others, the one issued by the National Court on 26/02/2014: "it should be noted that the request for access to information made by the plaintiff here The Ministerio de Hacienda y Administraciones Públicas is not aware of the content of the right of access to personal data that Article 15 of the LOPD grants to the holder of such data, as it is aimed at obtaining information on the identity of public officials or servants who might have access to the personal data of the actress, presuming that they could have them

transferred to third parties Therefore, it does not aim to obtain information about the personal data being processed, the origin of such data and the communications made or intended to be made of them by the person in charge of the file, but about the data of the identity of those public employees belonging to the administrative organization of the person responsible for the file who had accessed them, who are not included in the right of access recognized to the holder of personal data and legally configured in the terms expressed".

In short, the right of access regulated by the personal data protection legislation does not include the right to know the identity of the specific people at the service of the data controller who have accessed the information of the person requesting access .

A different issue is that the affected person has well-founded suspicions that there has been improper access to their data by people who provide services in the organization responsible for the treatment, a fact that could be brought to the attention of this Authority if available of some indication, which would be convenient to provide in the eventual complaint. Reference will be made to this in the 7th legal basis.

5.- In view of the above, from the perspective of the regulated right of access to the LOPD and RLOPD, as has been advanced, the present claim should be formally assessed, insofar as the DGP would not have responded in time to the request for access of the claimant here; and to dismiss it on the merits, in accordance with what was stated in the 4th legal basis, since, as has been said, in the present case it was not appropriate to provide the requested information.

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, must be required of the data controller so that within 10 days the exercise of the right becomes effective. However, it is considered that in the present case it is not necessary to make any request, given that the estimate is based solely on the formal issue of not having given an answer within the deadline.

7.- Finally, it is necessary to refer to the request made by the person making the claim in his letter in the sense of requesting the initiation of disciplinary proceedings in the event that improper access to the police/judicial proceedings of the which he was part of. The person claiming did not provide any elements tending to accredit these possible improper accesses. In this regard, it should be noted that the person making the claim here bases his suspicion of possible improper access simply on the alleged comment that, according to him, he made to a third person - who would have transferred to the claimant here - one of the people with whom he was facing in several litigations. This eventual comment "[members of the police force had contacted her in November 2016 and had offered her full collaboration (...), given that they knew she was a corrupt agent [referring se to the claimant here]", at the discretion of this Authority, would not justify in any case the initiation of an investigation for alleged illegal access;

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first, because there is no evidence that this comment was made, nor in what terms; and, secondly, because in the event that the comment is true, the content of the same cannot in any way lead to the conclusion that people in the service of the PG-ME have improperly accessed the data of the person claiming here contained in said proceedings.

But it is that, in addition to the above, it is also necessary to mean that for the hypothetical case - not proven - that members of the PG-ME body had accessed the controversial proceedings until November 2016, the eventual infringement that had assumed this alleged access to personal data would already be time-barred. In effect, the eventual responsibilities that this Authority could have demanded from the DGP - in the event that these hypothetical improper accesses had occurred - for the commission of the offense provided for as serious in article 44.3.d) in relation with article 10 of the LOPD they would have been extinguished, and this because any infringements would have already been prescribed, in accordance with what was provided for in article 47 of the LOPD, in which it was determined that serious infringements prescribed two years from the day the offense was committed.

For all that has been exposed,

RESOLVED

First.- Estimate in part, for formal reasons, the guardianship claim made by Mr. (...) against the General Directorate of the Police of the Department of the Interior, for not having responded to the request for access within the period established by the applicable regulations, and dismissing it as regards the substance.

Second.- Notify this resolution to the General Directorate of the Police 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.



Autoritat Catalana de Protecció de Dades

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The director,

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