

RESOLUTION of the rights protection procedure no. PT 26/2019, urged by Ms. (...) against the Riudarenes Town Council

Background

1.- On 12/06/2019 it was reported to the Catalan Data Protection Authority, a letter from Ms. (...), for which he formulated a claim for the alleged neglect of the right of deletion, which he had previously exercised before the Riudarenes City Council. Specifically, the person claiming requested that "my personal data exposed on the internet since 2015" be deleted, referring to the personal data that identified him as a member of the electoral board for the municipal elections of 24/ 05/2014 (name and surname, DNI, postal address and level of education) in the document "Minutes of the Plenary session of the City Council on (...)", which is published publicly on the internet under a domain owned by the City Council.

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

- copy of the general instance, registered from the beginning on (...) at the City Council, by means of which the claimant formulated his request to exercise the right of deletion;
- copy of the City Council's response communication, dated (...), in which it was stated that they had deleted all the personal data from the controversial document published on the City Council's website, with the exception of " the initials of the name and surname, which do not allow the person to be identified, but which must be part of the minimum content of the Plenary", and add that "in relation to the Transparency portal of the Generalitat de Catalunya, the minutes were sent yesterday to the Generalitat, requesting that they remove the previous one and replace it with the one that appears on the municipal website.";
- copy of the emails exchanged during the month of November 2018, between the person making the claim and the Secretary of Territorial Services in Girona of the Department of Education of the Administration of the Generalitat of Catalonia, the purpose of which is to know which department would have sent the aforementioned data deletion request to the City Council.

2.- On 06/18/2019 the Authority, in accordance with article 37.2 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD) , forwarded the claim to the data protection delegate of the claimed entity, in order to give a response to the claim within one month, and to communicate this response to the Authority. On the other hand, at the office of transmission of the claim, the entity was informed that in the processing of the corresponding procedure, the hearing procedure could be dispensed with for the interested persons, in accordance with what is foreseen in article 82.4 of Law 39/2015, of October 1, on the common administrative procedure of public administrations.

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3.- On 06/11/2019, the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the claim. Thus, it was found that when doing a search with the name and surname of the person claiming together with the name of the Council claimed, the first result offered by the internet search engine "Google" is a file called "Acta of the Plenary session of the town hall on the day (...)", which is located in a domain owned by the Riudarenes Town Hall ((...)). By clicking on the result, a pdf document is downloaded with the following title "Minutes of the Plenary session of the City Council on the day (...)", which contains the personal data of the person making the claim (name and surname, ID, postal address, postal code and level of education), who was elected as president

of a polling station.

Likewise, it can be seen that through the City Council website (<http://www.ajuntamentderiudarenes.cat/#>), and specifically in its electronic headquarters, it is possible to choose the minutes of the Municipal Plenum that you want to consult, and among these, two "extraordinary" minutes of the same date are indexed "(...)" . The first downloads the document "Minutes of the Plenary Session of the City Council on (...)", which is the same pdf file referenced in the previous paragraph, which contains the personal data of the claimant referenced. The second downloads a document with the title "Minutes of the session of the Plenary of the City Council on (...)", which despite the change of date, reproduces the same content as the minutes of the date (..), but here without the claimant's personal data except for the name and surname which have been replaced by the claimant's initials.

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 being resolved here was formulated with respect to a request to exercise the right of deletion ("right to be forgotten") that had been presented to the claimed entity on 03/09/2018, in accordance with the provisions of article 17 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 circulation of these (hereinafter, the RGPD), which determines the following:

"1. The interested party will have the right to obtain without undue delay from the person responsible for the treatment of the personal data concerning him, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

- a) personal data are no longer necessary in relation to the purposes for them that were collected or treated in another way;
- b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;

- c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party in accordance with article 21, section 2;
- d) personal data have been treated unlawfully;
- e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;
- f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.

2. When he has made personal data public and is obliged, by virtue of the provisions in section 1, to delete said data, the controller, taking into account the technology available and the cost of its application, will adopt reasonable measures, including technical measures, with a view to informing those responsible who are processing personal data of the interested party's request to delete any link to these personal data, or any copy or replica thereof.

3. Sections 1 and 2 will not apply when the treatment is necessary:

- a) to exercise the right to freedom of expression and information;
- b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;
- c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;
- d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or
- e) for the formulation, exercise or defense of claims."

The RGPD also establishes the obligation to notify the recipients of the data of the deletion exercised by the interested party, in article 19:

"The person responsible for the treatment will communicate any rectification or deletion of personal data or limitation of the treatment carried out in accordance with article 16, article 17, section 1, and article 18 to each of the recipients to whom the personal data have been communicated, unless it is impossible or requires a disproportionate effort. The person in charge will inform the interested party about said recipients, if so requested."

Likewise, on the rights contemplated in articles 15 to 22 of the RGPD, article 12.4 of the RGPD establishes the following:

"4. If the controller does not comply with the request, he will inform you without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the

possibility to file a claim before a control authority and to take legal action"

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, 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 deadline, they can submit a claim to the Catalan Data Protection Authority."

3.- Having exposed the applicable regulatory framework, it is appropriate to analyze the substance of the claim, that is to say, whether the response given by the City Council to the request of the now claimant, conformed to the precepts transcribed in the legal basis previous

As a starting point, it should be taken into account that article 17 of the RGPD regulates the right of deletion as the right of the interested party to demand from the person in charge of the treatment that they exclude from the treatment the personal data that are unnecessary for the purpose that justifies the treatment, so that it is not in your interest that they undergo treatment, because the treatment violates the principles of the RGPD, or by legal imperative. Also, in section 2on of article 17, the right to be forgotten is regulated as an extension of the right to deletion, which focuses on the protection of individuals with respect to information published on the internet. The RGPD limits the right to be forgotten to cases where the data has been published, facilitating access to the information to any third party who is interested in knowing it. The right to be forgotten, however, only applies in those cases where the right to deletion also applies. The right to deletion, and by extension the right to be forgotten, is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data.

This is why the limitations to this right of deletion must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. Thus, the cases in which the RGPD excludes the right to deletion and oblivion are listed in its article 17 section 3; and also in article 33, points 1 and 2, of the RLOPD, in force in everything that does not contradict the RGPD.

In view of the documentation provided by the person making the claim, it is proven that the City Council responded to the request for deletion of the data of the person making the claim within the deadline granted for the purpose. However, in its response the City Council, on the one hand, indicates that the personal data of the person claiming from the "Minutes of the Municipal Plenary Meeting of the day (...)" have been deleted and that "the personal data that appear in the agreement are only the initials of the name and surname, which do not allow the person to be identified, but which must be part of the minimum content of the Plenary", and on the other hand, regarding this same document, he states that the council has requested the Administration of the Generalitat of Catalonia "in relation to the transparency portal of the Generalitat of Catalonia (...) to remove the previous one and replace it with the one that appears on the municipal website, so that the data does not appear there

personal". First of all, as indicated in the antecedents (3), it is necessary to mention the fact that in the electronic headquarters of the City Council there are two links linked to the Municipal Plenum held on the same date "...", at through which the Internet user can download the following two documents: the document "Minutes of the Municipal Plenum of the day (...)", where the personal data of the claimant here have been removed except for the first and last name have replaced with their initials; and the document "Minutes of the Municipal Plenum of the day (...)", in which the same content is reproduced as the "Minutes of the Municipal Plenum of the day (...)", but keeps the personal data of the person reporting here: name and surname, ID, postal address, postal code and level of education. In other words, probably the result of an error, in the electronic headquarters of the Riudarenes Town Council, which can be accessed from the council's website (<http://www.ajuntamentderiudarenes.cat/#>), there are published two minutes relating to the extraordinary municipal meeting held on (...), one of them the "Minutes of the municipal meeting of the day (...)", where personal data of the here claimant except for the first and last names that have been replaced by their initials, and the other, the "Minutes of the Municipal Meeting of the day (...)" where the claimant is identified as the president of a polling station for the municipal elections, through all the personal data indicated above. Be that as it may, the fact is that on the electronic headquarters of the City Council there are published two municipal acts with personal data of the claimant here, and therefore, still accessible to the general public.

Consequently, the two published municipal acts contain personal data, although in the document "Minutes of the Municipal Plenum of the day (...)", the published personal data are smaller than those contained in the document "Minutes of the Municipal Plenum of the day (...)", since only the initials of the name and surname of the person making the claim are kept. In this respect, the deletion of the personal data contained in the document "Minutes of the Municipal Plenum of the day (...)" is positively valued, but it is necessary to make a point about the fact that the names and surnames of the people chosen to be members of the electoral commissions have been replaced by their initials, given that the initials linked to a first and last name also have the character of personal data pursuant to the provisions of article 4.1 of the RGPD, which defines the concept "personal data" such as "all information about an identified or identifiable physical person (..)", and there are many cases where initials can be used to allow the identification of the person

Secondly, with regard to the publication through the electronic headquarters of the City Council of the two Plenary acts indicated, it is necessary to mention Law 29/2010, of August 3, on the use of electronic media of public sector (Law 29/2010), which contains in article 10.2 a specific provision in relation to the publication in the electronic headquarters of the local entity of the minutes of the municipal plenary sessions, although it is advanced that such provision does not protect the dissemination made in the case of the publication of the referred acts in which personal data of the claimant are contained, and this for not meeting the requirements provided for there. Indeed, article 10.2 provides the following:

"2. Local entities must publish the minutes of the plenary sessions in their electronic headquarters. In their publication, the principles and guarantees established by the data protection regulations and the protection of the right to honor and privacy must be taken into account. For these purposes, personal data may be included without

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the oblivion), given that none of the circumstances cited in articles 17 of the RGPD and 33 of the RLOPD that would allow the denial of the right to deletion in relation to the data of the person making the claim are observed. In turn, it should be noted that the person in charge of the file has not asserted the existence of any of these impeding circumstances, nor has he invoked any law or community rule of direct application that prevents granting the deletion or the concurrence of a provision applicable to this personal data that implies a mandatory period of conservation of the same, so it is appropriate to consider the right of deletion.

4.- 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. In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, proceed to the deletion of all personal data from the acts of the Plenary referenced municipalities. In particular, from the document "Minutes of the municipal meeting of the day (...)" (disseminated on the internet in duplicate through the electronic headquarters of the City Council, and through the Google search engine under a domain of the City Council) , it is necessary to delete the following personal data of the person reporting here: first and last name, ID, postal address, postal code and level of education; and from the document "Minutes of the Municipal Plenum of the day (...)", the initials corresponding to the name and surname of the person making the claim must be deleted. In relation to this data, it is necessary to proceed with its deletion unless the claimed entity considers that blocking is applicable. Once the right of deletion has taken effect in the terms set out and the person making the claim has been notified, 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 guardianship claim made by Ms. (...) against the Riudarenes Town Council.

Second.- Request the Riudarenes City Council so that, within 10 counting days from the day after the notification of this resolution, the right of deletion (right to be forgotten) exercised by the person becomes effective claiming, in the manner indicated in the 4rt legal basis. Once the right of deletion (right to be forgotten) has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to the Riudarenes Town Council 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.

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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,