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## File identification

Resolution of the rights protection procedure no. PT 45/2019, urged against the Open University of Catalonia.

## Background

1.- On 02/10/2019 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, claimant), for which he made a claim against the Open University of Catalonia (UOC) for the alleged disregard of the right of deletion, which is foreseen in 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, RGPD).

He accompanied his letter with various documentation: the resolution of the Spanish Data Protection Agency (AEPD) transferring the claim, and four emails, the first of which was an email dated 05/05/2019 that he would have sent to the UOC, by means of which he requested deregistration as a user, opposition to the processing of his data and its deletion.

On 10/15/2019 he received, by referral from the AEPD, the same letter of claim that the claimant presented to the Authority.

2.- In accordance with article 5.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, RLOPD and LOPD, respectively), by means of office dated 07/10/2019 the claim was transferred to the UOC, so that within 15 days it could formulate the allegations it considered relevant.

3.- The UOC made allegations in a letter dated 10/21/2019, in which it set out, in summary and for what is now relevant, the following:

- Regarding the UOC's response to the request submitted by the person complaining, the UOC pointed out that:

*"On 05/29/2019 he was given a response to the right exercised, confirming that his request for the deletion of his personal data had been received and informing him that the necessary procedures had been carried out to process the your request."*

- Regarding the events subsequent to the UOC's response, which motivated the claimant's complaint:

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*"Mr. (...) received on 04/09/2019 an email from the account (...)@uoc.edu in which he was informed of the period to be able to formalize the enrollment in the University Master's Security of Information and Communication Technologies, about which he had requested information. Attached as Annex 2 is the email received by the claimant.*

*On the same day that the information email was sent to the claimant, he replied to the address [fuoc\\_pd@uoc.edu](mailto:fuoc_pd@uoc.edu) requesting information about the status of the right of deletion he had exercised in May and the reason for receiving the information academic of the aforementioned Master. (...)*

*It should be noted that the UOC e-mail address, [fuoc\\_pd@uoc.edu](mailto:fuoc_pd@uoc.edu), is an account used solely to manage the exercise of rights by those affected and which we attend to daily to respond as quickly as possible.*

*(...)*

*The UOC has collaborative staff who carry out teaching support tasks. Each collaborator is assigned a group of people interested in taking certain courses, or of students already enrolled in them, with whom he interacts through the Virtual Campus and to whom he guides, helps and supports them in their training .*

*As a result of the present procedure, it has been detected that a collaborator, based on the information available in the UOC's IT management tools, created his own list with the basic identifying and contact data of the students he had assigned. The creation of the list was done privately in tools over which the UOC has no control, such as Word or Excel. The main reason for the creation of the list was to have all the relevant information of each future student or student in a single document that would allow immediate consultation by the collaborator to facilitate their teaching tasks that also include informing the students of new training options.*

*Unfortunately, the list used by the contributor was not up-to-date and was therefore unaware that this person had deleted their data. If he had consulted the management tools of the UOC, in particular, this person's file, he would have been able to verify that the claimant's data had indeed been canceled, once his request had been granted and that, therefore, it was not possible make head*

*shipping."*

- With regard to the actions carried out in order to comply with the request made by the person making the claim, the UOC stated that:

*"we have proceeded to confirm the deletion of the claimant's email from the database, in order not to continue sending him information (...) A interview and meeting with the collaborator to explain the incidence and consequences of creating, using and/or downloading lists or databases outside the UOC tools."*

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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.- Article 17 of the RGPD regulates the right to deletion, and determines the following:

*"1. The interested party has the right to obtain from the data controller, without undue delay, the deletion of the personal data affecting him. The person in charge must delete them without undue delay, when any of the following circumstances apply:*

*a) The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed.*

*b) The interested party withdraws the consent on which the treatment is based, in accordance with article 6, paragraph 1, letter a), or with article 9, paragraph 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, paragraph 1, and there are no other legitimate reasons for the treatment or the interested party objects to the treatment, in accordance with the article 21, section 2.*

*d) The personal data have been treated unlawfully.*

*e) The personal data must be deleted, to fulfill a legal obligation established in the law of the Union or of the member states to which the data controller is subject.*

*f) The personal data have been obtained in relation to the offer of information society services mentioned in article 8, paragraph 1.*

*2. If the person in charge of the treatment has made personal data public and, by virtue of the provisions of section 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the person in charge of processing must take reasonable measures, including technical measures, to inform those responsible who are processing this data of the data subject's request to delete any link to this personal data, or any existing copy or replica.*

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

*a) To exercise the right to freedom of expression and information.*

*b) To fulfill a legal obligation that requires the processing of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of conferred public powers to the responsible*

*c) For reasons of public interest in the field of public health, in accordance with article 9, section 2, letters h) ii), 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, in the*

*to the extent that the right mentioned in paragraph 1 may make impossible or seriously hinder the achievement of the objectives of this treatment, or*  
*e) To formulate, exercise or defend claims."*

Article 77 of the RGPD, entitled "Right to present a claim before a control authority", establishes the following:

- "1. Without prejudice to any other administrative recourse or judicial action, any interested party has the right to submit a claim to a supervisory authority, in particular in the Member State in which he has his habitual residence, place of work or place of has produced the alleged infringement, if it considers that the processing of personal data affecting it infringes this Regulation.*
- 2. The control authority before which the claim has been submitted must inform the claimant about the course and result of the claim, including the possibility of accessing judicial protection under the provisions of the article 78."*

For its part, article 16.1 of Law 32/2010 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 explained the applicable regulatory framework, it is then necessary to analyze whether the UOC has resolved and notified the response to the deletion request made by the person making the claim.

From the documentation and the statements made by both parties in the procedure, it appears that the claimant sent an email to the UOC on 05/05/2019, requesting that the university deregister him as user, and objected to the university processing his data, as well as requesting its deletion.

It is inferred from this request that the person claiming will withdraw or revoke the consent they previously gave when they registered as a user, in order to request information about a master's degree taught by this university . Based on this premise, the assumption provided for in article 17.1.b) of the RGPD would apply, which recognizes the right of interested parties to obtain from the person in charge (here the UOC) the deletion of their data when the treatment is based on your consent.

It is not a disputed fact that the UOC responded on 05/29/2019 to the complainant's email, stating the following: *"On May 5, 2019, we received your request for the cancellation of personal data. So, we are pleased to inform you that we have taken the necessary steps to make the cancellation effective"*.

On the other hand, the UOC has stated in the hearing phase that it appreciated the deletion request made by the person making the claim, but that for reasons beyond his control one of his collaborators continued to process his data, outside the usual circuit, from where they had already been deleted. And then he pointed out that: *"(...) the removal of the claimant's email from the database has been confirmed, in order not to continue sending him information (...) held an interview and meeting with the collaborator to explain the incidence and consequences of creating, using and/or download lists or databases outside the UOC tools".*

From these manifestations made by the UOC it can be inferred that this university would have carried out actions aimed at deleting the claimant's data. But it is not clear from such manifestations that the collaborating person who would have sent the mail to the person making the claim, has also deleted the data of the person making the claim that he dealt with outside the usual space. Nor does the Authority know that the UOC has communicated here claiming the total deletion of its data. In fact, the reason for the claim lies in the fact that the UOC did not reply to his email dated 09/04/2019, in which he stated that he had received an email from the UOC on the same day, despite having you loved the request to delete your data. This is why the UOC should be required in the terms indicated in the 4th legal basis.

Finally, and in response to certain statements made by the UOC in its letter dated 21/10/2019, it should be remembered that the data controller - the UOC - is the person obliged to guarantee the security of the data, which includes protection against unauthorized treatments, through the adoption of appropriate technical or organizational measures (art. 5.1.f RGPD). These measures must guarantee that any person who acts under the authority of the person in charge (or of the person in charge) and who has access to personal data, can only process this data following the instructions of the person in charge (art. 32.4 RLOPD, except for what is imposed by the Law of the EU or the Member States).

In accordance with everything stated, the estimate of the claim proceeds, which was based on the lack of response to the complaint regarding the neglect of the request for the deletion of your data - despite the formal response estimate of the UOC-, as well as in the fact that the UOC (collaborating staff) continued to process their data, a circumstance that the UOC has recognized during the processing of this procedure.

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 controller must be required so that in the period of 10 days makes the exercise of the right effective.

For the reasons indicated in the 3rd legal basis, it is necessary to request the UOC so that within 10 counting days from the day after the notification of this resolution, it communicates to the person claiming the effective deletion of their personal data. Once this communication has been made, within the same period of 10 days the

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UOC will have to give an account of this to the Authority, before which it will also have to certify, by providing a signed statement from the person collaborating with the UOC who on 09/04/2019 sent the mail to the person making the claim, that this person has also deleted the personal data of the person making the claim.

For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mr. (...) against the Open University of Catalonia.

Second.- To require the Open University of Catalonia so that within 10 days, counters from the day after the notification of this resolution, make effective the right of deletion exercised by the person claiming, in the manner indicated in the basis of law 4th. Once the aforementioned right has been effective, within the same period of 10 days the UOC will have to report it to the Authority, and will have to provide the documentation indicated in the 4th legal basis.

Third.- Notify this resolution to the Open University of Catalonia 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,