

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

RESOLUTION of the rights protection procedure no. PT 52/2019, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat

#### Background

1.- On 08/10/2019 the Catalan Data Protection Authority received a letter from Mr. (...), for which he made a claim for the alleged neglect of the right of cancellation, which he had previously exercised before the General Directorate of the Police of the Department of the Interior of the Generalitat (hereinafter, DGP). Specifically, the claimant requested the cancellation of his personal data recorded in the SIP PF file, relating to various police investigations. The claimant provided various documentation relating to the exercise of this right.

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on data protection of personal nature (hereafter, RLOPD and LOPD, respectively), by means of an official letter dated 10/16/2019, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations that I thought relevant.

3.- The DGP made allegations by means of a letter dated 10/30/2019, in which he set out the following, accompanied by the documentation he mentioned:

*"1. On August 1, 2019, the aforementioned person registered a request for the cancellation of personal data recorded in the files of the SIP scope.*

*2. The interested person only provided a negative certificate of criminal record issued by the Central Registry of Criminals of the Ministry of Justice but not the rest of the relevant supporting documentation, despite the obligation contained in article 32.1 of the Royal Decree 1720/2007, of December 21, approving the regulation for the development of Organic Law 15/1999, of December 13, on the protection of personal data (applicable according to the provisions of the Fourth Transitional Provision of the Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights). However, from the ARCO Rights Management Unit, the judicial body that heard about the case was contacted by phone to find out the meaning of the resolution that put an end to the judicial procedure.*

*3. On October 17, 2019, the Resolution was issued by which personal data is cancelled.*

*4. On October 24, 2019, the notification of the resolution was registered.*

*5. Finally, and as you requested, I am sending you a copy of the following documentation:*

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

a) Copy of the cancellation request submitted by Mr. (...). b) Authentic copy of the negative certificate of criminal record given by Mr. (...). c) Resolution of cancellation of personal data dated October 17, 2019. d) Copy of the notification of the resolution.

#### 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.- Regarding the legal regime applicable to the data cancellation request made for the claimant, it should be noted, first of all, that 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) expressly excludes from its application the processing of personal data carried out by (art. 2.2.d RGPD): *"the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences, or execution of criminal sanctions, including the purpose of protection and prevention against threats to public security and their prevention"*, where the request for cancellation is framed which is the subject of the claim that this resolution gives rise to. Recital 19 of the RGPD expressly indicates that these treatments must be governed by 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 treatment of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), the which provides in article 16 the right of deletion, which replaces the previous right of cancellation.

However, Directive (EU) 2016/680 has not yet been transposed into national law, although Article 63 of the Directive established a deadline for adopting and publishing the legal, regulatory and administrative rules to comply with the Directive, which ended on 06/05/2018. And while it is true that it is a doctrinal criterion of the Court of Justice of the European Union that individuals can invoke the direct effect of the precepts of the directive when they confer rights in an unconditional and sufficiently clear and precise manner before public administrations, also is that the state legislator has expressly provided in transitional provision 4a of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights (LOPDGDD), that data treatments that are subject to Directive (EU) 2016/680 (as is the present case) will continue to be governed by Organic Law 15/1999, of December 13, on the protection of personal data (LOPD).

This is how things are and for what is now of interest, when article 16.2 of Directive (EU) 2016/680 provides that the Member States will require the data controller to delete the

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

personal data "without undue delay" and the right of interested parties to obtain from the data controller the deletion of personal data, compliance with this requirement must be understood as fulfilled in the terms provided for in article 16.1 of the LOPD, on the right of rectification and cancellation, which establishes that the person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.

Apart from this, article 16 of the LOPD determines the following:

- "1. The person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.*
- 2. The personal data whose treatment does not comply with the provisions of this Law must be rectified or cancelled, where appropriate, and, in particular, when these data are inaccurate or incomplete.*
- 3. The cancellation leads to the blocking of the data, and they must only be kept at the disposal of public administrations, judges and courts, for the attention of the possible responsibilities arising from the treatment, during the term of prescription of these responsibilities. Completion of this term, the deletion must proceed.*
- 4. If the rectified or canceled data has been previously communicated, the person in charge of the treatment must notify the person to whom they were communicated of the rectification or cancellation, in the event that the latter maintains the treatment, who must also proceed to cancellation.*
- 5. Personal data must be kept for the periods provided for in the applicable provisions or, where applicable, the contractual relationships between the person or entity responsible for the treatment and the interested party."*

For its part, article 31.2 of the RLOPD provides the following:

- "2. The exercise of the right of cancellation results in the deletion of data that is inappropriate or excessive, without prejudice to the blocking duty in accordance with these Regulations. (...)"*

Article 32 of the RLOPD, sections 1 and 2, determines the following:

- "1. (...) In the cancellation request, the interested party must indicate which data he is referring to, and must provide the documentation to justify this, if applicable.*
- 2. The person in charge of the file must decide on the request for rectification or cancellation within a maximum period of ten days from the receipt of the request. After the deadline has passed without an express response to the request, 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 the affected person, it must also be communicated within the same period."*

Given that the right subject to this resolution refers to a treatment carried out by the security forces and bodies, it is necessary to refer to the specific regulation for these cases provided for in articles 22.4 and 23.1 of the LOPD, which determine the following:

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

*"Article 22. Files of the Security Forces and Bodies.*

*(...) 4. The personal data recorded for police purposes must be canceled when they are not necessary for the investigations that have motivated their storage.*

*For these purposes, the age of the affected person and the nature of the data stored, the need to keep the data until the conclusion of an investigation or a specific procedure, the final judicial decision, especially acquittal, pardon, rehabilitation and limitation of liability.*

*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. (...)"*

On the other hand, article 18 of the LOPD, regarding the protection of the rights of access, rectification, opposition and cancellation, establishes the following in its sections 1 and 2:

*"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.*

*2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable, of the competent body of each autonomous community, which must make sure of the validity or inadmissibility of the refusal."*

In line with the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, 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 DGP resolved and notified, within the period provided for by the applicable regulations, the right of cancellation 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.

Regarding the alleged neglect of the cancellation request that is the subject of the claim, it is proven in the procedure that on 08/01/2019 it was entered at the registration office (...) (Office territorial of (...)) of the Catalan Tax Agency a letter from the person here claiming, dated 07/31/2019, through which he requested the

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

cancellation of your personal data recorded in the file of the SIP area, following a complaint that would have been submitted to police departments on 12/09/2015.

In accordance with articles 16 LOPD and 32 RLOPD, the DGP had to resolve and notify the cancellation request within a maximum period of ten days from the date of receipt of each 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 Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, 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 the duly accredited notification attempt (art. 40.4 LPAC).

In this regard, in the letter dated 10/30/2019, the DGP has indicated that: *"On August 1, 2019, the aforementioned person registered a request to cancel recorded personal data in the files of the SIP scope".* According to these statements, the deadline for responding ended on 08/14/2019.- However, this response would not have occurred until a later date than 10/24/2019 - which is the date stated in the stamp of the exit register that appears stamped in the service of notification of the response resolution-.

The allegations made by the DGP to justify the delay in its response, relating to the fact that the claimant had submitted the cancellation request without accompanying it with the relevant documentation, as required by art. 32.1 RLOPD in relation to the arts. 22 and 23 LOPD, it would certainly be a reason to suspend the ten-day period available to the DGP to respond to the cancellation request, as provided for in art. 22.1.a) LPAC, suspension of the term that would include from the date of notification to the interested person of the amendment request office, until its compliance, or until the period granted expires, which is ten days, in accordance with art. 68.1 LPAC. But none of this has been stated by the DGP in its letter dated 10/30/2019 during the hearing procedure. On the contrary, from his statements (*"the ARCO Rights Management Unit contacted the judicial body that heard the case by phone to find out the meaning of the resolution that ended the judicial procedure"*), it seems clear that the amendment was not required of the person here claiming, so that the legally provided deadline for responding to the cancellation request was not formally suspended, despite the concurrence of the cause legal noted. Therefore, it cannot be considered that the DGP has given an answer *"without undue delay"*.

Consequently, the claim, which was based on the lack of response to the request to exercise the right of cancellation, should be upheld, since the DGP did not resolve and notify the cancellation request in a timely manner - application presented by the affected person.

4.- Regarding the merits of the claim, it is evidenced in the actions that the DGP has agreed to, through resolution dated 17/10/2019, and in application of the applicable regulations - art. 22.4 and 23.1 LOPD and art. 18 of Instruction 12/2010 of the DGP - estimate the request for cancellation of data presented by the person here claiming, treated on the occasion of police proceedings no. (...) / 2015 processed following a complaint on 12/09/2015, which resulted in a misdemeanor trial instituted by a Court of First Instance and Investigation, which ended with a judgment of conviction, which became final, and that it imposed on the person here claiming a penalty that this person complied with. Given the estimation of the cancellation request, it becomes unnecessary to make further considerations about it.

5.- 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 the present case the estimation obeys the fact that the DGP has not attended to the right of cancellation within the legally fixed term, but has done so extemporaneously by estimating the right to the person making the claim. Now, given that the DGP has not certified before the Authority the notification to the claimant of the estimated resolution of the requested cancellation, the DGP must be required so that, within the maximum period of 10 days - to be counted from from the day after the notification of this resolution - contribution before the Authority with proof of Correus - or equivalent document - certifying the notification to the person claiming of the aforementioned resolution.

For all that has been exposed,

RESOLVED

First.- Declare extemporaneous the resolution dated 17/10/2019 of the DGP, through the what is the estimate of the cancellation request made by Mr. (...), for not having responded within the period established in the applicable regulations. Regarding the substance, declare that the DGP has satisfied the right, although this pronouncement is conditional on the accreditation before the Authority of the notification of the resolution to the person claiming, in the terms indicated in the following point.

Second.- Request the DGP so that within 10 days, counting from the day after the notification of this resolution, provide the Authority with the proof of Post Office - or equivalent document - certifying the notification to the person claiming the

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

resolution dated 10/17/2019, estimate of the cancellation request submitted by this person.

Third.- Notify this resolution to the DGP 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,