

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Resolution of the rights protection procedure no. PT 54/2019, urged against the City Council of (...).

Background

1.- On 05/11/2019 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), for which he made a claim for the alleged disregard of the right he had previously exercised before the City Council of (...).

Specifically, the person making the claim stated that in January 2018 he had participated in a selection process called by this City Council, and that on the municipal website two acts of the qualifying tribunal were still published, which contained tables in which his name and surname appeared next to your ID. In the request he submitted to the City Council on 04/30/2018, he requested: *"That my data be anonymized and that my ID cannot be linked to my first and last name or deleted."*

2.- On 14/11/2019, the Authority forwarded the claim to the City Council's data protection officer, so that she would respond to the claim within one month, and that forward this response to the Authority, in accordance with the provisions of article 37.2 of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD).

3.- On 28/11/2019, the City Council provided the Authority with a copy of the letter dated 28/11/2019 addressed to the claimant, with which he was informed that on that date had verified *"that the data that the applicant is interested in having deleted are no longer accessible"*.

4.- On 03/31/2020, the person instructing the procedure verified that the two acts referred to by the person claiming in his letter of claim were no longer accessible through the web addresses that this person had indicated in the same letter, and which corresponded to the official website of the City Council. Likewise, it was verified that the aforementioned files were not accessible through the search field of the municipal website, nor through the introduction of the name of the files in the Google search engine.

From the result obtained, the corresponding due diligence was carried out.

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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.- Regarding the right exercised by the person claiming before the City Council of (...), although in the request and subsequently in the letter of claim he referred to the deletion of his data, his intention was to prevent his personal data from being published on the municipal website, accessible to everyone, but not their deletion from the municipal archives, this second issue which would lead to a different response from the one made in the present resolution.

Thus, it must be understood that, by means of the request dated 04/30/2018, the person now claiming objected to the processing of his personal data - such as the open publication of the same on the municipal website -, and consequently the right exercised was the right of opposition, which was provided for in article 6.4 of Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), which established the following:

"4. In cases where the consent of the affected person is not necessary for the processing of personal data, and as long as a law does not provide otherwise, the latter may object to its processing when there are reasonable and legitimate reasons for this to a specific personal situation. In this case, the person in charge of the file must exclude the data relating to the affected person from the processing."

3.- Article 37.2 of the LOPDGDD enables the control authorities to forward the claims received to the delegated person for data protection of the person in charge of the treatment to which the claim refers, in the following terms:

"2. When the person concerned submits a claim to the Spanish Data Protection Agency or, where appropriate, to the autonomous data protection authorities, they may refer the claim to the data protection delegate so that he responds in the term of one month. If after this period the data protection delegate has not communicated to the competent data protection authority the response given to the claim, this authority must continue the procedure in accordance with the provisions of Title VIII of this Law organic and its rules of deployment."

As has been made clear in the antecedents of this resolution, the referral of the claim to the delegated person for data protection of the City Council of (...) has allowed the exercise of the right to take effect by the person claiming, to the extent that the data of the person claiming is no longer accessible through the municipal web addresses indicated by that person. Apart from this, this Authority has verified that the municipal documents in which this person's data appeared

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claimant, they are also not accessible through the municipal web search engine, nor through the Google search engine.

The above, however, does not prevent us from considering that the City Council's response to the cancellation request that is the subject of this claim was clearly untimely, since it should have been responded to within ten days established in art. 16.1 of the LOPD, and it is stated in the actions that on 04/30/2018 the request submitted by the person making the claim was entered in the City Council's register, and that the council gave - response by letter dated 11/28/2019.

resolution

Therefore, I resolve:

1. Declare the extemporaneity of the City Council's response to the request that is the subject of this guardianship claim made by Mr. (...) against the City Council of (...). Not make any pronouncement on the merits given that the claimant's right of opposition has finally been met.

2. Notify this resolution to the City Council of (...) and the person making the claim.

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, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,