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RESOLUTION of the rights protection procedure no. PT 62/2019, urged against the Sant Cugat del Vallés City Council.

Background

1.- On 02/12/2019 the Catalan Data Protection Authority received a letter from Mr. (...) (...) (hereinafter, the person making the claim), for 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 City Council of Sant Cugat del Vallés.

The claimant provided various documentation relating to the exercise of this right, in particular, a copy of the request to exercise the right of access submitted through electronic means on 22/10/2019 to the City Council, in which he requested the following:

a) On the one hand, he requested to know the origin of certain data relating to his person, data that, according to him, he had not provided to the City Council. Specifically,

a.1) The data relating to the fact that the claimant here *"receives a disability pension due to chronic illness (...)"*. This information was collected in a report issued on 01/03/(...) by the City Council's Basic Social Services.

a.2) The data relating to the fact that the claimant here in (...) *"is not a beneficiary of any Social Security benefits"*. This information was collected in a letter dated 09/10/2019, through which the City Council resolved a request for data rectification previously made by the claimant here.

b) On the other hand, he requested *"a free copy of ALL the personal data subject to treatment"*.

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, approving the Regulation implementing Organic Law 15/1999, of December 13, on the protection of personal data (hereafter, RLOPD), on 12/05/2019 it was transfer the claim to the City Council so that within 15 days it formulates the allegations it deems relevant.

3.- On 08/01/2020 the City Council provided the Authority with a copy of the Mayoral Tenure Decree of Good Governance, Transparency, Participation and Neighborhoods of 07/01/2020, which resolved the sole - request for access that the claimant here had made before the City Council. In this Decree - which, as indicated in the dispositive part, was notified, among others, to the claimant here - the City Council explained, first of all, in what context the data of the claimant had been treated : *"to the basic social services of the Sant Cugat del Vallès City Council there is the file with reference 2008/(...), the opening of which was a consequence of attending to and providing assistance to the daughters of Mrs. (...) and Mr. (...) (...)"*.

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Basic Social Services urges, through a referral report to the EAIA, the reopening of the file based on the finding of risk indicators for minors [report dated 01/03/(...)]"

Subsequently, in relation to the specific requests for access made by the claimant here in the application dated 10/22/2019, the aforementioned Decree was pronounced in the following terms:

- Regarding the origin of the statement contained in the report dated 01/03/(...) regarding "Mr. (...) receives a disability pension due to chronic illness (...)":

"In this regard, it should be noted that the first reference in which this data is included is from a report dated 01.03.2010 that was issued by Basic Social Services to the EAIA".

- With respect to the origin of the statement relating to the fact that the claimant here did not receive in (...) any Social Security benefits (information contained in a letter dated 10/09/2019 in response to a previous request from rectification):

"In this sense, inform him that on 30.07.2019, he formalized an instance through an electronic request, by virtue of which he "authorized the Sant Cugat City Council to request from other administrations the information regarding to the present request". In order to be able to respond to your request, and given that you did not present any supporting documentation of the ends which rectification you requested, ex officio, and according to the aforementioned authorization, the database of the Tax Agency with respect to the exercise (...), access for your consultation".

- *"Finally, with regard to the free copy of all personal data subject to treatment requested, access to own data is estimated, anonymizing third-party data contained in the file in such a way that cannot be identified and there is no identifiable data of any third party. These personal data of third parties cannot be accessed without the consent of the persons themselves, in compliance with Article 6.1 a) of the RGPD, or in relation to special categories of data, Article 9.2 a) of the RGPD . It should be noted that only the appropriate, relevant and limited data (minimization of data) indicated in Article 5 c) of the RGPD should be given.*

Despite the above, due to the complexity of the information contained in the reference file, which requires the prior anonymization of the data, since it is data from special categories contained in reports and evaluative documents of third parties, which must be specially monitored, more time is required to access with guarantees of respect for the rights to protect personal data of all persons identified or identifiable in the file. This is why we inform you of the need to extend the deadline for issuing the copy of all the requested data, in accordance with what is established in article 12.3 of European Regulation 2016/679, taking into account the complexity of the information contained in the file."

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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.- The claim that is resolved here was formulated with respect to a request to exercise the right of access that had been presented to the claimed entity on 10/22/2019, in accordance with the established in article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free circulation thereof (hereinafter, the RGPD), which determines the following:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee for any other copy requested by the interested party

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based on administrative costs. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

Also, on the rights contemplated in articles 15 to 22 of the RGPD, article 12, apparatus 3, 4 and 5 of the RGPD establishes the following:

"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.

(...)"

Article 13.1 of the LOPDGDD, on the right of access, provides for the following:

"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or processing activities to which the request refers.

(...)"

Finally, article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, 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 period, they can submit a claim to the Catalan Data Protection Authority.

2. The Catalan Data Protection Authority must expressly decide on the merits or inadmissibility of the claim referred to in paragraph 1 within six months, with the prior hearing of the person responsible for the file and also of the interested persons if the result of the first hearing procedure makes it necessary. Once this term has passed, if the Authority has not notified the resolution of the claim, it is understood that it has been rejected.

3. The resolution of total or partial estimation of the protection of a right must establish the term in which it must take effect.

4. If the request to exercise the right before the person responsible for the file is estimated, in part or in full, but the right has not been made effective in the form and the deadlines required in accordance with the applicable regulations, the interested parties can bring it to the attention of the Catalan Data Protection Authority so that the corresponding sanctioning actions are carried out."

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the City Council resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for the complaint of the person who initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In this respect, it is certified that on 22/10/2019 he had entry to the City Council, through thematic means, a letter from the person here claiming through which he exercised the right of access to his personal data.

From the point of view of article 12.3 of the RGPD, the City Council had to resolve and notify the access request within a maximum period of one month from the date of receipt of the request. It is worth saying that this term can be extended by another 2 months (3 in total), taking into account the complexity or number of requests. In relation to the issue of the term, it should be borne in mind that in accordance with article 21.3 b) of the LPAC and article 41.7 of the LRJPCat, on the one hand, the calculation of the maximum term in procedures initiated at the instance of part - as is the case - starts from the date on which the request was entered in the entity's register. 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).

Well, as indicated in the background (background 3), it was not until 07/01/2020 that the City Council responded (incompletely, as will be seen) to the access request made by the claimant here, through the Mayoral Tenure Decree of Good Governance, Transparency, Participation and Neighborhoods; Decree which, in other words, the City Council has not proven to have notified the claimant here, although, to the extent that in the same Decree

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its notification was available, it can be inferred that it occurred in the days immediately following.

As indicated, in the Decree issued by the City Council, on the one hand, an answer was given to the specific request about the origin of certain information (letter a/ of the 1st antecedent) - answers that will be the subject of analysis when addressing the substance of the claim- ; and, on the other hand, the City Council agreed to provide him with a copy of his data, but delayed its delivery based on the provisions of article 12.3 of the RGPD, given the difficulty involved in anonymizing the requested information (the claimant's details were part of a social services file which contained details of other people which had to be removed from the copy).

In this respect it must be said that, indeed, article 12.3 of the RGPD provides that, if certain circumstances occur - as far as the complexity of the request is concerned -, the data controller can extend by two more months, the general term of one month to respond to the request.

This Authority does not question the difficulty expressed by the City Council, a difficulty that is understandable insofar as the data of the claimant here are included in a very voluminous social services file and which in all probability includes data from other people. However, it should be emphasized that the same precept 12.3 of the RGPD it is very clear in demanding that this eventual extension must be agreed upon and notified to the affected person within the first month of receiving the request, which the City Council did not do.

Consequently, from a formal point of view, the estimation of the claim would proceed, based on the lack of response to the request to exercise the right of access, since the City Council did not resolve and notify in form and time the said request presented by the affected person. 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 substance of the claim, that is to say, if the response given by the City Council to the request of the now claimant, conformed to the precepts transcribed in the foundation of right 2nd

As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case, access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

As has already been explained, the right of access exercised by the person making the claim referred, first of all, to knowing the origin of certain information relating to his person that was available to the City Council; and, secondly, to obtain a complete copy of your data. It is appropriate to analyze separately the responses given by the City Council to each of these requests:

4.1.- In relation to the origin of certain information:

4.1.1.- On the origin of the information relating to the fact that the claimant here "*receives a disability pension due to chronic illness (...)*" - information contained in a report issued by the City Council's Basic Social Services on 01/03/(...) (section a.1 of the 1st antecedent)-.

In relation to this request, the City Council indicated the following: "*it should be noted that the first reference in which this data is included is from a report dated 01.03.2010 that was issued by Basic Social Services to the EAIA*".

Article 15.1.g) of the RGPD stipulates that the right of access to personal data precedes the right to obtain "*any available information on its origin*", when said data have not been obtained from the person concerned, as would be the case.

It is clear that with this answer the City Council does not give a precise answer about the origin -understood as a source- of the information, since it is simply limited to indicating that this information dates from 2010. However, it must also be said that taking into account the time that has passed since the collection of such information in the file up to the date of the access request (approximately 10 years), it is completely understandable that the City Council does not know precisely what its origin was, in fact it cannot be ruled out that it was the same person claiming or someone from the family nucleus who facilitated the controversial information on that date to the social services. In any case, it should be noted that under the right of access the data controller cannot be forced to inform about the origin of data when he does not know it. So, to the extent that the City Council would have facilitated the here claiming - albeit extemporaneously - all possible information about the origin of this specific personal data (as required by article 15.1.g) of the RGPD), it must be considered that the answer given would conform to the regulations.

4.1.2.- On the origin of the data relating to the fact that the claimant here at (...) *"is not a beneficiary of any Social Security benefits"* (information that was collected in a letter dated 09/10 /2019, through which the City Council resolved a request for rectification of data previously made by the claimant here).

In relation to this information, the City Council indicated in the Decree of 07/01/2020 clearly of its origin: the database of the Tax Agency, which was consulted with the consent of the claimant here (3rd precedent). Given the above, it is considered that the answer given by the City Council complies with the regulations.

4.2.- On the other hand, the claimant requested a copy of all his personal data.

Article 15 of the RGPD expressly provides for the right of the interested person to obtain a copy of their personal data free of charge.

In this sense, it is necessary to demonstrate that the City Council, in the Decree of 07/01/2020 in which responded to the claimant's request for access, it did not deny this copy, but postponed its delivery given the difficulty in anonymizing the data of other people that were included in the documentation. The point is that, despite the time that has passed, it is not known that the City Council has provided the copy requested by the complainant, so the claim must be considered in terms of the delivery of this information.

In short, from the perspective of the right of access regulated in the RGPD and the rest of the applicable personal data protection regulations, the present claim for protection of the right of access should be considered, given that in the present case the The City Council would not have given a complete answer to the claimant through which the right of access requested would have been effective.

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 access of the person claiming. 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, provide the person making the claim with a copy of their data subject to treatment . Once the right of access has taken effect in the terms set out, 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 Mr. (...) (...) against the Sant Cugat del Vallés City Council in the terms set forth in legal grounds 3 and 4.

Second.- Request the City Council of Sant Cugat del Vallés so that, within 10 calendar days from the day after the notification of this resolution, it makes effective the right of access exercised by the person claiming, in the form indicated in the 5th foundation of law. Once the right of access has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to the City Council of Sant Cugat del Vallés 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.

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,