

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

RESOLUTION of the rights protection procedure no. PT 64/2019, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat

Background

1.- On 10/12/2019 the Catalan Data Protection Authority received a letter from Mr. (...), for which he formulated a claim for the alleged neglect of the right of access, 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 access to his personal data recorded in the SIP PF file, relating to various police investigations. The claimant provided 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 01/13/2020, 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 02/11/2020, accompanied by various documentation, in which he stated the following:

- "1. On November 7, 2019, Mr. (...) requested access to the personal data recorded in the SIP files.*
- 2. On January 14, 2020, the Director General of the Police issues a resolution in which he agrees to give effect to the right of access to the requested personal data.*
- 3. The resolution was sent to the interested party at the address indicated for notification purposes (...)."*

The DGP provided the following documentation along with its allegations:

- Copy of the access request, with entry registration from the Camp de Tarragona Police Region (DGP) dated 7/11/2019.
- Copy of the resolution of the Director General of the Police, dated 14/01/2020, for the which the access request made by the person making the claim is estimated.
- Copy of the notification of the access decision, dated 01/24/2020.
- Table with the list of shipments from the DGP to Correus, which includes the certificate number that would have been assigned to the shipment made to the person making the claim.

A copy of the Post Office receipt, certifying the notification of the aforementioned resolution to the person making the claim, is not included.

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

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 request for access to personal data made by the person making the claim, it should be noted, first of all, that the material object of this request for access falls within the scope of application of 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 processing 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), which provides in the article 15 the right of access.

This Directive, however, has not yet been transposed into domestic 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 Union European that individuals can invoke the direct effect of the precepts of the directive when they confer rights unconditionally and sufficiently clear and precise before the public administrations, it is also that the state legislator has expressly provided in the transitional provision 4a of the Law organic 3/2018, of December 5, of Protection of Personal Data and guarantee of digital rights (LOPDGDD), that data treatments that are subject to Directive (EU) 2016/680 (as is the case here) will continue governed by the LOPD.

Article 15 of the LOPD determines the following:

- "1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.*
- 2. The information can be obtained through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, without using keys or codes that require the use of specific mechanical devices.*
- 3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."*

For its part, article 27 of the RLOPD, in its first and second sections, provides the following regarding the right of access:

- "1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing*

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

that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications carried out or planned for this data.

2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.

However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD establishes the following:

"1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request. After the deadline has passed without an express response to the access 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 those affected, it must also notify them within the same period.

2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.

3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

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 article 23.1 of the LOPD, which determines the following:

"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.

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

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 access exercised by the person making the claim, since precisely the reason for the 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.

With regard to the request that the claimant mentions in his letter of claim, it is proven in the procedure that on 07/11/2019 a letter of the person here claiming, through which he exercised his right of access to his personal data recorded in the file of the SIP scope.

In accordance with article 29.1 RLOPD, the DGP had to resolve and notify the access request within a maximum period of one month 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 (hereafter, 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, it is stated in the proceedings that, in response to the request for access submitted by the person making the claim, the DGP issued the resolution dated 01/14/2020. Although this Authority does not have a record of the date of notification of this resolution to the claimant, it is sufficient to take into account the date of presentation of the request to the

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

DGP (07/11/2019), to conclude that the legally established deadline for responding was far exceeded.

Consequently, the estimate of the claim proceeds, which was based on the lack of response to the request to exercise the right of access within the legally established term, since the DGP did not resolve and notify within the term maximum of one month the request for access submitted by the affected person.

4.- Regarding the substance of the claim, the DGP has agreed to estimate the request for access presented by the person making the claim, through the resolution dated 01/14/2019. Thus, the DG would have responded, albeit late, to the request submitted by the person making the claim. And since it is an estimated resolution of the 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 person in charge of the file must be required so that within the term of 10 days to make 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 access within the legally fixed term, but it would have done so extemporaneously by estimating the right to the person making the claim. Now, given that the DPG has not certified before the Authority the notification to the person claiming the estimated resolution of the requested access, the DGP must be required so that, within a maximum period of 10 days - counting from the day after the notification of this resolution - submit to the Authority the documentation that proves this end. For everything that has been explained,

RESOLVED

First.- Declare extemporaneous the resolution of the DGP, through which the request for access made by Mr. Regarding the substance, declare that the DPG has satisfied the right, although this pronouncement is conditional on the accreditation before the Authority of the notification of the resolution to the claimant in the terms indicated in the following point.

Second.- To require the DGP so that within 10 days, counting from the day after the notification of this resolution, it provides the Authority with the documentation that proves the notification to the person claiming the estimated resolution from his access request.

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), in accordance with article 17 of Law 32/2010, of October 1.

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

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 the jurisdiction

administrative litigation.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,