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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.

RESOLUTION of the rights protection procedure no. PT 8/2020, urged against the City Council of (...).

Background

1.- On 11/02/2020 the Catalan Data Protection Authority received a letter of claim from Mr (...) (hereafter, claimant) against the City Council of (...) (hereafter, City Council), for the alleged disregard of the right of access, provided for in article 15 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 movement thereof (hereafter, RGPD).

In order to certify the exercise of the invoked right, the claimant provided a copy of an email that he sent on 01/24/2020 to the City Council's data protection delegate, in which he reiterated the sole · request for access that he had previously made before the City Council, and indicated the following:

> *"(...) I have worked for the town hall of (...) from 07/09/(...) until 11/21/(...) as (...) of the Local Police in which they ended the service commission in a fulminating manner from the mayor's office. That because of this, they blocked the email account mentioned above in which there was my personal data, I received all my payrolls and notifications with the different administrations, my data and contacts from various administrations, etc., etc.. That at the beginning of December I entered an instance claiming access and being able to recover all the data contained in it and all my questions that are personal. That to this day I have no answer (...)."*

2.- By official letter dated 02/12/2020, the Authority required the person making the claim to provide a copy of the request that he claimed to have presented to the City Council in exercise of the right of access, as he did on 18/02/2020 by means of a letter, accompanied by a copy of the request he had presented to the City Council on 13/12/(...), in which he stated that the council had blocked his access to his corporate email (...) when he finished the service commission in this City Council as (...) of the Local Police. He then pointed out that due to this blockade *"I have all the contacts of organizations, (...), Chiefs of Police and commands, service companies, etc., to whom I have not been able to communicate my departure or have the contacts for to be able to communicate with them".* And in the last one he requested *"to be able to access or recover the mails and the* mail information (...)(...).cat".

3.- In accordance with article 37.2 of Organic Law 3/(...), of December 5, on Protection of Personal Data and guarantee of digital rights (hereinafter, LOPDGDD), by ex officio dated 06/03/2020, the claim was transferred to the City Council's data protection officer (hereafter, DPD), so that within one month he would respond to the claim presented by the person concerned and communicate it to the Authority.

4.- The DPD of the City Council formulated allegations by means of a letter dated 25/06/2020, in which it set out, in summary, the following:

> *"1- The request made by the interested person to access or retrieve all the information from the corporate mail does not imply the exercise of the right of access to data protection.*
> *2. On June 25, 2020, a response was given to the interested party's claim. Attached is the response email dated June 25, 2020 (DOC 1 Complaint Response)."*

In the e-mail provided, which the City Council sent on 06/25/2020 to the person making the claim, the following was indicated, as far as is now relevant:

"(...) The corporate e-mail address that was assigned to you by the City Council, (...)(...).cat, directly identified you as the account holder and, for this reason, it is considered a personal data. An e-mail also contains various information that can be considered personal data: the e-mail address of the sender and the recipient or recipients, the subject, the date and time, the body of the message, the footer signature and the attached documents.

When an employee ceases to provide services to the City Council, the security officer must be notified immediately so that the employee's user codes and passwords are disabled and, where appropriate, an automatic response message is included in the incoming mail indicating the new address to which messages can be addressed for professional reasons.

Therefore, once your service commission ended, the City Council acted correctly and disabled the user code and password of the corporate mail that you had been assigned by the City Council of (...) in order to effectively carry out the functions assigned to you.

With regard to your request to access or retrieve the information from the corporate mail that you had assigned does not imply the exercise of the data protection right of access because this right implies accessing your personal data and obtaining information about the processing of your personal data by the City Council: the purpose of the processing; the categories of personal data that are processed; the recipients or categories of recipients to whom the data has been or will be communicated; the expected period of data conservation or the criteria used for its determination; the origin of the data, if it has been obtained from another source other than the person; the rights that assist the person, the right to request the data controller to rectify or delete the data, the limitation of the treatment or the right to oppose it; the right to present a claim before the APDCAT; the origin of the data, when they have not been obtained from the interested party; the existence of automated decisions, including

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the elaboration of profiles; the guarantees offered in case of international data transfers. Therefore, the access you request is not an exercise of the data protection right of access.

The exercise of this right does not allow the obtaining of documents or information containing personal data of third parties. A copy of all the messages contained in the professional e-mail box cannot be provided to you because the information contained therein is professional and you do not have the right to be provided with a copy to retrieve all the data contained therein since the notifications or professional emails were addressed to you, according to your functions.

The fact that a certain private use of corporate mail is allowed means that among the professional messages there may be some messages of an exclusively personal nature, but this does not imply that after the end of the professional relationship with the City Council you can have access to the mailbox electronic However, if you were interested in
recover some very specific personal information, you should identify it to us, in order to be able to evaluate it and know if it would be technically possible to access it, in accordance with the observation of the necessary guarantees.

As for the contacts of the email account that you incorporated as your contacts, these can be provided to you by the City Council and we will give the City Council the instructions to get them to you as soon as possible.

Regarding the payslips or other information related to your employment relationship, you can request it and it will be provided to you by the City Council, without the need to access the email account to obtain them. "

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 15 of the RGPD, in relation to the right of access, determines the following:

1. The interested party has the right to obtain from the data controller confirmation of whether or not personal data affecting him is being processed, and if so, he has the right to access this 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 have been communicated or will be communicated, in particular recipients in third countries or
international organizations.
d) The planned retention period for personal data. If this is not possible, the criteria used to determine this term.

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e) The existence of the right to request from the controller the rectification or deletion of personal data or the limitation of the processing of personal data relating to the interested party or to oppose it.
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 the elaboration of profiles, referred to in article 22, sections 1 and 4, and at least in these cases, it must provide significant information about the logic applied as well as the importance and expected consequences of this treatment for the interested party. 2. (...)

3. The controller must provide a copy of the personal data subject to processing (...)

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

Regarding the deadline for responding to the access request, article 12 of the RGPD establishes the following in sections 3 and 4:

"3. The person responsible for the treatment must provide the interested party with information related to their actions, if the request has been made in accordance with articles 15 to 22 and, in any case, within one month of from the receipt of the request. This deadline can be extended by another two months, if necessary, taking into account the complexity and number of requests. The person in charge must inform the interested party of any of these extensions within one month of receiving the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, whenever possible the information must be provided by these same means, unless the interested party requests that it be done in another way.

4. If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for the his non-action and the possibility of presenting a claim before a control authority and of exercising judicial actions."

Finally, article 16.1 of Law 32/2010, provides:

"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 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.

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In this respect, it is certified that on 13/12/(...) a letter was entered in the City Council's Registry by the person here claiming, through which he exercised his right of access to information linked to the your corporate email.

In accordance with article 12.3 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.

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).

Well, from the response and documentation provided by the City Council to the Authority, it is clear that it was not until 06/25/2020 that the council responded - by email - to the request for access exercised by the now claimant, and, therefore, once the period of one month provided for by the RGPD - which ended on 01/13/2020 - had expired, without the Authority knowing that the City Council had extended this term. worth mentioning
that the suspension of the administrative deadlines established by DA 3a of the Royal Decree 463/2020, of March 14, by which the state of alarm is declared for the management of the health crisis situation caused by COVID-19, does not affect this consideration about the extemporaneity of the response, since the suspension of deadlines provided for in the aforementioned Royal Decree began on 03/14/2020, when it had been more than two months since the end of the one-month period available to the City Council to respond to the request access request made by the now claimant.

Consequently, the estimate of the claim proceeds, which was based on the lack of response to the request to exercise the right of access. This notwithstanding what will be said below regarding the substance of the claim.

4.- Once the above has been settled, it is appropriate to analyze the merits of the claim, that is to say, whether 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

It is proven in the procedure that the City Council responded to the request for access made by the person making the claim on 13/12/(...), through an email sent by the DPD to the claimant on 25/06 /2020. From the content of this email it appears that the City Council considers that the request of the person now making a claim cannot be framed in the exercise of the right of access. However, in the same email the City Council
declares that it will facilitate access to its payrolls, to its personal contacts, and, as far as possible, to its private mails.

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In this regard, it should be noted, first of all, that the blocking of the now claimant's corporate e-mail carried out by the City Council when it terminated the service commission as (...) of the local Police of (...), is considered in accordance with the law, since the access and subsequent processing of the personal data contained in the corporate mail was precisely based on the development of the police command tasks assigned to the now claimant, so that once the services commission, it was necessary to adopt measures to avoid improper access or other treatment without a legal basis.

Regarding the security measure of email blocking, this was already mentioned in Recommendation 1/2013 of the Authority on the use of email in the field through the Authority (https://apdcat .gencat.cat/ web/.content/01-autoritad/normativa/documentos/2757.pdf), labor, access a (section III, point 4) the following is indicated: *"When the employee ceases to provide services to the company, the body responsible for personnel management must immediately notify the security officer so that employee user codes and passwords are not used and, where appropriate, include an automatic reply message for incoming mail indicating the new address to which messages can be addressed for professional reasons"* .

This blocking of the corporate e-mail, however, must not prevent the exercise of the claimant's right of access to his personal data that appears in the archives or files of the City Council - as long as this data is not have deleted -, if there are no exceptional cases that prevent access.

With regard to the scope of the request for access made by the person making the claim, it is clear from the requests and the subsequent claim presented by this person to the Authority that his request for access has for the purpose of the content of all emails sent and received in your corporate email account - which, among others, would include those emails that would contain information about your payroll -, as well as all the contact information of the people to whom he would have sent emails or from whom he would have received them (hereinafter, contacts).

Next, access to each of these data will be analyzed separately, depending on whether the personal data to which you want to access appear in private or personal emails (4.1), or appear in professional emails that were sent or received
in the exercise of the entrusted public functions (4.2.).

4.1. About access to private emails and contacts.

4.1.1. About access to private emails sent by the person making the claim.

With regard to the access by the person claiming to the information contained in the personal or private emails that he sent through the corporate email, the City Council recognizes that in the workplace a certain private use of the email was allowed corporate, however

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points out that such permissiveness *"does not imply that once the professional relationship with the City Council has ended, access to the e-mail box can be had".* Despite this statement, following its reply to the claimant, the City Council admits the right of access to certain information when it states that: *"if you were interested in recovering some very specific personal information, we you should identify, in order to be able to assess it and know if it would be technically possible to access, in accordance with the observation of the necessary guarantees."*

In this regard, the Authority considers that the claimant must be able to access his personal data contained in the private emails he sent through the corporate email account. Although this email account was the property of the City Council and was designed for the exercise of the command functions entrusted to the claimant,
the admission by the City Council of a certain private use, together with the recognition by the claimant of the existence of private mails, means that a privacy space has been configured for the data processed in the private mails, which is alien to the public activity carried out by the now claimant. Although this private space cannot be considered exclusively personal or domestic because it was given in a corporate email, the power of data control exercised in this private space by the person holding the data (the now claimant) must be higher The criterion set out in Recommendation 1/2013 is therefore followed, where it is pointed out that: *"the company must make it easier for the working person to obtain the private messages from the email account, as long as they do not exceed the maximum period of conservation established in the rules of use of mail for messages of this nature. In this case, it will be accessed in the presence of the employee, in order to identify messages of an exclusively personal nature".*

It is worth saying, moreover, that in the present case it does not seem that any exception to those provided for in art. 23 RGPD that prevents the claimant from accessing his private emails sent through the corporate email address provided by the City Council. At the very least, the City Council has not indicated any legal case that justifies the denial of access, and has referred only and indirectly to possible technical problems linked to the security of the data, without specifying them, the which do not seem insurmountable, if we take into account the confidentiality clauses and other measures aimed at guaranteeing the protection of personal data, which can be adopted in order to make effective the right of access.

In accordance with the criteria set out, it is appropriate to estimate the right of access of the now claimant to the content of the private emails that he sends, as long as and when the rules for the use of email approved by the City Council are followed (exercise the right of access within the data retention period, etc.).

4.1.2. About access to emails and private contacts.

Secondly, with regard to access to private emails that third parties sent to the now claimant's corporate email address, as well as access to their email addresses and possibly other contact details (such as now, first and last name, contact telephone number or professional address), it should be noted that, although they contain personal data of third parties, to the extent that they appear in emails sent by these persons to the claimant and received by him in your private space, it is considered to be

it also deals with information that corresponds to the person claiming, over which, consequently, he must be able to exercise his control. Equally, it does not seem that any exception to those provided for in art. 23 RGPD that prevents the claimant from accessing these private emails received and private contacts.

With regard to the assessment of the impact that access to the rights and freedoms of third parties may have, the fact that the personal data of third parties to which the claimant now wishes to access, is completely relevant, is not other than the data that these third parties previously communicated to you as part of a personal or non-professional communication. Therefore, his subsequent access by the claimant to this data would not imply an interference in the private sphere of these third parties (he would not access any new data that the affected persons had not communicated to him before).

In accordance with the criteria set out, it is appropriate to estimate the right of access of the now claimant to the content of the private emails he received, as well as to the information relating to private contacts, as long as and when the established in the rules are followed of email use approved by the City Council (exercise of the right of access within the data retention period, etc.).

4.2. About access to emails and professional contacts.

A different answer to the one presented in the previous heading (4.1) deserves access to the mails professionals that the now claimant sent or received to his corporate email account, as well as access to professional contacts or corporate email addresses that would be linked to his corporate mailbox.

This information to which the claimant now wants to access, is considered *public information* in the terms defined by the so-called transparency laws, so it is stated that its access regime is mainly regulated by these other rules.

Article 2.b) of Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (LTC), defines "public information" as: *"information prepared by the Administration and that which it has in its power as a result of its activity or the exercise of its functions, including that supplied by the other obliged subjects in accordance with the provisions of this law".* Law 19/2013, of December 9, on transparency, access to public information and good governance (LT) is pronounced in similar terms in its articles 12 (right of access to public information) and 13 (public information)).

The professional e-mails sent by the now claimant to his corporate e-mail while exercising the functions of (...) of the Local Police, as well as the e-mails he received during the same period due to these public functions, are considered information which is in the possession of the Administration as a result of the exercise of the police functions entrusted to the claimant, and therefore, it is public information.

Similarly, the corporate email addresses of public employees (and where applicable, other contact details), is also considered public information.

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Consequently, access to emails and professional contacts must be mediated, not through the right of access of art. 15 of the RGPD, but through the regime provided for in the transparency laws. Thus, the person making the claim can exercise before the City Council the right of access to this public information, in accordance with art. 18 LTC. And, in the face of the possible denial of the right on the part of the City Council, or the lack of express response, can present a claim before the Guarantee Commission for the Right of Access to Public Information (GAIP), in accordance with art. 39 LTC.

However, it is necessary to point out what has been said so far in this section (4.2), regarding the mails received by the now claimant that contained information about their payrolls. The claimant would have received these emails as part of the employment relationship, and in principle they would only contain his personal data. If the latter is the case, it should be noted that art. 24.3 LTC provides that: *"Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the protection legislation of data".* The present case is not quite like that, since the request for access made by the now claimant concerns personal data to which different legal regimes apply. In any case, for procedural economy, and given that with regard to the claimant's request for access to the emails containing his payrolls, the data protection regulations must be applied, it is considered appropriate to carry out a pronunciation

Although the mails containing the claimant's payrolls would not properly be private mails, the information they contain cannot be equated, from the point of view of data protection, to that other public information that the claimant could have handled in other posts as a result of or in the exercise of the public functions entrusted to him. The payroll contains information that, in addition to being subject to the privacy obligations arising from the applicable regulations, in our socio-cultural context it is recognized as a unique privacy, which consequently also requires the attribution to its owner a higher power of control, to a degree analogous to that attributed to him in respect of private mails. So, based on the consideration that none of the exceptional cases provided for in art. 23 RGPD, it is necessary to recognize the right of the claimant to access the emails he received with information about his payroll.

In accordance with the above, it is concluded that the claim for neglect of the right of access of art. 15 RGPD regarding the claimant's request for access to his emails and professional contacts, except for those emails received by the claimant that would contain information related to the payrolls received by the claimant, in respect of which the right of access is recognized.

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 accordance with this, it is necessary to require the City Council to, within 10 counting days from the day after the notification of this resolution, facilitate the person claiming access to: (1) the mails private messages sent or received by the now claimant through the corporate mail assigned to him by the City Council, including the mails received by the now claimant that

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they would contain their payrolls; and (2) information about your private contacts. 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.- Partially estimate the guardianship claim made by Mr. (...)against the City Council of (...), and recognize the right of this person to access their private emails that they sent or received through their corporate email from the City Council, to the emails they received relating to their payrolls , as well as the information relating to his private contacts, corresponding to the period of time that he performed the functions of (...) of the Local Police of this City Council in the service commission. Dismiss the claim with regard to the rest of the information requested, for the reasons indicated in legal basis 4.2.

Second.- Request the City Council of (...) so that, within 10 counting days from the day after notification of this resolution, make effective the right of access exercised by the person making the claim, in the form indicated in the fifth right foundation. Once the right of access has taken effect, within the same period of 10 days the City Council of (...) must report to the Authority.

Third.- Notify this resolution to the City Council of (...) and to 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.

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The director,