

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

## File identification

Resolution of the rights protection procedure no. PT 11/2020, urged against the Management General of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 19/02/2020 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for not having taken care of the right to delete or cancel his personal data, which he had previously exercised before the General Directorate of Police ( hereinafter, DGP).

The claimant certified that, by means of a letter dated 16/12/2019, he had exercised before the DGP the cancellation of his "*police records and personal data appearing in the police files*". In that letter, the claimant stated that he provided his ID and the certificate issued by the Court of First Instance and Instruction no. 1 of Martorell on 05/12/2019, in which it was certified that on 29/02/2008 a Providence had been issued declaring final the sentence handed down in the misdemeanor trial no. (...) /2007 (signed following the certificate of the Police of the Generalitat-Mossos d'Esquadra -PG-ME- no. (...) /2007 AT USC Martorell dated 19/11/2007) by which resolved to absolve the person making the claim and the file of proceedings (documentation that the person making the claim provided together with the claim).

In turn, the claimant also certified that, by means of a letter dated 02/03/2020, he reiterated his request to delete his police record.

2.- By official letter dated 02/24/2020, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The DGP made allegations in a letter dated 06/30/2020, in which it set out, in summary, the following:

- That on 16/12/2019, the person claiming requested the cancellation of the data related to police proceedings no. (...) /2007.
- That on 02/26/2020, the Director General of the Police issued the resolution by which it was agreed to make effective the cancellation of the personal data recorded in the requested SIP files, and others whose storage was no longer necessary.
- That the resolution was sent to the person making the claim at the address indicated for the purpose of notification

The DGP provided various documentation.

## Fundamentals of Law

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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.- At the time when the affected person exercised the right of cancellation or deletion to the personal data that were the object of treatment by the DGP and to which the request for cancellation or deletion referred, Directive (EU) 2016/680, of the European Parliament and of the Council, would apply, of 27/4, relating to the protection of natural persons with regard to the processing of personal data by the competent authority 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), in accordance with what is established in its article 1, which provides for the right to deletion in its article 16.

In this regard, it should be noted that Directive (EU) 2016/680 has not been transposed into national law within the period provided for that purpose (on 06/05/2018) and, consequently, individuals they can directly invoke European law before the courts, regardless of whether or not they have been transposed into national law. Thus, in accordance with the doctrine of the Court of Justice of the European Union, individuals may invoke the direct effect of the directive's precepts when they confer rights unconditionally and in a sufficiently clear and precise manner before public administrations.

The request for deletion analyzed here was submitted when Organic Law 3/2018, of December 5, on the Protection of Personal Data and Guarantee of Digital Rights (LOPDGDD), was already fully applicable, which repealed Organic Law 15/1999, of December 13, on the protection of personal data (LOPD). However, with regard to data processing that is subject to Directive (EU) 2016/680, it should be noted that transitional provision 4a of the LOPDGDD provides that these will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes into Spanish law the provisions of the aforementioned Directive enters into force.

3.- In accordance with the above, firstly, it is necessary to refer to article 16 of the LOPD, which in relation to the right of cancellation determined 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 results in 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 Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter, RLOPD), provides the following regarding the right of cancellation :

*"2. Exercising the right of cancellation results in the deletion of data that is inadequate 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 that is the subject of this resolution refers to a treatment carried out by the forces and security forces, it is necessary to refer to the specific regulation for these cases provided for in articles 22.4 and 23, sections 1 and 3, of the LOPD, which determine the following:

*"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 refuse 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. (...)*

*3. The affected person who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring this to the attention of the director of the Data Protection Agency or the competent body of each autonomous community in the case of files maintained by the police forces of these communities, or by the autonomous tax administrations, which must make sure of the origin or impropriety of the denial."*

In line with the above, 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."*

4.- 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 deletion exercised by the person making the claim.

In this regard, it is certified that on 16/12/2019 the person making the claim submitted to the entry register of the office in Martorell of the Department of Work, Social Affairs and Families of the Generalitat of Catalonia a letter addressed to the DGP through which he exercised his right of cancellation.

In accordance with articles 16 of the LOPD and 32 of the RLOPD, the DGP had to resolve and notify the cancellation or deletion request within a maximum period of ten days from the date of receipt of the request

In relation to this matter, 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, the calculation of the maximum term in procedures initiated at the instance of a party - as is the case starts from the date on which the request was entered in the register of the competent body for its processing. 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

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to have notified the resolution, or at least to have produced the duly accredited notification attempt (art. 40.4 LPAC).

Well, although there is no record of the date on which the said letter of cancellation was entered in the DGP register, taking into account that the person making the claim here again reiterated the same request for the cancellation of his antecedents police officers on 02/03/2020 and that the DGP ruled on the cancellation request on 02/26/2020, it can be concluded that the DGP did not resolve within the period provided for that purpose.

Consequently, since the claim was based on the lack of response to the request to exercise the right of cancellation, it is necessary to declare that the DGP did not resolve and notify in form and time the said request submitted by the affected person.

Regarding the merits of the claim, given that the DGP has agreed to consider the request to cancel the personal data presented by the person making the claim, it is not considered necessary to make further considerations in this regard, notwithstanding that in the case that the claimant considers that his cancellation right has not been fully exercised with respect to personal data recorded in the files of the SIP area, he may bring this to the attention of this Authority.

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 controller must be required so that in the period of 10 days makes the exercise of the right effective. However, in the present case there is no need to make any request to the DGP since it has already decided to cancel the personal data of the claimant here.

resolution

Therefore, I resolve:

1. Declare extemporaneous the resolution of the DGP, by which it deems the request for cancellation made by Mr. other pronouncement or any requirement regarding the fund when the claimant's right has become effective, in accordance with what has been indicated in the 4th and 5th legal foundations.
2. Notify this resolution to the DGP and the person making the claim.
3. Order the publication of the Resolution on the Authority's website (apdcat.gencat.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

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the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, in the period of two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating contentious jurisdiction administrative

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

The director,

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