

RESOLUTION of the rights protection procedure no. PT 19/2020, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat

Background

1.- On 28/04/2020 the Catalan Data Protection Authority received a letter from Ms. (...) (hereafter, claimant), for which he made a claim for the alleged neglect of the rights of access and cancellation, which he had previously exercised before the General Directorate of the Police of the Department of the Interior of the Generalitat (hereinafter, DGP), with respect to all their personal data that were recorded in two files in the field of information systems of the DGP (SIP PF and SIP PFMEN). The claim for the alleged disregard of the right of access was assigned no. PT 19/2020, and the claim for the alleged disregard of the right of cancellation, no. PT 19 bis/2020. This resolution only refers to the alleged neglect of the right of access.

In order to certify the exercise of the right of access before the person responsible for the treatment (DGP), the claimant provides a copy of the access request dated 03/17/2020, addressed to the DGP.

2.- By official letter dated 09/15/2020, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 9/10/2020 a letter of allegations from the DGP was entered in the Authority's register, through which it set out the following:

"1. On March 17, 2020, Ms. (...) requested the cancellation of personal data.

2. On August 13, 2020 (departure registration dated 08/19/2020), a request to amend or improve the application is sent to you, since it does not specifically indicate the data you are requesting to cancel, nor does it provide supporting documentation.

In this request, you are informed of the data contained in the file. Therefore, the right of access requested is effective.

This requirement is notified to you on August 31, 2020.

3. (...)

4. The request was sent to the interested party at the address indicated for notification purposes when the suspended administrative deadlines resumed in accordance with the additional provision 3a of Royal Decree 463/2020, of March 14 (...) and when the Registry of entry and exit of documents from Les Corts resumed its activity.

Once processing was resumed, the files were dispatched maintaining the strict order of initiation (...)."

The DGP provided, with regard to the claim addressed here, a copy of the request for access presented by the person making the claim and of the request for amendment dated 08/13/2020, through which responded to the access request, as follows:

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"(...) Regarding the request for access to your personal data contained in the Generalitat Police Information System file of persons (SIP PF) managed by the General Directorate of the Police of the Department of the Interior, and after consulting the aforementioned file, it can be seen that the person concerned has the following personal data:

- *Visit Installation with visit number (...).*
- *Victim/ Complainant on 01/05/2012 in proceedings (...).*
- *Relative on 02/05/2014 in proceedings (...).*
- *Requirement not valid on 05/20/2014 (...).*
- *Identified on 07/07/2015 with identification number (...)2015 of GUÀRDIA URBAN OF BADALONA.*
- *(...)*
- *Identified on 01/14/2016 in proceedings (...)/2016 of USC SANTA COLOMA DE GRAMENET for ROBBERY WITH VIOLENCE AND/OR INTIMIDATION.*
- *Complainant and Identified on 07/08/2016 in proceedings (...)/2016 by POLICE LOCAL DE SANTA COLOMA DE GRAMENET for THREATS (Mild) and INJURIES (Mild).*
- *Victim/ Complainant on 10/25/2016 in proceedings (...)*
- *Victim/ Complainant on 28/10/2016 in proceedings (...).*
- *identified on 10/28/2016 with USC identification number (...)2016 BADALONE*
- *Requirement not valid on 01/12/2016 (...).*
- *Victim/ Complainant on 23/12/2016 in proceedings (...).*
- *(...)*
- *Relative on 23/12/2019 in proceedings (...).*
- *Interlocutor on 08/03/2020 (...)"*

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 data access request made by the person making the claim, it should be noted, first of all, that 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 circulation thereof (hereafter, RGPD) expressly excludes from its application the processing of personal data carried out by (art. 2.2.d RGPD): *"the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses, or the execution of criminal sanctions, including the purpose of protection and prevention against security threats public and its prevention"*, which frames the access request that is the subject of the claim that is the cause of this resolution. Recital 19 of the RGPD expressly indicates that these treatments must be governed by 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 treatment of personal data by the authorities

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competent 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, which provides for the right of access in article 14.

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

In accordance with the above, first of all, it is necessary to go to article 15 of the LOPD, which determines the following in relation to the right of access:

"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. (...)"

For its part, article 27 of the development regulation of the LOPD (hereafter, RLOPD), in its first and second section, 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 that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications made 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.

(...)"

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

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"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.

(...)

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 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 16.1 of Law 32/2010, of the Catalan Data Protection Authority, in line with article 18 of the LOPD, 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.

In this regard, it is certified in the procedure that on 03/17/2020 a letter from the person here claiming was entered in the General Electronic General Register of the Generalitat addressed to the DGP, through which he requested access to all his personal data recorded in the files of the SIP scope (SIP PF and SIP PFMEN).

In accordance with article 29 of the RLOPD, the DGP had to resolve and notify the request for access within a maximum period of one month from the date of receipt of the request.

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In relation to 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 the 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 proceedings initiated at instance of part - as is the case - 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 have occurred the duly accredited notification attempt (art. 40.4 LPAC).

When the person now claiming submitted the access request (on 03/17/2020) Royal Decree 463/2020, of March 14, was in force, declaring a state of alarm for the management of the health crisis situation caused by COVID-19, whose DA 3a established the suspension of administrative deadlines, with effect from 03/14/2020, a suspension that remained in force until 05/31/2020, in accordance with the provisions of article 9 of Royal Decree 537/2020, of May 22.

In accordance with this, the one-month period available to the DGP to respond to the access request did not begin until 06/1/2020, with the lifting of the suspension, and it ended on 06/30/2020. However, in the statement of objections the DGP has recognized that the office of amendment request - which contains the response to the access request - was notified to the person making the claim on 31/08/2020, and, therefore, once the legal deadline would have passed. And it is not known to the Authority - nor has the DGP alleged - that it had agreed to an extension or a suspension of the planned deadline.

Consequently, the claim should be upheld, in terms related to the lack of response to the request to exercise the right of access, since the DGP did not resolve and notify in form and time the request for access access of the person claiming.

4.- Regarding the merits of the claim, in the statement of objections the DGP has stated that through the amendment request office dated 08/13/2020, it responded to the request of 'access, with which information would have made effective the right of access exercised by the person making the claim.

The answer cannot deserve a favorable reception, at least in part, for the reasons set out below.

At the outset, it must be made clear that the Authority has no record of the notification of the aforementioned requirement to the person making the claim. The only information provided by the DGP before the Authority is the amendment request on which the DGP's exit registration stamp dated 08/19/2020 is stamped, but there is no evidence that the claimant has received this office. To this must be added the fact that the person making the claim expressly requested electronic processing of their access request. So it could very well be that the claimant had not yet received this letter containing her personal data, together with the amendment request.

Secondly, it should be noted that the request for access made by the person making the claim referred to the data contained in two files: Information system of the Generalitat Police for natural persons (SIP PF), and System of information from the Generalitat Police on minors (SIP PFMEN). On the other hand, in the response letter of the DGP dated 08/13/2020 (transcribed in the 3rd antecedent), only the data contained in the SIP PF file is mentioned, so it seems that it would fail to provide the personal data listed in the SIP PFMEN file.

Thirdly, it should be made clear that the scope of the right of access is greater than the information that the DGP provided to the person now claiming in the said office.

By means of this office, the DGP would have provided the person making the claim with the data relating to the police background contained in the following SIP PF file: number of police proceedings, status held by the person making the claim in those actions (that is, if it was complainant or victim, or identified, family member of the person involved, interlocutor, etc.), the date on which it was reported or identified, etc., the place where said actions had taken place and the reason for the action (type of misdemeanor or crime).

In accordance with articles 15 LOPD and 27.1 RLOPD, part of the essential content of the right of access is the specific personal data of the applicant, as well as the information regarding the origin of the data (only with regard to the data of the claimant that had been collected through other people), the communications of data carried out or planned (such as, to judicial bodies, etc.), the uses and the purpose of the treatment. So everything seems to indicate that it would be necessary to provide the claimant with this other information.

It is worth saying that article 29.2 of the RLOPD allows the data controller to provide this information within ten days of the notification of the estimated resolution of the access request, but it is not recorded in the Authority that the DGP has provided this information subsequent to the referral of the aforementioned office, nor has the DGP stated this in its statement of allegations.

In accordance with what has been stated, the merits of the claim should be upheld, and the claimant's right to electronically access all his personal data contained in the SIP PF and SIP PFMEN files - on the understanding that he does not none of the reasons for denying access provided for in art. 23.1 LOPD-, as well as the information relating to the uses and purpose of the treatment, the origin of the data and the communications made or planned to be made.

5.- In accordance with all the above and with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, the DGP should be required so that, within a maximum period of 10 days - starting from the following day of the notification of this resolution, make effective the right of access exercised by the person claiming, in the terms provided for in the 4th *in fine basis of law*. Subsequently, within ten days following the end of the first term indicated, he must give an account to the Authority, providing the document certifying the notification of the response to the person making the claim.

For all this,

RESOLVED

First.- Declare extemporaneous the response dated 08/13/2020 of the DGP, by which the access request made by Mrs. (...) for not having given an answer within the period established in the applicable regulations. Regarding the fund, estimate the claim, i declare that the DGP has not fully satisfied the right of access, for the reasons indicated in the 4th legal basis.

Second.- To require the DGP so that within 10 days, counting from the day after the notification of this resolution, it makes effective the right of access of the person claiming, in the terms indicated in the fundamentals of right 4th and 5th. Likewise, the DGP is required to submit to the Authority within the following 10 days the document certifying the notification of the response to the claimant, as well as a copy of the written response.

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.

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

The director,