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## File identification

Resolution of the rights protection procedure no. PT 23/2020, urged by Mr. (...) against the City Council of L'Hospitalet de Llobregat.

## Background

1.- On 05/26/2020, the Catalan Data Protection Authority received a complaint from Mr (...)

(henceforth, the claimant) against the City Council of L'Hospitalet de Llobregat, for not responding to the request to exercise the right of access, which is provided for in article 15 of the 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).

The claimant provided various documentation, in order to certify the exercise of this right, specifically:

- 1.1. Copy of a letter that the claimant submitted on 05/12/2019 to Barberà del Vallès City Council, and addressed to L'Hospitalet City Council, requesting: "a copy of the entire file, and identification of the instructor of my recusal letter against the criminal offender (...)". The City Council's failure to respond to this request for access is the subject of the claim.
- 1.2. Copy of a letter of objection, presented by the claimant on 07/08/2019 to the Ministry of Finance (Cadastre Catalonia-BCN), and also addressed to L'Hospitalet City Council, for which he requested the recusal of the head of the Social Services Section of this City Council

2.- By official letter dated 08/26/2020, the claim was transferred to the City Council of L'Hospitalet de Llobregat, so that within 15 days it formulates the allegations it deems relevant. In the transfer office, the City Council was asked to provide a copy of the supporting documentation of the date on which it would have received the request to exercise the right of access made by the person making the claim, and in case of having resolved it, the supporting documentation of said resolution and of its notification to the person making the claim. Likewise, he was asked to indicate the administrative procedure in question, as well as the regulations that the regulated

3.- On 16/09/2020 and 18/09/2020 the Authority received several letters from the City Council, specifically:

- 3.1. A letter from the City Council's data protection delegate.

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3.2. A report from the *Basic Areas Social Services* unit of the City Council.

3.3. A report from the City Council's *Heritage and Insurance* unit .

3.4. Copy of Resolution (...) /2016, of January 22, by which a recusal request submitted by the person here claiming against a municipal employee of the City Council's Social Services is dismissed, based on the lack of administrative procedure on which the objection can be raised, among others. And copy of your notification to the lawyer of the person here claiming.

3.5. Copy of Resolution (...) /2020, of (...), dismissing the claim for patrimonial responsibility presented by the person here claiming against the City Council, in procedure no. (...) /2019.

3.6. A resolution issued by the Authority on October 30, in rights protection procedure no. PT (...) /2019, by which the subsequent loss of the object of the claim is declared.

With the set of documents presented, the City Council alleged, in summary, the following:

- That the City Council was not clear to which file the person making the claim was referring to, and that the inconsistency of the claim made prevented it from attending to the right of access provided for in article 15 of the RGPD.
- That the City Council only had the following two files to which the claimant here had access:
  - 1) The file corresponding to procedure no. (...) /2016, in the framework of which Resolution no. (...) /2016 mentioned, dismissing the recusal requested by the claimant here, notified on 01/27/2016.
  - 2) The file corresponding to the property liability procedure (...) /2019, in the framework of which resolution (...) /2020, of (...), dismissing the claim was issued. That as part of this procedure, a copy of the file was provided to the person making the claim.
- That he requested the archive of the claim *"given the incongruity of the claim formulated which makes it impossible to attend to the exercise of the right of access (...) as well as given the content of the request itself and the accompanying documentation, with offensive expressions and attacks on the personal dignity of several public workers of this City Council (...) which has been reiterated multiple times for a long time by the claimant (...) "*

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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.- As a first question, it is necessary to determine whether the claim we are dealing with should be resolved based on the right of access regulated by data protection legislation.

In this respect, in the claim presented to this Authority, the affected person provided a copy of the request presented to Barberà del Vallès City Council on 12/05/2019 -addressed to L'Hospitalet de Llobregat City Council-, by means of which he requested: *"a copy of the entire file, and identification of the instructor of my recusal letter against the criminal offender (...)"*. It must be noted that it was not indicated that the right of access to their data was exercised.

In relation to this, it must be clarified that from the point of view of the right of access to one's own data regulated by the legislation on the protection of personal data, it is not essential that in the writing with which this right of access is exercised access, whether or not the interested party expressly invokes article 15 RGPD or the regulations for the protection of personal data. In other words, the determination of whether or not what is being requested fits into the mentioned right of access does not depend on the qualification that the interested party makes of his writing or the precepts he cites, but on the claim that is specifically made .

In the present case, the claimant requested on 05/12/2019 access to the entire file. With regard to the identification of this file, in the request for access he did not specify it clearly - referring, of course, to his letter of recusal -, but it can be inferred from the claim presented to this Authority which referred to *"the expediente de recusación"*, related to the letter of recusal that the claimant presented on 07/08/2019, and which accompanies his claim.

If this were the case, and the City Council was processing an administrative procedure, the claimant could submit a request under the right of access to the file as an interested party of the procedure - ex art. 53.1.a) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC)-, or you could also submit a request for access under the protection of the regulations of data protection, based on the consideration that the aforementioned file would contain personal data relating to the person there requesting and here claiming (at the very least, those of his request for recusal and those of his request for 'access).

However, from the response given by the City Council in the hearing procedure, it seems that it would not have processed any administrative procedure, and therefore, the request for access would not have been made with respect to an open procedure or in process. That being the case, it could be questioned whether the access request was covered by the exercise of the right of access to public information (hereinafter, AIP) provided for in the so-called transparency laws,

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or in the right of access provided for in the data protection regulations. However, this is an issue that becomes irrelevant here, since, to the extent that everything indicates that the City Council would only have the two documents presented by the person making the claim, and that it would therefore only have the claimant's personal data, the only access requests should always be processed in accordance with the data protection regulations, in consideration of the referral made by article 24.3 of Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (LTC), which states 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 right of access established by data protection legislation"*.

All of the above makes it possible to approach this claim from the point of view of the right of access regulated by data protection legislation, in accordance with the principles of speed and *pro action*.

In this regard, article 15 of the RGPD 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 perceive fear*

*any other copy requested by the interested party a reasonable fee 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.*

*5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:*

*a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or*

*b) refuse to act in respect of the request.*

*The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.*

*(...)"*

In relation to the above, 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*

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*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.- Once it has been determined that the present claim would have its place in the right of access regulated by the RGPD and this regulation has been set out, the present claim will therefore be resolved from this point of view.

As relevant background, it is certified that on 05/12/2019 a letter was entered in the Registry of the Barberà del Vallès City Council that the person here claiming addressed to the City Council of L'Hospitalet de Llobregat, through which he requested access to a recusal file.

From the point of view of article 12.3 of the RGPD, the City Council of L'Hospitalet de Llobregat had to resolve and notify the request for access 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 Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, 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 received in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolve and notify (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 must have occurred (art. 40.4 LPAC).

This Authority has no record of the date on which the request for access was received by L'Hospitalet de Llobregat City Council, despite having requested it in the transfer office of the claim. But the fact that Barberà City Council made an electronic copy of the application - in order to process it electronically - and that the form used by the applicant contained a section corresponding to the "Administration receiving the

*document*", in which the City Council of L'Hospitalet de Llobregat was clearly specified, lead to consider that the request reached the recipient City Council. It would also be indicative of the receipt of the request by the claimed City Council, the fact that in the statement of objections the City Council of L'Hospitalet has not denied that the access request had been entered into its registration, but has limited itself to pointing out the reasons why it considered it necessary to file the claim. And apart from that, with his allegations he has made it clear that, at least on the date he sent the letter of allegations to the Authority (16/09/2020) he had not responded to the request for access made by the claimant.

This is how things are, given that between the date of entry of the application in the register of the Barberà del Vallès Town Council (05/12/2019) and the date of receipt by the Authority of the letter of allegations of the City Council of L'Hospitalet (16/09/2020) passed more than nine months, it must be understood that the one-month deadline available to the City Council claimed for having given an answer to the access request.

Consequently, the assessment of the claim proceeds from this formal perspective, without prejudice to what will be said below regarding the substance of the claim.

#### 4.- Analysis of the claim from a background perspective.

First of all, it should be made clear that, whether or not the City Council processed the recusal request presented by the person making the claim, it was obliged to respond to the request for access that this person made present, in accordance with the provisions of article 12.1 RGPD. And if he chose not to proceed with his request, he should also have been informed of the reasons for his non-action and of the possibility of submitting a claim to this Authority (art. 12.4 RGPD).

The City Council states in defense of its lack of response that the inconsistency of the claim makes it impossible for it to attend to the exercise of the right of access provided for in art. 15 RGPD, but such an allegation cannot be favorably received. While it is true that the application and the accompanying documents submitted by the claimant are very confusing, given this circumstance the City Council should have asked the now claimant to clarify the terms of his application. This was foreseen in article 25.3 of the old Regulation of the LOPD (*"In the event that the request does not meet the requirements specified in the first section, the person in charge of the file must request the amendment"*) - which is considered valid insofar as it does not contradict the RGPD - and is also provided for in art. 68.1 LPAC -of supplementary application-.

On the other hand, the City Council's request to file the claim on the basis of all the objectionable expressions that appear in the various writings of the person making the claim cannot be accepted either. Although article 30 LRJPCat establishes, among others, the duty of citizens to act with the respect due to people and institutions, and certainly the claimant's writings contain many expressions that clearly lack the respect due to people in to whom it is addressed or referred to, the application rules do not provide for a case of denial of access based on this

behavior of the person requesting access to their data, and consequently, access must be granted.

Likewise, in relation to the allegations made by the City Council regarding the fact that the council had already facilitated access to the now claimant to the two files on file, it should be noted at the outset that it does not appear that these files keep relation to the request for access that we are now dealing with, since one has as its object a claim for patrimonial responsibility of the City Council, and the other was processed following a request for recusal that the claimant presented on 20/02/2015, and which ended by means of a resolution dated 01/22/2016. While in the present case the request for access refers to a recusal request that the claimant now presented on 07/08/2019, and therefore it would be a new request for recusal

But in the hypothetical case that there was some relationship with those files, it must be taken into account that article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the person in charge of the treatment a copy of the documents containing the subject personal data of treatment, regardless of whether or not the administrative acts contained in the corresponding administrative file have been properly notified, and whether or not the claimant already has the required information. None of this exempts the City Council from the obligation to provide it again. And Resolution of the rights protection procedure no. is not contrary to this approach. PT (...)/2019, urged against the City Council of L'Hospitalet de Llobregat, since this resolution refers to a case different from the present one. In that case, the City Council facilitated the right of access to the claimant once the Authority forwarded the letter of claim to the City Council's data protection delegate, so the Authority declared the loss arising from the object of the guardianship claim. While in the present case the City Council itself recognizes that it has not facilitated the right of access.

Finally, with regard to the information that must be provided to the applicant for access to their own data, it should be stated that, in addition to the copy of the requested documentation, article 15.1 of the RGPD establishes that it is also necessary to inform about other ends, and in particular about the origin of the information and the eventual recipients of the data, as well as about the purpose of the treatment and the categories of personal data that are being treated.

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.

In accordance with this, the City Council of L'Hospitalet de Llobregat is required to respond to the request of 'access formulated by the person making the claim, informing him of the ends provided for in article 15 RGPD, and -unless there is an exception from those provided for in art. 23 RGPD- providing him with a copy of the documents requested by the claimant, collected or processed by the City Council up to the date of the access request.



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For all that has been exposed,

RESOLVED

First.- Estimate the guardianship claim made by Mr. (...) against the City Council of L'Hospitalet de Llobregat.

Second.- Request the City Council of L'Hospitalet de Llobregat so that within 10 counting days from the day after the notification of this resolution it makes effective the right of access exercised by the person making the claim, d in accordance with the fifth law foundation.  
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 L'Hospitalet de Llobregat to the person making the claim.

Fourth.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://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,