

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

File identification

Resolution of the rights protection procedure no. PT 26/2020, urged by Mr. (...) against the General Directorate of the Police.

Background

1.- On 06/22/2020, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), represented by Mr. (...), for which he made a claim for the alleged neglect of the right of cancellation, which he had previously exercised before the General Directorate of the Police (hereinafter, DGP) of Department of the Interior. Specifically, the claimant requested that his personal data be deleted from the Natural Persons Police Information System (SIP PF) file of the Generalitat de Catalunya.

The claimant certified that, by means of a letter dated 04/03/2018, he had exercised before the DGP the cancellation of his personal data from the SIP PF file, relating to police proceedings no. (...).

2.- On 31/07/2020 the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it considered appropriate in this regard.

3.- In response to the aforementioned office, the DGP formulated allegations by means of a letter dated 09/02/2020, in which he set out the following:

- That the claimant requested the cancellation of his data before the DGP, on 04/03/2018, "*(...) related to the arrest for a crime against public health (drug trafficking) , police proceedings no. (...)(and expansions (...) and (...))*".
- That due to "*various necessary internal managements of police relevance*", es temporarily extended the processing of the file.
- That, on 07/08/2020, the director general of the Police issued a resolution agreeing to the effective cancellation of the claimant's data recorded in the files of the SIP area "*(...)related to the aforementioned police proceedings, as well as regarding police proceedings no. (...) for a complaint for possession of drugs related to criminal proceedings(...)*".

The DGP provided various documentation in this regard, among which was also the document certifying the notification to the person claiming of the estimated resolution relating to his request for the cancellation of personal data.

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 this resolution is issued, to the personal data that were the subject of treatment by the DGP and to which the cancellation or deletion request referred, the 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 authority for prevention purposes, would apply, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data, in accordance with what is established in its article 1. In this regard, it should be emphasized that the Directive (EU) 2016/680, has not been transposed into national internal law within the period provided for that purpose (05/06/2018), but transitional provision 4a of Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD), also in force at the time of dict this resolution, provides that data processing that is subject to Directive (EU) 2016/680 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, in accordance with what has been provided for in the LOPDGDD, enters into force.

Therefore, in accordance with what has been explained, this resolution is issued in accordance with the provisions of the LOPD and the RLOPD, as these are the rules applicable at this time but also at the time when it was exercised the right of cancellation (04/03/2018) which is the object of the claim here.

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*

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contractual relations 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 rights and

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liberties 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.- Based on the precepts referred to above, it is necessary to analyze whether the DGP has resolved and notified the right of cancellation exercised by the person here claiming within the period provided for in the regulations that apply in this specific case, since, precisely, the reason for the complaint of the person who started the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

With regard to the alleged neglect of the right that is the object of the claim, it is proven that on 04/03/2018, the person making the claim presented in the entry register of the General Directorate of the Police (hereinafter, DGP) of the Department of the Interior, a letter through which he exercised the right to cancel his personal data that appeared in the SIP PF file relating to the proceedings (...). These proceedings, together with proceedings no. (...), extended the police proceedings no. (...) which resulted in Preliminary Proceedings no. (...), - for crime against public health (drug trafficking) - instituted by the Court of Inquiry no. 25 of Barcelona and of which the claimant was acquitted and the judgment became final.

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 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 it happens in this 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 deadline is to resolve and notify (article 21 of the LPAC), so that

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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).

Well, according to the proceedings, on 04/03/2018, the claimant made the request to exercise the right. The deadline for resolving and notifying this resolution ended on 04/17/2018. However, the DGP ruled on the cancellation request on 07/08/2020, that is to say, more than two years past the resolution deadline provided for the purpose, for which it can be concluded that the DGP resolved extemporaneously.

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.

With regard to the merits of the claim, and taking into account 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, without prejudice that in the event that the person making the claim considers that their right of cancellation has not been fully exercised with respect to personal data recorded in the files of the SIP area, they can 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.

For all the above,

RESOLVED

1. Declare extemporaneous the resolution of the DGP, by means of which the request for cancellation made by Mr. make any other pronouncement or any requirement regarding the fund once 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 General Directorate of the Police and to 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 February 20, by which the Statute of the Catalan Agency of

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Data Protection, the interested parties can file, with discretion, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, of in accordance with the provisions of article 123 et seq. of the LPAC 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,

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