

## File identification

Resolution of the rights protection procedure no. PT 34/2020, petition against the Town Council of l'Escala.

## Background

1. On 07/27/2020, the Catalan Data Protection Authority received a letter from Mr. (...) (henceforth, the claimant), for which he formulated a claim for the denial of the right of opposition that he had previously exercised before the Town Council of l'Escala.

The person making the claim accompanied his letter of claim with several documents, including the application he had submitted to the City Council on 03/07/2020. In this request, the now claimant stated that on 08/05/2019 he had participated in selective tests for the creation of a job exchange for (...) convened by the City Council of l'Escala (exp. (...)), and that, despite the time that has passed

since its celebration, I had verified that on 6/03/2020 it was still possible to access the minutes of the constitution of the court, and of the evaluation of the evidence and merits, which contained several of his personal data, specifically: the your first and last name, the last four digits of your ID number, the number assigned to you in the selection process, and the score obtained.

The now claimant pointed out that said act could be accessed through internet search engines, and to that effect provided a screen printout of the results obtained from the search (through the inclusion of his first and last name in the Google search engine) , where an electronic address (seu-e.cat) appeared as the second result that allowed access to the aforementioned minutes. For this reason, through his letter of 06/03/2020 he requested from the City Council, among others, the following: "1. That he withdraw the indexed publication relating to the constitution of the court (...) so that it is no longer possible to access it through an internet search with any search engine. 2. That, however, it is impossible to access and find these documents by any means of public and indiscriminate reach".

The person making the claim complained about the response that the City Council had given him to his request ("*the alleged extremes are not even argued*"). He provided a copy of an email that the City Council of l'Escala sent him on 22/07/2020, through which he stated the following: "*(...) once the consultation with the protection delegate has been made of data, they confirm to me that the format that was used in this City Council for the publication of the results of the selective processes - first and last name and the last 4 digits of the identity card - are perfectly legal*".

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2. On 09/15/2020, the claim was transferred to the City Council of l'Escala so that within 15 days it could formulate the allegations it deemed relevant.

This deadline was exceeded by far, without the Town Council of l'Escala having formulated allegations.

3. On 27/01/2021 the instructor of the procedure carried out several actions on the internet, in order to verify the facts related by the person making the claim. In these actions, it was found, among others, that if you entered your first and last name in the Google search engine, the first result was the link to download a corresponding PDF document ((...)) in the disputed minutes, which included the personal data indicated by the claimant (name and surname and 4 digits of his ID). Likewise, it was found that it was also possible to access this act through the City Council's Transparency Portal, specifically, through the section on staff calls, based on the reference to the procedure ((. .)).

From the result obtained, the corresponding due diligence was carried out.

#### 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. With regard to the determination of the right exercised by the claimant, it should be noted that, although in the request he presented to the City Council on 07/03/2020, he made express reference to the right of deletion, in reality what he was asking for was not actually the deletion of the data that was published on the City Council's electronic headquarters, but that he remove *"the indexed publication relating to the constitution of the court"*, this request which has a better fits into the right of opposition, provided for in article 21 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 circulation of these (hereinafter, the RGPD), which determines the following in section 1:

*"1. For reasons related to their particular situation, the interested party has the right to object that the personal data that affect you are the subject of a treatment based on what provides article 6, section 1, letters e) of), including the elaboration of profiles in accordance with these provisions. The controller must stop processing these personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation the exercise or defense of claims."*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, sections 3 and 4 of article 12 of the RGPD establish the following:

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*"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."*

For its part, article 77 of the RGD provides for the right to submit a claim to a control authority. And Article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, provides, among others, in section 1, that: *"the persons interested in whom the exercise of the rights of access, rectification, cancellation or opposition is denied, in part or in whole, or that they may understand that their request has been rejected due to the fact that it has not been resolved within the established period, they can file a claim with the Catalan Data Protection Authority."*

3. Having explained the applicable regulatory framework, it is then necessary to analyze whether the City Council of l'Escala resolved and notified, within the period provided for by the applicable regulations, the right of opposition exercised by the person making the claim, since one of the reasons of his complaint that 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.

As explained in the background, the claimant submitted his request to the City Council of l'Escala on 07/03/2020, and the City Council responded by email on the 22nd /07/2020.

In accordance with article 12.3 RGD, previously transcribed, the data controller must resolve and notify the opposition request within a maximum period of one month from the date of receipt of the request. Regarding the calculation of the term, it should be remembered that Royal Decree 463/2020, of March 14, which declares a state of alarm for the management of the health crisis situation caused by COVID-19, provided for the suspension of the terms and the interruption of the deadlines for the processing of administrative procedures, with effect from 03/14/2020; suspension that was not lifted until 1/06/2020, in accordance with the provisions of Royal Decree 537/2020 of 22 May, which extended the state of alarm. Taking into account this suspension of administrative deadlines, the City Council had until 23/06/2020 to respond to the opposition request, but did not respond until 22/07/2020.

Consequently, the City Council's response to the request to exercise the right of opposition of the claimant was extemporaneous.

4. Next, it is necessary to analyze the substance of the claim, that is to say, if, in accordance with the precepts transcribed in the 2nd legal basis, in this case the opposition to the aforementioned publication proceeds in the terms that tender the person claiming.

In this regard, it should be borne in mind that article 21.1 RGPD regulates the right of opposition as the right of the affected person to avoid the processing of their personal data or the cessation of this in certain cases, unless one of the exceptions that the same precept indicates. It is worth saying, however, that the aforementioned precept imposes on the affected person the duty to prove the existence of a reason related to their particular situation, which justifies the cessation of the processing of their personal data. Now, in those cases in which the treatment that is the object of opposition is unlawful, the particular reason would become the unlawfulness of the treatment itself, as is precisely the case here.

Indeed, the person now claiming requested the City Council of l'Escala *"to withdraw the indexed publication relating to "the minutes of the court (...) so that (...) is not possible (...) access it through an internet search with any search engine"*. The claimant was referring to the fact that when an Internet user searches through an Internet search engine, in this case "Google", this search engine that provides the service of locating content published by other entities on the Internet, index the disputed minutes as a result.

In this regard, it should be noted that on 27/01/2021 the Authority verified that, from the introduction of the name and surname of the claimant in this search engine, the first result obtained was a link to this act (. ..). Likewise, it was verified that it was also possible to access this act through the electronic headquarters of the City Council, specifically, through the Transparency Portal, in the section on staff calls, from the reference of the procedure ((...)).

Having said that, when the City Council responded, by email of 07/22/2020, to the opposition request made by the person making the claim, it pointed out that the system used to identify the person claiming here (name and surname and the 4 digits of the identity document) *"are perfectly legal"*, but did not invoke any cause that would allow the request to oppose the dissemination of the claimant's data contained in the disputed minutes published on the internet.

Neither within the framework of the present procedure for the protection of rights, the City Council of l'Escala has made allegations, nor has it invoked any reason that prevents the exercise of the right of opposition of the person here claiming.

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Well, based on the fact that the City Council has not cited any cause that highlights the exceptional need to keep the aforementioned minutes published on its electronic headquarters, and that this minutes refers to a selective process that everything indicates end on 08/05/2019 or on a later date but close to it, it must be understood that the purpose of making public the result of the selection process, which was pursued with the publication of the minutes on the City Council's Transparency Portal, it would have already been fulfilled. Consequently, keeping the minutes published at present, facilitating their accessibility through a simple search, is considered completely unnecessary, and, for this reason, contrary to the principle of limiting the retention period provided for in the article 5.1.e) RGPD, according to which, personal data must be kept in a way that allows the identification of the interested persons for no longer than is necessary for the purpose of the treatment.

That being the case, the data processing we are dealing with would have become illegal, which entails the existence of the particular reason required by art. 21.1 RGPD for the exercise of the right of opposition, and the consequent obligation on the part of the person responsible to make the right effective.

It is for this reason that the present claim for the protection of the right of opposition should be considered.

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 treatment 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 claimed entity so that, within 10 counting days from the day after the notification of this resolution, it carries out the necessary actions to unpublish the act of incorporation of the court corresponding to the file (...) (...).

Once the right of opposition has been made effective in the terms set out and the person making the claim has been notified, within the same period of 10 days the claimed entity must give an account to the Authority.

resolution

Therefore, I resolve:

1. Estimate the guardianship claim made by Mr (...) against the Town Council of l'Escala.
2. Request the City Council of l'Escala to exercise the right of opposition within 10 calendar days from the day after the notification of this resolution exercised by the claimant, in the manner indicated in the 5th legal basis. Once the right of rectification has taken effect, within the same period of 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the City Council of l'Escala and the person making the claim.

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

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

The director,