

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

File identification

Resolution of the rights protection procedure no. PT 48/2020, petition against the Management General of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 19/10/2020 the Catalan Data Protection Authority received a letter from Mr. of the right of access to his personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The claimant provided various documentation relating to the exercise of this right.

2.- By means of a letter dated 10/23/2020, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed appropriate in this regard.

3.- The DGP made allegations by means of a letter dated 11/13/2020 -which was entered in the APDCAT on 11/20/2020-, and which basically set out the following:

- That on 01/07/2020, the person claiming requested access to the personal data recorded in the files of the Police Information System (SIP).
- That on 22/09/2020, the Director General of the Police issued the resolution by which it was agreed to give effect to the access to the personal data contained in the SIP files.

ÿ That on 20/10/2020 the resolution was notified to the person making the claim.

The DGP provided various documentation.

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.- At the time when this resolution is issued, the personal data that were the subject of processing by the DGP and to which the access 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 the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution of criminal sanctions, and the free circulation of this data, in accordance with what is established in its article 1, and which provides for the right of access in its article 14. In this respect, it is necessary to indicate that said Directive has not been transposed into national law within the deadline set for that purpose (on 06/05/2018) and, consequently, individuals can directly invoke European law before the

courts, regardless of whether or not they have been transposed into national law, in accordance with the doctrine of the Court of Justice of the European Union.

The access request analyzed here was submitted when Organic Law 3/2018, of December 5, Protection of Personal Data and Digital Rights Guarantee (LOPDGDD), which repealed Organic Law 15, was already fully applicable /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 what the aforementioned Directive provides comes into force.

2.- In accordance with the above, firstly, it is necessary to go to article 15 of the LOPD, which in relation to the right of access determines the following:

- "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. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."*

For its part, article 27 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter, RLOPD), in its first and second sections 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.*
However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

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

"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.

In the event that it does not have the personal data of those affected, it must also notify them within the same period.

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 provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

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."

Lastly, and since 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 article 23, sections 1 and 3, of the LOPD, which determine the following 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 that are being carried out. (...)

3. The person affected 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."

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3.- Next it is 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, given that the reason for the complaint of the person who initiated the present procedure of protection of rights was precisely the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 01/07/2020 a letter was entered in the DGP register by the person here claiming, through which he exercised his right of access to his personal data recorded in the files of the SIP scope of the DGP.

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. 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 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 (in this case, 1/07/2020) . And on the other hand, that the maximum period is for resolution and notification (article 21 of the LPAC), so that before the end of this period the resolution must have been notified or, at the very least, produced the duly accredited notification attempt (art. 40.4 LPAC).

Well, it is proven that the DGP did not respond to the claimant's request within the period of one month provided for that purpose, which ended on 07/31/2020, given that it issued the resolution by which he estimated his right of access on 22/09/2020, and the notification of this resolution did not take place until 20/10/2020.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access, it must be declared that the DGP did not resolve and notify in form and time the said request submitted by the person claiming

4.- When in the substance of the claim, given that the DGP has agreed to consider the request for access to personal data presented by the person making the claim, it is not considered necessary to carry out further considerations in this regard, without prejudice to the fact that in the case that the claimant considers that his right of access 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, given that it has already decided to facilitate access to the personal data of the person making the claim.

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For all the above,

RESOLVED

1.- Declare extemporaneous the resolution of the General Directorate of the Police, by means of which the access request made by Mr. , without proceeding to 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 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 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 administrative contentious jurisdiction.

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

The director,