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In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Resolution of the rights protection procedure no. PT 49/2020, relating to the City Council (...)(...).

Background

1. On 10/30/2020, the Catalan Data Protection Authority received a letter from Mr. (...), for which he made a claim for the alleged neglect of the right of deletion that he had exercised on 14/10/2020 before the City Council (...)(...), in which he requested the deletion of a piece of information relating to his minor daughter that appeared in a report issued by the Basic Social Services (SSB) of the City Council on 01/03/2018 (hereinafter, the report). In this regard, Mr. (...) showed his disagreement with the content of the resolution dated 26/10/2020, through which the City Council had responded to his request.

Along with his letter, the person making the claim provided various documentation from which the following is derived:

1.1.- That in a letter dated 14/10/2020 the claimant here formulated a letter before the City Council (...)(...) in which he requested the deletion of a piece of data included in the report of SSB. In particular, he requested the deletion of the data relating to "*continuous school absenteeism/lack of schooling*" as one of the reasons that had led to the referral of the file relating to his minor daughter (...)(...) from the SSBs to the Child Care and Adolescence Team (EAIA), dependent on the General Directorate of Children and Adolescence (DGAIA) of the Department of Labor, Social Affairs and families This deletion, the claimant understood, the City Council had to do based on the following:

- From what was indicated in section 4.4 of the 4th legal basis of the resolution issued by the Catalan Data Protection Authority, finalizing the rights protection procedure no. PT 2/2020 relating to the City Council (...)(...), in which the claim made by Mr. (...) (the claimant here) regarding the exercise of the right was considered in part of rectification

- From what is provided in article 52 of Law 14/2010, of May 27, on rights and opportunities in childhood and adolescence, which determines that in accordance with the provisions of the said law, to be understood by "a) *Non-enrollment: the fact that the parents, guardians or guardians of a child or adolescent in compulsory schooling do not manage the corresponding school place without a reason to justify it*" ; and, "b) *Absenteeism: the absence of class without presenting proof or without an acceptable justification*".

1.2.- That the City Council responded to this request on 10/26/2020. In this letter, the City Council informed the claimant that it had complied with the resolution issued by the Authority finalizing rights protection procedure no. PT 2/2020, incorporating in the SSB report of 01/03/2018 a diligence that included the information indicated by the Authority in said resolution; action that was notified to him as an interested person ex officio on 10/05/2020.

2. Although the claim made by Mr. (...) before the Authority referred to the City Council's lack of attention to its right to deletion, once the Authority analyzed the terms of the claim and the request made before the City Council, was considered more adjusted to the right to link it to the exercise of the right of rectification, to the extent that what the claimant here seeks is the rectification of the SSB report in relation to the reasons which are recorded there as justification for the referral from the SSB to the EAIA in March 2018, from the file of his minor daughter. Specifically, the claimant considers that among the reasons related to the report - "*Problematic family situation*"; "*Inability/Impossibility to control the behavior of the minor*"; and, "*Continued school absenteeism/lack of schooling*" - the latter should not have been included because it did not fit the reality of the facts.

3. Considering that in his letter of claim, the claimant mentioned a various documentation that he did not provide, but which is included in other procedures for the protection of rights processed by this Authority in which the claimant here was also interested person; the following documentation is incorporated into these actions, of which the relevant for the purposes of this procedure is highlighted:

3.1.- Copy of the "*EAIA Referral Report*", issued on 01/03/2018 by the Council's SSB (...) (...), for the purpose of requesting the "*reopening of the EAIA File in relation to minors (...)*" and (...).

The first page of the report includes a list of sixteen possible "*reasons for referral*", of which - according to the filling instructions that appear in the same document - a maximum of three must be marked. In this case, and with regard to the derivation of the case of minors (...)and (...), the boxes linked to the reasons are marked following: "*Problematic family situation*", "*Continued absenteeism/lack of schooling*"; and, "*Inability/Impossibility to control the behavior of the minor*". It should be clarified here that to the extent that, in relation to the other minor, the report does not mention any problems arising from school absences, this reason for referral should be understood only as linked to the minor (...)

3.2.- Resolution issued by the director of the Authority on 15/09/2020, finalizing the rights protection procedure no. PT 2/2020. That resolution analyzed the request that the person claiming here (who was also a claimant in that procedure) had made before the City Council (...) (...) requesting the rectification of information contained in the report issued by the SSB. Point 4.4 of the 4th legal basis of said resolution is reproduced below, since this is the section invoked by the claimant here as

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one of the elements on which your request for rectification is based, the subject of the present procedure (section 1.1 of precedent 1).

"In the SSB report, in section "3.2. Current situation", the following text is included: "During the last months(...)he does not attend (...) due to the complaints and trials that take place with the young people and colleagues of the (...) ».

The people making claims here request the replacement of this paragraph, with the following: "During the last months(...)he has not attended (...) due to his repeated attention in the Emergency Department and hospital stays, until his access to the (...). (...)".

As can be seen, the discrepancy lies essentially in the reason for the minor's absence in (...). Well, according to the extensive documentation provided by the claimants here, during this period ("the last months"), the minor was admitted several times to different institutions; and the judicial procedure in which the minor appeared as the complainant was also being processed. Based on the above, the information collected by the SSBs in the report at this point cannot be said to be incorrect or inaccurate, but it would be capable of being completed. Therefore, the information contained in the referred section of the report will have to be supplemented in the sense that the minor's lack of attendance at (...) would also be caused by her "repeated attentions in Emergencies and hospital stays".

4. On 06/11/2020, the claim was transferred to the City Council (...)(...) so that within 15 days it could formulate the allegations it considered relevant.

5. The City Council (...)(...) formulated allegations by means of a letter dated 11/25/2020, in which it stated that *"the indicated request has been sent to the responsible unit, in order to value the extreme indicated by Mr. (...), which defends that there was no absenteeism since the minor's non-attendance at school was due to hospital and judicial issues. That is why he asks that this report be deleted or modified because it includes the box marked "continuous school absenteeism/lack of schooling" and this is an indicator that he did not go to school without a justified reason. The unit has assessed the request and it must be reported that at the time of the referral report to the EAIA, this aspect of the absenteeism was not documented and together with other indicators, it was the which prompted the referral. Likewise, the unit would agree to include a diligence rectifying the information if Mr. (...)provide documentary evidence of absence, bearing in mind that all schools when a child is absent ask their parents for the required evidence. Therefore, considering that they should be able to prove that the school already knew the reasons for the absence, if these supporting documents are now provided, it can be recorded in the file through the aforementioned diligence. In any case, however, this fact, it should be noted, does not invalidate the rest of the report that was sent to the EAIA".*

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.- The claim that is resolved here is formulated with respect to a request to exercise the right of rectification that had been presented to the City Council (...)(...) on 10/14/2020 .

Article 16 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27 of April, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, the RGPD), regulates the right of rectification in the following terms:

"The interested party will have the right to obtain without undue delay from the controller the rectification of inaccurate personal data concerning him. Taking into account the purposes of the treatment, the interested party will have the right to complete the personal data that are incomplete, including by means of an additional declaration".

For its part, article 14 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right of correction:

"When exercising the right of rectification recognized in Article 16 of Regulation (EU) 2016/679, the affected person must indicate in his request which data he refers to and which correction must be made. It must be attached, when necessary, the supporting documentation of the inaccuracy or the incompleteness of the data being processed".

Also, regarding the rights contemplated in articles 15 to 22 of the RGPD, article 12.4 of the RGPD establishes the following:

"4. If the data controller does not proceed with the request, it will inform you without delay, no later than one month after receiving the request, of the reasons for its non-action and of the possibility of filing a complaint with a control authority and to take legal action"

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, 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."

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3. As stated in the antecedents, the City Council (...) (...) responded to the request of the claimant on 10/26/2020, therefore, within the one-month period provided for article 12 of the RGPD. Therefore, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, rectification of the data in the terms requested by the person making the claim is necessary in this case.

As has been collected in more detail in the antecedents, the claimant requested the rectification of a data contained in the report issued on 03/01/2018 by the Council's SSB. In particular, he expressed his disagreement with *the inclusion of "continuous school absenteeism/lack of schooling"* as one of the reasons for referring the minor's case from the SSB to the EAIA. The claimant understands that marking this box would indicate, in accordance with the definition that article 52 of Law 14/2010 makes of

concepts of "absence" and "non-attendance", that the minor did not go to school without a reason to justify it, when the truth is that, according to the claimant's opinion, her absence was motivated by hospital and judicial reasons .

For a better analysis of the case, and in accordance with what is recorded in the proceedings, it is advisable to take into account the following:

- a) That the absence from school, to which the claimant refers and which he considers justified for hospital and judicial reasons, is related to the educational center (...) (...), center in which the minor was enrolled for the 2017-2018 academic year.
- b) That in section 3.2 of the SSB report, entitled "*Current situation*", the following text appears: "*During the last months (...) he does not attend the (...) due to the allegations and the trials that take place with the young people and colleagues of the (...)*". This information, in accordance with the resolution of the Authority that put an end to the rights protection procedure no. PT 2/2020, was completed in the sense that "*the minor's lack of attendance at (...) they would also be caused by their repeated visits to the Emergency Department and hospital stays*" (section 2.2 of precedent 2n).
- c) That in section 4 of the SSB report, entitled "*School information of each minor susceptible to intervention*", in relation to the minor, the following information is included referring to the 2016-2017 school year, when she was enrolled at School (...) (...): "*More serious absences and some days of absenteeism are beginning to occur*".
- d) That in section 2 of the report, entitled "*Advice*", the "*Intervention of 16/01/2018*" is related, which contains the following text: "*At the level of schooling, resources have also been exhausted ; at the moment (...) he does not attend (...) and [the parents] have given up on (...)*". This same information is reiterated in section 3.1 "*Antecedents - Family history*", in the following terms: "*(...) stops attending the (...) due to the situation with the young people. It is offered that she can attend (...) but the family does not agree as they consider that theirs is the victim and the colleagues who are harassing her should leave*".

As has been done in the antecedents, the City Council responded to the request made by the claimant here through a letter dated 10/26/2020, in which the City Council informed him that it had complied with the resolution issued by the Terminating Authority of

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the rights protection file no. PT 2/2020, including in the SSB report the specific information regarding his daughter that was indicated in said resolution.

It must be said, however, that this answer given by the City Council was incongruous with the request that the claimant here had made, without ruling out that this could have been facilitated by the confusing wording of the request.

The City Council has indeed addressed in the allegations made in this procedure the reasons why it believes that the requested rectification would not proceed; specifically, because *"at the time of making the referral report to the EAIA, this aspect of absenteeism [for hospital and judicial reasons] was not documented and together with other indicators, it was what motivate the referral"*. Despite the above, the City Council agreed to *"include a due diligence [in the SSB report] rectifying the information if Mr. (...) provide documentary proof of absence"*.

First of all, it must be said that the statement made by the City Council in this allegation, regarding the fact that on the date of issue of the report it had no record of the justification for the absences in (...), it would not be entirely accurate. Thus, although it is within the realm of possibility that on that date the SSB did not have evidence that some of the minor's absences were due to admissions and hospital care (information that the SSB could have known later during the guardianship procedure itself rights no. PT 2/2020), it is not that they did not know that certain absences were justified for judicial reasons, and this because in the same report it is stated that the minor did not go to the (...) *"because of the complaints and the trials that take place with the young people and colleagues of the (...)"*. So, if the SSB included in the report the complaints and the judgments as a reason for the minor's non-attendance at the (...) it is because, obviously, they had information about it.

That being the case, ask the claimant here to provide school proof of the minor's absences to (...), in order to be able to proceed with the requested rectification, when from the same report it is inferred that in the date of its writing the SSB considered that the absences at this center were justified, it is incongruous and disproportionate.

Despite the above, this Authority believes that the requested rectification does not proceed, although for other reasons than those put forward by the City Council, specifically:

- a.1) On the first page of the report, as has been said, a list of sixteen possible reasons for referral to the EAIA is included, among which the SSB must mark those that fit in the specific case. In the controversial report, one of the reasons indicated is, among others, that of *"Continuous school absenteeism/lack of schooling"*, a referral reason that the claimant considers not to be true because when Law 14 /2010 defines "absenteeism" and "non-schooling" it does so in terms of non-attendance at school without justification, which would not correspond to the absence of his daughter in (...), which was justified by hospital and judicial reasons, as has been seen.

Well, in this respect it must be said that it does not seem that the reason for referral referred to *"Continued school absenteeism/lack of schooling"* should be linked

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strict with the definitions it makes of the concepts of "absenteeism" and "non-schooling". article 52 of Law 14/2010, as intended by the claimant here. First of all, because nowhere in the report - which follows a standardized model and provides for some considerations to be taken into account by the SSB professional with regard to its correct completion - is it mentioned that this strict link must exist. And, secondly, because the fact that most of the possible reasons for derivation that are related to the report (a total of 16) are not defined in Law 14/2010, would lead to consider that the reason that is the subject of controversy would be a generic reason related, yes, to problems assistance or schooling. The consideration of this reason as generic and not strictly linked to the definition of article 52 of Law 14/2010, would be reinforced by the fact that in the list there is no other reason that is related to the scope school

- b.1) That, although, as has been seen, the minor's absence at (...) could be justified, the report shows unexcused absences of the minor in other schools, specifically at the school which the minor went to just before enrolling in (...) (letter c/ preceding). Therefore, the problem of truancy had occurred in another school and the SSBs considered this information relevant enough to include in the report; and possibly having considered it a reason for referral of the case.
- c.1) It is inferred that on the date the report was issued there was a problem related to the minor's schooling, since it is known that since January 2018 she has not been attending the (...) (although it is also stated in the report that she has been enrolled since the end of February) and that her parents refuse to register it in another center (letter d/ precedent). Therefore, this circumstance could justify the marking of the box "*Continued school absenteeism/ lack of schooling*".

In view of the considerations made in sections a.1), b.1) and c.1) above, it is considered the fact that one of the reasons for referring the minor to the EAIA was "*Continued school absenteeism/lack of schooling*", is accurate and conforms to the reality of the facts at the time of issuing the report; therefore, from the perspective of the right of rectification regulated in the RGPD and the rest of the applicable data protection regulations, the claim must be dismissed.

For all this, I resolve:

1. Dismiss the guardianship claim made by Mr. (...) against the City Council (...).
2. Notify this resolution to the City Council (...) and 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

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

The director,

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