

File identification

Resolution of the rights protection procedure no. PT 50/2020, urged by Mrs (...) against the General Directorate of the Police of the Department of the Interior.

Background

1.- On 11/17/2020, the Catalan Data Protection Authority received a letter from Ms (...) (hereinafter, the person making the claim), represented by Mrs. (...), 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 the 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 person making the claim provided various documentation, including the generic request letter submitted to the DGP registry, on 05/05/2020 - through which he certified that he had requested the cancellation of the your personal data from the SIP PF file relating to police proceedings no. (...)-, and which, subsequently, was reiterated and expanded by police proceedings no. (...), on 09/06/2020, (where the cancellation of other data was also requested).

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on data protection of personal nature (hereafter, RLOPD and LOPD, respectively), by means of official notice dated 12/10/2020 the claim was transferred to the DGP, so that within 15 days, counters from day following its receipt, formulate the allegations it deems relevant.

3.- In response to the aforementioned office, the DGP formulated allegations by means of a letter dated 12/21/2020, in which he stated the following:

- That *"On 05/05/2020, Mrs (...) submitted a request for the cancellation of the personal data recorded in the SIP files. The entry record of the generic request is the (...)"*.
- That *"Subsequently, on June 9, 2020, this request was reiterated and other personal data was requested to be deleted. Everything was included in the same file already started"*.
- That, on 09/17/2020, 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 in relation to the proceedings referred to above.

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

- That the resolution was sent to the interested person at the address indicated in the request dated 05/05/2020, and was notified on 06/10/2020.

In this regard, the DGP indicated that it provided the following documentation: copy of the cancellation request, of the attached supporting documentation, of the issued resolution and of the service of notification. However, after reviewing the documentation that accompanied the DGP's response letter, it was found that the DGP had not sent to the Authority a copy "of the issued resolution and nor of the notification".

4.- For this reason, the Authority, by means of a letter dated 02/04/2021 - which was received on the same date - required the DGP, so that within 3 working days, to count on from the day after the receipt of said letter, send him both documents.

5.- Finally, on 11/02/2021, the DGP sent the Authority a copy of the issued resolution, of the service of notification and also the accreditation of the effective receipt of the documentation by the person claiming

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 treatment by the DGP and to which the request for cancellation was referred to, would be application of 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. In this respect, it should be emphasized that said Directive, has not been transposed into national internal law within the deadline for that purpose (05/06/2018), but transitional provision 4a of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), also in force at the time of issuing this resolution, provides that the data treatments that are subject to this Directive will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes the Spanish law what the aforementioned directive provides.

Therefore, in accordance with what has been stated, this resolution is issued in accordance with the provisions of the LOPD and the RLOPD, as these are the rules applicable both at this time and also at the time when it was exercise the right of cancellation (05/05/2020 and 06/09/2020) which is the subject of the claim here.

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

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 have been previously communicated, the data controller must notify the rectification or cancellation carried out to whom they have been communicated, in the event that the latter maintains the treatment, which must also proceed with the cancellation.*
- 5. Personal data must be kept for the periods provided for in the applicable provisions or, where applicable, the contractual relationships 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 the rights and freedoms 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.- In accordance with 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 subject of the claim, it is proven that on 05/05/2020, the person making the claim presented in the entry register of the General Directorate of the Police (hereinafter, DGP) of the Department

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

of Interior, a letter through which he exercised the right to cancel his personal data that appeared in the SIP PF file relating to police proceedings no. (...) and which, on 09/06/2020, reiterated and expanded by police proceedings no. (...) (complaint for domestic abuse and habitual physical/psychological violence in the family).

In accordance with articles 16 of the LOPD and 32 of the RLOPD, the DGP had to resolve and notify the cancellation 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 term is for resolving and notifying (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 (art. 40.4 LPAC).

According to the proceedings, on 05/05/2020, the claimant made the request to exercise the right, and on 06/09/2020 he reiterated and expanded said request, also requesting the cancellation of new data. It is worth saying that, in its letter dated 12/21/2020, the DGP stated that following the reiteration of the cancellation request dated 06/09/2020 in which the cancellation of other data *"Everything was included in the same file already started"*. Despite the above, the DGP did not rule on the cancellation request until 17/09/2020, that is to say, well past the resolution deadline provided for the purpose, both with respect of the first (18/05/2020) and of the second application (22/06/2020). This is why it must 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 must be declared that the DGP did not resolve and notify these requests within the deadline.

With regard to the substance of the claim, it should be noted that the DGP has agreed to estimate the requests to cancel the personal data presented by the person making the claim, as can be seen from the DGP's written response - dated 12/21/2020 - and from the copy of the resolution provided by the DGP to this Authority on 02/11/2021.

Likewise, following the documentation provided by the DGP, this Authority has been able to verify that, on 06/10/2020, the DGP effectively carried out the notification of the estimated resolution relating to the requests made by the person here claiming. It is for this reason that it is not considered necessary to make any further consideration or request in this regard, without prejudice to the fact that in the event that the person making the claim considers that their right to cancel with respect to data has not been fully exercised

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personal data recorded in the files of the SIP area, may bring this to the attention of this Authority.

For all the above,

RESOLVED

1. Declare extemporaneous the resolution of the DGP, by means of which the cancellation request made by Mrs. proceed to make any other pronouncement or any requirement regarding the fund when the claimant's right has become effective, in accordance with what is indicated in the 4th legal basis.

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,