

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

## File identification

Resolution of the rights protection procedure no. PT 57/2020, petition against the Public Security Institute of Catalonia.

## Background

1.- On 02/12/2020, the Catalan Data Protection Authority received a letter from Mr. Institute of Public Security of Catalonia (hereinafter, ISPC) for the alleged disregard of the right to deletion and, in its absence, the right of opposition, in relation to the data corresponding to the Basic Police Training Course of the years (... ) and (...), which he had previously exercised on 11/08/2020 before the ISPC. The claimant provided various documentation relating to the exercise of these rights.

2.- On 10/12/2020, the claim was transferred to the ISPC so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 12/24/2020, the ISPC made allegations through a letter in which it stated, among others, the following:

- That on 11/08/2020, the person claiming through his representative, requested the deletion of the personal data of the interested party or, in his case, the exercise of the right of opposition and blocking in relation to the data corresponding to the basic police training course of the years (...) and (...).
- That, on 23/12/2020, the ISPC rejected the deletion request, in accordance with article 17.3.d) 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 movement thereof (hereinafter, the RGPD), since it considered that the processing of personal data of the person concerned it was necessary for archival purposes in the public interest, in accordance with article 32 of Decree 95/2010, of July 20, which approves the Internal Regulations of the ISPC, which prescribes the content of the student's individual file.
- That *"The student's file is permanently kept in accordance with the document evaluation tables approved by the Directorate General of Archives of the Generalitat de Catalunya"*.
- That the ISPC *"has foreseen technical and organizational measures to guarantee the principle of minimization of personal data and arrangements have been made so that the personal data of the academic management information and registration system avoid as much as possible the treatment of the data of the interested party"*.
- That *"The letter rejecting the request was sent to the interested person at the address indicated for notification purposes"*.

The ISPC provided various documentation.

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

4.- On 18/01/2021, the Authority required the ISCP to specify the access and documentary evaluation tables (hereinafter, TAAD) where the permanent conservation of the file of the students of the 'ISPC.

5.- By means of a letter dated 01/02/2021, the ISPC responded to this Authority stating, basically, the following:

- That *"the documentary series corresponding to the academic file of the students of the Public Security Institute of Catalonia has not yet been evaluated by the National Commission for Documentary Access, Evaluation and Selection and is not part of any Table of 'documentary access and assessment (TAAD)'.*
- That *"currently the series of academic records of university students (TAAD 412) which are permanently kept and the series of the selection process of public employees (TAAD 16) which are permanently kept with selection are currently being evaluated. Both documentary series could be equivalent to the student file of the ISPC".*
- That *"Article 9 of Law 10/2001, of July 13, on archives and document management, prohibits the removal of any document if the regulations and procedure established by regulation are not followed and this forecast is developed through Decree 13/2008, of January 22, on access, evaluation and selection of documents, where it is determined that documents cannot be deleted as long as there is no table that resolves their deletion in accordance with the documentary evaluation procedure provided for in the aforementioned rule".*

Accompanying the previous letter, the ISPC provided various documentation, including the resolution of 23/12/2020 on the request for deletion of personal data. In that letter, the ISPC indicated that *"The legal argument used (art. 17.a) of the Regulation) is not applicable to the case in accordance with the exception provided for in the same article 17, section 3, letter d, given that it is necessary to process your data for archival purposes. The purpose of filing in the public interest is justified by article 32 of Decree 95/2010, of July 20, of the Internal Regulation of the Public Security Institute of Catalonia, which prescribes the content of the file individual of the student. The student's file is permanently kept in accordance with the document evaluation tables approved by the General Directorate of Archives of the Generalitat of Catalonia".* And the ISPC added that *"Article 89.1 of the Regulation regulates the processing for archiving purposes in the public interest, and establishes that the processing for archiving purposes in the public interest will be subject to the appropriate guarantees, which will assume that s apply technical and organizational measures to respect the principle of minimization of personal data. In this sense, we inform you that arrangements have been made in the computer application or information system and registration of the academic management to avoid the processing of the interested party's data as much as possible and in general to minimize the processing ".*

Fundamentals of Law

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

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.- Article 17 of the RGPD regulates the right of deletion in the following terms:

*"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:*

- a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
- b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;*
- c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;*
- e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
- f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1. (...).*

*3. Sections 1 and 2 will not apply when the treatment is necessary (...)*

*d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment. (...)"*

For its part, article 15 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 deletion:

- "1. The right of deletion must be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.*
- 2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge may retain the identification data of the affected person necessary in order to prevent future processing for direct marketing purposes."*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establish the following:

*"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.*

*4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.*

*5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:*

*a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or*

*b) refuse to act in respect of the request.*

*The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.*

*(...)"*

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."*

3.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the ISPC has resolved and notified, within the period provided for by the applicable regulations, the response to the request made by the person making the claim, since the reason for the complaint of the claimant who initiated the present legal protection procedure was not to have received a response within the period provided for the purpose.

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

In accordance with article 12.3 of the RGPD, the ISPC had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request application, which took place on 08/11/2020. In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of the LPAC and article 41.7 of 7 of Law 26/2010, of August 3, on the legal system and of procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party (as is the case) starts from the date on which the sole 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 have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, in the present case the ISPC did not resolve the request submitted on 11/08/2020 until 24/12/2020, that is to say, beyond the deadline for that purpose.

4.- Once the above has been settled, 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 deletion of the data in the terms that - legality of the person claiming.

It should be borne in mind that the right to deletion regulated in Article 17 of the RGPD is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. However, this right conditions its exercise to the concurrence of one of the cases provided for in its 1st section, and as long as it does not occur any of the exceptions noted in section 3 of this same article.

The person claiming requested the deletion of his data relating to the basic police training course of the years (...) and (...), because he considered that *"the data collected have lost their purpose for which they were collected and / or without there being any legitimate reason for their treatment once I have completed the basic police training courses in which they were collected"*, that is to say, the person claiming invoked the circumstance provided for in article 17.1.a) of the RGPD, to exercise the right of deletion.

For its part, the ISPC justifies its refusal to delete the claimant's data based on the exception provided for in the same article 17, section 3, letter d, considering that its treatment is necessary for the purposes of file in the public interest.

At this point, it is appropriate to refer to article 9 of Law 10/2001, of July 13, on archives and document management, which establishes that *"Once the active and semi-active phases have been concluded, it must apply to all public documents the evaluation regulations, on the basis of which their conservation is determined, due to their cultural, informational or legal value, or their elimination. No public document can be removed if the regulations and procedure established by regulation are not followed."*

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

In turn, article 8 of Decree 13/2008, of January 22, on access, evaluation and selection of documents establishes the two procedures by which the evaluation of documents can be carried out, which will determine whether or not they are kept :

*"The evaluation of documents is done by the following procedures:*

- a) Through a resolution of the National Commission for Access, Evaluation and Documentary Selection, issued at the request of the person or entity concerned and applicable exclusively to the case that is the subject of it.*
- b) Through the approval by the councilor competent in matters of culture of evaluation tables and documentary access."*

Regarding article 10 of the aforementioned Decree, it provides that:

*"1. The evaluation and document access tables are applied to public documentation and determine, for each documentary series, the retention period and the criteria for the application of the regulations governing access to documents."*

In compliance with the provisions of section b) of article 8 of this Decree, the Department of Culture of the Generalitat of Catalonia has issued numerous approval orders for TAADs, in accordance with the proposal of the National Commission of Access, Evaluation and Choice of Documentation

Nevertheless, the ISPC has admitted that the documentary series corresponding to the academic records of ISPC students has not yet been evaluated, but considers that the TAAD *"Academic records of students"* (code 412 ) could be applied by analogy ), and the TAAD *"Selection of public employees"* (code 16).

The first of the above (the TAAD with code 412), which provides for the permanent conservation of academic files, affects an area (university education) different from the one analyzed here, which is why it cannot be applied analogously in the case that it occupies us While the TAAD *"Selection of public employees"* (code 16), could be applicable by analogy, taking into account that the basic police training course is selective for access to the Catalan police forces. In this latest TAAD, the *"permanent preservation of the acts and agreements of the qualifying court, the definitive lists of admitted, the test model and the resolutions"* and the *"total elimination of the rest of the documentation"* are contemplated.

In the resolution issued by the ISPC on 23/12/2020, as already mentioned, the deletion of the data of the interested person was denied for considering that its treatment was necessary for archive purposes in interest public, and this in accordance with article 32 of Decree 95/2010, which regulates the content of the student's individual file, and provides that it is made up of the following documentation:

- "a) the student's file,*
- b) the individual grade sheet,*
- c) the medical reports that affect you,*

- d) *notes on disciplinary sanctions,*
- e) *any other information that the Institute considers of interest."*

Therefore, in accordance with the provisions of TAAD 16, only the claimant's individual qualifications sheet should be permanently retained (art. 32.2.b Decree 95/2010), on the understanding that it could be equated to the *"acts and agreements of the qualifying court, the final lists of admitted candidates, the test model and the resolutions"*.

However, taking into account that a specific TAAD has not been drawn up on the documentary series corresponding to the academic file of ISPC students, it cannot be ruled out that it is also necessary to preserve, for archival purposes in public interest, other documentation that makes up the ISPC student file.

In particular, it may be necessary to keep relevant information that may appear in the student's file (art. 32.2.a Decree 95/2010) and in the medical reports (art. 32.2.c Decree 95/2010) if the applicant (the claimant) eventually joined a police force (circumstance that is unknown) to the extent that they may be transcendent from the point of view of the function that would develop.

Therefore, with regard to the documentation or information reviewed so far, its deletion is not considered appropriate to consider that its treatment is necessary for archival purposes in the public interest, in accordance with article 17.3.d) of the RGPD.

On the other hand, the duty of conservation for archival purposes in the public interest is not considered applicable with respect to the rest of the information or documentation not mentioned above, which is part of the student file of the ISPC linked to the basic training courses police in which the claimant participated (editions (...) and (...), such as non-relevant information from the student's file (art. 32.2.a Decree 95/2010), medical reports of the person claiming if he did not join a police force (art. 32.2.c Decree 95/2010), the notes on disciplinary sanctions (art. 32.2.d Decree 95/2020) and *"any other information that the Institute considers of interest"* that may appear in the claimant's file (art. 32.2.e Decree 95/2020), if this interest is not duly justified for archival purposes in the public interest.

This is why it is appropriate to consider the request for deletion with regard to this other information, without prejudice to the application of the blocking obligation established in article 32 of the LOPDGGDD (obligation which in appearance would be applicable to the information linked to the basic police training course (...). In its tone, the ISPC could also retain the information in respect of which the right to erasure is valued, if it does so in an anonymized form.

5.- In addition to the above, the claimant also exercised the right of opposition as a subsidiary. Although the main claim for deletion of data linked to the basic police training courses of the years (...) and (...) has already been addressed, nothing prevents us from ruling on the subsidiary claim of opposition to the treatment.

In advance, it should be noted that in the letter of exercise of the right, the claimant objected in general terms to the processing of his data, but did not specify which processing he was referring to. However, from the content of his claim it can be inferred that he would object to the treatment consisting in the conservation of his personal data linked to the basic police training courses of the years (...) and (...).

Article 21.1 of the RGPD, regarding the right of opposition, provides that:

*"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the 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, exercise or defense of claims."*

In those cases in which the treatment is based on the fulfillment of a mission in the public interest (art. 6.1.e RGPD), as is the archive in the public interest, article 21.1 of the RGPD requires that the person claimant invokes a reason related to his particular situation.

Well, despite the fact that the person claiming here, when he exercised his right before the ISPC, did not highlight any particular situation that justified the opposition to the processing of his data (the conservation), the claimed entity did invoke as a compelling legitimate reason the treatment of data linked to the basic police training courses of the years (...) and (...) for archival purposes in the public interest. This reason invoked by the ISPC must prevail over the claimant's opposition that is not founded in any particular situation, regarding the information or documentation that, in accordance with what has been set forth in the previous legal basis, it must be kept for archival purposes in the public interest.

Therefore, the opposition to the conservation of said information would lead to the same conclusion that has been reached in the previous legal basis regarding the exercise of the right of deletion.

6.- 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 manager of the file must be required so that in the period of 10 days makes the exercise of the right effective.

In accordance with this, it is necessary to request the claimed entity so that, within 10 counting days from the day after the notification of this resolution, proceed to the deletion of the data of the person making the claim linked to the courses of basic police training (editions (...) and (...)), in respect of which its preservation is not required

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

for archival purposes in the public interest as set out in the 4th legal basis, without prejudice to its blocking or anonymisation.

Once the right of deletion has taken effect 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 report to the Authority.

For all this, I resolve:

1.- Assess the guardianship claim made by Mr. (...) against the Public Security Institute of Catalonia, regarding the deletion of his data in respect of which preservation for archival purposes is not required public interest in accordance with what is established in the foundation of law 4th.

2.- Request the ISPC so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of deletion exercised by the person making the claim, in the manner indicated in the basis of law 6th Once the right of deletion has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

3.- Notify this resolution to the ISPC and the person making the claim.

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 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 Law 39/2015 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,