

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

## File identification

Resolution of the rights protection procedure no. PT 58/2020, petition against Tarragona City Council.

## Background

1. On 04/12/2020 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right to rectification in relation to his data included in the following administrative files: (...) of the Urban Guard Department and (...) OMAC, both of Tarragona City Council (hereafter, the City Council). The person claiming stated that the City Council had not responded to the request for rectification of their personal data.

Specifically, on 9/10/2020 he presented an instance to the City Council in which he requested: *"in communique de novedades and extract of police action by the Urban Guard. The record of police action no. (...) must be completed with the following data (in bold):*

### A) News release.

**"Location", "Floor:" (...), "Door:" (...).**

**"Requesting phone:" (...)**

**"Resolution of the service:" The tenant states that he has experience in the use of weapons, and because of this he tried to join the Urban Guard of Tarragona".**

**"Persons involved:", "Reason: Requester", "Vía:" (...)**

**"Municipality:" Tarragona, "Núm./Km." (...), "Floor:" (...), "Door:" (...).**

### B) Extract police action.

**"People involved: - Requester: (...)", floor (...).**

**"Description of the service: The applicant, neighbor of the street" (... no. (...)" floor (...).**

**"Resolution of the service:" The tenant states that he has experience in the use of weapons, which is why he tried to join the Guardia Urbana de Tarragona.**

**The "Requesting phone" data is credited through the attached invoice, part sufficient, (...), Consumption details,**

**"15-05-2020 23:26:10, Number Destination (...) [Guardia Urbana], Duration 0:06:09". The floor and door of the home are on both the invoice and the municipal register, to which this Corporation has access, and the statements of the accused can be confirmed by the TIP Agents (...), members of the Police Unit (...) that intervened in diligence**

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

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2. On 12/17/2020, the claim was transferred to the City Council so that within 15 days it could formulate the allegations it deemed relevant.
3. The City Council made allegations in a letter dated 01/25/2021, in which it stated the following:

- That on January 15, 2021, a response was given to the interested person, through a resolution of the Minister of Public Safety, Decree number: (...), no. departure (...), date of departure 15//2021 8:55:00 (provide the supporting document).
- ÿ The aforementioned decree was accompanied by a report issued by the sergeant of the public security division dated 01/13/2020 (provides the document). In summary, the report explained that *"the police files of the Tarragona Urban Guard already contain the telephone number and full address of all those involved in the service with no. (...)"*. And he added that *"the sentence that the person claiming wants to be included in the "Resolution of the service" section of the "News announcement" and the "News extract" has not been ratified by the acting agents and is therefore not can introduce"*.
- The document *"Comunicado de novedades"* with the incorporation was attached to the report of the applicant's phone number and apartment (provide the document).

#### 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. Article 16 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (hereinafter, 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"*.

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In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes 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 City Council resolved and notified, within the period provided for by the applicable regulations, the right of rectification exercised by the person making the claim, since precisely the reason for his complaint which started

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the present rights protection procedure, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 09/10/2020 the entity received, through electronic means, a letter from the person claiming by which he exercised the right to rectify his personal data.

In accordance with article 12.3 of the RGPD, the City Council 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 legality It is worth saying that this term can be extended by another 2 months (3 in total), taking into account the complexity or number of requests. In any case, the City Council must inform the person claiming any of these extensions within a maximum period of one month from the receipt of the request. 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, the City Council has not proven to have responded to the request for rectification within the one month period (extendable by two more months) provided for that purpose. In addition, he has not proven that he had notified the person claiming the extension of the aforementioned deadline. Consequently, since the claim was based on the lack of response to the request to exercise the right of rectification, it must be declared that the City Council did not resolve and notify in time said request submitted by the affected person.

However, the City Council has acknowledged having responded to the rectification request extemporaneously, specifically, on 01/15/2021. This notwithstanding what will be said below regarding the substance of the claim.

4. Once the above has been established, 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 rectification of the data in the terms that usually tender the person claiming. Specifically, the person claiming requested the rectification in the sense of completing the information contained in the record of police action no. (...), in the terms stated in precedent number 1.

As a starting point, it should be borne in mind that article 16 of the RGPD regulates the right of rectification as the right of the affected person to have inaccurate or incomplete data modified, thus complying with the principle of accuracy regulated in article 5.1.d) of the RGPD. In addition, article 14 of the LOPDGDD requires that the request be accompanied by the

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documentation justifying the inaccuracy or incompleteness of the data being processed.

As a preliminary consideration, it should be noted that the claimant requested the City Council, on the one hand, to complete the register of police actions with his incomplete contact details and, on the other hand, that included certain manifestations, in relation to the police action, which he claimed would have been carried out by a third person.

Based on this prior consideration, we will analyze the request separately, distinguishing what relates to your contact details, from the claim to include statements allegedly made by a third person.

a) Regarding the contact details of the claimant, of the documentation he provides the City Council is not clear at what point it proceeded to complete the "*Communication of new developments*" and "*Extract the new developments*" of the police action. In any case, it is currently known that they have been completed and, therefore, to make effective the right of rectification of the person making the claim. This is clear from the document "*Comunicado de novedades*" provided to the Authority and which was communicated to the person claiming on 01/15/2021.

b) Regarding the claim to include the sentence: "*The tenant states that he has experience in the use of weapons, and for this reason he tried to enter the Tarragona Urban Guard*", the City Council states that said statement has not been ratified by the acting agents and, therefore, cannot be entered. In relation to this, it must be said that the right to rectification of personal data covers only objective and verified data. In this case, the claimant wanted to include in the file a statement that allegedly would have been done by a third person. However, according to the City Council this was not possible because the information had not been ratified by the acting agents. The person claiming nor has he provided any evidence that allows us to conclude that this is cross-checked information. Consequently, the right of rectification does not apply to this specific point, given that it is not considered to be ratified or verified information.

In short, and from the perspective of the right of rectification regulated in the RGD, as set out in the 3rd legal basis, the present claim for protection of the right of rectification should be considered for formal reasons insofar as the The City Council did not respond to the claim within the legally established deadline. And as for the substance, estimate the claim only in relation to the contact details of the person making the claim. And in accordance with what was stated in section b) of the 4th legal basis, dismiss it in relation to completing the file with a certain manifestation of a third person, given that in this case the right was not applicable of rectification

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 protection of rights, the manager of the file must be required so that within the term of 10 days to make the exercise of the right effective. However, it is considered that in the present case it is not necessary to make any request, given that the estimate is based solely on the formal issue of not having given an answer within the deadline.

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resolution

Therefore, I resolve:

1. Declare extemporaneous the decree dated 15/01/2021 by which the claim for protection of the right of rectification made by Mr. (...) against the Tarragona City Council, for not having responded to the request for rectification within the legally established term, in accordance with the explicitness of the 3rd fundamentals of law.
2. Regarding the merits of the claim for protection of the right of rectification, the claimant's claim to include a certain sentence in the record of police action is rejected *no*. (...), in accordance with the explicitness of the legal basis 4t b), without proceeding to make any pronouncement or request regarding his other claim to complete the record of the aforementioned police action with contact data, having - in this respect, your request for rectification was granted in accordance with what has been indicated in the legal basis 4th a).
3. Notify this resolution to the City Council 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 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,