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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 62/2020, urged against the City Council of (...).

Background

1. On 10/12/2020 it was submitted to the Catalan Data Protection Authority, by referral from the Commission for the Guarantee of the Right of Access to Public Information, a letter from Mr. (...) (hereinafter, the claimant), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the City Council of (...).

Specifically, the claimant certified that he had submitted the following requests to the City Council:

- Generic instance 12/03/2020 Registration ID: REG_ENTRADA/2020005578), in which he stated that on 27/02/2020 "a Post Office worker tried to make a notification in my name at my parents' home" (in (...)) and that "more than 13 years ago I was dismissed from the town hall of (...)" (the claimant indicated that his current address was

in Barcelona).

Through said instance, the person making the claim requested that "the person in charge of the file from which my personal data and that of my parents were consulted be identified, and that it be transferred to me. Identify the person responsible for the inquiry, and give me a transfer. That I also be informed of the reasons for the consultation."

- Generic instance presented on 09/30/2020 (Registration ID: E/001369-2020), through which he requested that "a certificate be issued to me from the same Department of Personnel and Organization where it appears: 1. What address my number appears in my file as an employee of the Urban Guard of (...). 2. Which address did I state in each of my appointments as an official of the Guardia Urbana. 3. If there has been any change in the aforementioned address. In that case indicate who has changed it and why."
- Generic instance 06/11/2020 Registration ID: REG_ENTRADA/2020020589), in which (he reiterated the previous request of 30/09/2020.

2. On 12/15/2020, the claim was transferred to the City Council of (...) so that within 15 days it could formulate the allegations it deemed relevant.

3. The City Council of (...) made allegations in a letter dated 12/31/2020, in which it set out, in summary, the following:

- That "Consulting the departure register of the City Council of (...), 4 are recognized records addressed to mr. (...) dated 2020".
- That "Indeed it is verified that there is an exit log sent to a address different from that of notification to your usual address."
- That "It has been verified that the notifications 2020001327 and 202001323 are exactly the same notification sent to the old and the new address of the applicant, with the aim of responding to his demand in an effective and without a soul of harm in any case."

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 15 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 (hereafter, the RGPD), regarding the right of access of the interested person, provides that:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;
- b) the categories of personal data in question;
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;
- f) the right to present a claim before a control authority;
- g) when the personal data has not been obtained from the interested party, any available information about its origin;
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well

as the importance and expected consequences of said treatment for the interested party.

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

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.

(...)"

For its part, article 13 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 to access:

"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or the processing activities to which the request refers.

2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.

However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.

3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it

4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."

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 of (...) resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for his complaint, which initiated the present rights protection procedure, was the fact that he had not obtained a response within the period provided for the purpose.

In this respect, it is certified that on 12/03/2020 and 30/09/2020 the entity received two letters from the person claiming through which he exercised the right of access to his personal data. Subsequently, on 06/11/2020, the claimant submitted a new request in which he reiterated the information requested on 30/09/2020.

In accordance with article 12.3 of the RGPD, the City Council of (...) had to resolve and notify requests to exercise the requested right within a maximum period of one month from the date of 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 Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and 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 initiated procedures at the instance of a party (as is the case) it 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 (art. 21 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).

Well, the City Council of (...) has not proven to have responded to said requests.

Consequently, it is necessary to declare that the City Council of (...) did not resolve and notify in form and time the said requests submitted by the affected person.

Having said that, it should not be left out to add that the terms in which the requests were formulated could give rise to reasonable doubts in the City Council that the right of access provided for by the regulations on the protection of personal data had actually been exercised and, therefore, on the term in which these had to be resolved. In any case, as explained, the City Council has not proven to have responded to them.

4. Once the above has been settled, 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, in this case access to the data in the terms that request of the person making the claim.

As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case, access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

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The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. The reasons for denying the right of access are found in article 23 of the RGPD, which must be provided for "through legislative measures" (art.

23.1 GDPR). It is worth saying, however, that in the framework of this rights protection procedure, the City Council has not invoked any limitation.

Having established the above, the requests made by the person making the claim before the City Council of (...) should be addressed separately.

4.1. About the request of 03/12/2020.

Through the request presented to the City Council of (...) on 12/03/2020, the claimant requested that "identify the person responsible for the file from which the my personal data and those of my parents, and be transferred to me.

Identify the person responsible for the inquiry, and give me a transfer. That I also be informed of the reasons for the consultation."

Well, in the present case, the person claiming did not request to know the identity of the person responsible for the treatment (the City Council of (...), but wanted to be identified as the person employed by the City Council of (...) responsible for the file or information system from which his address and that of his parents would have been consulted, as well as the person who would have consulted this data.

In this regard, it should be noted that article 15 of the RGPD does not include the obligation of the person in charge to provide the identity of specific persons who, as staff of the entity responsible for the treatment, have able to process the data of the interested person or who are responsible for the file or information system that contains this data. In addition, by virtue of the right of access, the claimant could not access any of his parents' data, unless he proved that he was acting as their representative.

Nor does knowing the reasons for any query of the applicant's data form part of the content of the right of access provided for in Article 15 of the RGPD.

Therefore, the claimant does not have the right to access this information by virtue of the right of access regulated by the regulations on data protection.

4.2. Regarding the request of 30/09/2020, reiterated on 06/11/2020.

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Through a request submitted on 09/30/2020, reiterated on 11/06/2020, the claimant asked the City Council of (...) to issue a certificate stating the following: "1. Which address is in my number in my expediente como trabajador de the Urban Guard of (...). 2. What address did I state in each of my appointments as an official of the Guardia Urbana. 3. If there has been any change in the aforementioned address. In that case indicate who has changed it and why."

Well, the right of access contemplated in article 15 of the RGPD also does not protect the right to obtain a certificate about the data being processed.

However, the person making the claim does have the right to know what specific data about his address is being processed by the City Council, due to his status as an agent of the Urban Guard of (...); as well as the addresses that he stated in each of his appointments as City Council staff, in the event that this information is available.

On the contrary, as already explained in the previous section, the right of access does not include the right to know the identity of the person who has changed his address, nor is it the object of the right of access to obtain a justification of why (without prejudice to the fact that information on the origin of the data is part of the right of access).

In short, the present claim for the protection of the right of access should be assessed, in relation to knowing the address of the claimant who, due to his status as an employee, appears in the information systems of the City Council, the origin of this information, as well as the addresses that had stated this in the various appointments.

On the contrary, from the perspective of the right of access regulated by the regulations on the protection of personal data, the request for access must be rejected in terms of knowing the identity of people employed by the City Council, the motivations of 'eventual treatments of your personal data and obtaining a certificate on your personal data.

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. In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the claimant's right of access, providing the following information:

- 5.1. The domicile of the person making the claim as recorded in the City Council's information systems, due to their status as an employee, as well as the origin of this data.
- 5.2. The addresses that the claimant had stated at the time each of his appointments as City Council staff took place, unless this information has been deleted.

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Once the right of access has been made effective 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 give an account to the Authority.

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the City Council of (...), regarding access to the address that, due to his status as an employee, appears in the City Council's information systems, the origin of this data, as well as the addresses that the claimant had stated in the various appointments; and dismiss it with regard to knowing the identity of people employed by the City Council, the motivations for any processing of their personal data, and obtaining a certificate on their personal data.
2. Request the City Council of (...) so that, within 10 days from the day after the notification of this resolution, make the right of access effective exercised by the claimant, in the manner indicated in the 5th legal basis. Once the right of access has taken effect, within the same period of 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the City Council of (...) 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, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,