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File identification

Resolution of the rights protection procedure no. PT 66/2020, petition against Barcelona City Council.

Background

1. On 12/21/2020, the Catalan Data Protection Authority received a letter from Mrs. partial right to delete his personal data, which he had previously exercised before Barcelona City Council (hereinafter, the City Council).

Specifically, from the documentation provided by the person making the claim, it appears that on 05/16/2019 he exercised the right of deletion before the City Council requesting that his personal data (name and first surname) be deleted in relation to a activity of dance that he had taught. Their data had been published in the activities agenda of the District (...) of Barcelona "Agenda (...)" from 04/23/2018 to 05/06/2018. Said agenda had been published on different web pages (some of them unrelated to the City Council). In the request, the person making the claim specified the links where it had been published.

On 05/21/2019, the City Council responded to your request in the sense of attending to the right of deletion with regard to the data that the City Council had published and as regards the websites of third parties it claimed to have sent the deletion request to the bodies responsible for said web pages.

On 01/07/2019, the claimant again sent a request to the City Council that said verbatim:

"In response to the responses received, inform that the personal data of the following links are those that still appear on the internet. Among the links I communicated to you, these are the ones that still have content published on the internet. In order to facilitate the task, I am writing you the links:

1. (...) - publish the Agenda (...) From 23/04/2018 to 06/05/2018
(URL)
2. AGENDA (...) - (...) 16 April 2018
(URL)
3. CIVIC CENTER (...) - (...) 7 March 2018
(URL)

I followed the instructions you gave me. I have written to Association (...). They tell me that they have deleted the content, but the content of the links is still there

published In all cases there was an agreement to ensure that my personal data was no longer on the internet and on any platform. I have written to the various facilities to comment that the work they tell me is done is not, in fact, finished, and I have decided to write to you so that you can help us. I have them facilitate the links pending to be treated to facilitate the task of finding the sites on the internet."

On 07/26/2019, the City Council's Data Protection Officer responded to the request that said the following: regarding link number 1: *"the first link corresponds to a page of the 'association (...) that leads to the agenda of activities from 04/23/2018 to 05/06/2018 of the District of (...). In this case, you must contact this association";* regarding links number 2 and 3: *"(...) is a private online service that allows the viewing of digitized material by anyone who has an open account on the platform. In this case, although the City Council can remove some content, it is not possible to order Google to deindex the information, given that the domain does not belong to the City Council".*

On 12/18/2019, the claimant again submitted a request to the City Council complaining that when he did a Google search, links with his personal data still appeared. The links direct to the pdf corresponding to the schedule of activities *"(...) from 23/04/2018 to 06/05/2018"* and the pages correspond to the domains: (URL); www.(...).com,. In the new request, the claimant added the publication to the blog of *"the AFA, Center (...)".* On 07/01/2020 he received a response from the Data Protection Delegate of the City Council.

On 06/02/2020, the claimant again requested the deletion of his personal data from the links that had not yet been processed. On 03/03/2020 he received the response from the Data Protection Delegate of the City Council in the following sense:

"In relation to your request dated 6/2/2020 in which you request to exercise the right to delete your personal data on the following web page links:

(URL)
(URL)
(URL)

we inform you that we have made the necessary arrangements and are no longer accessible by internet search engines.

In the case of the link: (URL), we inform you that due to the internet's own architecture, it is possible that pages previously consulted with a certain frequency remain for a while in subsequent searches even if, as is the case, the contents have been deleted at the original source. This situation can be prolonged according to the policies of the providers of the internet infrastructure, outside the control of the Barcelona City Council or the content managers of the final websites".

Finally, the person making the claim complains that despite the response from the City Council's DPD, their data was still on the Internet. The claimant provided various documentation relating to the exercise of this right.

2. On 15/01/2021, the claim was transferred to Barcelona City Council so that within 15 days he formulates the allegations he deems relevant and provides a copy of the supporting documentation of the actions taken and the measures taken, including the technical measures, aimed at informing those responsible who are processing the personal data subject of the deletion request.

3. The Barcelona City Council made allegations by means of a letter dated 02/05/2021, in which it stated the following:

"1. (...) The content that the claimant alleges can still be found on the Internet would be the following: (URL)

(URL)

(URL)

Search in the Google search engine for the terms "(...) dance laboratory (...)", searched on February 2, 2021: The pdf belonging to the web (URL) The pdf already mentioned but coming from the web (URL) This web page does not belong to Barcelona City Council, but to the AFA Association (...).

The pdf already mentioned, accessible from the portal (...), and uploaded on April 24, 2018 by the user District of (...): (URL)"

2. The actions carried out by the City Council: In relation to the web links of the Barcelona City Council, which would be the first two listed in the previous point, (...) the page has been completely deleted and a message appears that says "Web page not available". In relation to the link on the website (...), it is verified that it redirects to a pdf file consisting of the Agenda of the District of (...), for the period from April 23 to May 6 of the year 2018, and where the name and surname of the claimant appear, as a teacher of a dance workshop. It should be noted that, despite the fact that it is an agenda of District activities and contains the logo of Barcelona City Council, the web page where the pdf file is hosted is of a private nature. In particular, the web address (URL), for which the association is responsible (...), as stated in the same. Therefore, he feels that this City Council cannot delete the content that comes from a web page from which it does not hold any privilege, (...). However, on February 2, 2021, a communication was issued via email - being the only way of contact that has been found through the aforementioned web portal -, for the purposes of proceeding to delete the cited pdf file or, in any case, to omit the name of the claimant.

3. In relation to the results obtained on Google, the actions carried out by the City Council: In relation to the second result, considering that the entity that owns the website is the AFA (...), has issued a request on February 2, 2021 to the address of

contact that appears on the web page itself, for the purposes of proceeding with the omission of the claimant's data or the complete omission of the file. In relation to the third result, it has been verified that the pdf file had been uploaded from a profile managed by the District of (...). In this sense, on February 2, 2021 it was omitted, the pdf file can no longer be accessed. (...) those belonging to the web pages of (...) and the AFA (...), not being responsible or in charge of the data and not being able to omit data from web pages that do not belong to it, has proceeded to ask the holders to omit the claimant's personal data, no kind of responsibility can be appreciated from this entity, having attended to the request for the right of deletion and making it extendable to those responsible for treatment" .

The City Council provided several documents attesting to its actions. Among which, he provided a document dated 04/02/2021 by which he informed the person making the claim that he had deleted his personal data from all web pages belonging to or managed by the City Council and indicated that he had transferred his claim to those responsible for treatment that had published the document with the claimant's data.

4. On 02/17/2021, the Authority carried out a series of checks on the Internet that gave the following results:

- It was verified that it was not possible to access the content of the links subject to complaint, except for those corresponding to the association "AFA (...)" and that of the association "(...)"

- The following searches were also carried out in the *Google search engine*, first entering "first and last name" of the person making the claim. The following results were obtained:

In 3rd place, there was a link to the association's Wordpress blog (...) where there was a pdf corresponding to the aforementioned activity agenda, hosted at: (URL)

In 4th place appeared a link from the association AFA (...), from where it was also possible access the pdf: (URL)

- The search on *Google* using "name and two surnames" did not give any results.

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 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of individuals with regard to data processing

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personal data and the free circulation of these (hereinafter, the RGPD), regulates the right to deletion in the following terms:

"1. The interested party has the right to obtain from the data controller, without undue delay, the deletion of the personal data affecting him. The person in charge must delete them without undue delay, when any of the following circumstances apply:

a) The 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, paragraph 1, letter a), or with article 9, paragraph 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, paragraph 1, and there are no other legitimate reasons for the treatment or the interested party objects to the treatment, in accordance with the article 21, section 2.

d) The personal data have been treated unlawfully.

e) The personal data must be deleted, to fulfill a legal obligation established in the law of the Union or of the member states to which the data controller is subject.

f) The personal data have been obtained in relation to the offer of information society services mentioned in article 8, paragraph 1.

2. If the person in charge of the treatment has made personal data public and, by virtue of the provisions of section 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the person in charge of processing must take reasonable measures, including technical measures, to inform those responsible who are processing this data of the data subject's request to delete any link to this personal data, or any existing copy or replica.

3. Sections 1 and 2 do not apply when the treatment is necessary:

a) To exercise the right to freedom of expression and information.

b) To fulfill a legal obligation that requires the processing of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of conferred public powers to the responsible

c) For reasons of public interest in the field of public health, in accordance with article 9, section 2, letters h) ii), and section 3.

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 mentioned in paragraph 1 may make it impossible or hinder seriously the achievement of the objectives of this treatment, or

e) To formulate, exercise or defend claims."

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 responsible for the treatment must provide the interested party with information related to their actions, if the request has been made in accordance with articles 15 to 22 and, in any case, within one month of from the receipt of the request. Considering the complexity and number of requests, if necessary this term can be extended by two months; in this case, within one month of receiving the request, the person in charge must inform the interested party of the extension and must indicate the reasons for it. If the interested party submits the request by electronic means, whenever possible the information must be provided by these same means, unless the interested party requests that it be done in another way.

4. If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for the its non-action and the possibility of presenting a claim before a control authority and of exercising judicial actions.

5. The information provided under articles 13 and 14, as well as any communication and action carried out under articles 15 to 22 and 34, must be free of charge. If the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the data controller may opt for one of the following actions:

a) Charge a reasonable fee, in accordance with the administrative costs that have been incurred to facilitate the information or communication, or to carry out the requested action.

b) Refuse to act on the request.

It is up to the data controller to demonstrate the manifestly unfounded or excessive nature of the request".

For its part, article 77 of the RGPD, entitled "Right to present a claim before a control authority", establishes the following:

"1. Without prejudice to any other administrative recourse or judicial action, any interested party has the right to submit a claim to a supervisory authority, in particular in the Member State in which he has his habitual residence, place of work or place of has produced the alleged infringement, if it considers that the processing of personal data affecting it infringes this Regulation.

2. The control authority before which the claim has been submitted must inform the claimant about the course and result of the claim, including the possibility of accessing judicial protection under the provisions of the article 78."

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

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resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

3. Having set out the current regulatory framework, it is then necessary to analyze whether the City Council has resolved and notified, within the period provided for by the applicable regulations, the request made by the person making the claim.

Specifically, the complaint referred to the fact that all the links containing the personal data of the person making the claim had not been deleted in relation to an agenda of activities that had been published by the City Council. The person responsible for the treatment (the City Council) had made it public via the Internet on several web pages owned by the City Council and on pages of content hosting service providers. In addition, the information was also contained in the web pages and blogs of other data controllers who had published said agenda. It is worth saying that the City Council answered and managed all the requests that the person making the claim addressed to it. Despite this, the complainant complained that when he did a Google search by entering his first and last name, he still found links to the aforementioned information. It should be emphasized that in some cases these were web pages of content hosting service providers where the City Council had uploaded the information, while others corresponded to third party blogs that had uploaded the information, as is the case from the following URLs:

- (URL) (Blog of the AFA association (...) on Wordpress.com, the online platform for creating and hosting blogs).
- (URL) (Wordpress blog of the association of (...)).

Although the City Council responded quickly to the claimant's first request in relation to his right to deletion, bearing in mind that his request to the City Council took place on 05/16/2019, and he replied on 05/21/2019, although the City Council claimed in its response to have attended to the right to delete the

data published on its websites and those managed by the City Council, in reality it only deleted some of the links. Therefore, the complainant found other URLs that linked to the disputed information. Well, it has been accredited

that on 02/17/2021, when the Authority transferred the right protection claim to the City Council, the personal data of the person making the claim was still on the City Council website (URL) and also in the web page of the content hosting service provider (URL), where a user from the district of (...) (one of the administrative demarcations in which the municipal organization of Barcelona is structured) had uploaded the document controversial. Consequently, the City Council did not fully resolve the exercise of the right of deletion until 02/04/2021, when it notified the person making the claim that it had deleted the remaining links:

- (URL)
- (URL)
- (URL)

The Authority verified that the information was no longer accessible from these links.

Next, 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, the deletion of the data in the terms requested by the person making the claim is necessary in this case. Specifically, the person making the claim asked the City Council to delete their personal data from any *URL* to host the content with your personal data and to stop indexing this content on *Google*.

Article 17 of the RGPD regulates the right of deletion as the right of the affected person to delete the personal data that affect him. The person in charge must delete them without undue delay when any of the circumstances listed in the same article occur. The first question to be determined is: if in this case there are any of the circumstances that oblige the person in charge to delete the data of the person making the claim.

As a starting point, it should be noted that the *URLs* that appear from the search for the claimant's name and surname refer to a publication relating to her professional life, specifically to a 2018 activity agenda in which the claimant had to participate as a teacher. Article 17.1 provides that the right to deletion will be applied when: "a) *The personal data are no longer necessary in relation to the purposes for which they were collected or treated in another way*". In this case, the processing of personal data included in the activity agenda dates back to 2018.

Given that the purpose of publishing the agenda is to inform citizens of the activities carried out by the City Council so that they can sign up for the activities, we would be dealing with outdated information. In short, in this case section a) of article 17.1 of the RGPD would apply, since the personal data are no longer necessary in relation to the purpose for which they were collected.

The second issue to be analyzed is: whether the City Council complied with the provisions of article 17.2 of the RGPD: *"If the controller has made the personal data public and, by virtue of the provisions of section 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the controller must take reasonable measures, including technical measures, to inform the controllers that are processing this data of the sole request from the interested party to delete any link to this personal data, or any existing copy or replica.* In

in this case, the City Council made public the agenda of activities both on its own websites and on various platforms of content service providers, such as *www.(...).com*. In this regard, the City Council has certified that it has taken the appropriate measures to delete the information that contained the data. On the other hand, the "activities agenda" document is published on third-party web pages/blogs, specifically, on two blogs hosted on the Wordpress.com platform. In this case, the City Council has also proven to have taken reasonable measures to inform the associations that had published the statement information on the exercise of the right of deletion by the person making the claim. In short, the City Council has certified that on 04/02/2021 it notified the person claiming that it had exercised the right of deletion with respect to the links that had not yet been deleted, as well as having communicated the exercise of the right to responsible owners of the blogs that had published the schedule of activities where the claimant's personal data were included.

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08008 Barcelona

Regarding the following URLs:

(URL)

(URL)

If, after waiting a reasonable time, the associations that own the blogs referred to have not deleted the personal data, the person making the claim may contact these entities in order to exercise their right to deletion. And in the event that this is not attended to, may submit a claim to the competent control authority, on the understanding that in neither case would the Catalan Data Protection Authority be competent.

resolution

For all this, I resolve:

1. Declare as extemporaneous the response of the Barcelona City Council to the request for the right of deletion made by Mrs (...), and the dismissal of the claim with respect to the substance, in accordance with what has been indicated in the 3rd legal basis.
2. Notify this resolution to Barcelona 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 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,