

## File identification

Resolution of the rights protection procedure no. PT 01/2021, urged against the Department of Agriculture, Livestock, Fisheries and Food.

## Background

1. On 05/01/2021 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 of access to his personal data, which he had previously exercised before the Department of Agriculture, Livestock, Fishing and Food (hereafter, DARPA).

Specifically, the claimant requested from DARPA a copy of all the disciplinary proceedings brought against him corresponding to the years 2018 and 2019, he specifically requested copies of all the notifications sent and the receipts signed, because he claimed that he had received a restraint provision without having been properly notified of the resolution of the procedure corresponding to the year 2019 issued by the General Directorate of Food, Quality and Agro-food Industries. That the incorrect notification of the file meant that it was impossible to present allegations, also, it led to the initiation of the coercion process.

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

2. On 01/19/2021, the claim was transferred to DARPA so that within 15 days it could formulate the allegations it deemed relevant.

3. The deadline for submitting objections has long passed and DARPA has not submitted objections.

## 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 requests. 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 means

*electronic when 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 proving the character Manifestly unfounded or excessive 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*

*behave 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. Exposed the applicable regulatory framework, DARPA has not proven to have responded to the request for access made by the person making the claim, even within the one-month period (extendable for two more months) provided for the purpose, nor subsequently. And he has not given an answer either, when, on 19/01/2021, the Authority gave him a transfer of the claim so that within 15 days he could formulate the allegations he considered relevant.

Therefore, it is appropriate to declare that DARPA did not resolve and notify in a form and time the said request submitted by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

4. In advance, it is necessary to specify the right of access to the administrative file by the interested persons and the right of access contemplated in the data protection regulations. Regarding the right of access to the file by interested parties, in an administrative procedure in progress, it is regulated in article 53.1.a of Law 39/2015, of October 1, on the procedure common administrative of the public administrations, and its purpose is that the interested person can access the content of the file, to defend their rights and/or interests. On the other hand, in the case at hand, taking into account that the administrative procedure had ended and that the claimant exercised the right of access to his data, article 15 of the RGPD applies.

Specifically, the person making the claim, who had been the only person interested in the sanctioning procedures already completed, exercised his right of access to the documents that form part of these files. In this regard, it is certified that on 06/11/2020 a letter from the claimant was received by the claimed entity through which he exercised the right of access to his personal data. Specifically, the claimant requested from DARPA a copy of all the disciplinary proceedings brought against him corresponding to the years 2018 and 2019, he specifically requested copies of all the notifications sent and the receipts signed, because he claimed that he had received a provision of constraint without having been correctly notified of the resolution of the procedure corresponding to the year 2019.

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It should be borne in mind that article 15 of the RGDPR configures 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, to access said data and all other information detailed in article 15.1 of the RGDPR. In addition, article 15.3 of the RGDPR 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.

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 can be found in article 23 of the RGDPR, which must be foreseen *"through legislative measures"* (art. 23.1 RGDPR).

None of these causes are relevant in the present case, nor have they been invoked by DARPA, so the interested person has the right to have his right of access enforced.

In short, the present claim for protection of the right of access should be considered, given that it has been proven that the claimant exercised before DARPA the right of access with respect to his personal data contained in the sanctioning files instituted against him and already completed (years 2018 and 2019), and it is also proven that he did not receive a response from DARPA.

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. 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 Department of Agriculture, Livestock, Fisheries and Food.
2. Request the Department of Agriculture, Livestock, Fisheries and Food so that, within 10 days from the day after the notification of this resolution, it makes effective the right of access exercised by the person making the claim, in the manner indicated in

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foundation of law 4th. 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 Department of Agriculture, Livestock, Fisheries and Food and to the person making the claim.

4. Order the publication of the resolution on the Authority's website ([apdcat.gencat.cat](http://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,