

Carrer Rosselló, 214, Esc. A, 1r 1a
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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 3/2021, urged against the City Council of (...).

Background

1. On 05/01/2021, the Catalan Data Protection Authority received a letter from Ms (...) (hereinafter, the person making the claim), for which he formulated a claim for the alleged neglect of the right of rectification that he had exercised before the City Council of (...) in relation to the date of discharge, as a career employee of the basic level of Local Police, in the General Treasury of the Social Security (hereinafter, TGSS). The claimant provided various documentation relating to the exercise of this right before the City Council; as well as a copy of the TGSS report on her working life, which stated that she had been registered as an employee of the City Council of (...) on 01/09/2020, the date she estimated that would be incorrect.

2. On 14/01/2021, the claim was transferred to the City Council of (...) so that within 15 days it could formulate the allegations it deemed relevant.

The deadline was exceeded and no objections were filed.

3. On 12/05/2021, the City Council of (...) was required to issue a report on whether 01/09/2020 (which is the date of registration at the TGSS of the person claiming as an employee of the City Council of (...), corresponded with the date of taking possession.

4. On 05/25/2021, the City Council of (...) complied with this request by means of a letter stating that the claimant took possession as a career employee of the City Council on 09/14/2020.

The claimed entity provided a copy of the act of taking possession of the claimant as a career official of the City Council that took place on 09/14/2020, in accordance with the appointment made by means of Decree d 'Mayor's Office number 406/2020, of 08/17/2020.

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".

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 pursuant to 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 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 any communication and any action carried out under

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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 of (...) 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 initiated the present rights protection procedure, was the fact that he had not obtained a response within the period foreseen for the purpose.

In this respect, it is certified that on 07/10/2020 he joined the entity claimed, a letter from the claimant through which he exercised the right to rectify his personal data.

In accordance with article 12.3 of the RGPD, the City Council of (...) 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. 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 regime 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 of (...) has not proven to have responded to the request for rectification made by the person making the claim, even within the period of one month (extendable for two more months) provided for that purpose, nor subsequently.

4. Once the above has been established, 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 the rectification of the data in the terms that usually tender the person claiming.

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. This is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data.

In the present case, the claimant has asked the City Council of (...) to correct the date of registration with the TGSS as an employee of this City Council. Specifically, the claimant states that the date of discharge that appears in the TGSS report of his working life (09/01/2020) is incorrect, as it does not correspond to the date on which he was appointed career official of the City Council through Mayoral Decree number 406/2020, of 17/08/2020, and considers that the correct date of registration as an employee at the TGSS would be 20/06/2020, a date that it even predates the date on which the invoked Mayor's Decree no. 406/2020 (17/08/2020).

It is worth saying that in his letter of 07/10/2020, through which he exercised the right of rectification before the City Council of (...), the person here claiming what he provided was Mayor's Decree no. 347/2020, of 20/07/2020, in which she was appointed career official from 01/08/2020 (this Mayoral Decree was also after 20/06/2020).

For its part, the City Council of (...) has certified that the person claiming here took possession of the job for which she was appointed by Mayor's Decree number 406/2020, on 09/14/2020 . Therefore, in accordance with article 62.1 of the Royal Legislative Decree 5/2015, of October 30, which approves the revised text of the Law of the Basic Statute of the Public Employee, the person claiming she did not acquire the status of career official until the date of taking possession (09/14/2020).

In accordance with the above, the rectification carried out by the claimant in the requested terms does not proceed, and this because the date of registration with the TGSS as an employee of the City Council of (...) has not been to link to the date of her appointment as a career official of this City Council, as she intends, but to the date of taking possession of her workplace, which in the present case is 09/14/2020 , a later date than that contained in the copy of the TGSS report on his working life (01/09/2020), which the claimant has provided together with his claim.

That being the case and in accordance with what has been stated, the present claim for the protection of the right to rectification in the terms requested by the person making the claim must be rejected on its merits. All this, without prejudice to the claimant being able to exercise again

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your right of rectification before the City Council in order to request that the date of registration in the TGSS be adapted to the date of taking up possession as a career civil servant of the City Council (14/09/2021); or that the City Council of (...) in compliance with the principle of data accuracy (art. 5.1.d RGPD) carry out the corresponding actions to rectify this data and communicate the rectification to the TGSS.

For all this, I resolve:

1. Declare that the City Council of (...) has not responded, within the period established in the applicable regulations, to the request for rectification made by Mrs. (...), in accordance with what is 'exposed to the foundation of law 3rd.
2. With regard to the substance of the guardianship claim, dismiss the claimant's claim in the terms in which he requests rectification in accordance with what has been indicated in the 4th legal basis.
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,