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In this resolution, the references to the affected region 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 region, the natural persons affected could also be identified.

File identification

Resolution of the rights protection procedure no. PT 4/2021, urged against the County Council (...).

Background

1. On 08/01/2021 it was registered with the Catalan Data Protection Authority, by referral from the Commission for the Guarantee of the Right of Access to Public Information - GAIP- (complaint presented to the GAIP with number (...)/2020), a letter from Mrs. (...) (hereafter, the person making the claim), in which she formulated a claim for the alleged neglect of the right of 'access to his personal data, which he had previously exercised before the Regional Council (...) (hereafter, the CC).

In particular, the claimant certified that on 11/24/2020 (with CC entry no. (...)) he requested the following information from the CC:

- "Copy of the letter of complaint presented to the CC(...) by Mrs. (...).
- Copy of the notification of this letter to (...), Social Worker (...) assigned to municipality of (...) on that date.
- Copy of proof of receipt of notification to (...).
- Copy of file filed by the CC(...) as a result of the letter/complaint presented by Ms. (...).
- Copy of the resolution adopted in this file."

2. On 18/01/2021, the claim was transferred to the CC in order for it to formulate the allegations it deemed relevant.

3. On 08/02/2021, the CC provided various documentation, including the Decree of the Presidency of the CC of 08/02/2021, through which it was decided to provide the person here claiming "the written of complaint presented by the user of the Social Services in the municipality of (...), and to inform that no procedure was given to this complaint as there is no other document in the file."

In this Decree of the Presidency of the CC it was also indicated that "Having carried out the appropriate checks, it turns out that only the aforementioned letter of complaint was received but that it was not processed, so the only document that can be provided to the interested party is this one, there being no other documents in the file."

4. On 02/11/2021, the GAIP forwarded the email that the person here had sent complaining to that body on 02/10/2021. In this email, the

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claimant reported that the CC had notified him of the Presidential Decree of 08/02/2021 and provided him with a copy of the disputed complaint.

5. The CC made allegations through a letter dated 02/16/2021, in which it explained, in summary, that the person making the claim did not make the request in order to exercise the right of access foreseen by the data protection regulations.

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 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. In advance, it should be noted that article 24.3 of Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC) specifies the following:

"3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data. "

In the present case, the requested documentation was linked to a complaint respect the person here claiming in his capacity as an employee of the CC. Like this

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therefore, to the extent that this documentation referred to the person making the claim, the regime applicable to access requests is that provided for in article 15 of the RGD.

4. Having explained the applicable regulatory framework, it is then necessary to analyze whether the CC 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 that initiated 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 24/11/2020 a letter from the person claiming was entered in the CC, through which he exercised the right of access to certain documentation.

In accordance with article 12.3 of the RGD, the CC 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 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).

In the present case, the CC resolved and notified the request for access on 02/08/2021, once the person making the claim had already filed the claim with the Authority that has given rise to the present rights protection procedure. That is to say, beyond the period of one month provided for the purpose.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access, it must be declared that the CC did not resolve and notify within the deadline said request submitted by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

5. 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 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 RGD 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

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as in the rest of the detailed information 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.

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).

In accordance with article 15.1.g) of the RGPD, the person claiming has the right to obtain information about the origin of the data (the identity of the people who have provided the information).

Having said that, article 15.4 of the RGPD also provides that the right to obtain a copy of the personal data subject to access must not negatively affect the rights and freedoms of third parties.

Therefore, the person making the claim has the right to access the requested complaint that refers to their person, except for those data of the person who formulated it that are not necessary to identify that person. And this, except that that person had exercised his right of opposition, a circumstance that is not certified, or even invoked, by the CC.

In accordance with what has just been explained, it is certified that on 08/02/2021 (in the framework of the present rights protection procedure) the CC facilitated the copy of the complaint requested by the person making the claim, in which certain data of the person who had formulated the complaint (DNI/NIF, address, telephone and email) were omitted, which were unnecessary for the identification of the person who formulated the complaint.

It is worth saying that the CC did not provide the claimant with the rest of the documentation that he also requested in his letter of 11/24/2020, but this was justified by the fact that it did not exist. Specifically, the CC has stated that the complaint is not being processed, which is why it does not have any other documents related to it, apart from the written complaint.

In summary, taking into account that the CC has proceeded to deliver a copy of the requested letter of complaint, and that the rest of the documentation that was also requested does not exist,

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it must be concluded that the CC has satisfied the claimant's right of access in the terms exercised. That is why it becomes unnecessary to make any request in this regard.

For all this, I resolve:

1. Declare that the Regional Council (...) has extemporaneously resolved the claimant's request for access, and dismiss the claim as to the fund given that his right of access has been satisfied in the terms set forth to the foundation of law 5th.
2. Notify this resolution to the County Council (...) and to 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, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,