

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

File identification

Resolution of the rights protection procedure no. PT 19/2021, urged against Escola Miret and Sans-ZER Narieda d'Organyà (Department of Education).

Background

1. On 01/29/2021, the Catalan Data Protection Authority received a letter from the representative of Mrs. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged partial neglect of the right of access to the personal data of the daughter of the person making the claim, the student (...), that he had previously worked for the Miret and Sans-ZER Narieda d'Organyà School (Education Department).

From the documentation he provided it appeared that on 27/11/2020, the lawyer of the person claiming, on behalf of his client, submitted a request for access to public information addressed to the Miret School and Sans-ZER Narieda d'Organyà (henceforth, the School). The representative of the person claiming requested access, by means of an authenticated electronic copy, to all the information and documentation concerning the daughter of their representative that was in the possession of the School. On the other hand information, requested the dates of non-attendance in class and their causes. In addition, it indicated as the reason for the request *"the right of access to public information and, in addition, the right of Ms. (...), whom I represent, as a mother and as an interested party, to know said information"*.

On 12/17/2020, the head of the Technical Cabinet of the Department of Education responded the request to exercise the right of access estimating the request for access to public information. The content is as follows:

"In relation to your request for access to public information, we inform you that your right of access has been estimated in accordance with article 18.1 of Law 19/2014, of December 29, of transparency, access to public information and good governance, which recognizes the right of all people to access public information.

Given that the request is accepted and there has been no opposition from third parties, the resolution is replaced by this communication, as provided for in article 34.8 of the aforementioned Law 19/2014.

In reference to your request for all the information and documentation held by Escola Miret i Sans - ZER Narieda, Organyà, which concerns the student (...), among other things, the dates of absence class and its causes, is attached to this communication:

- a) compressed folder with eleven files in .pdf format, which correspond to the documentation in the possession of the educational center, according to the detail:
- The four files with number 1 are court documents that the parents have sent to the school.
 - The four files with number 2 are absence certificates (given to the mother) and also the child's collection calendars that the father has given to school.
 - The file with number 3 is the demand made by the school in order to create a subcommittee to deal with the subject of the minor.
 - The two files with number 4 refer to the incidents that took place this year regarding the performance of PCR tests on the minor.
- b) To complete the information about the center that concerns your daughter, we attach a report from the school director, dated 09.12.2020, in pdf format."

On 01/21/2021, the claimant filed a claim with the GAIP alleging that the School had not provided all the information concerning the minor. Specifically, it specified that the following documentation was missing:

"There is a lack of information and documentation (minutes of meetings, reports and others) relating to, (i) the interdisciplinary Subcommittee; (ii) the application of the Absenteeism Protocol of Alt Urgell (issued by the Social Services of Primary Care and others); (iii) Child risk file; (iv) psychological evaluations (by the CSMIJ or others), if applicable; (v) the so-called COVID-19, in particular with regard to the PCR test scheduled for 27.10.2020 and, if applicable, subsequent ones, including parental authorization to carry it out".

2. On 04/03/2021, the claim was transferred to the School so that within 15 days it could formulate the allegations it deemed relevant.
3. The deadline for making allegations has been exceeded and the School has not made allegations
4. In the context of a previous claim for protection of rights urged before the Authority by the person making the claim, and which gave rise to the protection of rights procedure PT 20-2021, the Authority became aware that by judicial resolution, the sentence (...) dated 10/30/2020, the child's father had been granted the exclusive exercise of parental responsibility.

In view of the above information, on 12/05/2021, the representative of the claimant was required to report on whether her representative holds the exercise of parental responsibility for her daughter or if this has been attributed to the father of the minor due to the aforementioned court ruling. And, in the event that he claimed that his represented holds the exercise of parental responsibility for his minor daughter, who provided documentary evidence in this regard. In the same request he was warned of the

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consequences of not certifying that the child's mother holds parental responsibility regarding the outcome of the present claim. The deadline passed without the required information being provided.

Indeed, it is stated in the evidence of the notification process that the request was made available to the representative of the person claiming on 05/12/2021 and that the notification was rejected by the system on 05/26/2021.

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.

For its part, article 12 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), relating to the General provisions on the exercise of rights, determine the following:

1. The rights recognized in articles 15 to 22 of Regulation (EU) 2016/679 may be exercised directly or through a legal or voluntary representative.

6. In any case, the holders of parental authority may exercise the rights of access, rectification, cancellation, opposition or any other that may correspond to them in the context of this organic law in the name and representation of children under the age of fourteen.

In relation to the protection of the rights provided for by the regulations on personal data protection, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, provides the following:

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"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 School resolved and notified within the period provided for by the applicable regulations.

In accordance with article 12.3 of the RGPD, the School 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 legality. According to the documents provided by the claimant, it is noted that the date of exercise of the right of access is 11/27/2020. The notification date for the response estimating the right of access is 12/17/2020. Therefore, the School notified the resolution of the request to exercise rights within the established period.

4. Once the above has been established, it is appropriate to point out that 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 the case of children under the age of 14, the holders of parental authority can exercise data protection rights on behalf of their children. Indeed, in accordance with article 12.6 of the LOPDGDD: *"In any case, the holders of parental authority may exercise the rights of access, rectification, cancellation, opposition or any others that could correspond to them in the context of this organic law."*

In relation to the content of parental authority, refer to Section Three of Book II of the Civil Code of Catalonia, which specifies the content of parental authority. And in the case we are dealing with, in particular, in article 236-18 which establishes the legal representation of minors in the following way: *1. The exercise of authority over the children entails the legal representation of them. 2 The following acts are excluded from the legal representation of children: a) Those relating to personality rights, unless the laws that regulate them establish something else.* Well, as we have seen article 12.6 LOPDGDD empowers the holders of parental authority to exercise the rights of minors regarding the protection of personal data.

Regarding the exercise of parental authority, it is necessary to consider the second Section of Book II of the Civil Code of Catalonia. More specifically, article 236-8 which establishes the joint exercise of parental authority by both parents, unless they agree on another method of exercise or the laws or the judicial authority provide otherwise. And, also, article 236-10 of the same legal text which provides the following: *Parental authority is exercised exclusively by one of the parents in cases (...) that the judicial authority so disposes in the interest of the children.*

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In the case we are dealing with, as explained in the previous 4th of this resolution, in the framework of a previous claim for the protection of rights (PT 20-2021), the Authority was informed that for judgment dated 10/30/2020 exclusively granted the exercise of parental authority to the father of the minor. In that rights protection procedure, the representative of the claimant was required several times to confirm or deny whether the exercise of parental authority over the daughter of the person represented had been attributed exclusively to the minor's father. The required information was not provided, and that claim was dismissed as not valid

certified that the mother held the legal representation of the minor.

In the case at hand, on 12/05/2021, the representative of the person making the claim was also required to report whether their client exercised parental responsibility and, in such case, to certify this end. In the same request, he was warned of the consequences of not proving that the mother exercises parental responsibility in the processing of the present claim. As explained in the preceding 4th, the deadline has passed without a response to the request and without any evidence being provided to confirm that the mother of the minor retains the exercise of legal authority parental, resulting in the rejected notification. In summary, the Authority had evidence through the actions carried out in PT 20-

2021 that the exercise of parental authority had been attributed exclusively to the minor's father by judgment dated 10/30/2020, and the claimant has not provided information that would distort this information, nor prove that the mother has the legal representation of the minor, this being a necessary requirement to exercise the rights relating to data protection of minors under fourteen years of age.

Indeed, as explained above, among the contents of parental authority is the legal representation of minors. According to the proceedings, the mother through her representative exercised the right of access to her daughter's data on 11/27/2020, when in accordance with the judgment of 10/30/2020, which grants the minor's father the exercise of exclusive parental authority, he no longer held the legal representation of his daughter and, therefore, could not exercise the right of access before the claimed entity. Consequently, the claim for protection of rights made by Mrs. (...).

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:

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1. Dismiss the claim for the protection of rights no. 19/2021 formulated against the School Miret and Sans-ZER Narieda d'Organyà of the Department of Education.
2. Notify this resolution to Escola Miret i Sans-ZER Narieda d'Organyà 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, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,