

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

## File identification

Resolution of the rights protection procedure no. PT 29/2021, urged against the Terrassa City Council.

## Background

1.- On 03/03/2021 the Catalan Data Protection Authority received a letter from Mr. (...) by which he formulated, on the one hand, a complaint against the Terrassa City Council for an alleged violation of data protection regulations - complaint that has resulted in the initiation of prior information no. IP 93/2021-; and, on the other hand, a claim for the alleged neglect of access and deletion rights, which he had previously exercised before the Terrassa City Council. The claimant provided various documentation relating to the exercise of these rights.

2.- On 22/03/2021 the person claiming additional information was asked on some aspects of your claim, which was submitted to this Authority in a letter dated 03/24/2021.

In view of what was stated by the claimant in his writings and documentation provided, the following follows:

2.1- With regard to the claim regarding the non-attendance of the right of access.

The person making the claim stated that he had applied to Terrassa City Council access to the report drawn up by the City Council's Social Services, regarding the referral of the case of his minor son to the Foundation (...). The claimant here considered that the City Council had not respected his right of access to the extent that, in response to his request, he was provided a *"document prepared ad hoc, (which) is not original"* and in which there were blank parts. The person making the claim made it clear that what he wanted was access to *"the complete and original report"*.

In order to substantiate his claim, the claimant provided the following documentation:

- a) Copy of the standard *"Right of access to public information" form*, dated 12/04/2020, through which the claimant here requested various documentation from Terrassa City Council, among other things, a copy of the report that the Social Services would have drawn up on the referral of your child's file to another entity.
- b) Copy of the general form for *"presentation of instances and documentation to the General Registry of the City Council"* dated 12/08/2020, through which the claimant reiterated his request for documentation.
- c) Copy of the official document dated 12/18/2020 through which the Terrassa City Council transferred to the herein claimant the requested documentation, among other things, a

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copy of the referral report of your son's case to the Foundation (...), drawn up by the City Council's Social Services on 09/30/2019. In this office the City Council informed him that from this report *"the personal data not subject to public information have been deleted (...) in accordance with the regulations on transparency and data protection, which do not correspond to the applicant or his son and that affect third parties, of whom we do not have authorization nor can we legally disseminate their personal data or personal information"*.

- d) Copy of the controversial referral report, which contains data relating to the claimant here, his minor son and staff in the City Council's service. Likewise, it is observed that various information related to the ex-wife of the claimant and mother of the minor would have been hidden from this report, in particular, various data that would appear in the sections *"Data of the beneficiary and family"*, *"familial socioeconomic situation"*; and, *"employment status"* from the original report.

2.2- The person making the claim also asked for *the "administrative annulment of the referral report* [issued by the City Council's Social Services] that was *deliberately biased (...)*", and frames this request, as he adds, in the exercise of the right of deletion.

#### Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to issue this resolution, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2.- With regard to the claim relating to the non-attendance of the right of access.

The claim that has been addressed to this Authority regarding the lack of attention to the right of access by the Terrassa City Council, is formulated under the protection of art. 16 of Law 32/2010, in which this Authority is given the competence to resolve claims made for not having properly attended to the right of access as provided for in the regulations for the protection of personal data. The right of access is regulated in 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 circulation of these (hereinafter, the RGPD). This precept determines the following:

*"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 they will or will be communicated*

*communicated personal data, in particular recipients in third countries 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. (...)

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."*

This provision of the RGPD recognizes the right of the affected or interested person to have the data controller confirm whether or not their personal data is being processed and, if so, to access it and obtain a copy of it, as well as information on the aspects mentioned in its section 1 (purpose of treatment, categories of processed data, recipients or categories of recipients to whom the data has been communicated or is expected to be communicated, etc.).

Well, we can move forward since the subject of this claim is not the right of access regulated in article 15 of the RGPD, given that the affected person does not seek to access information about his personal data (and /or those of his minor child, on behalf of him) given that this information has already been provided to him, but on other types of information held by the claimed entity, specifically labor and economic information relating to his ex -wife (and mother of the minor).

Indeed, it is proven in the actions, first, that the claimant here on 04/12/2020 formulated before the City Council a request for access to various

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documentation (among other things, a copy of the report issued by the Social Services referring your child's file to another entity) using a standardized model of access to public information. And secondly, it is also certified that a few days later, specifically on 08/12/2020, the City Council responded to this request, providing a copy of the report issued on 09/30/2019 by the Social Services referring his son's case to the Foundation (...). It is worth saying that in its office of transfer of the documentation, the City Council informed here claiming that the aforementioned report

*"the personal data not subject to public information in accordance with the transparency and data protection regulations, which do not correspond to the applicant or his child and which affect third parties, have been deleted (...) of which we do not have authorization nor can we legally disseminate your personal data or personal information".*

From the analysis of the copy of the disputed referral report provided by the herein claimant - which would be the copy that the City Council would have provided -, it is inferred that this entity would have removed certain economic and labor related information from the original report to the ex-wife of the claimant here (2.1.b/ of the 2nd antecedent). Well, it must be said that this specific information is not part of the right of access regulated by the protection regulations personal data, notwithstanding that it may be requested under the right of access to public information, provided for in art. 105.b) de la Constitució Espanyola, i regulat a la Llei estatal 19/2013, de 9 de desembre, de transparència, accés a la informació pública i bon govern, ia la Llei catalana 19/2014, del 29 de desembre, de transparency, access to public information and good governance (hereafter, LTC). And this because in his claim he does not complain that he was not provided with information about himself and/or his minor child, but about a third person, taking into account that the claimant here used a public information access form to request this information.

Consequently, to the extent that, as has been said, the information that is the subject of the claim is not part of the right of access regulated in article 15 of the RGPD, the claim is rejected.

2.2.- The claimant, invoking the right to deletion, also requested that *"the administrative annulment of the referral report [issued by the City Council's Social Services] that was deliberately biased (...)"*. In this regard, simply say that the subject of this request cannot be framed within the content of the right to deletion regulated in article 17 of the RGPD, and could only be channeled through the procedures provided for in Law 39/2015, d October 1, of the common administrative procedure of public administrations, and, in any case, does not fall within the scope of this Authority's powers

the annulment or administrative review of the acts or reports issued by the different Public Administrations, which is why it is appropriate to reject the claim regarding this specific request.

Therefore, I resolve:

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1. Dismiss the guardianship claim made by (...) against the Terrassa City Council, regarding the right of access and reject it regarding the request that forms part of an eventual exercise of the right of deletion, in accordance with what is stated in the 2nd legal basis.
2. Notify this resolution to Terrassa City Council and the person making the claim.
3. 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 Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within 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,