

Carrer Rosselló, 214, Esc. A, 1r 1a
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File identification

Resolution of the rights protection procedure no. PT 39/2021, urged against the Center for Attention and Management of Emergency Calls 112 Catalonia.

Background

1. On 09/04/2021 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 exercised before the Center for Attention and Management of Emergency Calls 112 Catalonia (hereinafter, CAT112).

It follows from the documentation provided by the person claiming that:

1.1. On 03/26/2021, the claimant requested access to his personal data before CAT112 in relation to a call he made to warn of a medical emergency for his grandmother and in which he was alone. request medical intervention. According to the complainant, she spoke with several people until she was able to speak with a nurse. Next, this nurse would have called the landline of the address of the his grandmother and would have spoken to the claimant's mother.

The person making the claim requested that: *"I receive a recording of the call made to 112 from the mobile (his) and of the call made by 112 to the landline (his grandmother's), identifying the interlocutors of the 112 in the same, to undertake the appropriate legal actions".*

1.2. On 03/29/2021, CAT 112 responded to the previous request (attested by an authentic copy of the same date) in the following terms:

"In accordance with your request requesting a report of the call made by you to the Emergency Call Center 112 Catalunya (CAT112) on March 9, 2021 from the telephone (...), once the case has been studied, we provide you with the data we have:

Call details:

Day: March 9, 2021

Time: 20:49:27h

Municipality: (...)

Alerted operational bodies: Medical emergency system

Alert telephone: (...)

Content of the call: A man calls, who identifies himself as (...), reporting that his grandmother was diagnosed (...). She states that her mother is with her and that (...). Confirm that he is in Barcelona. The 112 operator asks for the grandmother's phone number and the caller provides the (...).

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Indicate as your grandmother's address (...). At 8:50:55 p.m., the 112 operator notifies the Medical Emergency System (SEM-061) with all the information provided and transfers it to the caller so that they can communicate directly.

This information that we provide will allow you to see that the operations carried out by the 112 Catalonia telephone, as indicated by our protocols (answering the call and passing on the information received to the competent body, in this case the SEM) were carried out fast way 112 transfers the information to the relevant operational bodies but does not participate in their actions, nor does it have any information related to the resources activated in each situation.

As for the call back to your grandmother's landline, (...) it is verified that it was not made by our service but by the Medical Emergency System. For this reason, we do not have the recording or any other given To request information on health management, you can contact the SEM directly using the form you will find on the website: (<https://...>)

Regarding the recording you request regarding your call, we inform you that CAT112 only transfers recordings at the direct request of the Courts, given that the recordings you request from us in addition to your voice contain the voice of third parties (the CAT112 operator who answered the call).

Therefore, this could constitute a transfer of data without the consent of the same, given that the voice, as detailed in paragraphs 1) and 2) of article 4 of the RGPD, is considered personal data. Lastly and in relation to the identification of the operator involved in the management of the emergency and who, therefore, answered your call, he is an employee (...) SL entity domiciled in Madrid, C. (...), with NIF (...), borrower of the Call Support and Management Service d'Urgència 112 Catalunya (CAT112), according to the administrative contract signed for the purpose, therefore, you will have to direct your request to the aforementioned entity".

2. On 04/19/2021, the claim was transferred to CAT 112 so that within 15 days it could formulate the allegations it deemed relevant.

3. CAT 112 made allegations through a letter dated 05/04/2021, in which it stated that:

"I am attaching the verbatim transcript sent to the interested party on 04/12/2021, together with the acknowledgment of communication by email".

The documents provided by CAT 112 are the following:

- Authentic copy of the verbatim transcript of the call dated 04/12/2021, with the following content:

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"We attach a transcript of the call made by you to the Emergency Call Center 112 Catalunya (CAT112) on 03/09/2021 from the phone (...), where the content of the call between you and the 112 operator is indicated, given that once the latter transfers it to the SEM operator, communication is cut off from CAT112 and therefore, we do not have any further information about it:

Call details

Day: March 9, 2021

Time: 20:49:27h

Municipality: (...)

Alerted operational bodies: Medical emergency system

Alert telephone: (...)

Verbatim transcript of the call:

112 operator: 112 say?

(...)

The 112 operator calls the Medical Emergency System (SEM-061), transfers it to them so that they can speak directly, and the communication with 112 is cut off, for this reason, we reiterate that we do not have the recording that you keep from that moment. 112 transfers the information to the relevant operational bodies but does not participate in their actions, nor does it have any information related to the resources activated in each situation. To request information on health management, you can contact the SEM directly using the form you will find on the website: [https://\(...\)](https://(...))".

2. Emails:

- E-mail1 sent on 03/26/2021 from the claimant's professional email to the email of CAT112. Subject: 112 call report request. Body of the message: *"I am attaching an attached document in which I request the original report of the call made to 112 and received by the same on the telephones, in order to take the appropriate legal actions".*
- Email2 in response to the previous email. Sent on 03/29/2021 from the mail of CAT112 to the claimant's professional email. Subject: RE call report request 112. Content: *"Below we attach the authentic copy of the report you requested that has the effect of an original document (authentic copy provided to the proceedings by the claimant)".*
- E-mail3 sent on 09/03/2021 from the claimant's email to the CAT 112 email Subject: RE request call report 112. Content: *"Having received the call report, this information is insufficient and it does not correspond to reality because I spoke to several people in the call I made to 112, regardless of the call from the EMS to the aforementioned landline. For this reason, I am attaching a written request for the transcription of the call, removing the information that may violate the operator's right to data protection".*

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- E-mail4 in response to the previous mail sent on 04/12/2021 from the CAT112 mail to the claimant's professional mail. There is an attached file: Transcript report 112_Mr. (...). Content: *"we attach the verbatim transcript of the conversation held between you and the 112 operator. Once the call has been transferred to the operational body in charge of managing it, CAT 112 does not have the conversation with the other bodies"* .

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. To this one effect, the communication from the person in charge to the affected person of 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. Regarding the claim of the person making the claim, on the date he submitted the claim (09/03/2021) the reason for the complaint he raised was that the information received was insufficient, in other words, that CAT112 had not given him access to the data in the terms requested.

From the documentation contained in the proceedings, it is clear that the claimant lodged the claim with the APDCAT on 04/09/2021, when not a month had yet passed since the request to exercise the right to access (26/03/2021). With which it was a premature claim. However, and by virtue of the principle of procedural economy, it is considered appropriate to make a pronouncement.

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Prior to the analysis of the facts, it should be remembered that the claimant submitted two written submissions to the CAT112. The first, on 03/26/2021 and the second, on 03/09/2021.

Regarding the letter dated 03/26/2021, he requested:

- a) the recording of the call you made from your mobile to CAT112
- b) the one made from CAT112 to his grandmother's landline.
- c) That the interlocutors of the two calls be identified.

CAT112 responded to your request on 03/29/2021.

In relation to the recording of the call to his grandmother's landline, CAT112 claimed that it did not have the recording or any other data because the call was not made from CAT112, but was made by SEM-061. Well, this manifestation is consistent with the characteristics of the service provided by CAT112.

In this regard, article 3 of Law 9/2007, of July 30, on the Center for Attention and Management of Emergency calls 112 Catalonia, attributes to the public emergency call service on the 112 telephone:

"a) receive and answer emergency calls to the single European emergency telephone number 112 made by citizens in the territory of Catalonia.

c) Identify, treat and evaluate the calls received at number 112, according to the urgency or the type of incident, in accordance with the collaboration agreements, the communication procedures and the action protocols established between the Administration of the Generalitat and the public administrations or entities that have the competence to provide material assistance.

d) Transmit the request for assistance to the services that have the competence to prepare it materially and contribute, if necessary, to the coordination of said services by activating the most appropriate provision of assistance in each case and assigning priorities depending on the type of demand".

In addition, according to the information provided on its website, the service works as follows: *"When we receive a call from a citizen, we set in motion a whole process to be able to attend to it with maximum efficiency and speed possible. We locate the incident on a map thanks to a computer application, classify the call according to the type of incident and notify the most appropriate service: ambulance for medical emergencies, Mossos d'Esquadra for security, Firefighters for extinguishing fires and other rescue incidents".* In this particular case, CAT112 explained that the operator notified SEM-061 and that it was this service that communicated directly to his grandmother's landline number.

Regarding the request for the recording of the call made from the claimant's mobile phone in CAT112, it is proven that the claimed entity provided the claimant with a report with the call data. However, it didn't make recording any easier

of the same because it alleged that it contained the voice of the operator who answered the call and that CAT112 only carried out this transfer of data at the direct request of the Courts. In relation to this issue, in accordance with article 15 of the RGPD, the claimant would have the right of access to all that information relating to the person who has treated the CAT112, whether the voice, or other identifying data or other type that can be derived from the content of your call, as well as the data of the conversation held with the operator who answered the call. Now, beyond access to the claimant's own personal data, access to telephone conversations would also affect the person who directly answers the call or the information of other people whose data may appear in the conversation. In this case, the claimant claimed that he needed the recording in order to bring legal action. And the claimed entity argued that it could not facilitate the recording because it affected personal data (the voice) of the person who answered the call. Well, it is true that with the delivery of the recording the data of third parties could be compromised, and in this regard it must be considered that article 15.4 of the RGPD establishes that the right to obtain a copy of what is established in section 3 will not negatively affect the rights and freedoms of other people. In this case, the claimant indicated that he requested the recording to present legal actions. And the CAT112 stated that they only facilitate recordings at the request of the courts. But it did not weigh the conflicting rights and freedoms, nor will it assess the degree of impact on the rights of the person who answered the call. It should also be noted that the emergency call service is a public service and, although in this case it is provided by a company contracted through its own staff, these they are providing a public service to citizens. This is why it is considered that access to the recording would not greatly affect the protection of the data of the person who answered the call. Instead, limiting the claimant's right of access to the recording would be considered disproportionate. It must be remembered that the limitations to the 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 RGPD, which must be foreseen "through legislative measures" (art. 23.1 RGPD).

None of these causes apply in the present case, so the interested person has the right to have his right of access to the recording enforced.

Regarding the request for identification of the operator who handled the call, CAT 112 stated that it did not have his data, because he was an employee of the company that provides the customer service calls to CAT112, according to the signed administrative contract.

In this regard, the Authority verified that, indeed, the alleged contractual relationship existed between CAT112 and the indicated company (Exp. (...)). The object of the contract was the service of attention and management of emergency calls from the telephone number 112 in Catalonia. He also verified that the workers attached to the service were employees of the contractor company. Likewise, it was established that this company acted as CAT112 processor for the provision of the attention service and call management of the 112 number in Catalonia, and that it also had a processor contract. On the other hand, it was also established that the service was provided in the premises of the data controller (CAT112). Indeed, in accordance with the Plec de

technical prescriptions of the contract, the service is provided in the work centers of CAT112 (section 3.1) and in accordance with the section "Identification of Personnel" (section 7.5): *"Each worker, during the development of his working day, must carry in a visible place the identification card that states at least: current photograph, first and last name, name of the company and workplace that he develops . The winning company must provide the identification card and undertakes that its staff will use it appropriately.* However, CAT112 states that it does not have the identity of the operator who answered the call. However, even if it does not have this information, the contracting company (the data processor) can identify the operator who answered the call. At this point, it is necessary to take into account the

data processor contract which is included in the administrative contract under the title "Clauses (confidentiality and processing of personal data). In particular, clause 4. *"Obligations of the data controller: j. Assist the data controller in the response to the exercise of the rights of: 1. Access, rectification, deletion and opposition"*. In accordance with this, the CAT112, as responsible for the treatment, should require the information from the company in charge of the treatment.

On 09/03/2021, the claimant, considering the information received insufficient, requested the transcription of the call. In his request he also indicated that information that could violate the operator's right to data protection be deleted.

This second request was answered by CAT112 on 03/12/2021. The document corresponding to the verbatim transcript of the call was attached to the reply email.

In short, the present claim for the protection of the right of access should be considered partially, given that in the present procedure it has been proven that Mr. (...) exercised before the Center for Attention and Management of Emergency Calls 112 Catalonia the right of access regarding the call he made to this service on 03/26/2021 and to know the identity of the person who answered your call. And it is also proven that with the answer carried out by CAT112, access was not given to the recording of the call, nor to the identity of the operator who answered his call, as requested by the person making the claim .

4. 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 person in charge 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 right of access to the recording of the call that the claimant made to CAT112 on 03/26/2021. Likewise, in the event that the operator who answered the call is not identified in the recording, it requires the company in charge of the treatment to identify the operator in question and provide this information to the person making the claim. Once the right of access has been made effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must report to the Authority.

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For all this, I resolve:

1. Partially estimate the guardianship claim made by Mr. (...) against the Center for Attention and Management of Emergency Calls 112 Catalonia.
2. Request the Emergency Call Center 112 Catalunya so that, within 10 days from the day after the notification of this resolution, the right of access exercised by the claimant, in the manner indicated in the 4th legal basis. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the 112 Catalunya Emergency Call Center and Management Center and to 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, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,