

In this resolution, the mentions of the affected entity 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 entity, the physical persons affected could also be identified.

#### File identification

Resolution of the rights protection procedure no. PT 43/2021, urged against the Regulatory Council (...).

#### Background

1. On 20/04/2021 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person claiming), for which he made a claim for the alleged neglect of the right of access to his personal data, which he claimed to have previously exercised before the Regulatory Council (...) (in come in, (...)). The person making the claim submitted a letter addressed to (...) dated 07/06/2018 by means of which he requested "a copy of the minutes of the Regulatory Council agreeing to initiate the disciplinary proceedings 4- 18 against my person"
2. On 05/13/2021, the claim was transferred to (...) so that within 15 days it could formulate the allegations it considered relevant.
3. The (...) made allegations by means of a letter dated 01/06/2021, in which he set out, in summary, the following:
  - That on 06/07/2018, the claimant empowered his lawyer, Mr. (...) before the (...) to act in its name and representation in the sanctioning procedure initiated against it by this regulatory council, granting it the power to submit written submissions and receive notifications (provides the document).
  - That on 06/07/2021, the representative of the person claiming submitted a letter to (...) in which he requested a copy of the agreement of the Board (...) agreeing the initiation of the file 4/18 (provides the document).
  - That on 07/10/2018, the person investigating the case filed against the person making the claim answered the letter of the representative of the person making the claim by email to which he attached a letter in which he was informed that it was necessary that the requests were motivated.
  - That the claim made by Mr. (...) referred to the request for the "Copy of the Minutes of the Regulatory Council in which the start of the sanctioning file is agreed 4- 18 against my person.", which was effectively the subject of a disciplinary proceeding initiated by the Regulatory Council (...) when this corporation still enjoyed prerogatives in the exercise of disciplinary powers. That the sanctioning resolution that was finally imposed on him following that procedure was agreed, on November 20, 2019, by the General Director of Food, Quality and Agro-Food Industries of the Generalitat of Catalonia.
  - That there has been no violation of the rights that protect Mr. (...), since their personal data have been properly protected and, in this sense, the

- own claim made by Mr. (...) does not denounce or make any reference to what could have suffered damage as a result of the action of (...) in relation to his personal data.
- ÿ That the claim of neglect of the right of access presented by the person claiming for neglect of the right, is not framed within article 15 of Regulation (EU) 2016/679 and that the right of access cannot be confused to personal data with the right of access to a certain administrative procedure, as would be the case of the sanctioning procedure followed by this (...) towards the claimant.
- That there has been no violation of the rights that protect the person making the claim, since their data has been properly protected and, in this sense, the claim does not report or make any reference to any damage suffered in their personal data as a result of the action of (...).
- ÿ That the right exercised by the person making the claim does not correspond to the right of access relative to the protection of their personal data (Article 15 of the RGPD), but to the right of access to the administrative procedure regulated in article 53.1.a) of the LPAC, which was respected at all times.
- That the person making the claim has acted in bad faith by trying to subvert the sanctioning procedure in order not to have to pay the penalty imposed on him, given that he submitted the claim to the APDCAT on 04/20/2021 and disregarded the right which he alleges is from more than July 2018, almost three years had passed.
  - That on the first and second page of this letter of allegations it is certified that the person making the claim acceded to the sanctioning procedure and that he made the allegations within the deadline set for that purpose. In addition, in the claim itself, the person making the claim says that he was answered in a timely manner.

The claimed entity provided the following documentation:

- Document no. 1. Letter addressed to the claimant dated 28/11/2017 and notified to the claimant on 30/11/2017. The content is as follows:

"(...) We have proceeded to check individually for each winegrower and parcel if there have been incidents. As a result of this program we have detected the following incidents in your plots: (...). These incidents may entail a penalty for the wine grower if the Regulatory Council deems it appropriate. Below, we detail each of these incidents (...). Likewise, we inform you that you have 15 working days from the day you received your notification in order to present the corresponding allegations. These incidents will be communicated to your winery and the proportion of the wine produced with this grape may not be qualified as (...)."

- Document no. 2. Email of the person making the claim addressed to the entity claim dated 12/15/2017 in which he reports that he has reviewed the delivery notes and has observed the following errors (...) and comments that he will correct the errors in the next campaign.

- Document no. 3. Letter dated (...) 07/06/2018 from the claimant authorizing his lawyer to act in his name and representation before the Regulatory Council (...) and of the Department of Agriculture, Livestock, Fishing and Food of the Generalitat of Catalonia. And the request

handwritten from the same date of entry of the representative for which he requests an extension of the deadline to make allegations and a copy of the agreement of the board to initiate the procedure.

- Document no. 4. Email from the claimed entity to the claimant dated 07/11/2018 in response to the previous request, to which the instructing person's response is attached:

"In relation to the requests presented on July 6, 2018, relating to the sanctioning files 2-18, 4-18 and 5-18, we inform you that these requests must be motivated. You can submit these by writing addressed to (...)"

- Document no. 5. Letter dated 08/27/2019 from the instructor of the 5/19 sanctioning procedure file notified to the person making the claim on 08/29/2019. The content of the letter is as follows:

"In reference to the sanctioning file, 5/19, initiated by the Regulatory Council (...) on 07/26/2019, about which you presented allegations on 07/07/2019, in which you say that no the control file carried out by the technical services of the Regulatory Council has been attached, we are attaching the aforementioned documentation."

- Document no. 6. Proposed resolution of the sanctioning file 5-19, notified to the person making the claim on 08/10/2019.

#### 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.

The Regulatory Council (...) is a public law corporation with its own legal personality. In accordance with article 3.d) of Law 32/20210, the scope of action of the Catalan Data Protection Authority includes the treatments carried out, among others, by autonomous entities, consortia and the other public law entities linked to the Administration of the Generalitat or to local bodies, or that depend on them.

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 treatment of

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personal data and the free circulation thereof (hereinafter, 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 of

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 applications. 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. Prior to the analysis of the merits of the claim, a series of points must be made regarding the right of access to the administrative file by the interested parties and the right of access to personal data. With regard to the right of access to the administrative file by interested parties, this right is regulated in article 53.1.a of Law 39/2015, and also in article 26 of Law 26 /2010, of 3 August, of the legal regime and procedure of the public administrations of Catalonia of 1 October, of the common administrative procedure of the public administrations. Well, the access to the file by the interested parties, in an administrative procedure in progress, is for the purpose of the interested person being able to access the contents of the file to defend their rights and/or interests.

On the other hand, the right of access in Article 15 of the RGPD aims to guarantee every natural person a power of control over their personal data, understood as any information relating to an identified or identifiable natural person (Article 4.1 of the RGPD). Along these same lines, the Constitutional Court ruled in Judgment 292/2000, of 30/11/2000, which declared that the rights of the affected to consent to the collection and use of their personal data and to know about this data. And in order to make this content effective, the recognition of the right to be informed about the treatment (...) and access to the records and know the transfers made are indispensable, and if this is the case, exercise the rights of rectification and cancellation -lation

Once the above has been clarified, it should be added that with respect to the request for the right of access to own data, article 12.2 of the RGPD obliges the data controller to provide

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to the affected person the exercise of his rights, even if the affected person has used a different procedure.

In short, if the person responsible for the treatment receives a request from a natural person who requests access to information relating to their person, when the information refers to an administrative procedure in progress in which the applicant is an interested person, your right to access it and obtain a copy is recognized both in article 15 of the RGPD and in the administrative procedure legislation.

4. Once the above has been established, it is necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms requested by the person making the claim is necessary.

As a starting point, it should be borne in mind that article 15 of the RGPD 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 (...). 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.

According to the document provided by the person making the claim, it has been proven that on 06/07/2018 he requested from (...) a copy of the minutes of the agreement to start the file sanctioner no. 4/18 that this Council had imposed on him.

The claimed entity alleges that the claimant did not exercise the right of access in accordance with the data protection regulations, but the right of access to the file and that there has been no violation of the rights that protect the person making the claim, since their data has been properly protected and, in this sense, the claim does not report or make any reference to any damage suffered in their personal data as a result of the actions of (...).

Regarding the first question, it has been discussed in point 3 of the Fundamentals of law, where it has been made clear that what is relevant in this case to determine the application of data protection regulations is that the request access referred to a document that contained personal data of the claimant here. And on the statements relating to the absence of damage to the personal data of the person claiming as a result of the action of (...), in the rights protection procedure it is not necessary that any damage to personal data has occurred or that it is invoked. Indeed, the exercise of the rights recognized in the data protection regulations are configured to give people greater control over their data. And on the specific right of access, it 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.

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In line with the above, article 12.4 of Organic Law 3/2018, of December 5, on data protection and guarantee of digital rights (LOPDGDD), provides that proof of compliance with the duty to respond to the request to exercise the right formulated by the affected always falls on the person responsible for the treatment. In this sense, the (...) has not provided any evidence that allows us to conclude that he responded to the claimant's request for access. Even more, with respect to the request for the document, according to document number 4 provided by the claimed entity in its statement of objections (letter dated 11/07/20218 from the instructor of the procedure) the person instructor says verbatim "we inform you that these submitted requests must be motivated. You can submit these by writing addressed to (...)". Which would indicate that access to the document was not granted. In any case, the (...) has not proven that he has provided said document to the person making the claim when the proof of compliance falls on the (...).

In addition, it should be borne in mind that the data protection regulations do not establish any deadline for submitting a claim for the protection of rights to the Authority once the deadline for responding to the request by the data controller has expired.

In accordance with what has been said so far, when the person claiming exercised the right of access to the document, specifically, to the minutes of agreement for the initiation of the sanctioning procedure, he was requesting a document regarding your personal information. Therefore, from the perspective of the right of access to personal data, he had the right to obtain a copy of the requested document.

In short, the present claim for protection of the right of access should be considered, given that in the present procedure it has been proven that Mr. (...) exercised before the (...) the right of access regarding the minutes of the agreement for the initiation of sanctioning file no. 4/18 that this Council had imposed on him, and this entity has not proven that it made effective the right of access exercised.

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 the protection of rights, the manager of the file must be required in order to make effective the exercise of the right. 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, providing a copy of the minutes of agreement for the initiation of the 4/18 sanctioning procedure relating 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.

For all this, I resolve:

1. Estimate the guardianship claim made by (...) against the Regulatory Council (...).

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2. Notify this resolution to the Regulatory Council (...) and the person making the claim.
3. Request the Regulatory Council (...) so that, within 10 counting days from the day after the notification of this resolution, the right of access exercised by the person making the claim is effective, in the manner indicated to the foundation of law 5th. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
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,