

File identification

Resolution of inadmissibility and transfer to the Commission for the Guarantee of the Right of Access to Public Information of the rights protection procedure no. PT 46/2021.

Background

1.- On 29/04/2021 the Catalan Data Protection Authority received a letter from Mr. (...), for which he formulated a claim for the alleged neglect of the right of access. Specifically, the person making the claim requested access to the recording of a telephone call held on 03/09/2021 by a nurse from the Medical Emergency System, SA (hereinafter, SEM) and her mother, in relation to a medical emergency for the claimant's grandmother. In turn, the person making the claim also requests access to the "data" of this call and the identification of the operators who intervened in the call.

The claimant provided various documentation relating to the exercise of this right.

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.- The present claim that has been addressed to this Authority, 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 (...)."

Thus, Article 15 of the RGPD defines the right of access as the right of the affected person to obtain certain information about their own personal data that is being processed.

Well, we can move forward since the object 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 but about other type

of information held by the claimed entity. Specifically, the claimant requests access to the recording of a telephone conversation held on 09/03/2021 by third parties (an EMS nurse and her mother), in relation to the medical emergency that suffer his grandmother. Also in relation to this conversation, the person making the claim requests access to the "data" of the call and the identification of the operators who intervened.

That being the case, a right recognized in the personal data protection regulations is not exercised here, but the right of access to public information, provided for in art. 105.b) de la Constitució Espanyola, el qual està regulat a la Llei estatal 19/2013, de 9 de desembre, de transparència, accés a la informació pública i bon govern, i a la Llei catalana 19/2014, del 29 de desembre, de transparència, accés a la informació pública i bon govern (hereafter, LTC).

In this sense, article 18 of the LTC recognizes the right of all people to access public information held by public administrations.

And in the event that the response from the administration does not satisfy the applicant or does not receive a response within the period provided for the purpose, the LTC itself foresees a system of guarantees, among which the claim before the Commission for Guaranteeing the Right of Access to Public Information (GAIP), regulated in articles 39 et seq. of the LTC. Consequently, as this Authority does not have the right to resolve this claim, the following is its inadmissibility, and the referral to the GAIP, being the competent body.

3.- In accordance with what has been set forth in the 1st legal basis, since in accordance with article 141 of Law 40/2015, of October 1, on the legal regime of the public sector, the public administrations are obliged to respect the legitimate exercise by other administrations of their powers, the transfer of this claim to the GAIP is considered appropriate.

Therefore, I resolve:

1. Dismiss the guardianship claim made by Mr. (...) against the Medical Emergencies System, SA.
2. Transfer the reference claim to the Commission for the Guarantee of the Right of Access to Public Information (GAIP), together with a literal testimony of the present resolution.
3. Notify this resolution to the SEM and 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 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,