

File identification

Resolution of the rights protection procedure no. PT 64/2021, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 08/06/2021 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 personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

Specifically, the claimant requested on 03/25/2021 access to his personal data incorporated in the files of the Generalitat Police Information System (SIP).

2.- On 25/06/2021 the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The DGP made allegations by means of a letter dated 07/05/2021, in which it stated, in summary, the following:

- That on 03/25/2021, the person claiming requested access to the data personal data recorded in the files of the SIP scope (PF).
- That on 15/06/2021, the Director General of the Police issued the resolution by which it was agreed to make effective the right of access to the personal data contained in the SIP scope (PF) files. In said resolution, he was informed of the status he had in the proceedings (complainant, identified, witness, victim, visitor or detainee), the date of the events, the number of police proceedings or request or identification number, of the instructional unit and the reason for the action.
- That said resolution was sent to the address provided by the person making the claim for notification purposes.

The DGP provided a copy of the access request, the file documentation, the issued resolution and the notification letter - without the date of departure registration - but the supporting document was missing that the notification of the estimated resolution to the claimant or his attempt to notify has become effective.

Fundamentals of Law

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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.- The personal data processed by the DGP to which this claim refers, fall within the scope of Directive (EU) 2016/680, of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and free circulation of this data, in accordance with what is established in its article 1. Directive (EU) 2016/680 has been transposed into Spanish law by Organic Law 7/2021, of May 26, on data protection personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions, which entered into force on 06/16/2021. Given that both the request for access to the DGP (25/03/2021) and the claim presented to this Authority (08/06/2021) are prior to the date of entry into force of LO 7 / 2021, its processing continues to be governed by the regulations in force previously, that is, by Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), and in particular, by the article 22 and its deployment provisions (in accordance with the provisions of transitional provision 4a of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights).

3.- In accordance with the above, firstly, it is necessary to go to article 15 of the LOPD, which in relation to the right of access determines the following:

- "1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.
2. The information can be obtained through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, without using keys or codes that require the use of specific mechanical devices.
3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

For its part, article 27 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter, RLOPD), in its first and second sections provides the following regarding the right of access:

- "1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing that, if applicable, is being carried out, as well as the information available on the origin of the data

mentioned and the communications made or planned of these data.

2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.

However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD establishes the following:

"1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request. After the deadline has passed without an express response to the access request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.

In the event that it does not have the personal data of those affected, it must also notify them within the same period.

2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.

3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

Lastly, and since the right that is the subject of this resolution refers to a treatment carried out by the forces and security forces, it is necessary to refer to the specific regulation for these cases provided for in article 23, sections 1 and 3, of the LOPD, which determine the following exceptions to the rights of access, rectification and cancellation:

"1. Those responsible for the files that contain the data referred to in sections 2, 3 and 4 of the previous article may deny access, rectification or cancellation depending on the dangers that may arise for the defense of the State or public security, the protection of the rights and freedoms of third parties or the needs of the investigations that are being carried out. (...)

3. The person affected who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring it to the attention of the director of the Data Protection Agency or the organization

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competent authority of each autonomous community in the case of files maintained by police forces belonging to these communities, or by the autonomous tax administrations, which must make sure of the validity or impropriety of the refusal."

In line with the above, article 16.1 of Law 32/2010 provides:

"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."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP resolved and notified, within the period provided for by the applicable regulations, the right of access carried out by the person making the claim, since precisely the reason for the complaint of the person who started the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In accordance with article 29 of the RLOPD, the DGP had to resolve and notify the request for access within a maximum period of one month from the date of receipt of the request. In relation to the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and the Article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in proceedings initiated at instance of part - as is the case - starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least have occurred the duly accredited notification attempt (art. 40.4 LPAC).

Well, as can be seen from the documentation provided in this file, on 03/25/2021, the claimant exercised the right of access to data before the DGP, but it did not issue a decision on the request of access until 15/06/2021, that is to say, well past the resolution deadline of one month provided for the purpose, so it must be concluded that the DGP resolved extemporaneously.

Regarding the substance of the request for access to personal data, it should be noted that the DGP has agreed to enforce the right of access to personal data, as can be seen from the statement of objections dated 07/05/2021 and of the copy of the resolution of 06/15/2021, which the DGP has provided to this Authority, although the effective notification of this resolution has not been certified, as already indicated in the third antecedent. It is for this reason that it is not considered necessary to make further considerations in this regard, without prejudice to the fact that in the event that the person making the claim considers that their right of access has not been fully exercised with respect to their personal data

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recorded in the files of the SIP area, may bring it to the attention of this Authority, and also without prejudice to the request that is considered necessary to make to the DGP on the following legal basis.

5.- Given that in the present case, although on 06/15/2021 the DGP issued an estimated resolution of the access request made by the claimant, there is no documentary evidence that he was notified this, so this Authority considers it appropriate to require the DGP so that within 10 counting days from the day after the notification of this resolution, certify that the resolution dated 06/15/2021, estimate of the right of access, has been effectively notified to the person making the claim.

For all this, I resolve:

1. Declare extemporaneous the resolution of the General Directorate of the Police dated 06/15/2021, without it being necessary to go into the substance, given that the request made by Mr. (...) of access to your personal data incorporated in the SIP file, in the terms indicated in the 4th legal basis.
2. Request the DGP so that, within 10 counting days from the day after the notification of this resolution, it accredits the notification to the claimant of the estimated resolution dated 06/15/2021, in the form indicated in the 5th foundation of law.
3. Notify this resolution to the DGP 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 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,