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Autoritat Catalana de Protecció de Dades

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

Resolution of the rights protection procedure no. PT 76/2021, urged against Barcelona City Council.

Background

1. On 03/07/2021 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), for which he made a claim for the alleged disregard of the rights of deletion and opposition of his personal data relating to the "door to door" waste collection service that he had previously exercised before Barcelona City Council.

Specifically, the rights exercised referred to the following processing activities:

- Door-to-door waste collection. Web platform
- Door-to-door waste collection. Mobile application. App.

The complainant complained that the City Council did not respond to the exercise of the right of opposition and that with respect to the right of deletion it only made effective the deletion of the data relating to the treatment relative to the mobile application, but not regarding the Web Platform.

The claimant provided various documents:

- Documents dated 06/06/2021 exercising the rights of opposition and deletion.
- Letter of response from the City Council of 06/22/2021.
- Email of 05/05/2021 from the email address of the "door to door" waste collection service addressed to the person claiming regarding the receipt of the materials delivered and the registration code in the app and the address from where to download it.

2. On 07/21/2021, the claim was transferred to Barcelona City Council so that within 15 days it could formulate the allegations it deemed relevant.

3. The Barcelona City Council made allegations in a letter dated 07/28/2021, in which it set out, in summary, the following:

- That on 06/06/2021 the person making the claim presented two requests to exercise rights - right of opposition and right of deletion.

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ÿ The requests referred to two specific treatments: 1. Selective collection of waste door-to-door web platform and 2. Selective collection of waste door-to-door mobile application.

ÿ That, with regard to the processing of data on the web platform, the processing is based on article 6.1.e of the RGPD, based on a municipal competence attributed to the City Council by a rule with the rank of law. In addition, the processing of the claimant's personal data was necessary to be able to provide the correct, mandatory and necessary selective waste collection service. (The legal reasoning that he alleged will be discussed in section 3 of the fundamentals of law).

- On the other hand, in relation to the treatment mentioned in the previous point, the City Council stated in relation to the right of opposition that the claimant did not allege any reason justifying the opposition to the treatment.
- Regarding the data processed through the mobile application, the City Council stated that this processing is based on the consent of the person concerned. For this reason, the data relating to this specific treatment was deleted, as requested by the person making the claim.

The City Council submitted a letter of response dated 22/06/2021 addressed to the person claiming and communicated on 23/06/2021 in which it is informed that they cannot remove the data relating to the treatment "Door-to-door waste collection. Web platform" and which proceed to the deletion of personal data relating to the treatment "Door-to-door waste collection. Mobile app".

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 17 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 such data (hereinafter, the RGPD), regulates the right of deletion in the following terms:

> "1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:
>
> a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
> b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;

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c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;

d) personal data have been treated unlawfully;
e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;
f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.

3. Sections 1 and 2 will not apply when the treatment is necessary:

a) to exercise the right to freedom of expression and information;
b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;
c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;
d) with archival purposes in public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, section 1, to the extent that the right indicated in section 1
could make it impossible or seriously hinder the achievement of the objectives of said treatment, or
e) for the formulation, exercise or defense of claims.

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For its part, article 15 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 of deletion:

"1. The right of deletion will be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.
2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge will be able to retain the identification data of the affected person necessary in order to prevent future treatments for the purposes of direct marketing." .

Article 21 of the RGPD regulates the right of opposition in the following terms:

"1. The interested party will have the right to object at any time, for reasons related to his particular situation, to personal data concerning him being the object of a treatment based on the provisions of article 6, section 1, letters e) of), including the elaboration of

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profiles based on these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and liberties of the interested party, or for the formulation, exercise or defense of claims.

(…)

For its part, article 18 of the LOPDGDD, also in relation to the right of opposition, provides that:

"The right of opposition, as well as the rights related to automated individual decisions, including the creation of profiles, will be exercised in accordance with what is established, respectively, in articles 21 and 22 of Regulation (EU) 2016/679".

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establish 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 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.

(…)"

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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. Having exposed the applicable regulatory framework, it is necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, the deletion of the data in the terms requested by the person making the claim is appropriate in this case. As a preliminary matter, it is necessary to analyze whether the City Council's response to the exercise of the right was made within the period established in article 12.3 of the RGPD. In this case, the claimant's request is dated 06/06/2021 and the City Council's response was communicated to the claimant on 06/23/2021, therefore within the legally established deadline.

Prior to the analysis of the background, it is necessary to refer to the door-to-door waste collection and management system, as well as to the previous information regarding IP 248/2021 that the Authority is processing in relation to a complaint presented on the new waste collection and management system that the City Council implemented in some areas of the Sant Andreu del Palomar neighborhood.

According to the information provided by Barcelona City Council on the website https:// ajuntament.barcelona.cat/ecologiaurbana/ca/residu-zero/recollida selectiva/porta-a-porta-sant-andreu, the the aim of this model is to encourage the selective collection of waste. This new system that the City Council plans to implement throughout the city, was first implemented in the Sarrià Vell neighborhood and on 05/24/2021 the first phase of door-to-door collection began in the Sant neighborhood Andreu del Palomar.

Reference should also be made to the previous information regarding IP 248/2021 mentioned above. The City Council informed the Authority that, before implementing the door-to-door system in the neighborhood of Sant Andreu del Palomar, it sent an informative circular to all the homes in the area where the collection service was going to be implemented of waste door to door, without specifying the identifying information of the residents. This circular informed about this new system and indicated that it would go to homes to distribute the materials needed to carry out recycling (hereafter, recycling kit).
They were also informed that if they were not at home at that time, they could pick it up at the Door to Door Office. The information circular did not contain any identifying information, only the address of the home (the City Council provided a document to prove this). Attached to the circular was a data collection form that included the following fields: name, surname, mobile phone, email address and handwritten signature. The person had to hand it in when they picked up the recycling kit. The City Council also assured the Authority that the only necessary data

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for the operation of the service it was the address of the home and that identification and contact data were optional. In the words of the City Council: "While the service is provided, the data relating to the home must necessarily be processed in order to be able to provide the service". And the City Council also affirmed that it was guaranteed that in order to obtain the recycling kit it was not mandatory to provide identification or contact details and that evidence of this was that material was distributed without the person concerned having given their identification and contact details. It also ensured that the only essential data for the provision of the waste collection service was the address of the home, data that the City Council already had in the exercise of its powers.

Regarding the processing of data relating to the Web Platform, the City Council is not involved attend to the request for deletion of the data of the reporting person, because he alleged that the treatment is carried out in fulfillment of a mission in the public interest and based on a municipal competence. Regarding municipal competence in the matter of collection and management of urban waste, it is necessary to go to article 25.2.b of Law 7/1985, of April 2, regulating the bases of the local regime (hereinafter, LBRL) which provides, that: "The municipality exercises, in any case, as its own powers, under the terms of the legislation of the State and the autonomous communities, in the following matters: b) Urban environment: in particular, public parks and gardens, management of urban solid waste and protection against noise, light and atmospheric pollution in urban areas". And it is also contained in article 66.3 of Legislative Decree 2/2003, of April 28, which approves the revised text of the Municipal and Local Government Law of Catalonia (hereinafter, TRLMRL), which provides: "3 The municipality has its own competences in the following matters: l) Water supply and public lighting, road cleaning services, waste collection and treatment, sewers and waste water treatment".

On the other hand, the waste collection and management service is mandatory for municipalities, as prescribed in article 26 LBRL: "1. Municipalities must, in any case, provide the following services: a) In all municipalities: public lighting, cemetery, waste collection, street cleaning, domestic drinking water supply, sewerage, access to population centers and paving public roads". In the same line, article 67 of the TRLMRL is pronounced: "Municipalities, independently or associated, must provide, at least, the following services: a) In all municipalities: public lighting, cemetery, waste collection, cleaning roads, domestic supply of drinking water, sewers, access to population centers, paving and maintenance of public roads and control of food and beverages".

It should be added that article 86 LBRL configures the collection, treatment and utilization of waste as an essential public service reserved for local entities: "2. The reservation is declared in favor of the local entities of the following essential activities or services: home supply and water purification; collection, treatment and utilization of waste (...)".

Given the transcribed regulations, waste collection is by law an essential local public service reserved for local entities.

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The City Council, in relation to the exercise of the right of deletion, cited the sectoral regulations in the matter of municipal waste, in particular the obligation that the councils have to use the waste collection and separation systems that are have shown to be more efficient, as well as the services of transport, valorization and disposal of the rejection of municipal waste and which corresponds to local entities, as well as the exercise of the power of surveillance and inspection and the sanctioning power of the town councils, in the scope of their competences (articles 12 and 21.2 Law 22/2011, of 28 July on waste and contaminated soil). Likewise, he cited Legislative Decree 1/2009, of July 21, by which the Revised Text of the Waste Regulatory Law is approved, specifically, article 11 which confers on the municipality the regulatory power in the selective collection of municipal waste, article 42 which obliges the municipality to provide at least selective collection, transport, revaluation of waste. And article 53 of the same legal text that establishes that municipalities must use the separation and collection systems that have been shown to be more efficient and that are appropriate to the characteristics of their jurisdiction.

Once municipal jurisdiction is established, the matter must be analyzed from the point of view of data protection. In order for the processing of personal data to be lawful, one of the conditions contained in article 6.1 of the RGPD must be met. In the case of the exercise of the powers attributed to the public authorities by a rule with legal status, paragraph e) of this article applies: "the treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment". This is what is included in article 8.2 LOPDGDD "The treatment of personal data can only be considered based on the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible, in the terms provided for in article 6.1 e) of Regulation (EU) 2016/679, when it derives from a competence attributed by a rule with the status of law".

In addition, it is necessary to take into account article 5.1.c) relating to the principle of data minimization, according to which: "Personal data will be adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed ".

In this regard, in the previous information phase (IP 248/2021) mentioned above, the City Council informed the Authority that in order to provide the door-to-door waste collection service, it was only necessary to process the address of the home. However, with respect to the right to deletion, the City Council argued that the processing of the claimant's data was necessary for the provision of the service and referred to the Metropolitan Program for the Prevention and Management of Municipal Resources 2017-2025 which determines that in 2025 the municipalities must have incorporated a payment system for the use of the collection service on an individual scale depending on the behavior of the selective collection; he also referred to the Metropolitan Agreement for Zero Waste signed in February 2019 by which metropolitan municipalities undertake to implement individual systems for the collection of domestic waste that cover 100% of the population. But, according to the City Council, in the first phase of implementing the system (which is the one that has been implemented in the Sant Andreu district) only a global check is made to know that the triage is being done correctly. And he also stated in the same phase

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of prior information (IP 248-21), that in the future it is planned to use individualized data to apply a series of bonuses in the garbage rate to people who make a correct contribution of waste. In this regard, the City Council stated that in the future a Fiscal Ordinance called "fair waste rate" will be created which will have, among other objectives, precisely this bonus for people who properly manage the waste they generate. In the latter case, it could be considered that the identity and contact data of the person making the claim could be necessary for the management of the service.

But, at this time, the processing of this data is not necessary for the provision of the service, as stated by the City Council. It should be added that recently
the City Council has published on its website that the implementation of the second phase of door to door in Sant Andreu del Palomar has been postponed.

In short, given that in this first phase of implementation of the door-to-door collection system, according to statements by the City Council, the only data necessary for the provision of the service is the address of the home in question, only on this personal data the City Council could apply the provisions of article 17.3 of the RGPD.

Thus, article 17.3 of the RGPD provides that "Sections 1 and 2 will not apply when the treatment is necessary: b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person in charge of the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge". Certainly, the City Council is authorized to process the data necessary for the exercise of its competence in the matter of waste collection and recycling, but this legal basis does not empower the City Council to process more data than is necessary for the provision of the service

In short, on 06/06/2021 the claimant exercised the right to delete his personal data before the City Council in relation to the following
data processing: 1. Selective waste collection door to door web platform and 2. Selective waste collection door to door mobile application. The City Council responded to the exercise of the right of deletion within the legal deadline, informing that the data relating to treatment 1 could not be deleted, because they were necessary to fulfill a mission in the public interest attributed to the City Council and with regard to treatment 2, that the data was blocked and deleted as requested.

Given that the City Council proceeded to delete the data relating to the mobile application, there is no pronouncement in this regard.

In conclusion, and from the perspective of the right of deletion regulated in article 17 of the RGPD, the present claim for protection of the right of deletion should be considered, given that in the present procedure it has been proven that the person making the claim exercised before the City Council the right of deletion with respect to your personal data in relation to the door-to-door waste collection service and it is also proven that the City Council only made effective the data collected and processed by the mobile application, but not those collected through the data collection form that was entered on the portal management platform website

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at the door For this reason, the City Council must make effective the right of deletion exercised by the person making the claim, with the exception of the address of the home.

Next, it is necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case the right to object to the data in the terms requested by the person making the claim applies.

Regarding the right to object, it is necessary to take into account the provisions of article 21 of the RGPD: "The interested party shall have the right to object at any time, for reasons related to his particular situation, to which personal data concerning him are objected of a treatment based on the provisions of article 6, section 1, letters e)". So, in those cases in which the treatment is based on the fulfillment of a mission in the public interest (art. 6.1.e RGPD), as is the case, it requires the person claiming to invoke a reason related to their particular situation , But. the person here claiming, when he exercised his right before the City Council, did not allege any reason related to a particular situation that justified the opposition to the processing of his data. Having said that, it must be considered that in the case at hand the City Council carries out data processing necessary for the fulfillment of a mission in the public interest, based on the exercise of a municipal competence. On this issue, a reference is made to the previous paragraphs relating to the regulations that establish that waste collection is by law an essential local public service reserved for local entities. Likewise, the reasoning referred to the principle of minimization set out above in relation to the right of deletion, are applicable in relation to the right of opposition. Indeed, given that the City Council stated that the only data necessary for the treatment of the door-to-door waste collection service is the address of the home, the conclusion is that the rest of the data collected are not necessary for the treatment. Therefore, the present claim for protection of the right of opposition should be partially assessed with respect to the data that are not necessary for the provision of the "door to door" waste collection service, that is to say, all the data that the City Council has collected in relation to this service except for the address of the house in question.

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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 make effective the exercise of
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, proceed to the deletion of the personal data that is the subject of this claim
with the exception of the data relating to the address of the home. Once the right of deletion has taken effect 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.

Regarding the right of opposition, taking into account the previous requirement, that is to say, that the City Council must delete all the data of the person making the claim relating to the door-to-door waste collection service, with the exception of address of the home, and given that the data to be deleted are the same data from which

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given the claim of the right of opposition, it is not necessary to make any request for the City Council to exercise its right of opposition.

For all this, I resolve:

1. Partially estimate the claim for protection of the right of deletion and the right of opposition formulated by Mr. (...) against the Barcelona City Council, specifically the deletion of the claimant's data processed in relation to the door-to-door waste collection service, and his opposition to the processing of this data, with the exception of the data referring to the address of the home.

2. Request the Barcelona City Council so that, within 10 days from the day after the notification of this resolution, it makes effective the right of deletion exercised by the person making the claim, in the manner indicated in the foundation of right 4th Once the right of deletion has taken effect, within the following 10 days the claimed entity must report to the Authority.

3. Notify this resolution to Barcelona City Council 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,

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