

File identification

Resolution of the rights protection procedure no. PT 85/2021, urged against the Interuniversity Council of Catalonia.

Background

1. On 05/08/2021, the Catalan Data Protection Authority received a letter from

Mrs. (...) (hereafter, the representative person) on behalf of his daughter, at that time a minor, (...) (hereafter, the claimant), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Interuniversity Council of Catalonia (hereinafter, the Council).

The claimant submitted the application for access that he submitted on 26/07/2021 in which, in addition to making a query about the operation of the registration payment at a university and the place allocation system, He asked to know *"in which position I have been on the waiting list for the rest of the requests where I have not been able to access"*. Likewise, he also provided the Council's response of 28/07/2021, in which they respond to the inquiry about the payment of the registration but do not pronounce themselves in relation to the access request.

2. Through a request dated 09/18/2021, this Authority asked the representative person to certify the representation of the person making the claim. On 10/21/2021, it was accredited.

3. On 04/11/2021, the claim was transferred to the Council so that within 15 days it could formulate the allegations it deemed relevant.

4. The Council made allegations by means of a letter dated 26/11/2021, in which it set out, in summary, the following:

- That *"Mrs. (...) asked the University Access Office (through a CQS) information related to the pre-registration procedure for a university degree, which was provided to him by the same means"*.
- That *"there is no claim presented to the Office of Access to the University by Mrs. (...) in exercise of the rights of access, rectification, cancellation and opposition to the processing of his or his daughter's personal data"*.

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

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 on 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 for any other copy requested by the interested party

based on administrative costs. 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 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:

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"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 end, the communication from the person in charge to the affected in the manner as 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. Next it is necessary to analyze whether the Council resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since it was precisely the reason for his complaint that initiated the present guardianship procedure of rights, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 07/26/2021 the Council received a letter from the person claiming through which he exercised the right of access to his personal data. Specifically, he requested "to know where I was on the waiting list" to access the universities where he had pre-enrolled.

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In accordance with article 12.3 of the RGPD, the Council had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request. In relation to the question of 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 article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the request was entered in the register of the competent body for its processing.

Well, although the Council answered on 28/07/2021 another matter raised by the person claiming in his letter of 26/07/2021, unrelated to the data protection regulations, how was it to know how the procedure works registration, with that letter he did not respond to the request for access to his own data presented by the person claiming his position on the waiting lists for access to the universities where he had pre-registered nor has proven to have done so subsequently.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access, it must be declared that the Council did not resolve and notify in form and time the said request presented by the affected person

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms that request of the person making the claim.

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 and, in such case, access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. 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.

In this case, despite the allegations made by the Council on 26/11/2021 to the contrary, it is clear that when the claimant requested to know what position he had been on the waiting lists to access the universities where he had pre-registered, he was exercising his right of access to personal data on 07/26/2021.

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As already advanced,

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through the right of access, the owner of the data can find out which data about him/her are being processed. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to this 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 enforced.

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 the person making the claim exercised the right of access before the Council to *"find out where I was in the list of wait"* to access the universities where he had pre-enrolled, and it is also proven that with the response carried out by the Council, the right of access exercised did not become effective.

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 protection of rights, the manager 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 claimant's right of access. 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 Ms. (...) on behalf of his minor daughter, (...) against the Interuniversity Council of Catalonia.
2. Request the Interuniversity Council of Catalonia to make effective the right of access exercised by the person making the claim within 10 counting days from the day after the notification of this resolution. 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 Interuniversity Council of Catalonia 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, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,