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File identification

Resolution of the rights protection procedure no. PT 88/2021, urged by Mr. (...) against Barcelona City Council.

Background

1.- On 13/08/2021 the Catalan Data Protection Authority received a claim made by Mr. (...) (henceforth, the claimant) against the Barcelona City Council (henceforth, the City Council), for not attending to the request of exercising the right of access, which is provided for in article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to processing of personal data and the free circulation thereof (hereafter, RGPD).

In order to certify the exercise of this right, the claimant provided a copy of the generic request presented to the City Council on 06/03/2021, in which he stated that *"I was an employee of the Barcelona City Council since (...) hasta (...)"*, and asked *"obtain a complete copy of my labor and medical records for all the years I was working. My registration number was (...)"*. Dissatisfaction with the response provided by the City Council to the person making the claim constitutes the object of the claim.

2.- By official letter dated 12/20/2021, the claim was transferred to the City Council, so that within 15 days it formulates the allegations it deems pertinent. In the transfer office, the City Council was asked to provide a copy of the supporting documentation of the date on which it would have received the request to exercise the right of access made by the person making the claim, and in case of having resolved it, the supporting documentation of said resolution and of its notification to the person making the claim.

3.- On 11/01/2022, the Authority received the City Council's statement of objections, which basically alleged the following:

- That the claimant (former employee of the City Council) had not submitted a request for access to his personal data, given that he had requested a *"copy of the documentation of the personal file"*, and that his request had not been raised in terms of article 15.1 of the RGPD.
- That the claimant's request *"must be considered as an exercise of the specific right of access to the file itself, expressly recognized by the civil service regulations"*, and for this purpose he cites section 92 g) of Legislative Decree 1/1997, of October 31, which approves the recasting in a single text of the precepts of certain legal texts in force in Catalonia in matters of public function, and also article 51.4 of Decree 214 /1990, of July 30, which approves the Regulations for the staff at the service of local entities.

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- That the claimant *"is using an inappropriate way in order to obtain a copy of a document that affects him, the provenance of which, as will be said later, is in no way denied or even questioned by part of this Administration."*
- That the City Council responded to the claimant's request, given that *"in response to his request, Mr. (...) was summoned to the premises of the Office (...) of the Barcelona City Council (...) and appeared before the head of the aforementioned Office on (...), which showed him his personal file and gave him a copy of the documents he requested and which are listed below:*
 - Decree of (...), by which he was terminated as interim staff due to resignation.
 - Decree of (...), by which it was agreed to exclude him from the labor market in the category of administrative assistant".

The City Council provided a copy of the minutes of the appearance of the person claiming before the head of the Office (...) dated 07/19/2021.

- That *"proceeds to deny the claim of protection of rights of Mr. (...) for lack of object, as the request presented on June 3, 2021 had already been attended to by this Administration in time and form, at the time of the filing of the claim."*

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.- As a first question, it is necessary to determine whether the claim we are dealing with should be resolved on the basis of the right of access regulated by the data protection regulations.

In this regard, along with the claim presented to this Authority, the affected person provided a copy of the request presented to the City Council on 06/03/2021, in which, although it did not indicate that he exercised the right of access to his data, he does state that what he was asking for was to obtain: *"a complete copy of my labor and medical records of all the years that I was working (...)"*.

In relation to this, it should be clarified that in order to exercise the right of access to personal data regulated by the legislation on the protection of personal data, it is not essential that in the document with which this right of access is exercised access, the interested person expressly invokes article 15 of the RGPD or the regulations for the protection of personal data. Therefore, the determination of whether or not what is being requested fits into the mentioned right of access, does not depend on the qualification that the interested party makes of his writing or the precepts that he cites, but on the claim that is specifically formulated.

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In the present case, the person making the claim, a former employee of the City Council, specifically requested access to her entire file relating to the period from (...) to (...), corresponding to the years in which he was an active worker at the City Council.

That being the case, the request for access did not refer to the file of a procedure in progress, and it could be questioned whether the request for access covered the exercise of the right of access to public information provided for in the rules governing transparency, or in the right of access regulated in the data protection regulations, but to the extent that what was requested was access to the file with the employment data and medical of the claimant that the City Council would have, and therefore, which would only contain personal data of the claimant here, it is clear that the exercise of the right of access in this case is covered by the data protection regulations, and in accordance with article 24.3 of Law 19/2014, of December 29, 2014, on transparency, access to information and good governance (LTC), which provides that: *"Requests for access to the public information that refers only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by to data protection legislation"*.

That being the case, it is necessary to approach the present claim from the point of view of the right of access regulated by data protection legislation.

In this regard, article 15 of the RGPD 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:

- 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."

Also, regarding the rights contemplated in articles 15 to 22 of the RGPD, article 12, sections 3, 4 and 5 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.

(...)"

In relation to the above, article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, 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 period, they can submit a claim to the Catalan Data Protection Authority.

2. The Catalan Data Protection Authority must expressly decide on the merits or inadmissibility of the claim referred to in paragraph 1 within six months, with the prior hearing of the person responsible for the file and also of the interested persons if the result of the first hearing procedure makes it necessary. Once this term has passed, if the Authority has not notified the resolution of the claim, it is understood that it has been rejected.

3. The resolution of total or partial estimation of the protection of a right must establish the term in which this must take effect.

4. If the request to exercise the right before the person responsible for the file is estimated, in part or in full, but the right has not been made effective in the form and the deadlines required in accordance with the applicable regulations, the interested parties can bring it to the attention of the Catalan Data Protection Authority so that the corresponding sanctioning actions are carried out."

3.- Once it has been determined that the present claim would fit into the right of access regulated by the RGPD and this regulation has been set out, it is then necessary to analyze whether the City Council resolved and notified, within the period provided for by the regulation applicable, the right of access exercised by the person claiming.

In this regard, it is certified that on 06/03/2021 a letter from the person claiming was entered in the City Council Registry, through which he requested access to his file.

In accordance with the provisions of article 12.3 of the RGPD, the City Council had to resolve and notify the access request 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 1 October, 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 procedures initiated at the instance of a party - as is the case - begins 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, the request for access was submitted by the person here claiming before the City Council on 03/06/2021, but the City Council did not respond to the person claiming until

on 07/19/2021, the date on which, as stated by the City Council itself in its statement of objections, it summoned the person here claiming to appear before the head of the Office (...) of the City Council, in order to show him his personal file and, according to him, he gave him a copy of the documents he considered appropriate to request. Therefore, the City Council granted access to the person making the claim, exceeding the one-month resolution deadline provided for the purpose, so it must be concluded that the City Council resolved the request to exercise the right extemporaneously access of the person claiming.

Consequently, the assessment of the claim proceeds from the formal point of view, without prejudice to what will be said below regarding the substance of the claim.

4.- Once the above has been established, 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 requested by the person making the claim.

Well, of the actions carried out in the framework of this procedure, it is certified that in the request dated 03/06/2021, the person making the claim here asked to *"obtain a complete copy of my labor and medical record of all años que estuve trabajando"* referring to the period between (...) and (...).

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.

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 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. 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).

In view of the allegations made by the claimed entity, it is certified that the City Council responded to the claimant's request to exercise the right of access, on 07/19/2021 in person, given that it was received by the head of the Office (...) of the City Council, who showed him his personal file and provided him with a copy of the two documents identified in precedent 3 of this resolution, as stated in

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the attendance record signed by both people on that date. Although this answer cannot question the will of the City Council to give access to the person making the claim, the truth is that the person in his request explicitly asked *"to obtain a complete copy of my labor and medical file of all the years I was working"*.

Likewise, in relation to the allegations made by the City Council regarding the fact that had provided the person claiming access to his file, it should be noted that the fact of providing him only a copy of two documents, specifically, of the *"Decree of (...), by which he was terminated as interim staff for reasons of resignation"* and of the *"Decree of (...), by which it was agreed to exclude him from the labor market in the category of administrative assistant"*, no coincides with the claimant's request to obtain a complete copy of the personal data contained in his file in the period between (...) and (...), that is, while he was an active worker to the City Council, and which is the reason for his claim to the Authority.

In this regard, it should be borne in mind that article 15.3 of the RGPD states that, in relation to the exercise of the right of access *"The person responsible for the treatment will facilitate a copy of the personal data subject to treatment"*, is to say, on the one hand, the right of every person to obtain from the data controller a copy of their personal data that is the subject of processing is expressly recognized, and on the other hand, the obligation of the data controller is made clear of the processing to provide a copy of all the data that is being processed or has processed, relating to the person who exercises his right.

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, proceed to require the City Council so that, within 10 days from the day after the notification of this resolution, exercise the claimant's right of access, providing him with a copy of all the personal data contained in your file corresponding to the period in which you were working at the City Council, that is to say, from (...) to (...) - unless there is an exception from those provided for in art. . 23 of the RGPD-. Once it is made effective the right of access in the terms set out and the person making the claim is notified, in the following 10 days the claimed entity must give an account to the Authority.

For all this, I resolve:

- 1.- Estimate the guardianship claim made by Mr. (...) against Barcelona City Council.
- 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 access exercised by the person making the claim in the terms set out in the foundation of law 5th Once the right of access has taken effect, within the same period of 10 days the claimed entity must give an account 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 (www.apd.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,