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File identification

Resolution of the rights protection procedure no. PT 92/2021, referring to the Foundation for the Open University of Catalonia.

Background

1.- On 14/09/2021 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, claimant), for which he made a claim against the Fundació para la Universitat Oberta de Catalunya (FUOC) for the alleged disregard of the right to deletion, which is provided for in article 17 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 the processing of personal data and the free movement thereof (hereinafter, RGPD). On the same date, the claimant submitted a second letter reiterating his claim and providing the same documentation.

In the letter of complaint, he stated that he had requested the UOC to delete his personal data, but that the University had ignored his request. Specifically, he noted the following:

"I contacted the UOC to ask for information. They forced me to create an account but they told me that it was automatically deleted and my data was not saved. I don't want to receive anything, that's what I've told them and that's what I've written to the data protection representative, but they ignore me and keep sending me advertising, and my profile is on their Page (...)"

He accompanied his writing with an image of his profile in the virtual space of the UOC (campus.uoc.edu), in which his name and surname appeared and it was possible to read *"Espacio personal"* and under the legend *"when you have registered you will have access to this space"*. He also provided a copy of the following three emails, among which was a request to delete his data:

- A first email that the UOC Reception Service would have sent on 07/09/2021 to the claimant's address (...)@yahoo.com, entitled *"Ya has planificado el semestre"*, which contained the Welcome Bulletin.
- An e-mail that the claimant would have sent the next day, i.e. the 09/08/2021 from the address (...)@yahoo.com to the UOC data protection officer (dpd@uoc.edu), in which he requested the deletion of his data, as follows :

*"Delete all my data, please.
When they forced me to register to ask for information, they told me that they would cancel me if I didn't register, but they obviously lied to me.
In addition, it is not at all easy to know how to unsubscribe or that they stop sending advertising.*

THEY DELETED ALL MY DATA. Not only do they not send me anything, they DELETE MY DATA. As if it had never been in its systems (...)".

- A second email that the UOC Reception Service would have sent on 09/14/2021 to the same email address of the claimant ((...)*@yahoo.com*), entitled "Ya empieza el semestre", which contained another Welcome Newsletter.

In the last one, the person making the claim also stated that, in order not to receive any more emails from the UOC, on the same day 14/09/2021 he had changed his email address from his UOC profile, noting that as a personal address a email address of the same university.

2.- In accordance with article 5.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority, and article 117 of Royal Decree 1720/2007 , of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on the protection of personal data (hereinafter, RLOPD and LOPD, respectively), by means of office dated 08/09/2021 the claim was transferred to the FUOC, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The FUOC made allegations through a letter dated 10/27/2021, in which it set out, in summary and for what is now of interest, the following:

- Regarding the deletion request made by the person making the claim, the FUOC pointed out that:

"On September 8, 2021, an email with the sender identified as "(. ..)"(name) (...)@yahoo.com*, where he requests the erasure of his data and indicates that he requested information with the understanding that his data would be deleted if he did not register -se at the University.*

On September 13, 2021, the Data Protection Officer, while following the internal procedure for responding to the exercise of rights in the field of data protection, forwards the email to the fuoc_pd@uoc.edu mailbox, from 'where the requests to exercise rights in this matter are processed and are managed by the internal unit of the FUOC authorized for this purpose.

On September 14, 2021, the person making the claim reiterates to the Data Protection Delegate, from the email address (...)@yahoo.com*, their desire for their data to be deleted ."*

- With regard to the FUOC's response to the request submitted by the person making the claim, the university stated that, in accordance with article 12.6 of the RGPD, in

date 09/17/2019 sent an email to the claimant through the eEvidence email certification service, asking him to provide *"the additional information necessary to confirm his identity and complete the requested deletion process"*. The UOC provided a copy of the aforementioned email, in which the following was noted:

"(...) Having tried to remove your data from our systems, we have not been able to complete the deletion process since the email from the one who writes to us (...@yahoo.com) has not been located in our databases.

In order to be able to delete your data, we would appreciate it if you could provide us with any other information that you have provided during the registration process so that we can locate you and proceed with the deletion of your profile. We can locate you through your full number, your uoc.edu alias, phone number or other emails. Likewise, we ask you to check if any electronic mail redirection has been enabled in favor of the address (...@yahoo.com, as this could be a reason for the non-consistency of this data in our databases."

- Regarding the events following the FUOC's response, the university stated that the now claimant had not answered his mail, as follows:

"The email dated September 17, 2021 was never answered by the interested party and he also did not provide any other information by any other means that would allow us to confirm his identity; nor did he give us an answer in relation to the possibility of redirecting the email address he initially provided us to the one he uses to exercise his right of deletion (...@yahoo.com), despite having indicated to him the impossibility of completing the deletion procedure without the minimum information that would allow us to identify him.

(...) in the event that the person making the claim had enabled a redirection to the address (...@yahoo.com, the UOC would not be aware of it nor would it be able to verify it by its own means, nor would it be visible to the emails provided by the interested party, because there would be no trace of possible redirection (...)"

- Lastly, with regard to the actions carried out after the opening of the rights protection procedure, the FUOC added that, following the transfer of the letter of claim, which contained the name and surname and ID of the person making the claim, had been able to identify the person making the claim, which had allowed him to delete his profile and block his personal data:

"(...) we were able to proceed with the unequivocal identification of the person making the claim by means of his full name and ID and we were able to confirm the following:

1. *The existence of a profile in the name of (...), with ID no. (...)*

2. *That the contact details relating to the claimant were the email addresses (...)@gmail.com and (...)@(...).as, as well as the telephone numbers (...) and (...).*
3. *That this profile was created for the purpose of a request for information on specific studies, without any registration being completed.*
4. *That the UOC has proceeded to the deletion of this profile and the blocking of all personal data associated with it for the time necessary to attend to the legal responsibilities arising from its deletion."*

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 the RGPD regulates the right to deletion, and determines the following:

"1. The interested party has the right to obtain from the data controller, without undue delay, the deletion of the personal data affecting him. The person in charge must delete them without undue delay, when any of the following circumstances apply:

- a) *The 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, paragraph 1, letter a), or with article 9, paragraph 2, letter a), and this is not based on another legal basis.*
- c) *The interested party objects to the treatment, in accordance with article 21, paragraph 1, and there are no other legitimate reasons for the treatment or the interested party objects to the treatment, in accordance with the article 21, section 2.*
- d) *The personal data have been treated unlawfully.*
- e) *The personal data must be deleted, to fulfill a legal obligation established in the law of the Union or of the member states to which the data controller is subject.*

f) The personal data have been obtained in relation to the offer of information society services mentioned in article 8, paragraph 1.

2. If the person in charge of the treatment has made personal data public and, by virtue of the provisions of section 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the person in charge of processing must take reasonable measures, including technical measures, to inform those responsible who are processing this data of the data subject's request to delete any link to this personal data, or any existing copy or replica.

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

- a) *To exercise the right to freedom of expression and information.*

- b) To fulfill a legal obligation that requires the processing of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of conferred public powers to the responsible*
- c) For reasons of public interest in the field of public health, in accordance with article 9, section 2, letters h) ii), and section 3.*
- d) For archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right mentioned in paragraph 1 may make it impossible or hinder seriously the achievement of the objectives of this treatment, or*
- e) To formulate, exercise or defend claims."*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 and 6 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 (.. .)

6. Without prejudice to the provisions of article 11, when the person in charge of the treatment has reasonable doubts in relation to the identity of the natural person making the request referred to in articles 15 to 21, he may request that the information be provided additional information necessary to confirm the identity of the interested party."

Article 77 of the RGPD, entitled "Right to present a claim before a control authority", establishes the following:

"1. Without prejudice to any other administrative recourse or judicial action, any interested party has the right to submit a claim to a supervisory authority, in particular in the Member State in which he has his habitual residence, place of work or place of has produced the alleged infringement, if it considers that the processing of personal data affecting it infringes this Regulation.

2. The control authority before which the claim has been submitted must inform the claimant about the course and result of the claim, including the possibility of accessing judicial protection under the provisions of the article 78."

Article 12.4 of the RGPD establishes that:

"4. If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for his non action and the possibility of filing a claim before a control authority and of taking legal action."

For its part, article 16.1 of Law 32/2010 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 explained the applicable regulatory framework, first of all it should be pointed out that the person making the claim presented the letter of claim to the Authority before the expiry of the one-month period provided for in article 12.3 of the RGPD, of what the FUOC had to make the right of deletion effective. Specifically, as explained in the background, on 08/09/2021 the claimant sent an email to the UOC, by which he requested the deletion of his data, and six days later, on 14/09/2021, submitted a claim to this Authority, for disregarding the right to deletion. Considering that this one-month period ended on 07/10/2021, and that within that period the UOC had not expressly denied the request for deletion, the claimant should have waited for it to run out said term, on the understanding that the fact that after the deletion request the claimant continued to receive mail from the UOC, did not presuppose its denial.

So it must be concluded that the claim was presented prematurely.

Having said that, bearing in mind that, aside from the request for amendment, the FUOC did not give any other response to the claimant's request for deletion within the period of one month - as it should have done -, passed which the person making the claim could have presented the claim before the Authority and it would have been admitted, for procedural economy it is considered appropriate to make a statement on the substantive reason for the claim.

4.- From the documentation and the statements made by both parties in the procedure it appears that, on 09/08/2021, the person making the claim sent an email to the UOC, through which he requested that the university delete your personal data, including your profile in the UOC virtual space. And on 14/09/2021 he reiterated this request.

From this request it is inferred that the person making the claim will withdraw or revoke the consent they previously gave when they registered as a user, in order to request information about studies taught by this university.

Based on this premise, the assumption provided for in article 17.1.b) of the RGPD would apply, which recognizes the right of interested parties to obtain from the person in charge (here the FUOC) the deletion of their data when the treatment is based on your consent.

In the hearing phase, the FUOC provided a copy of an email that it would have sent on 09/17/2021 to the person claiming - to the same email address ((...@yahoo.com) that the claimant used to request the deletion of his personal data -, through which the UOC informed him that this email address did not appear in its databases, and that

consequently he could not identify her, and required him to provide the necessary information for that purpose.

Certainly, in the email that the claimant sent to the UOC on 08/09/2021, through which he requested the deletion of his data, only his name appeared ("(...)") and the electronic address "(...)@yahoo.com", which does not completely match any of the electronic addresses that the FUOC has stated were in its databases ("(...)@gmail.com" and (...)@(...).as). It should be pointed out that in the case of the first address indicated by the FUOC, there is a coincidence with the user name ("(...)"), but not with the domain (in the case of the UOC, the domain is "gmail.com", while the claimant's email was "yahoo.com").

These statements about the lack of coincidence of the electronic addresses are plausible, taking into account that in the mail that the FUOC sent to the claimant on 09/17/2021 - eight days after receiving the deletion request and before was aware of the processing of this guardianship procedure-, he was already informed of this precluding reason, and furthermore it was inferred the desire of the university to delete the claimant's personal data ("*...tras haber tratado de proceder a la baja of your data from our systems, we have not been able to complete the deletion procedure since the email from the one who writes to us ((...)@yahoo.com) has not been located in our data bases*").

On the other hand, it cannot be ruled out that the fact that on 09/14/2021 the same person had modified the email address of his UOC profile also contributed to the impossibility of identifying the person making the claim in order to 'avoid receiving more emails from the university.

As things stand, everything seems to indicate that the FUOC only had the name of the claimant, which information is clearly insufficient to identify him for the purpose of processing a request for deletion of personal data. In this regard, it should be noted that article 25 of Royal Decree 1720/2007, of December 21, which approved the Regulations for the deployment of the former LOPD, establishes that requests to exercise rights have to contain: "a) *Name and surname of the interested party; photocopy of the national identity document, or of the passport or other valid document that identifies him and, where appropriate, of the person representing him, or equivalent electronic instruments; as well as the document or electronic instrument certifying this representation. The use of an electronic signature identifying the affected person exempts from the presentation of photocopies of the DNI or equivalent document*".

On the other hand, the email that the UOC sent on 09/17/2021 to the person claimant is framed in the case provided for in article 12.6 of the RGPD, which provides that when "*the person responsible for the treatment has reasonable doubts in relation to the identity of the natural person making the request referred to in articles 15 a 21, may request that the additional information necessary to confirm the identity of the interested party be provided.*" With the addition that in this case, the impossibility of identifying her also prevented knowing the data that needed to be deleted.

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In the letter dated 10/27/2021 that it presented to the Authority, the FUOC stated that the person claiming did not reply to the email sent to him on 09/17/2021, where he was asked to provide information for identify it, a manifestation that is also plausible in view of the set of facts analyzed.

Finally, in the same letter the FUOC has stated that it has *"deleted this profile and blocked all personal data associated with it for the time necessary to attend to the legal responsibilities arising from its deletion"* .

It follows from these statements that the FUOC has considered the request for deletion of the person claiming, which makes it unnecessary to carry out any consideration on the provenance of the right of deletion exercised.

With regard to the blocking of the claimant's data that the FUOC indicates in its letter, it should be noted that this is an obligation of the data controller (in this case, the FUOC), provided for in article 32 of the LOPDGDD for cases in which personal data is rectified or deleted. According to the 2nd section of this precept: *"The blocking of the data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including the display , except for the provision of data to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities arising from the treatment and only for the term of prescription of these. After this period, the data must be destroyed"*. Likewise, section 3 of this article states that: *"Blocked data cannot be processed for any purpose other than that indicated in the previous section"*, which

would prevent, among others, processing the claimant's data for advertising purposes.

From the above it is concluded that the FUOC did not neglect the right of deletion exercised by the person claiming, since his lack of initial action cannot be attributed to said university but to the claimant here, who, even if it was involuntarily, did not provide the university with the information that allowed him to be identified - all and that she required it -, given that the right to deletion exercised is very personal, and that therefore the identification of the person requesting - now the claimant - was a necessary prerequisite to process their request for deletion, taking into account, in addition, that he has finally proceeded to delete the data of the person making the claim, once he was able to confirm his identity through the documentation that he presented with the claim before this Authority.

For all that has been exposed,

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RESOLVED

First.- Dismiss the guardianship claim made by Mr. (...) against the Foundation for the Open University of Catalonia.

Second.- Notify this resolution to the Foundation for the Open University of Catalonia and the person making the claim.

Third.- 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,