

File identification

Resolution of the rights protection procedure no. PT 111/2021, petition against the Department of Social Rights

Background

1. On 09/20/2021, the Catalan Data Protection Authority received a letter from the (. .) (henceforth, the claimant), for which he formulated, on behalf of his son, a claim for the alleged neglect of the right of access to personal data that he had previously exercised before the Department of Social Rights (henceforth, DS Department).

The claimant provided various documentation relating to the exercise of this right, specifically, the following:

- Electronic application (reference (...)) presented by the claimant here through the generic processor , dated 07/31/2021, and addressed to the DS Department. In the request he requested:

REQUEST FOR ACCESS TO PUBLIC INFORMATION WITHIN THE FIELD OF ITS FUNCTIONS OF THE DEPARTMENT OF SOCIAL RIGHTS IN ALL ITS COMPETENT AREA IN RELATION TO (...)IN RELATION TO ITS SERVICES RECOGNIZED BY ADMINISTRATIVE RESOLUTION, RESIDENCE OF ESTACIO DE MAR OF THE PERE FOUNDATION MEDJANS, AND ANDRADE OCCUPATIONAL THERAPY DAY CENTER. AND IN EVERYTHING THAT CONCERNS YOUR RE-ENTRY AND THOSE THAT HAVE BEEN ISSUED IN A GENERAL MANNER. WITHIN THE SCOPE OF THE EXERCISE OF ITS FUNCTIONS OF THE CORRESPONDING ADMINISTRATIVE BODY IN RELATION TO (...) IF YOU PROVIDE ME A COPY OF ALL ELECTRONIC MAILS, WHATSAPP MESSAGES AND ALL TYPES OF TELEPHONE MESSAGE SERVICES ISSUED BY THE FORMER DEPARTMENT OF LABOR, MATTERS SOCIAL AND FAMILY (DTASF), AND THE CURRENT DEPARTMENT OF SOCIAL RIGHTS, BETWEEN MARCH 12, 2020, AND JULY 31, 2021 AND THOSE THAT ARE ISSUED AFTER 07/31/2021.

- The document " *Communication dated 08/05/2021, from the General Directorate of Personal Autonomy and Disability , extending the deadline to resolve the request for access to public information, with processing code (...) (...)*".

In this respect, the Department of DS informs that the deadline for solving the request is extended by 15 calendar days.

- The " *Resolution dated 09/15/2021, whereby the request for access to public information with processing code (...) (...) is not accepted.*"

2. On 25/10/2021, the claim was transferred to the Department of Social Rights so that within 15 days it could formulate the allegations it deemed relevant.

3. The Department made allegations in a letter dated 11/17/2021, in which it set out, in summary, the following:

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- That " On 07/31/2021, the claimant submits a request for access to public information addressed to the Department, in accordance with Law 19/2014, of December 29, on transparency, access to public information and good government."
- That "On 08/05/2021 the extension of the application is notified, and on 09/15/2021 the Resolution of inadmissibility of the application is notified and it is indicated that:

"The request for access to public information presented is not admissible since there is an administrative procedure pending regarding the rights and benefits of Law 39/2006, of December 14, on the Promotion of Personal Autonomy and Attention to Persons in dependency situation, requested in number and representation of his son.

The information requested refers to an administrative procedure and files, in which the applicant has the status of interested person, and those interested in an administrative procedure have a more intense or strengthened right to access the documentation included in said procedure.

In the files that are still in process, the first additional provision of Law 19/2014, in its point 1, establishes that: The access of the interested parties to the documents of the administrative procedures in process is governed by what determines the legislation on legal regime and administrative procedure.

And, with a general character, article 53.1.a) of Law 39/2015, of the Common Administrative Procedure of Public Administrations, establishes the right of a person who has the status of an interested party in an administrative procedure to know, at any time, the status of the processing of the procedures in which they have the status of interested parties."

- That "It is also indicated:
" Transfer this request to the competent bodies in the processing and resolution of the administrative procedure that is currently being processed and in which he holds the status of an interested person so that they resolve it in accordance with the provisions of the common administrative procedure regulations. "
- That " On 12/11/2021 the DGAPD informs the person claiming:
" Next, we respond to the two petitions transferred to the General Directorate of Personal Autonomy and Disability, and we inform you that the email messages that are part of the file to which you refer in your request are already in their power and the rest of the communications have an internal character, without transcendence or relation to the substance of the matter, and are not the subject of treatment."
- That " *The denial of the request for access to public information has been based on the first additional provision of Law 19/2014 ."*

- That "E-mails can form, and are often part of, formalities and procedures of the documents that make up some files. In the case in question, the documents requested by the claimant, in accordance with article 70.4 LAPCAP, are considered to be of an auxiliary or supporting nature and, therefore, do not form part of the administrative file requested by the "access and are not subject to treatment."

- That "(...) this complaint procedure does not have its cause in a request for the right of access to your data, in accordance with the provisions of article 15 of the General Data Protection Regulation (RGPD) and article 13 of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (LOPDGDD), but in the request for access to public information, already resolved and notified to the person claiming, therefore, we indicate that it is not registered in the Department (apart from those indicated above and which have already been resolved and notified - a reference that must be understood to be made to two different petitions of the claimant here against the Department of DS and which are not the subject of this procedure-) any other request for the exercise of rights made by the person making the claim."

The entity provided various documentation linked to its allegations.

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 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 thereof (in hereinafter, 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 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.”*

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 requests. 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, LOPDGD), determines the following, also in relation to the right to access:

"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.

(...)"

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 set out the applicable regulatory framework, it is then necessary to analyze whether the DS Department resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim.

In this regard, it is certified that on 07/31/2021 had entry to the entity, a writing from the person claiming through which he exercised the right of access to his son's personal data. It is worth saying that this term can be extended by another 2 months (3 in total), taking into account the complexity or number of requests.

As a first consideration, it is necessary to refer to the fact that the DS Department issued, on 09/15/2021, a resolution linked to the request submitted by the claimant here. However, this resolution cannot be considered to comply with the right of the person who submits the request for the right of access, to receive a response from the data controller, from a data protection point of view.

In this regard, it should be noted that when the entity resolves the request presented by the claimant here, from the first moment, it grants him the nature of a request for the right of access to information provided for in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereinafter, LTC). And it is only under the prism of the LTC that, on 09/15/2021, the entity rejects access to the information requested by the claimant here. In relation to this, he argues that, in accordance with the provisions of

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additional provision 1a of the LTC, the request must be processed as a right of access to the file provided for in article 53.1.a) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereafter, LPAC) , and orders its transfer to the body responsible for its processing so that it becomes effective right, in accordance with the regulations of the common administrative procedure.

Well, in fact, as stated in the resolution dated 09/15/2021, the request for information made by the claimant here would fit within the right of access to the file that every person who holds the status of 'interested in such file, recognized in the administrative procedure legislation (art. 26 of Law 26/2010 and 53.1.a LPAC). This right of access allows the interested person to access the documents that are part of the file in which they have such a condition, and not only their data and/or personal information.

However, it should be noted that the request dated 31/07/2021 is also clearly a request to exercise the right of access regulated in Article 15 of the RGPD. In this regard, it should be noted that, despite the fact that the wording of the person making the claim in the request referred to a " *PUBLIC INFORMATION ACCESS REQUEST*", which could have induced the DS Department to discard it its treatment as a GDPR right of access, the truth is that, from the point of view of the right of access to your own data (or that of your representative) that regulates the personal data protection legislation, the determination as to whether or not what is being requested fits the aforementioned right of access does not depend on the qualification that the interested party can make in his writing, but on the claim that is specifically made. In this regard, taking into account the claim made by the claimant here - access to a series of emails and mobile phone messages which supposedly contained his personal data (or those of his representative) -, it is necessary to grant the request dated 31/07/2021 the nature of an exercise of the right of access of the RGPD. This, without prejudice to the possibility that this right may act concurrently with the right provided for in article 53.1.a) LPAC.

Having said that, it should be noted that following the resolution dated 09/15/2021, the DS Department is transferring the request internally to the competent body to resolve it from the perspective of a right of access to the file provided for in article 53.1.a) of the LPAC (at the General Directorate of Personal Autonomy and Disability). In this respect, it is certified that on 12/11/2021 the said General Directorate responded to the claimant on the basis of the common administrative procedure law. In this sense, he informs you that " *the electronic mail messages that are part of the file to which he refers in his request are already in his power and the rest of the communications are internal in nature, without transcendence or relation to the substance of the matter, and They are not the subject of treatment.*"

Therefore, although, in effect, the entity ended up giving two answers to the request submitted on 07/31/2021, the fact is that on neither occasion did it give a particular answer to the request legality under the prism of data protection regulations, thus leaving the request without a formal response in this regard. This notwithstanding what will be said below regarding the substance of the claim.

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4. Once the above has been established, it is necessary to analyze the merits 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 usually tender the person claiming.

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 are found in article 23 of the RGPD, which must be provided for "*through measures legislative*" (art. 23.1 RGPD).

In this regard, it should be noted that during the hearing procedure granted to the claimed entity, it did not invoke any of the cases established in article 23 of the RGPD.

However, the claimed entity, relying on article 70 of the LPAC, states that the e-mails or WhatsApp messages to which the person making the claim is requesting access would not properly form part of the administrative file, since they have an "*auxiliary or supporting character*", and therefore access would be denied. In this regard, it is considered that this reference must be understood as being made by that group of emails that the entity, in its response dated 11/12/2021 to the claimant here, denies access to, arguing that they are of communications that "*have an internal character, without transcendence or relation to the substance of the matter*". This limitation is the reason for a complaint that the claimant here makes before this Authority on the same date that the response is received.

Well, regarding this, it is necessary to specify that the right of access to personal data provided for in article 15 of the RGPD has a different scope and nature than the right of any person who holds the status of interested party to access to the documentation that forms part of an ongoing procedure in which it holds such status (article 53.1.a LPAC). Therefore, regardless of whether or not you have the status of an interested person in an ongoing procedure, or whether or not the e-mails are part of the administrative file under the terms of article 70 LPAC, every natural person has the right to access the personal information that is being processed about herself or those people she represents, in accordance with article 15 RGPD.

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What Article 15 of the RGPD recognizes is the right of every person to access the information that concerns them and that is the subject of treatment by the data controller, as a manifestation of the fundamental right to data protection (article 18.4 CE), by which every person is guaranteed control over their data. In accordance with this, the right of access recognized in article 15 of the RGPD entails that the person making the claim here has the right to access, in general, the information that may eventually be contained in the emails sent by the Departments of DS, as long as the said documents contain data relating to the person making the claim or their child (represented). All this, without prejudice to the exceptions that may derive from rules with the status of law in accordance with article 23 of the RGPD, and the limitations that may derive from the existence of rights of third parties (art. 15.4 GDPR).

At this point, it is necessary to make a point about the fact that from the answer given by the DS Department on 12/11/2021, it can be inferred that the entity would have only denied access to those emails that it considers would have a auxiliary or support character ("*tienen carácter interno, sin transcendencia ni relación con el fondo del asunto*") , but he would have delivered those he would have considered closely linked to decision-making in the corresponding procedures ("*los mensajes de correo electrónico that form part of the file to which he refers in his request and are acting in his power*").

Well, in this regard, mention should be made of article 10 of Law 12/2007, of 11 October, on social services, which provides that "*in the field of social services, all people have the right to claim and receive truthful information about the services* " and, in particular, letter d) provides for the right to:

) Access their individual records, in all that does not violate the right to privacy of third parties, and obtain copies thereof, in accordance with what is established by law. This right does not include, however, access to the annotations that the professional staff have made in the file."

Obviously not every annotation can be included in this exception. A broad interpretation of this concept would lead to leaving the right of access empty of content. For this reason, as this Authority has already highlighted in opinion CNS 58/2021 "*only those notes can be considered included whose disclosure could end up harming the objective of the service provided and, ultimately, the interest of the same affected person. For these purposes, whenever possible, it will be necessary to take into account the opinion of the professionals who made the notes in order to be able to make this assessment* .

Therefore, to the extent that the sectoral regulations provide for a restriction on access to the notes of professional staff contained in the files, it will be necessary to limit access to this information, as long as and when the conditions indicated above are met, regardless of the format in which is contained.

In accordance with the above, it is considered that from the perspective of the right of access regulated in the RGPD and the rest of the applicable personal data protection regulations, it is necessary to recognize the right of access of the herein claimant to e-mails that contain your or your child's personal data. This, without prejudice to the fact that the entity, before giving access to the rest of the emails, may apply, where appropriate, the limitations that may derive

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from articles 15.4 and 23 of the RGPD, and in particular reference to the limit provided for in Law 12/2007, of October 11, regarding those communications that contain annotations by professional staff referring to the case that is the subject of a social services file, access to which could end up harming the purpose of the service loan and the interest of the affected person.

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, the person in charge of the file must be required so that within 10 days 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 (...) against the DS Department.
2. Request the Department of DS so that, within 10 counting 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 manner indicated in the 5th legal basis .Once the right of access has taken effect, in the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the DS Department 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,