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In this resolution, the identity of the claimed entity has been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the claimed entity, the physical persons affected could also be identified.

File identification

Resolution of the rights protection procedure no. PT 125/2021, relating to the Regional Council (...).

Background

1. On 10/22/2021, the Catalan Data Protection Authority received a letter from Ms. (...) (hereafter, the person making the claim), 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 Regional Council (...) (hereafter, claimed entity).

The claimant provided various documentation relating to the exercise of this right, from which it was inferred that on 07/29/2021 he submitted an instance electronically to the claimed entity, through which he requested "*A copy of my entire file, including notes and other documents that may be contained in it*", and that in response to said request, the claimed entity issued a decree, dated 09/22/2021, appraising the request of access, through which he agreed to give him various documentation that appeared in the Basic Social Services file no. (...). In section 1 of the dispositive part or *Resolution* of this decree, the scope of access was specified in the following terms: "*FACILITATE documentation that does not contain personal data or sensitive data*". Fact 3 of this decree contained a list of the documentation that would have been delivered to the claimant.

In the letter of complaint that he subsequently presented to the GAIP on 18/10/2021 - and this entity forwarded to the Authority -, the person making the claim stated, as grounds for complaint, that the claimed entity had provided him with the documentation late, and that he had not provided all the requested documentation. With regard to the omitted documentation, the claimant pointed out that the documentation provided corresponded to documents issued only by entities other than the entity claimed. Among the documentation that he considered to have been omitted, he mentioned the documentation or information generated following the presentation to the claimed entity of a letter of complaint dated 06/26/2018, as well as the information that the entity's staff claimed would have collected in the successive visits that the claimant had made to this entity.

2. On 10/11/2021, the claim was transferred to the claimed entity so that within 15 days it could formulate the allegations it deemed relevant.

3. The claimed entity made allegations in a letter dated 11/30/2021, accompanied by a report from the Social Welfare coordinator, in which it set out, in summary, the following:

- Regarding the late delivery of the requested documentation and the documentation already delivered, which:

"Following the request made via telematic request to the County Council (...), dated July 29, 2021, in which Mrs. (...) requested a copy of her file, it is agreed to cite to the lady in order to review the file and specify the documentation required (...).

Likewise, since it was a very extensive file (...) it was considered that it would be more understandable to specify what documentation the lady specifically required.

The appointment system was the usual one in the Basic Area of Social Services (...), via email, in which the lady stated that she could not attend, although she was offered several days (it is accompanied by document 1).

After refusing the previous appointments, on August 25 at 8.30 a.m. she was called again to hand over the documentation in paper format, but the lady did not come to pick it up either (document 2 is attached) .

On August 29, he replied by e-mail to his reference professional in basic social services, who still has no confirmation of the answer and who has not received any notification linked to his request.

On September 22, 2021, the request was answered electronically and the following documentation was attached (document 3 is attached):

- *Resolution issued by the Secretary General of the Department of Work, Social Affairs and Families, recognizing the right to receive the Guaranteed Citizen's Income (RGC).*
- *Requirement of the Department of Work, Social Affairs and Families, of supporting documentation for the review of your RGC file (...).*
- *Application to the housing board for assessment of economic and social emergency situations in Catalonia.*
- *Resolution of the Department of Work, Social Affairs and Families of suspension of the Citizen's Guaranteed Income (RGC).*
- *Certificate issued by the head of the Labor Insertion Programs Service of the General Directorate of Social Economy, The Third Sector and Cooperatives, as a beneficiary of the RGC benefit.*
- *Resolution of the Department of Work, Social Affairs and Families ending the suspension of the RGC.*
- *Office, report and exit log of the response of the Basic Area of Social Services (...) to the recommendation of the Grievance Ombudsman.*

On September 25, we have evidence that the lady received and accepted the documentation electronically (document 4 is attached) (...)"

- With regard to the selection of the documentation delivered to the claimant, the claimed entity stated that: *"(...) bearing in mind that it was not possible to specify with the interested person what specific documentation was required, it was choose to hand over the official communications linked to the Citizen's Guaranteed Income and Emergency Board procedures and closure of the Grievance Ombudsman's file."*

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- With regard to the documentation that the person making the claim considered was not read had delivered, the claimed entity set out several reasons why it had denied access, which are analyzed in the 4th legal basis.

The claimed entity accompanied the documentation mentioned in the transcribed report.

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 submitted, the affected person provided a copy of the application submitted to the claimed entity on 29/07/2021, in which, although it did not indicate that it exercised the right of access to the his data, he did state that what he was asking for was to obtain: *"A copy of my entire file, including notes and other documents that may be included"*.

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 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 these (hereafter, the RGPD) or the personal data protection regulations. The determination as to whether or not what is requested fits within the aforementioned right of access does not depend on the qualification that the interested party makes of his writing or of the precepts he cites, but of the claim that is specifically formulated.

As noted, on 07/29/2021 the person claiming here requested a copy of his file, and on 08/13/2021 and 08/29/2021 he sent two emails to his social worker, reiterating the request for access to his file (*"I just want the file, send it to me by mail and that's it. No interview necessary"*). Although in the request for access he did not specify which administrative file he was referring to, the fact that he was a user of the Basic Area of Social Services (...(...)) managed by the claimed County Council, allows understand that he was referring to the file of basic social services. In fact, this is how the contested County Council understood it, according to the resolution by which it responded to the access request, in which it pointed out

that: *"On July 29, 2021, the instance presented by Mrs. (...)..., through which he makes a request requesting that all the documentation that forms part of his Basic Social Services file be handed over to him (...)"*.

In accordance with this premise, the exercise of the right of access in this case is covered by the data protection regulations, in accordance with article 24.3 of Law 19/2014, of 29

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of December 2014, on transparency, access to information and good governance (LTC), which provides that: *"Requests for access to public information that refer only to the applicant's personal data have been to resolve in accordance with the regulation of the right of access established by the 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 15.1 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 (...).

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, establishes that: *"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. 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 claimed entity 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 07/29/2021 a letter from the person claiming was entered in the register of the claimed entity, through which he requested access to his file.

In accordance with the provisions of article 12.3 of the RGPD, the claimed entity had to resolve and notify the access request within a maximum period of one month from the date of receipt of the request . In accordance with the applicable precepts (article 21 and 40.4 of the

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of Law 39/2015, of October 1, of the common administrative procedure of public administrations - henceforth, LPAC-, and 41.7 of Law 26/2010), the deadline for solving and notifying the access request that the claimant presented ended on 08/28/2021. But the claimed entity did not respond and did not deliver the documentation to the claimant until 09/25/2021.

As justification for this delay in responding, the claimed entity has argued that the request was for a very extensive file, and that the claimant had been summoned *"in order to conduct a hearing file and specify the required documentation"*. Certainly, article 13.1 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD)

provides in the second paragraph that: *"When the person in charge processes a large amount of data relating to the affected person and is exercising his right of access without specifying whether it refers to all or part of the data, the person in charge may request it, before providing the information, that the affected person specifies the data or processing activities to which the request refers"*. However, it must be noted that in the emails that the claimed entity sent to the claimant on 08/10/21 and 08/13/21, and that it has presented as part of this claim, it did not specify this reason of requirement, but limited himself to pointing out that: *"...we would like to hold an interview with you, at the root of the instance entered in the CCAC2, and "...to give you an answer to the instance"*. This would explain the response emails from the person making the claim, in which he stated: *"(...)what is the interview for? We already did the one for the housing board" (mail dated 11/08/2021), and "I just want the file, send it to me by mail and that's it.*

No interview necessary" (mail dated 08/13/2021). So that the eventual delay in the response would not be attributable to the person making the claim. In any case, article 12.3 of the RGPD provides for the possibility that the data controller may extend the deadline by one month for reasons of complexity and the number of requests. But the precept requires that the interested party be informed of said extensions within one month, and the Authority is not aware that the claimed entity has done so.

On the other hand, given that the claimant submitted the request for access electronically and had requested to receive the notifications electronically, the claimed entity was obliged to give access to the data in electronic format, and not compel it to go to the headquarters of the claimed entity to collect the information in paper format. This follows from what is provided for in article 15.3 of the RGPD, in which it is pointed out that: *"when the interested party submits 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"*. This electronic processing obligation also derives from what is provided for in articles 14 LPAC and 24 of Law 26/2010.

In accordance with the above, it must be concluded that the reasons put forward by the claimed entity do not justify this administration giving access to the claimant once the one-month resolution period provided for that purpose has been exceeded, for which it can be concluded that the claimed entity resolved extemporaneously the request to exercise the right of access of the person making the claim. This notwithstanding what will be said below regarding the substance of the claim.

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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.

In this regard, it is certified that on 09/22/2021 the claimed entity responded to the claimant's request to exercise the right of access, and on 09/25/2021 it was sent to him electronically several documents from his file of basic social services, although the person in his request explicitly asked for "A copy of my entire file, including notes and other documents that may be included".

Faced with this clear request for access to the entire file, the claimed entity admits that it chose unilaterally to hand over only part of the documentation contained in the file, as follows: "(...) bearing in mind considering that it was not possible to specify with the interested person what specific documentation was required, it was decided to deliver to him the official communications linked to the procedures for the Guaranteed Income of Citizens and the Emergency Board and the closing of the file of the Ombudsman.

Well, this answer does not comply with the provisions of article 15 of the RGD. Based on the premise that from the statements made by the claimed entity it cannot be inferred that there is a reason for denial of access provided for in article 23 of the RGD, in the face of the request for access from the claimant referred to the entire file, the claimed entity should have provided her with a copy of the entire file, in accordance with article 15.3 of the RGD, which provides that the data controller - the Complained County Council must deliver a copy of the personal data subject to treatment, in this case, of the documents in the administrative file that contain personal data of the person making the claim.

However, apart from the reasons for denying access provided for in article 23 of the RGD, it is necessary to take into account whether there are other limits to access, which are provided for in article 15.4 of the RGD and the sectoral regulations, both with regard to the own data and the data of third parties that may appear in the file of basic social services. Access to documentation or to is analyzed below specific information to which both the claimant and the claimed entity refer in their respective writings (4.1, 4.2, 4.3 and 4.4), and finally the limits to access when data from third parties is used (4.5) .

4.1 Regarding the professionals' notes.

With regard to the observations and comments of the professionals or the results of the interviews carried out by the social worker assigned to the person making the claim, which may have been collected through annotations in the file or in the corresponding computer application, it is necessary to take into account the sectoral regulations, specifically, Law 12/2007, of 11 October, on social services, which provides in article 10 that "in the field of social services all people have the right to claim and receive truthful information about the services" and, specifically, letter b) provides for the right to:

"d) Access their individual files, in everything 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 professional staff have made in the file."

The indicated precept foresees a restriction on access to the notes of the professional staff contained in the records of social services, so as a general rule, access to this information should be limited, regardless of the format in which it is contained

However, it must be pointed out that not all notes made by social service professionals are excluded from access under this provision, given that a broad interpretation of the concept "notes" would lead to emptying the right of access

For this reason, it is necessary to interpret that the annotations of the professionals who would be excluded from access, would be those whose content, if accessed, would harm the objective of the service provided, and in short, the interest of the person himself affected. For these purposes, whenever possible, it is necessary to take into account the opinion of the professionals who made the notes in order to make this assessment.

On the other hand, it would also be necessary to recognize the right of access to those notes that reflect, for example, the content of an interview held by the social services professional with the user interviewed -here the claimant-, especially considering that the interview constitutes a usual action in social intervention.

Therefore, in accordance with the above, the claimed entity must provide the person making the claim, if there is one, a copy of the notes that reflect the content of the interviews carried out by the professional assigned to that person, as well such as those notes to which the claimant's access would not harm the objective of the service provided and, in short, the interest of the person making the claim.

4.2. Regarding the complaint dated 26/06/2018 submitted by the person making the claim and the documentation derived from its processing.

With regard to the right of access to this information or documentation, the claimed entity has stated as justification for the denial of access, that it was documentation that the claimant already had.

This reason does not fit into any of the cases of denial of access provided for in articles 15.4 RGPD ("*...the rights and freedoms of others*") and 23 RGPD, nor in the sectoral regulations. Therefore, even if the claimant already had this documentation at the time she made her request for access, she should have been given it again, including her letter of complaint.

Another thing is that the claimant had requested access to the same documentation within the six-month interval, so, if that were the case, the request could be considered repetitive -unless there was a legitimate cause- (article 13.3 of the LOPDGDD), and in this case article 14.5 RGPD enables the person in charge to charge a reasonable fee,

or to refuse to act. But the claimed entity has not invoked this circumstance, and moreover, from the statements made by the person claiming it does not appear that he has the documentation derived from his complaint (*"There is no record of my complaint in the previous social worker who did not attend to my problems or communicate them to the institution (or what happened with this issue, date of complaint 26/06/18)"*).

According to the above, the denial of access to this information by the claimed entity was not in accordance with the law.

4.3. Regarding internal reports.

Following its letter, the claimed entity stated that: *"Several internal reports drawn up as part of the social intervention were not delivered because they were considered to be part of communications between administrations: City Council of (...), Generalitat de Catalunya for the management of social intervention (art. 70.4 of the Law on the common administrative procedure of public administrations)."*

With the mention of article 70.4 of the LPAC, the claimed entity would point out that it did not give the claimant a copy of several internal reports, considering that these are not part of the file of basic social services, with respect to which the access request was made.

Certainly, article 70.4 of the LPAC indicates that the information that is auxiliary or that serves to support the administrative decision, such as internal reports or between administrative bodies or entities, is not part of the administrative file, as follows :

"4. Information that has an auxiliary or supporting character, such as that contained in applications, files and computer databases, notes, drafts, opinions, summaries, communications and internal reports or between administrative bodies or entities, will not form part of the administrative file, as well as the value judgments issued by the Public Administrations, unless they are reports, mandatory and optional, requested before the administrative resolution that puts an end to the procedure."

As this Authority pointed out in the opinion CNS 58/2021 published on the Authority's website: *"it is not up to this Authority to pronounce on the information that must be part of the administrative files, since it is the competent public administration who determines, in accordance with the administrative and sectoral rules of procedure that are applicable, the documentation or information that must be included, although it must be borne in mind that there are judicial pronouncements according to which a restrictive application of the provision of article 70.4 of the LPAC, in the sense of limiting as much as possible the information that is considered to be auxiliary or supporting (Order of the Chamber of Administrative Disputes of the Supreme Court of April 20, 2017 falling in the appeal number 458/2016)."*

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But it should be emphasized that article 70.4 of the LPAC in fine, foresees as an exception to the above, that mandatory and optional reports requested before the resolution that puts an end do form part of the administrative file to the procedure. Therefore, at the outset, the person claimed would have the right to access these reports.

Having said that, one cannot overlook the broad terms in which the person making the claim formulated the request for access, as well as the fact that ultimately this person could access - by virtue of the right of access of the RGPD- to the personal data contained in the reports of social services, even if they are not part of the administrative record of social services in the strict sense. For this reason, it is necessary to recognize the claimant's right of access to social service reports if they contain information about him.

4.4. Regarding the claim presented to the Grievance Ombudsman.

In the last one, the claimed entity points out that it also did not deliver to the claimant *"all the reports and demands linked to a claim before the Ombudsman because the documentation generated is not part of the file linked to social care , but of another type of administrative file, as well as to deal with internal reports between administrative bodies (art. 70. 4 of the Law on the common administrative procedure of public administrations). Only the closing document was delivered."* With regard to this closing document, in the decree of 09/22/2021 it is indicated that the following would have been delivered: *"Office, report and exit record of the response of the Basic Area of Social Services Alt Camp to the recommendation of the Grievance Ombudsman"*.

Certainly, the person making the claim formulated the request for access to a file without specifying which one it was. As has been pointed out, the fact that she was a user of the Basic Area of Social Services (...), which is managed by the contested County Council, and that the e-mails where she reiterated the access request were addressed to the social worker of the Adult Unit of the Social Welfare Area of this County Council, lead to consider that the request for access was for Basic Social Services file no. (...), and this is also how the complained County Council understood it. On the other hand, from the content of the letter of complaint presented to the Authority it does not appear that the reason for the complaint obeys the omission of this documentation

From this point of view, the reason given by the claimed entity for denying access to this documentation - based on the consideration that it is not part of the Basic Social Services file - would be in accordance with the law.

However, we cannot overlook the fact that the claim that the claimant presented to the Ombudsman, and which is part of another file (no. (...)) is closely linked to the 'file of Basic Social Services (no. (...))', as can be seen from the report dated 23/06/2021 issued on the basis of the recommendation of the Ombudsman - and submitted to the Authority -, in which it is made clear that, following the claim presented by the claimant about the social intervention received at the claimed county Council, this Council had reopened the Basic Social Services file in March 2021, and had resumed the social intervention towards the

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claimant person The fact that the Regional Council itself, despite the reason given for refusal, gave the claimant part of the documents from this other file would be indicative of this link.

Based on this connection between both files, as well as the fact that ultimately this person could access - by virtue of the right of access - the documentation of this file (apart from the exceptions noted or that are appropriate), it is necessary to recognize the claimant's right of access to the documents appearing in this file (no. (...)) that have not yet been delivered to the claimant.

4.5. About the personal data of third parties.

Finally, with regard to the information of third parties that may eventually be included in the file of basic social services of the person making the claim, it must be taken into account that, by virtue of the exercise of the right of access provided for in article 15 of the RGPD, the Regional Council must provide the person making the claim with access to information regarding the origin of their data when this has not been obtained from the claimant (art. 15.1.g RGPD), as well as information on recipients or categories of recipients (art. 15.1.c RGPD). And this information (origin and recipients) may contain data from third parties.

With respect to the claimant's right of access to this information referring to third parties, the following limits must be taken into account:

- On the one hand, article 15.4 RGPD establishes that the right to obtain a copy of the personal data subject to treatment *"will not negatively affect the rights and freedoms of others"*. According to this precept, if by virtue of the exercise of the right of access it is necessary to provide the claimant with information about third parties (who would have sent information to the Regional Council or to whom it would have been sent), it will be necessary to make in each case a balance between your right to access this information and the rights and freedoms of third parties, including the right to the protection of your personal data.

On the other hand, article 10.d) of Law 12/2007 recognizes the right of users of social services to access their individual files *"in everything that does not violate the right to privacy of third parties"*. So things are, if by virtue of the exercise of the right of access it is necessary to provide the claimant with information about third parties (who would have sent information to the Regional Council or to whom it would have been sent), it will not be possible to provide these third party data if this violates your right to privacy.

In accordance with the above, paragraph 1 of the dispositive part or *Resolution* of the decree dated 09/22/2021, which specified the scope of access in the following terms, is not in accordance with the law: *"FACILITATE documentation that does not contain personal data or sensitive data"*, referring to data from third parties. It will be necessary, as pointed out by in the event that the information provided to the person making the claim (on the origin of their data available to the Regional Council, and on the recipients of the same) refers to personal data of third parties, limit access to

these data only when they refer to your privacy (which, as has been said, does not seem to be the case), or when, once the aforementioned weighting of rights is done, it is considered that the right or rights of these third parties prevail over the right of access of the claimant.

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, deliver to the person claiming a copy of the following documentation, with the limits noted in legal basis 4.5:

- 5.1. The complaint dated 06/26/2018 submitted by the person making the claim and all the documentation derived from its processing.
- 5.2. The rest of the documentation not provided to the person making the claim (even if it is not properly part of their basic social services file), specifically:
 - 5.2.1. The notes that reflect the content of the interviews carried out by the professional assigned to this person, as well as those notes to which access by the claimant would not harm the objective of the service provided or, ultimately, the interest of the claimant (FD 4.1).
 - 5.2.2. Social service reports issued on the claimant (FD 4.3).
- 5.3. The undelivered documentation that you have regarding the claim that the person here claiming filed before the Síndic de Greuges (no. (...), except for the documentation in respect of which there is a legal reason for denying access, in which case the reason for denial must be justified 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.** Partially estimate the guardianship claim made by Mrs. (...) against the County Council (...), and by virtue of this, declare extemporaneous the decree dated 09/22/2021 of the aforementioned Council, and recognize the claimant's right of access to the information indicated in the 4th legal basis.
- 2.** Request the Regional Council (...) so that within 10 days from the day after the notification of this resolution it makes the right of access effective exercised by the claimant, in the manner indicated in the 5th legal basis. one

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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 County 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,