

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

## File identification

Resolution of the rights protection procedure no. PT 133/2021, urged by Mr. (...) versus the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 05/11/2021 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right to delete personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The person making the claim certified that, by means of a letter dated 23/08/2021 -with entry registration of that same date-, he had requested from the DGP the deletion of his personal data that appeared in the files of the 'area of information systems of the Generalitat Police (SIP). Specifically, the claimant requested the deletion of the data relating to police proceedings no. (...) (for the crime of theft with force in things), and for these purposes, he provided, among others, the following documentation: copy of the judicial certification of the state of execution no. (...) (which led to the police proceedings (...), issued for the purpose of deleting criminal and police records

(15/09/2021), and a copy of the evidence of the lack of criminal record carried out at the Ministry of Justice's Central Registry of Criminals (07/10/2021).

2.- By order dated 11/10/2021, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The DGP made allegations by means of a letter dated 11/16/2021 -which was entered in the APDCAT on 11/19/2021-, basically setting out the following:

• That on 08/23/2021, the person claiming requested the deletion of personal data relating to police proceedings no. (...) (for the crime of theft with force in things), and provided supporting documentation.

- That on 09/11/2021, the Director General of the Police issues a resolution in which he agrees to delete the personal data recorded in the files of the SIP area requested by the person making the claim.

- That the above-mentioned resolution and the service of notification had been sent to the indicated address by the person claiming for notification purposes.

Likewise, the DGP provided the following documentation: copy of the deletion request submitted by the claimant to the DGP registry on 08/23/2021, copy of the supporting documentation provided, copy of the issued resolution

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(09/11/2021), and a copy of the notification - without the date of departure registration - but did not provide the document certifying that the notification of the estimated resolution to the claimant.

#### 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.- The personal data subject to processing by the DGP referred to in this claim relating to the request to exercise the right of deletion submitted to the DGP registry on 08/23/2021, fall within the scope of application of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions (LO 7/2021), which entered into force on 06/16/2021.

3.- In accordance with the above, it is necessary to refer to article 23 of LO 7/2021, which in relation to the right of deletion provides the following:

*"2. The person responsible for the treatment, on his own initiative or as a consequence of the exercise of the right of deletion of the interested party, will delete the personal data without undue delay and, in any case, within a maximum period of one month from the date of knowledge, when the treatment infringes articles 6, 11 or 13, or when personal data must be deleted by virtue of a legal obligation to which it is subject.*

*3. Instead of proceeding with the deletion, the controller will limit the processing of personal data when any of the following circumstances occur:*

*a) The interested party doubts the accuracy of the personal data and its accuracy or inaccuracy cannot be determined.*

*b) Personal data must be kept for evidentiary purposes.*

*When the treatment is limited by virtue of letter a), the person responsible for the treatment will inform the interested party before lifting the limitation of the treatment".*

*"(...) 5. When the personal data have been rectified or deleted or the treatment has been limited, the person responsible for the treatment will notify the recipients, who must rectify or delete the personal data that are under their responsibility or limit their treatment".*

Likewise, it should be borne in mind that in the event of restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment, it is necessary to refer to articles 24 and 25 of LO 7/2021, which determine what:

*"Article 24. Restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment.*

*1. The controller may postpone, limit or omit the information referred to in article 21.2, as well as deny, in whole or in part, requests to exercise the rights contemplated in articles 22 and 23, provided that, having taking into account the fundamental rights and the legitimate interests of the affected person, it is necessary and proportionate to achieve the following ends: a) Prevent inquiries, investigations or judicial proceedings from being obstructed. b) Avoid causing damage to the prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions. c) Protect public safety. d) Protect National Security. e) Protect the rights and freedoms of other people.*

*2. In case of restriction of the rights contemplated in articles 22 and 23, the person responsible for the treatment will inform the interested party in writing without undue delay, and in any case, within one month from the date of knowledge of said restriction, of the reasons thereof, as well as of the possibilities of filing a claim before the data protection authority, without prejudice to the remaining judicial actions that can be exercised by virtue of the provisions of this Organic Law. The reasons for the restriction may be omitted or replaced by neutral wording when the disclosure of the reasons for the restriction may jeopardize the purposes referred to in the previous section.*

*3. The person responsible for the treatment will document the de facto or derecho grounds on which the decision denying the exercise of the right of access is based. This information will be available to the data protection authorities".*

*"Article 25. Exercise of the rights of the interested party through the data protection authority.*

*1. In cases where there is a postponement, limitation or omission of the information referred to in article 21 or a restriction of the exercise of the rights contemplated in articles 22 and 23, in the terms provided for in article 24, The interested party may exercise their rights through the competent data protection authority. The data controller will inform the interested party of this possibility.*

*2. When, by virtue of what is established in the previous section, the rights are exercised through the data protection authority, this must inform the interested party, at least, of the completion of all the necessary checks or the corresponding review and of his right to file a contentious-administrative appeal".*

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In paragraph 1 of article 52 of LO 7/2021, regarding the regime applicable to the procedures processed before the data protection authorities, it is foreseen that:

*"1. In the event that the interested parties appreciate that the processing of personal data has violated the provisions of this Organic Law or their request to exercise the rights recognized in articles 21, 22 and 23 has not been met, they will have the right to file a claim before the data protection authority (...)"*.

In line with the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, provides the following:

*"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, deletion or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within within the established period, they can submit a claim to the Catalan Data Protection Authority."*

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP resolved and notified, within the period provided for by the applicable regulations, the right of deletion exercised by the person making the claim, since precisely the reason for the person's complaint that initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that on 08/23/2021, the person making the claim submitted a letter in the entry register of the DGP through which he exercised the right of deletion.

In the case we are dealing with here, in accordance with article 20.4 of LO 7/2021, the DGP had to resolve and notify within a maximum period of one month from the date of receipt of the request of deletion submitted by the person claiming. In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

Well, as can be seen from the documentation provided in this file, the DGP did not issue the resolution in response to the deletion request dated 23/08/2021 until 09/11/2021, that is to say, far exceeded the resolution period of one month foreseen a

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the effect, so it must be concluded that the DGP resolved extemporaneously, and in this sense the estimation of the present claim proceeds given that it is based on the lack of response to the request to exercise the right in the legally provided term.

Regarding the substance of the request to delete the personal data that appeared in the SIP PF file, it should be noted that, as stated in the resolution of the DGP dated 09/11/2021 and also in its letter of delegations dated 11/16/2021, the DGP has agreed to the deletion of personal data relating to police proceedings no. (...), in the terms requested by the claimant. As things stand, the claim regarding the fund has lost its object, which is why it is not necessary to make other considerations in this regard, nor to require the DGP to proceed to delete said data of the person making the claim from the SIP PF file.

5.- Given that, although the DGP has certified that it issued the estimated resolution dated 09/11/2021, relating to the deletion request made by the person making the claim, there is no documentary evidence that this resolution has been notified, which is why this Authority considers it appropriate to require the DGP so that within 10 counting days from the day after the notification of this resolution, certify that the resolution dated 09/11/2021, estimated of the right of deletion, has been effectively notified to the person making the claim.

For all this, I resolve:

1. Estimate the claim presented by Mr. (...), given that the Management's resolution General of the Police dated 09/11/2021 which agrees to the deletion of your personal data incorporated in the SIP file, specifically, those relating to police proceedings no. (...), has been issued extemporaneously, without requiring the DGP to delete the claimant's data, or make other considerations regarding the fund.
2. Request the DGP so that, within 10 counting days from the day after the notification of this resolution, it accredits the notification to the claimant of the estimated resolution dated 09/11/2021, in the terms indicated in the 5th legal basis.
3. Notify this resolution to the DGP and the person making the claim.
4. Order the publication of the Resolution on the Authority's website ([apdcat.gencat.cat](http://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 February 20, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can submit, on an optional basis,

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appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of LPAC or file an administrative contentious appeal directly 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, governing the contentious administrative jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

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