

## File identification

Resolution of the rights protection procedure no. PT 137/2021, urged by Mr. (...) versus the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 09/11/2021 the Catalan Data Protection Authority received a letter from Mr. (...) on behalf of Mr. (...) (hereinafter, the claimant), for which he made a claim for the alleged neglect of the right of access to 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 10/09/2021 -with entry registration of that same date-, he had requested from the DGP the exercise of the right of access to his personal data that appeared in the files of the information systems of the Generalitat Police (SIP PF and PFMEN), and provided other documentation.

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:

ÿ That on 10/09/2021, Mr. (...), on behalf of Mr. (...), requested access to his personal data recorded in the files of the SIP scope.

- That on 12/11/2021, the director general of the Police issues a resolution in which he agrees to give effect to the access to the personal data contained in the SIP PF file, where *he was also "informed of the condition he held in the actions (arrested, reported, identified, or non-valid requirement, ... ) of the date of the events, the number of police proceedings, the non-valid or identification requirement, the investigative unit and the reason for the performance."*

- That the aforementioned resolution and the service of notification had been sent to the address that the claimant had indicated in his application for notification purposes.

The DGP provided various documentation, including: copy of the access request (10/09/2021), copy of the file documentation, copy of the issued resolution (12/11/2021) and a copy of the notification - without the date of departure registration - but did not provide the document certifying that the notification of said documentation had been made to the claimant.

## Fundamentals of Law

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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 access submitted to the DGP registry on 09/10/2021, fall within the scope 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 enforcement of sanctions penal laws (LO 7/2021), which entered into force on 06/16/2021.

3.- In accordance with the above, it is necessary to refer to article 22 of LO 7/2021, which in relation to the right of access provides the following:

*"Article 22. Right of access of the interested party to his personal data.*

*1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him is being processed.*

*In the event that the treatment is confirmed, the interested party will have the right to access said personal data, as well as the following information: a) The purposes and legal basis of the treatment.*

*b) The categories of personal data in question. c)*

*Recipients or categories of recipients to whom personal data have been communicated, in particular, recipients established in States that are not members of the European Union or international organizations. d) The retention period of personal data, when possible, or, if not, the criteria used to determine said period.*

*e) The existence of the right to request from the controller the rectification or deletion of personal data relating to the interested party or the limitation of its treatment.*

*f) The right to submit a claim to the competent data protection authority and its contact details. g) The communication of the personal data subject to treatment, as well as any available information about its origin, without revealing the identity of any natural person, especially in the case of confidential sources.*

*(...)"*

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".*

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 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 attended to the right of access exercised by the person making the claim within the period provided for by the applicable regulations, since the reason for the complaint of the person who 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 09/10/2021, the person making the claim presented a letter in the entry register of the DGP through which he exercised the right of access

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 access submitted by the claimant. 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, according to the documentation provided in this file, the DGP did not issue the resolution in response to the request for access presented to the DGP registry on 09/10/2021 until 12/ 11/2021, that is to say, the resolution period of one month foreseen for the purpose has been exceeded, so it must be concluded that the DGP resolved extemporaneously, and in this sense the estimation of the present claim proceeds given that this is based on the lack of response to the request to exercise the right within the legally provided period.

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5.- With regard to the substance of the request for access to the personal data listed in files in the SIP area (PF and PFMEN), it is certified that the DGP issued a resolution dated 12/11/2021 in which it was agreed to provide the person claiming access to the personal data contained in the SIP file PF. This is why the claim regarding the fund and in relation to access to data from the SIP PF file 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 facilitate the right of access to the person claiming.

On the other hand, with regard to the request for access requested by the person claiming in relation to his personal data that could appear in the SIP PFMEN file, the DGP has not proven to have given any response in this regard. In relation to this, it should be borne in mind that the right of access also includes the right to know whether or not personal data is being processed. Therefore, and with regard to the case analyzed here, the claimant had the right to know if the SIP PFMEN file contained his personal data, and in the event that this was not the case, to have the DGP also inform him of the non-existence of the your data in said file. In short, the DGP did not give a complete answer to the request made by the person making the claim.

In this regard, it must be said that, if as and as requested by the person claiming in his application he was interested in accessing his personal data that also appeared in the SIP PFMEN file, the DGP in its resolution dated 12/11 /2021, he should also have explained to the claimant, whether or not he had his data in the SIP PFMEN file.

In view of all the above, the access claim should be upheld, given that the DGP's response was incomplete.

6.- 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 manager of the file must be required so that in the period of 10 days to make effective the exercise of the right in relation to the data of the person making the claim.

In the case at hand, although the DGP has certified that it issued the estimated resolution dated 12/11/2021, regarding the request for access to data made by the person claiming in relation to the data of the claimant who appeared in the SIP PF file, there is no documentary evidence that this resolution has been notified to him, 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 12/11/2021, estimating the right of access relative to the personal data of the SIP PF file, has effectively been notified to the person making the claim.

Likewise, it is necessary to require the claimed entity so that within the same period of 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the claimant's right of access, of in accordance with what is stated in the 5th legal basis, regarding access to the SIP PFMEN file data. 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.

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For all this, I resolve:

1. Estimate the claim presented by Mr. (...) against the General Directorate of the Police.
2. Request the DGP, so that within 10 counting days from the day after the notification of this resolution, certify the notification to the claimant of the estimated resolution dated 11/12/2021, in the terms indicated in the 6th legal basis.
3. Request the DGP, so that within 10 counting days from the day after the notification of this resolution, the right of access exercised by the person claiming in relation to the data that may appear in the SIP PFMEN file, in the form indicated in the 6th legal basis. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
4. Notify this resolution to the DGP and the person making the claim.
5. 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 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,