

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

## File identification

Resolution of the rights protection procedure no. PT 138/2021, urged against (...).

## Background

1. On 09/11/2021 the Catalan Data Protection Authority received a letter from Ms. (...) (hereafter, claimant), for which he made a claim for the alleged neglect of the right of access to his personal data by (...) (hereinafter, claimed entity). Specifically, in the letter of complaint he stated the following:

*"On October 2019 the Hospital (...) received the documentation that accredits me as a victim of gender-based violence at work from the SIE (...) by certified mail. They made a procedural error since it is the interested person who collects it from the center and delivers it. When I request a certified photocopy, the Hospital gives me the same answer as it does now that when it comes to documentation that they have received by certified mail, it belongs to them. The SIE (...) could not issue a copy (...) they repeatedly refuse to hand over the documentation (...) I forward the last refusal to my lawyer. I request: The delivery with acknowledgment (.sic) of receipt of the documentation that is related to my condition (...), and the original document at the end of my contract with the entity (...)."*

The person making the claim submitted two e-mails, in which reference was made to several issues, including a request for access to the documentation referred to in the letter of claim, as follows:

- An email sent by the person claiming to the Hospital (...) on date 28/09/2021, through which he stated the following:

*"(...) please send me:*

- *The ending*
  - *The account number to make the deposit to the entity of the agreed return.*
  - *Remind Mrs. (...)tell me when I can pick up the documentation that accredits me as a victim of gender violence, requested two months ago.*
- (...)"*

- An email sent on 5/11/2021 to the person claiming for his lawyer, through which he stated the following:

*"(...) I made the appropriate arrangements with the hospital's lawyer, and he sent me the following response that I copy to you:*

*We have reviewed the employment record of Dra. (...), about the original document that you commented to me on Tuesday in court, and we cannot attend to your request, since the document contained is a certification from the Specialized Intervention Service of*

*(...)-(...) of the General Directorate of Family DIRECTED to HR of the Hospital (...), where it is stated that she is a victim of gender-based violence in the workplace, and that she was requested by the hospital itself in its day to the Administration, because the worker did not contribute anything, therefore, as it is a document from the hospital, we cannot attend to her request.*

*(...)"*

2. By letter dated 11/24/2021, the Authority asked the person making the claim to provide the supporting documentation of the exercise of the right of access to the claimed entity.

3. On 13/01/2022, the Authority received a letter from the person claiming, accompanied by an access request form of the same date, addressed to the claimed entity, through the which requested access to the following documentation:

*"(...) CREDIT DOCUMENT OF THE CONDITION OF BEING A VICTIM OF GENDER VIOLENCE AT THE LABOR LEVEL*

*The document was sent by the SIE-(...) by certified mail, and expresses a condition of my personal life.*

*It has been requested on three occasions:*

- Email Ms. (...) (2019) HR*
- HR (2021) email*
- Email of Ms. (...), legal representative.*

*(...) That this information includes (...) my basic personal data, and the results of any elaboration, process or treatment, as well as the origin of the data, the transferees, and the specification of the concrete uses and purposes for which they will be stored."*

This form also included information on the preferred channel for receiving the response to their access request, and the claimant requested to receive a copy of the required documentation by email, as well as receive the original by hand of this documentation.

4. On 02/24/2022, the claim was transferred to the claimed entity so that within 15 days it could formulate the allegations it deemed relevant.

5. The claimed entity made allegations by means of a letter dated 03/16/2022, in which it stated the following:

*"1. That on Thursday, January 13, 2022, at 1:32 p.m., Ms. (...) send an email to the email address dpd@(...).cat, requesting the right of access to documentation that accredits you as a victim of gender-based violence in the workplace .*

*Attach form and copy of your identity document.*

*2. Ms. (...) send the same email to the same address dpd@(...).cat, on the same Thursday, January 13, 2022, at 2:07 p.m.*

*3. On the same day, January 13, 2022, at 2:15 p.m., an answer is given to Ms. (...) indicating that the email has been received and that we will proceed to handle your request.*

*4. On February 14, 2022, at 5:41 p.m., an answer will be given to Ms. (...), sending the requested encrypted document. Then, in another email it is indicated that the password is (...).*

*5. On February 15, 2022 Ms. (...) confirms that you have been able to open the document.*

6. In the form for exercising the right of access presented by Mrs. (...) requested a copy of the document certifying the condition of being a victim of gender-based violence in the workplace, as well as the original document.

As mentioned above, a copy of the document was provided.

In this sense, the following was considered to give the copy and not the original document:

- Firstly, the Guidelines 01/2022 on data subject rights - Right of access

Adopted on 18 January 2022 - drawn up by the European Data Protection Committee, refers to the following aspects:

i. Point 2.2.1 of the document explains the definition of the content of the right of access, determining that sections 1 and 2 of article 15 of the General Data Protection Regulation contain the following aspects. First, confirmation of whether the applicant's personal data is being processed, if so, second, access to this data, and, third, information on data processing.

Therefore, three different components can be considered which together form the right of access. In the case at hand we understand that the applicant is requesting the second component of the right of access, that is to say, access to the data.

ii. In point 2.2.2 of the cited document the modalities of the right of access are explained, establishing as modalities the delivery of a copy, providing other copies (more than one copy) or making the information available in a commonly used electronic format. In this sense, with regard to the delivery of a copy, it is indicated that the obligation to provide a copy is not intended to extend the right of access, but refers only to a copy of the personal data subject of treatment, not necessarily to a reproduction of the original documents.

Therefore, we understand that providing a copy of the document available to the entity is responding to the right of access exercised by the claimant.

- Secondly, the document requested by Ms. (...) is a document of the SIE (...)-

(...) which he sends directly to the Human Resources Directorate of (...), since this Directorate requested the report on whether Ms. (...) had at that time the condition of being a victim of gender violence within the meaning of art. 23 of LO 1/2004, modified by RDL 9/2018. Therefore, although it concerns Ms. (...), it is an internal document that was sent directly by the SIE (...)-(...) to the Human Resources department of (...) and where it is certified that it holds the condition of a victim of gender violence, for the purposes of labor rights and Social Security benefits.

- Thirdly, as can be seen from the Workers' Statute and other applicable labor regulations, (...) has certain obligations and responsibilities in relation to the people who have this condition. Therefore, we understand that we must retain the internal document that was sent directly from the SIE (...)-(...) until such possible responsibilities of (...) are prescribed.

- Likewise, it must be borne in mind that Ms. (...) is no longer an employee of the entity so, as established in the document "La protección de datos en las relaciones laborales" of the Spanish Agency for Data Protection, once the employment relationship has ended proceed with the blocking or deletion of the data. In this case, the information has been blocked, as procedures currently exist

*open judicial proceedings between (...), in addition to the criterion related to the prescription of the responsibilities of (...)."*

He accompanied his written copy of several emails, among which was the email sent on 13/01/2022 by the person claiming to the data protection delegate of the claimed entity, for which he exercised the right of access; the entity's response email, sent to the claimant on 02/14/2022, in which it sent him a copy of the requested document, and an email dated 02/14/2022 sent by the claimant to the entity, through which it stated that it had accessed the document, while exercising the *"right to the portability and traceability of the document"*.

6. On 03/17/2022, the Authority received a letter from the person claiming, through which he reiterated the reasons for his claim, specifying that the entity claimed had reiterated the refusal to hand over the requested document, even after his employment contract had ended, although he then stated that: *"on date 2/14/2022 I have the right of access by the entity's data protection officer"*, referring to the email that on that date the DPD of the claimed entity had sent to the claimant, with the document that this person had requested.

In this same letter, the claimant referred to the neglect of the right to portability exercised before the claimed entity, referred to in the same document. The claim regarding the alleged neglect of the right to portability has led to the opening of rights protection procedure no. PT 30/2022.

## **Fundamentals of Law**

1. The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the Catalan Data Protection Authority.

2. Article 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 of such data (hereafter, 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, paragraph 3 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 (...)"*

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.** As a preliminary matter, it should be noted that the request for access that the claimant has submitted to the Authority in order to certify the prior exercise of the right of access, is dated after presentation of the claim before the Authority. Specifically, this access request is dated 13/01/2022, while the claim was submitted to the Authority on 09/11/2021. This should lead to the inadmissibility of the present claim. However, from the documentation provided by the claimant along with the claim letter, as well as from the response made by the claimed entity, it can be inferred that prior to the date of presentation of the claim, this person had already requested from the claimed entity access to the same documentation, although he did not use the form provided *ad hoc* by the claimed entity or send it to his DPD, as he did

on 01/13/2022. Accreditation of such an end leads to the admission of the claim.

**4.** Next, it is necessary to analyze whether, in accordance with the precepts transcribed in the previous legal basis, access to the data proceeds in the terms requested by the person making the claim.

The claimant requested from the claimed entity access and a copy of the document that would have been issued by the Specialized Service (SIE) of (...)-(…), which would accredit him as

victim of gender-based violence in the workplace, as provided for in article 23 of Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender-Based Violence, as well as the delivery of this original document. In the same access request dated 11/13/2021, the claimant also requested access to: *"my basic personal data, and the results of any processing, processing or treatment, as well as the origin of the data, the transferees, and the specification of the specific uses and purposes for which they will be stored"*. However, with regard to this last information, in the letter of claim that he subsequently presented to the Authority on 09/11/2021, he only requested: *"The delivery with acknowledgment of receipt of the documentation that it is relative to my condition. The administrative apology from HR for the violation of my right to request a special data from October 2019 (date of*

*first refusal), and the original document at the end of my contract with the entity"*, from which request it is clear that the claimant would limit her complaint to the inattention on the part of the claimed entity of the part of the request of access referred to the non-delivery of the document issued by the SIE (...)-(...).

Regarding the delivery of this documentation, in the hearing phase the claimed entity stated that on 02/14/2022 it sent an email to the claimant, through which it delivered a copy of the documentation that this person had requested. These statements would coincide with those made by the person making the claim before the Authority through a letter dated 03/17/2022. This does not prevent the claim from being considered regarding the request for access and copy of this document, since the delivery of the documentation took place after the submission of the claim to the Authority, which, as noted, was based on the disregard of requests

previous complaints made by the person claiming the same documentation, which had been addressed to the claimed entity without using the *ad hoc* form or the DPD email provided for that purpose, and this based on the consideration that the use of channels different from those provided for that purpose by the data controller is not sufficient reason to deny the access request.

The controversy that remains to be analyzed, therefore, is essentially limited to the part of the access request referring to the delivery to the claimant of the *original* document that would have been issued by the SIE (...)-(...), which would accredit him as a victim of gender violence in the workplace.

While the claimant states that the SIE of (...)-(...) delivered *"by procedural error"* the original document certifying such condition to the Hospital (...), instead of hand it over to her, the claimed entity maintains that its Human Resources Department requested the aforementioned SIE if the claimant *"had at that time the condition of being a victim of gender violence for the purposes of the art. 23 of LO 1/2004"* and *"for the purpose of labor rights and Social Security benefits"*, and that in response to this request, the aforementioned SIE gave him a report certifying this condition. Therefore, he concludes, it is an internal document that the claimed entity must keep until the possible violations of the applicable regulations are prescribed. In the last one, he adds that, given that the person making the claim no longer works for the making entity, the deletion of his data (and consequently of the requested document) would proceed, although he states that he would have blocked them due to deadlines of prescription of infringements, and the existence of open judicial procedures.

In this regard, it should be made clear that the right of access provided for in Article 15 of the RGPD does not include the right of access to the *original* documentation containing the personal data of the person holding the data who exercises this right, but only includes access to sayings

personal data (art. 15.1 RGPD), as well as the right to a copy of the same (art. 15.3 RGPD: "*The person responsible for the treatment will provide a copy of the personal data object of treatment*"). Another thing is that, in order to comply with article 15 of the RGPD, in the face of a request for access, the interested person is provided with a copy of the documentation containing their personal data.

This consideration does not prejudice the claimant's reason for complaint about whether the disputed document should have been delivered to him, instead of to the claimed entity, among other reasons, because it is an issue that exceeds the material aspect of the right of access that constitutes the object of the present procedure. By virtue of the right of access, the claimant can access their data that is in the possession of the claimed entity, regardless of its origin.

For the reasons stated, the claim must be partially upheld with regard to the request for access to the *copy* of the aforementioned document, given that the claimed entity has delivered such documentation to the claimant once the present procedure had begun; and dismiss the claim regarding the request for access to the *original documentation*, since such a request exceeds the object of the right of access object of the claim.

Finally, with regard to the content of the letter of complaint regarding the certified copy request, it should be remembered that article 27.4 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), recognizes "*the right of interested persons to request, at any time, the issuance of authentic copies of public administrative documents that public administrations have validly issued*", although the same precept establishes that "*the request must be addressed to the body that issued the original document*", which in the present case would be the SEI (...)-(...). In any case, it must be noted that the eventual neglect of this right to issue authentic copies would not be the subject of a claim before the Authority, to exceed the material aspect of the right of access in article 15 of the RGPD.

For all this, I resolve:

1. Partially estimate the guardianship claim made by (...) against (...), since it resolved extemporaneously the request for access to the *copy* of the document requested by the person making the claim, rejecting it with regard to the request for delivery of the original document, for the reasons indicated in the 4th legal basis.
2. Notify this resolution to (...) and the person making the claim.
3. 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 to be counted



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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,

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