

Carrer Rosselló, 214, Esc. A, 1r 1a
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File identification

Resolution of the rights protection procedure no. PT 139/2021, urged by Mr. (...) against the Directorate General of Police of the Department of the Interior.

Background

1.- On 11/10/2021, a letter from Mr. (...) (hereinafter, the person making the claim) for which he made a claim for the alleged neglect of the right of cancellation, which he had previously exercised before the General Directorate of the Police (hereinafter, DGP) of

Department of the Interior.

Specifically, the claimant requested the cancellation of his personal data relating to police proceedings no. (...) (which resulted in the Minor Offenses Trial (...)) of the Police Information System of the Generalitat de Catalunya file on natural persons (SIP PF), and for these purposes he provided, among others, the following documents:

- Copy of the application submitted to the DGP registry (12/04/2021).
 - Copy of the certificate issued by the Court of Inquiry (...) of Barcelona, which indicated that, on 28/01/2021, a final judgment of acquittal had been issued in relation to the Minor Offenses Trial (...) (petitioner of police proceedings no. (...)).
- 2.- On 24/11/2021 the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.
- 3.- On 11/01/2022, the DGP made allegations by means of a letter dated 03/12/2021, in which he stated the following:
- ÿ That, on 12/04/2021, the person claiming requested the cancellation of their data before the DGP in relation to *"police proceedings no. (...), which resulted in the Trial of minor crimes no. (...)-L, instituted by the Court of Inquiry (...) of Barcelona"*.
- That, on 05/25/2021, the director general of the Police issued a resolution agreeing to the effective cancellation of the claimant's data recorded in the files of the SIP area in relation to the proceedings referred to above.
 - That the resolution was sent to the address indicated by the person claiming for this purpose in the application, but that on 06/18/2021, *"the Post Office returned the notification with an unknown reason to the address indicated" by the person claiming."*

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In this regard, the DGP provided various documentation, specifically, a copy of the cancellation request (12/04/2021), a copy of the file documentation, a copy of the estimated resolution issued, a copy of the registered notification office of departure (06/02/2021) and copy of the notification returned by the Post Office (1st attempt 06/14/2021 and second attempt 06/18/2021).

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 treatment by the DGP referred to in present claim, fall within the scope of Directive (EU) 2016/680, of European Parliament and Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and the free circulation of this data, in accordance with the established in its article 1. Said Directive has been transposed into Spanish law by 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 penalties (LO 7/2021), which entered into force on 06/16/2021. The cancellation request of data was submitted on 04/12/2021, therefore, prior to the effective date of LO 7/2021, and for this reason its processing related to the exercise of the right of cancellation continues to be governed by the regulations in force previously, that is to say, by Organic Law 15/1999, of 13 December, on the protection of personal data (LOPD), and in particular, by article 22 and its provisions on deployment (in accordance with the provisions of transitional provision 4a of Organic Law 3/2018, of December 5, Protection of Personal Data and guarantee of digital rights). Notwithstanding the above, since the claim presented to this Authority is dated after (10/11/2021) the date of entry into force of LO 7/2021, the processing related to the procedure of this claim is will govern as provided for in this rule.

3.- In accordance with the above, firstly, it is necessary to refer to article 16 of the LOPD, which in relation to the right of cancellation determined the following:

"1. The person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.

2. The personal data whose treatment does not comply with the provisions of this Law must be rectified or cancelled, where appropriate, and, in particular, when these data are inaccurate or incomplete.

3. The cancellation results in the blocking of the data, and they must only be kept at the disposal of public administrations, judges and courts, for the attention of the possible responsibilities arising from the treatment, during the term of prescription of these responsibilities.

Completion of this term, the deletion must proceed.

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4. *If the rectified or canceled data has been previously communicated, the person in charge of the treatment must notify the person to whom they were communicated of the rectification or cancellation, in the event that the latter maintains the treatment, who must also proceed to cancellation.*
5. *Personal data must be kept for the periods provided for in the applicable provisions or, where applicable, the contractual relationships between the person or entity responsible for the treatment and the interested party."*

For its part, article 31.2 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the LOPD (hereafter, RLOPD), provides the following regarding the right of cancellation :

"2. Exercising the right of cancellation results in the deletion of data that is inadequate or excessive, without prejudice to the blocking duty in accordance with these Regulations. (...)"

Article 32 of the RLOPD, sections 1 and 2, determines the following:

1. *(...) In the cancellation request, the interested party must indicate which data he is referring to, and must provide the documentation to justify this, if applicable.*
2. *The person in charge of the file must decide on the request for rectification or cancellation within a maximum period of ten days from the receipt of the request. After the deadline has passed without an express response to the request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13. In the event that it does not have the personal data of the affected person, it must also be communicated within the same period."*

Given that the right that is the subject of this resolution refers to a treatment carried out by the forces and security forces, it is necessary to refer to the specific regulation for these cases provided for in articles 22.4 and 23, sections 1 and 3, of the LOPD, which determine the following:

*"Article 22. Files of the Security Forces and Bodies.
(...) 4. The personal data recorded for police purposes must be canceled when they are not necessary for the investigations that have motivated their storage.*

For these purposes, the age of the affected person and the nature of the data stored, the need to keep the data until the conclusion of an investigation or a specific procedure, the final judicial decision, especially acquittal, pardon, rehabilitation and limitation of liability.

Article 23. Exceptions to the rights of access, rectification and cancellation

Carrer Rosselló, 214, Esc. A, 1r 1a
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1. Those responsible for the files that contain the data referred to in sections 2, 3 and 4 of the previous article may refuse access, rectification or cancellation depending on the dangers that may arise for the defense of the State or public security, the protection of the rights and freedoms of third parties or the needs of the investigations being carried out. (...)

3. The affected person who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring this to the attention of the director of the Data Protection Agency or the competent body of each autonomous community in the case of files maintained by the police forces of these communities, or by the autonomous tax administrations, which must make sure of the origin or impropriety of the denial."

In line with the above, article 16.1 of Law 32/2010 provides:

"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."

4.- In accordance with the precepts referred to above, it is necessary to analyze whether the DGP has resolved and notified the right of cancellation exercised by the person here claiming within the period provided for in the regulations that apply in this specific case, since, precisely, the reason for the complaint of the person who started 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 04/12/2021, the person making the claim presented the request for cancellation in the entry register of the DGP of his personal data that appeared in the SIP PF file relating to police proceedings no. (...) (which led to the Minor Offenses Trial (...)).

In accordance with articles 16 of the LOPD and 32 of the RLOPD, the DGP had to resolve and notify the cancellation request within a maximum period of ten days from the date of receipt of the request .

In relation to 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 the 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 proceedings initiated at instance of part - as it happens in this case - 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,

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that the maximum term is for resolving and notifying (article 21 of the LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt must have occurred (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 cancellation request dated 04/12/2021 until 05/25/2021, i.e. past the 10-day resolution period provided for that purpose, therefore 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 within the legal term set .

On the other hand, with regard to the notification, it is necessary to specify that the claimant in his application submitted to the DGP on 12/04/2021, provided both his postal address and his electronic address, and also indicated *"I accept to receive notifications and communications of administrative acts related to this request by electronic means"*. In this regard, it should be borne in mind that in relation to the practice of notifications by public administrations, article 41.3 of the LPAC provides that *"In procedures initiated at the request of the interested party, the notification is he must practice by the means indicated for the purpose by that one"*. And that in the case that *"it is not possible to make the notification in accordance with what is indicated in the application, it must be done in any suitable place for this purpose, and by any means that allows us to have evidence of the receipt by the interested party or his representative, as well as the date, identity and content of the notified act."*

Well, within the framework of the actions carried out, there is no evidence that the DGP, prior to or after unsuccessful attempts to notify by post, has notified the claimant of the estimated resolution by other means, considering that, as stated in your cancellation request, you consented to being notified by electronic means.

5.- Regarding the merits of the claim, it should be taken into account that the DGP has agreed to cancel the personal data relating to police proceedings no. (...) of the person here claiming, as can be seen from the letter of allegations of the DGP and the documentation provided, specifically, the copy of the resolution of the Director General of the Police (25 /05/2021) and of the 2 unsuccessful intense notifications - by post - to the claimant (on 14/06/2021 at 10.20am and on 18/06/2021 at 4.24pm), at the address provided by the claimant in their application, as stated by the Postal Service.

6.- Given that, although the DGP has certified that it issued the estimated resolution dated 05/25/2021, relating to the cancellation request made by the claimant, and that it made two unsuccessful attempts to notification by post, there is no evidence that this resolution has been notified by other means, in accordance with the your request dated 04/12/2021. That 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

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08008 Barcelona

05/25/2021, estimate of the right of cancellation, has effectively been notified to the claimant by electronic means.

For all this, I resolve:

1. Estimate the claim presented by Mr. (...), given that the Management's resolution General of the Police dated 25/05/2021 who has agreed to cancel his personal data incorporated in the SIP file, in terms of his request, has been issued extemporaneously.
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 05/25/2021, in the terms indicated in the 6th 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), 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, which approves the Statute of the Catalan Agency of Data Protection, the interested parties can file, as an option, an 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 the LPAC or to directly file an administrative contentious appeal 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, regulating administrative contentious jurisdiction.

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

The director,