

File identification

Resolution of the rights protection procedure no. PT 143/2021, urged by Mr. (...) against the Secretariat of Administration and Public Function of the Department of the Presidency.

Background

1. On 11/23/2021, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), for which he made a claim for the alleged neglect of the right to rectification of his personal data, which he had previously exercised before the Secretary of Administration and Public Function of the Department of Presidency

Specifically, the person making the claim - temporary teaching employee of the Department of Education - complained that on 21/10/2021 he had requested before the Secretariat of Administration and Public Service of the Department of the Presidency, the rectification of his data contained in their file that can be consulted on the ATRI platform as "*jobs held in the Administration of the Generalitat of Catalonia*" (administrative data section), given that these were incomplete as they were not included the positions occupied with a trade union exemption license, without said body having responded to said request.

In order to certify the exercise of this right, the claimant provided various documentation, in particular, the proof of submission of the application through the Generalitat's electronic registry on 10/21/2021, the application data rectification request addressed to the Secretariat, indicating the data that had to be completed, and the accompanying documentation to support your request, in particular, a copy of the resolutions granting trade union licenses from the course 2008-2009 until the 2020-2021 academic year.

2. On 17/12/2021, the claim was transferred to the Department of the Presidency so that within 15 days it could formulate the allegations it considered relevant, a deadline that was extended by another 7 days (until 19 /01/2022), in response to the request for extension made by the claimed entity, and in accordance with the provisions of article 32 of Law 39/2015, of October 1, of the common administrative procedure of the public administrations (hereinafter Law 39/2015).

3. The Department made allegations in a letter dated 01/13/2022, in which it stated the following:

-That according to the information provided by the Department's Administration and Public Function Secretariat, once the request "*for rectification of personal data to ATRI*" was received on 10/21/2021 from the person here claimant, and taking into account that it was data relating to teaching staff, said request was referred to the Department of Education on 10/26/2021, as the competent body to resolve it, as communicated to the person here claiming by email of the same date.

-That from the Department of Education "*it is reported that given that the management of the applicant's ATRI platform belongs to the Consorci d'Educació de Barcelona, his application was transferred to this entity in order to give him response, and it is unknown if any action has been taken in this regard.*"

- That therefore, taking into account the circumstances presented, the claim against the Secretary of Administration and Public Function of the Department must be dismissed , given

that said body had acted in an appropriate manner, deriving immediately the request for rectification of the person here claiming to the competent body to resolve it.

4 . In this regard, it must be emphasized that, although certainly, and in accordance with what is reported on the ATRI platform itself, it is " *the department where the services are provided that has the competence to update personal and administrative data, in the General Personnel Register. Data that can be consulted through the ATRI portal and where you can also request the modification of some personal data (...)* ", it is also true that it is stated that it is the General Directorate of Public Function of the Department of the Presidency who enjoys the status of responsible for processing the data included in the ATRI portal and therefore, before whom, in accordance with the data protection regulations, and as expressly also indicated on the platform, s they must exercise the right of informative self-determination regarding the processing of data carried out on the platform, such as the right of rectification that concerns us here, and to whom its resolution corresponds (articles 12 and 16 of Regulation (EU) 2016/679 of the European Parliament and the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (hereafter, the RGPD).

That is why, in accordance with the provisions of article 50.1.c) of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, by means of the office of date 08/02/2022 the Department of the Presidency was required, so that within 10 working days, it provided complementary information in relation to the claim that initiated the present procedure, and specifically, so that it provided a copy of the following documentation:

- of the transfer of the request for rectification of the person making the claim to the Department of Education, as well as of the communication that would have been sent to him on 26/10/2021 informing him of said transfer.
- of the resolution of the request for rectification, if it has been resolved, and also of the accreditation of its notification to the person making the claim.

Also, in the request it was stated that " *In the event that the request has not been resolved, and that you consider that the rectification of the data in the terms requested by the person making the claim is not appropriate, you can formulate allegations to justify the reason, in the same period granted.* "

5 . The Department responded to this request by means of a letter dated 02/18/2022, with which it accompanied various documentation, among which there was, and in accordance with what had been requested, a copy of the communication made to the person here claiming on 26/10/2021, regarding the transfer of his request to the Department of Education.

Likewise, and with regard to the resolution of the data rectification request, the Department of the Presidency reported that, until that date, the following actions had been carried out:

- That the Consorci d'Educació de Barcelona sent a communication on 02/10/2022 to the person making the claim, informing them of the following:

" As a result of your complaint, before the Secretary of Administration and Public Function, of the Department of the Presidency of the Generalitat of Catalonia, I am

sending you a certification of the positions that appear in the computerized staff register of the Generalitat of Catalonia.

We would like to inform you that the problem why you cannot see your data in ATRI is because of how the system is configured and the Department of Education does not know the technical reason why you cannot see this information.

In any case, we will inform the Public Service, as this fact affects all workers, not only the staff of the Education Consortium, who are in the same situation ."

And a copy of the certification referred to was provided, issued by the Barcelona Education Consortium on 10/02/2022, in which there is a list of the different appointments as interim official of the person here claiming recorded in the "Computerized personnel register of the Generalitat de Catalunya" (centres, periods and specialties).

-That from the Department of Education, on 11/02/2022, a copy of the said response sent to the claimant was transferred to the Department of the Presidency, as well as the certificate issued by the Consortium relating to the services provided by the claimant as to temporary teaching staff.

- That said documentation was sent, in turn, by the then data protection delegate of the Department of the Presidency to the Secretariat of Administration and Public Service on 02/17/2022, so that, once found out the reason why the data relating to the person making the claim included in the Computerized Personnel Register were not displayed correctly on the ATRI platform, the appropriate actions were carried out within the portal, in order to enforce the right of rectification exercised by the person here claiming, and that once said right had been satisfied, he would be informed about it, in order to be able to transfer it.

6 . Along these lines, the data protection delegate of the Department of the Presidency informed this Authority, through a communication dated 03/28/2022, of the response that the Directorate General of Public Service had sent him, on the reason for which, according to what they had been able to find out, the complete data relating to the jobs held by the person here claiming, and the actions that had been taken in this regard, were not displayed on the ATRI platform.

Thus, the General Directorate of Civil Service reported that this happened because the Department of Education (teachers) recorded in the "General Personnel Register" the data of teaching staff with a full-time trade union exemption license, as in the case at hand , differently from how the rest of the Departments did it, and so, he stated " *the teaching managers do not inform them in the section of occupied positions and then an incident of union license (as we do everything else), (.. .), but as reserved places., (...) and it is for this reason that the "Occupied places with release license" are not displayed in the "occupied places" section of the ATRI platform union", which is what the interested person claimed "*

And it was added that , in order to be able to solve it, "Education teachers" had been asked to change "this way of recording the data" and do it like the rest, so that the data on the platform, although it had been answered that said change had a big impact on its " *management of temporary appointments covering the position" , and that in order to solve it, t-Systems had been "asked together with Education, so that the data display screen in ATRI is modified and that therefore, the reserved positions are recorded in the occupied positions section", but the date on which this solution could be implemented was unknown.*

In this sense, on 30/03/2022, the delegate of the Department of the Presidency conveyed the information that the Department of Education had sent him in this regard:

"From the Sub-Directorate for Teaching Personnel Management, they tell me that they are working with Tsystems so that everyone who has a reservation for any reason can see it in the Atrium. During the month of April, work will continue with it and it is expected that it will be implemented in the month of May".(...)

And lastly, on 09/05/2022, a communication was received from the delegate of the Department of the Presidency in which he reported the following: *"In relation to this procedure, I am informed by the Department of Education that the CTTI has already implemented access to teacher data (including those exempt from union)."*

7 . Faced with this, the Authority addressed the claimant on 12/05/2022, in order to confirm that, indeed, his right to rectification had been satisfied in the terms of his request, that is to say, that a the "jobs held in the Administration of the Generalitat de Catalunya" section of its file that can be consulted on the ATRI platform (administrative data section), included the positions held with a trade union exemption license.

In this regard, the claimant stated and certified by mail of the same date, that in his file that can be consulted on the ATRI platform, the data relating to the positions held with a union license were still not accessible, and thus he said : *" I am attaching a copy of the administrative data where you can consult the jobs held in the Generalitat and I check that it remains unchanged."*

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 Catalan Data Protection Authority.

2 . Article 16 of the RGPD regulates the right of rectification in the following terms:

"The interested party will have right to obtain yes procrastination Unauthorized data rectification by the data controller personal inaccurate that the concern _ Considering the purposes of the treatment , the interested party will have right to have the data completed personal that they are incomplete , inclusive through a statement additional "

For its part, article 14 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right of correction:

"When exercising the right of rectification recognized in Article 16 of Regulation (EU) 2016/679, the affected person must indicate in his request which data he refers to and which correction must be made. It must be attached, when necessary, the supporting documentation of the inaccuracy or the incompleteness of the data being processed".

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establish the following:

"3. The person responsible for the treatment will facilitate the interested party information related to sus 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 . Dicho plazo podra extend another two months if necessary , taking into account the complexity and the number of applications . The person in charge will inform the interested party of any of these extensions within one month of receipt of the request , indicating the reasons for the delay . When the interested party present the request by media electronic , the information will be provided by media electronic when be possible , unless the interested party request that it be provided in another way.

4. If the data controller does not comply with the request of the interested party , the will inform yes delay , no later than one month has passed since the receipt of the request , the reasons for its non - action and the possibility of presenting a claim before a control authority and take legal action .

5. The information provided under articles 13 and 14 as well as all communication and anyone performance carried out under articles 15 to 22 and 34 will be entitled free _ When the requests they are manifestly groundless or excessive , especially due to him character repetitive , the person in charge may :

a) charge a fee reasonable based on administrative costs faced to facilitate information or communication or perform the action requested , or

b) refuse to act in respect of the request .

The person responsible for the treatment will bear the burden of proving character manifestly groundless or excessive 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 term , they can submit a claim to the Catalan Data Protection Authority."

3 . Having exposed the applicable regulatory framework, it is then necessary to analyze whether the General Secretariat of Public Function of the Department of the Presidency, which is listed as responsible for the treatment of the data included in the ATRI platform, resolved and notified, within the period provided by the applicable regulations, the right of rectification exercised by the person claiming, since precisely the reason for his complaint that initiated the present rights protection procedure, was the fact of not having obtained a response within the period provided for that purpose.

In this regard, it is certified that on 21/10/2021 the entity received a letter from the person claiming through which he exercised the right to rectify his personal data on the ATRI platform.

In accordance with article 12 of the RGPD, the General Secretary of Public Service of the Department of the Presidency had to resolve and notify the request to exercise the requested right, within a maximum period of one month from the date of receipt of the request, or within the extendable period of two more months, provided that the requirements established for that purpose, in section 3 of the same article, are met.

Well, the Secretariat has not proven to have responded to the request for rectification made by the person making the claim, neither within the one-month period, nor within the two-month extension provided for that purpose. In this regard, it should be borne in mind that the fact of transferring the claimant's request to the Department of Education, bearing in mind that the ATRI platform expressly stated that the right of rectification had to exercise before the General Secretariat of Public Function of the Department of the Presidency, does not exempt it, in its capacity as data controller, from the duty to resolve the request for rectification within the time limit.

Consequently, insofar as the claim was based on the lack of response to the request to exercise the right of rectification, it must be declared that the Secretariat did not resolve and notify in form and time the said request submitted by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

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 the rectification of the data in the terms requested by the claimant person

The person making the claim, in accordance with what has already been exposed in the background, requested the rectification of his data contained in the section "jobs held in the Administration of the Generalitat of Catalonia" of his consultable file on the ATRI platform (administrative data section), given that the data contained there was not complete, as it did not include the positions held with a trade union exemption license.

In this respect, and in accordance with what is required by article 14 of the LOPDGDD in the request for rectification of the data submitted by the person making the claim, it was indicated which data were related to their person that were they had to rectify (those processed on the ATRI platform) and what was the correction that had to be made (that is, the inclusion of positions held with a trade union exemption license), and the supporting documentation of said extreme ("resolutions granting trade union licenses from the 2008-2009 school year and up to the 2020-2021 school year).

In accordance with what has been proven in the actions, effectively the data of the person making the claim included in the ATRI platform is not complete, as it does not include the positions held with a trade union exemption license, which must effectively be part of the "occupied places" section , as a person who has a trade union exemption license, is in active service.

In this sense, it should be borne in mind that article 16 of the RGPD regulates the right of rectification as the right of the affected person to have inaccurate or incomplete personal data modified, thus complying with the accuracy principle regulated in article 5.1.d) of the RGPD. The right to rectification is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data.

Therefore, in the case at hand, the claimant has the right, in accordance with what has been recognized by the person in charge of the treatment in the framework of the actions carried out in this procedure, to which their data that is processed on the ATRI platform, and that these correspond to reality, and therefore, the full information is displayed in the "occupied places" section, that is to say, that they are included in the positions held with a trade union exemption license, and therefore, and from the perspective of the right of rectification regulated in the RGPD, it is appropriate to estimate the present claim for the protection of the right, and to make effective, without further delay, the right to rectification carried out in the terms intended by the person concerned.

In this regard, it should be borne in mind that the purpose of the ATRI platform is "to make available to the employees of the Generalitat de Catalunya, the use of various services and access to relevant content and information, related to the employment relationship of the his staff".

It is stated in the present proceedings that the Secretariat, although extemporaneously, has carried out a series of arrangements with the Department of Education, in order to attend to the rectification requested by the person claiming, and thus, once verified that the problem of displaying the data on the ATRI platform did not reside in the system configuration, but, in accordance with what has been set out in the 5th precedent of the resolution, in the way in which " *the Department of Education (teachers) had registered the data of the teaching staff who have a full union license* ", since they were not informed, as the other departments do, as "occupied places", but as "reserved places", an attempt has been made, in the first place, to change the way of recording said data, and when that was not possible, an alternative system has been chosen, which at this time, in accordance with what is set out in the previous 7th, it has not yet allowed the right of rectification exercised by the person making the claim to take effect, which is why the present claim must be considered.

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 the protection of rights, the data controller must be required, so that in the period of 10 days makes the exercise of the right effective.

In accordance with this, it is necessary to require the claimed entity so that without further delay, and within 10 counting days from the day after the notification of this resolution, it makes effective the right of rectification exercised by the person making the claim, and therefore carry out the necessary actions so that they are included in the section of "jobs held in the Administration of the Generalitat de Catalunya" of their file which can be consulted on the ATRI platform (section of administrative data), the data relating to the positions held with a trade union exemption license, and thus be able to access their complete information.

Once the right of rectification has taken effect in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must give an account to the Authority.

For all this, I resolve:

1. Estimate the guardianship claim made against the Secretary of Administration and Public Service of the Department of the Presidency.

2. Request the Secretariat of so that within 10 counting days from the day after the notification of this resolution, it makes effective the right of rectification exercised by the person making the claim, in the manner indicated in the 5th legal basis. Once the right of rectification has taken effect, within the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the Department of the Presidency 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,