

## File identification

Resolution of the rights protection procedure no. PT 144/2021, urged by Mr. (...) against the Foundation for the Open University of Catalonia

## Background

1.- On 19/11/2021 the Catalan Data Protection Authority received a claim made by Mr. (...) (henceforth, the claimant) against the Fundació para la Universitat Oberta de Catalunya (henceforth, FUOC), for not responding to the request to exercise the right of access to the data contained in their files, in accordance with the provisions of article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to processing of personal data and the free circulation thereof (hereafter, RGPD). The person making the claim bases the claim on the following fact "lack of information of which I have knowledge that they have in their possession" and provides various documentation relating to the facts that are the subject of the complaint.

Specifically, the claimant provides the request that he submitted to the FUOC on 02/08/2021, exercising his right of access to his own data, as well as the response of the claimed entity dated 01 /09/2021. In relation to this response, the FUOC provided the claimant with various data academics concerning your person, such as: personal data that you process, campus registrations, academic record, data relating to enrollment, enrolled subjects and study plan, evaluation, degrees, studies contributed, payments, among others.

The claim is also accompanied by a demand that the company (...), company awarded the FUOC's university degree printing and distribution service, file against the claimant. As indicated by the complaining party, based on the information that (...) provided in this judicial process, he was able to verify that the FUOC had information about his person, which in the response dated 09/01/2021 did not deliver to him. The claimant also attaches to the claim the documents indicated below and which, according to him, the FUOC would not have given him:

- Email that the FUOC addressed to (...), company awarded the printing and distribution service of university degrees, on 08/10/2018, setting out the following (underlining is ours):

"On March 4, 2013, the Open University of Catalonia (hereinafter, UOC) initiated the bidding process for the Service of printing, handling and distribution of official university degrees, of European supplements to the title and own degrees. [...]

Awarded result

the company (...), thus formalizing the contract on July 22, 2013.

That, the UOC was notified of a formal request from the Secretariat of

State of Universities, Research, Development and Innovation, belonging to the Ministry of Science, Innovation and Universities, dated August 9, 2018. In said request it is indicated that on May 29 and June 26, 2018, they had access to said Secretariat after writings sent by Mr. (...), in those that make it possible

deficiencies in the technical characteristics of paper and the printing of official titles and European Title Supplements (SET) carried out by the UOC.

Likewise, a copy of said writings in which analysis is carried out is provided carried out by the National Institute of Agricultural and Food Research and Technology (INIA) and by the National Currency and Stamp Factory (FNMT),

which would seem to corroborate these deficiencies. [...] In view of the above and it is common knowledge that (...) he has signed a contract with the UOC which aims to print, manipulate and distribute official university degrees, European supplements to the degree and degrees owned by the UOC, the company was convened last Friday, October 5, 2018 [...] to hold a meeting in order to determine the non-fulfillment or defective fulfillment of the obligations of the aforementioned contract. [...] During the course of the meeting, those present were informed of the purpose of the meeting, and the company representatives were shown and explained (...) the request that the UOC had received from the Secretariat of State of Universities, Research, Development and Innovation to the effect that they had the opportunity to express what they considered appropriate. Likewise, a copy of the aforementioned request was delivered together with the documentation that accompanied it to the reference Secretariat. [...]

In this same email, the FUOC also formally requested (...), in order to, as soon as possible, respond to the FUOC on the points pointed out by the now claimant in his letters of complaint presented to the Secretary of State for Universities, Research, Development and Innovation, belonging to the Ministry of Science, Innovation and Universities.

- Instances that the FUOC attached to the email sent to (...) on 08/10/2018, and which refer to documents submitted by the claimant on 26/05/2018 and 29/05/2018 to the Ministry of Education, Culture and Sports, through which it highlights that the university degrees issued by the European University of Madrid (UEM) and the Open University of Catalonia Foundation (FUOC) would not meet the technical characteristics required by the regulations. Also attached is a report drawn up by the Fábrica Nacional de Moneda i Timbre, at the request of the claimant, on compliance with Royal Decree 22/2015, of 23 January 2015, in relation to the issuance of titles by the EMU, as well as a letter dated 09/08/2018 from the Deputy Director General of Titles of the State Secretariat for Universities, Development and Innovation, of the Ministry of Science, Innovation and Universities addressed to the UOC.

- Email sent from the FUOC to (...) on 12/11/2018 setting out, among other considerations, the following (underlining is ours):

"The UOC has been notified of a letter presented by Mr. (...), in which he requested that the university certify that the inert support (cardboard) of his title meets the technical and security characteristics listed in Annex XI of Royal Decree 1002/2010, of August 5. Attached to this request is a copy of the letter presented by Mr. (...). That, as previously indicated, given that (...)he has signed a contract with the UOC whose purpose is the printing, manipulation and distribution of official university degrees, European supplements to the degree and UOC's own degrees, the company is formally required to, as soon as possible, expressly indicate and certify that the inert support (cardboard) of the title of Mr. (...) meets all the technical and safety characteristics listed in Annex XI of Royal Decree 1002/2010, of August 5".

- Application presented by the claimant to the Ministry of Education and Training Professional on 5/11/2018, addressed to the rector of the FUOC, asking him to certify that his university degree complies with the technical and security characteristics provided for in the regulations.

2.- By official letter dated 11/24/2021, the claim was transferred to the FUOC, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 16/12/2021 the Authority received the statement of allegations from the FUOC through which the following is argued, in literal terms:

- "In order to prepare the appropriate response and to unequivocally identify the interested party, the basic information contained in his Personal File was provided. The File is the UOC's internal information system where all the basic ordinary information about a person is collected from other UOC applications (academic documentation, inquiries handled by the Attention Service, payments, sanctions... ) so that any information or data related to a user of the University campus is directly accessible through the File, as long as it is not an extraordinary procedure, unrelated to the daily affairs of the University. [...] However, aside from the basic information on the File, we have become aware of a series of informal contacts with the person making the claim that, as they have no relation to their academic affairs, are not recorded in their File, given that these exchanges, as will be described below, were carried out by the interested party through non-formal channels, unrelated to the ordinary management of the University's affairs.

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- With regard to the data that the interested party claims not to have received in the exercise of their right of access, specifically certain complaints relating to the support of their university degree, the UOC has no evidence through the official consultation channels of the referred complaints; [...] It has been possible to verify, through the verbal testimony of UOC staff, that the claimant was in occasional contact with different people linked to the University [...]. Given that these complaints were addressed to University management staff e-mails not intended for the processing of complaints, these were not processed as consultation procedures or formal complaints [...], therefore, in the absence of in any information system intended for the purpose, they were not facilitated in the response of their right of access. Also, the UOC understands that the conversations that the person making the claim may have had with the organization's workers, outside of the official procedures established for the purpose, are not subject to the right of access to their personal data.

Finally, the FUOC's letter concludes that the right of access exercised by the claimant was attended to in time and form, having been provided by the University with all the data that worked in its ordinary information systems, despite the claimant he formulated his request in a generic and abusive manner, in accordance with Article 7 of the Civil Code. And he adds "In no case did the UOC communicate any information about the claimant to the General Sub-Directorate of Titles, beyond having answered the request of the said body, in which the claimant had the status of interested party".

4.- On 03/02/2022, this Authority required the FUOC to confirm whether the company (...) has the status of data processor and, if so, to provide the supporting contractual documentation.

5.- On 08/03/2022 the FUOC sent the Authority the contract concluded between the FUOC and the company (...), awarded the service of printing, handling and distribution of official university degrees and European supplements to the degree. The contract contains in its tenth clause the obligations of the awarded company, relating to confidentiality and data protection. The FUOC also provides the Contract's Special Clauses, where clauses 22, 23 and 24 establish the following obligations:

- "The successful tenderer acquires the status of data controller.
- The person in charge guarantees to the FUOC that he meets all the guarantees for compliance with the provisions of Royal Decree 1720/2007, of December 21. [...]"

6.- On 18/03/2022 this Authority required the person claiming to specify, as far as possible, what information would be in the possession of the FUOC and would not have been sent to him in response to his request exercise of the right of access.

7.- On 03/20/2022, the response of the person claiming to the request indicated in the previous antecedent was entered in the Authority's register. The writing of

The claimant points out that, at the very least, the FUOC did not provide him with the following information:

- Letter dated 29/05/2018 sent by the Secretary of State for Universities, Development and Innovation, of the Ministry of Science, Innovation and Universities.
- Letter dated 26/06/2018 sent by the Secretary of State for Universities, Development and Innovation, of the Ministry of Science, Innovation and Universities.
- Letter of departure dated 09/08/2018 from the Deputy Director General of Titles of the State Secretariat for Universities, Development and Innovation, of the Ministry of Science, Innovation and Universities addressed to the FUOC.
- Letter presented by the claimant to the Rector of the FUOC on 11/05/2019.
- Emails exchanged with the company (...) on 08/10/2018, 11/10/2018 and 12/11/2018.

Likewise, the person claiming also states, in a generic way, that the FUOC did not inform him about the transferees of his personal data, the uses and purposes for which they were processed, nor the origin of the writings that refer to your data. And, he adds that he does not know if there are any more emails, documents or other personal data about him that have been processed by the FUOC and have not been handed over to him.

#### 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 28, relating to the protection of natural persons with regard to the processing of personal data and the free movement of these (hereafter, the RGPD), regarding the right of access of the interested person, provides the following:

"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.”

Also, regarding the rights contemplated in articles 15 to 22 of the RGPD, article 12, sections 3, 4 and 5 of the RGPD establishes:

"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. This period can be extended 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 such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the

possibility to file 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 any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:

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

b) refuse to act in respect of the request.

The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.

(...)"

For its part, article 13 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 to access:

"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or the processing activities to which the request refers.

(...)"

In relation to the above, article 16 of Law 32/2010, regarding the protection of the rights provided for by the regulations on the protection of personal data, 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 period, they can submit a claim to the Catalan Data Protection Authority.

2. The Catalan Data Protection Authority must expressly decide on the merits or inadmissibility of the claim referred to in paragraph 1 within six months, with the prior hearing of the person responsible for the file and also of the interested persons if the result of the first hearing procedure makes it necessary. Once this term has passed, if the Authority has not notified the resolution of the claim, it is understood that it has been rejected.

3. The resolution of total or partial estimation of the protection of a right must establish the term in which it must take effect.

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4. If the request to exercise the right before the person responsible for the file is estimated, in part or in full, but the right has not been made effective in the form and the deadlines required in accordance with the applicable regulations, the interested parties can bring it to the attention of the Catalan Data Protection Authority so that the corresponding sanctioning actions are carried out."

3.- Having explained the applicable regulatory framework, it is necessary to analyze the allegations presented by the claimed entity in order to assess whether, in accordance with the precepts transcribed in the 2nd legal basis, it is necessary to declare the right of access to the data, in the terms requested by the person making the claim.

### 3.1 On the generic and abusive nature of the request to exercise the right

In the framework of this procedure, the FUOC has stated that the claimant formulated his request for access in generic terms and in an abusive manner.

In this respect, this Authority considers that the object of the request is clear, given that the claimant was requesting access to any data relating to him that was in the University's files. And, in any case, in accordance with article 68.3 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, the claimed entity had the possibility of asking the applicant the improvement of the terms of the request, for the purposes of specifying what the object was.

On the other hand, regarding the allegedly abusive nature of the request, the FUOC he relies on article 7 of the Spanish Civil Code to maintain that the claimant did not act in good faith. However, the claimed entity has not argued sufficiently that the exercise of the right of access was contrary to fairness and good faith, nor that the applicant had the intention of causing harm to the Administration by exercising the right in question.

Article 13.3 LOPDGDD provides that, for the purposes of Article 12.5 of Regulation (EU) 2016/679, the right of access that is exercised more than once, during the previous six-month period, can be considered repetitive upon submission of the application, unless there is a legitimate reason to do so. In accordance with this precept, in this case, it cannot be maintained that the request was repetitive, given that it has not been proven that the claimant has submitted several requests for access, to the same data controller, in the six months prior to the submission of the request that is the subject of this claim procedure.

### 3.2 On the right of access to the requested information

The controversy centers on the information that the FUOC had to hand over to the claimant, in compliance with the right of access.

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In this regard, it is certified that, on 02/08/2021, the claimant submitted to the FUOC a request that had as its object the right of access to its own data, and that, in literal terms, it requested: " that said information includes, in a legible and intelligible way, the basic data about me that is included in its files, [...] as well as the origin of the same, the transferees and the specification of the concrete uses and purposes for those that will be stored".

Likewise, it is also certified that, within the framework of this procedure, the FUOC has affirmed that with its response dated 09/01/2021 it provided the complaining party with the following information (the emphasis is ours):

"Basic information contained in your Personal File. The File is the UOC's internal information system where all the basic ordinary information about a person is collected from other UOC applications (academic documentation, inquiries handled by the Attention Service, payments, sanctions... ) so that any information or data related to a user of the University campus is directly accessible through the File, as long as it is not an extraordinary procedure, unrelated to the daily affairs of the University".

In this claim procedure, the FUOC has also acknowledged, as transcribed below, that it did not provide the claimant with a series of e-mails that concerned him (the emphasis is ours):

"It has been possible to contrast, through the verbal testimony of UOC staff, that the claimant was occasionally in contact with different people linked to the University [...]. Given that these complaints were addressed to University management staff e-mails not intended for the processing of complaints, these were not processed as consultation procedures or formal complaints [...], therefore, in the absence of in any information system intended for the purpose, they were not facilitated in response to their right of access."

From these statements it can be inferred, on the one hand, that the FUOC has not handed over to the claimant that documentation which it considers to be different from the daily affairs of the University, and on the other hand, that it has also not handed over the emails exchanged between the claimant and FUOC staff, arguing that these were informal communications.

For his part, as can be seen from the antecedents, the claimant has contributed various documentary evidence, to show that the FUOC has more information than it provided in response to its request to exercise the right of access.

At this point, it is necessary to specify that, what is recognized by article 15 of the RGPD is the right of every person to access the information that concerns him and that is the object of treatment by the person in charge of treatment, as a manifestation of the fundamental right to data protection (Article 18.4 EC), which is guaranteed to all

person control over their data. In accordance with this, the right of access recognized in article 15 of the RGPD means that the person claiming here has the right to access, in general, all those documents that concern him, without further limitations than those may derive from rules with the status of law, in accordance with article 23 of the RGPD, and from the limitations that may derive from the existence of rights of third parties (article 15.4 RGPD).

Well, from the above it can be inferred that, in general terms, article 15 RGPD includes within the scope of the right of access all the data that is the subject of treatment, as well as the informal communications that its staff have kept with the person requesting access to information.

Therefore, in accordance with the above, the FUOC's response of 09/01/2021 did not fully satisfy the claimant's right of access given that he did not provide all the information he had and that concerned the person making the claim. Among other information, it appears that he did not deliver the documentation indicated below:

- Emails dated 08/10/2018, 11/10/2018 and 12/11/2018 that the FUOC addressed to (...), referring to complaints submitted by the claimant.
- Application presented by the claimant to the Ministry of Education and Training Professional on 5/11/2018, addressed to the rector of the FUOC, asking him to certify that his university degree complies with the technical and security characteristics provided for in the regulations.
- Instances presented by the claimant on 26/05/2018 and 29/05/2018 to the Ministry of Science, Innovation and Universities that the FUOC attached to the email it addressed to (...) on 08/10/2018, and letter of resignation dated 09/08/2018 that the deputy general director of degrees of the State Secretariat for Universities, Development and Innovation, of the Ministry of Science, Innovation and Universities, addressed to the FUOC.

Therefore, given that the claimed entity partially delivered the information subject to the right of access, the claim should be upheld, and the FUOC should be required to deliver to the claimant any document concerning his person, as well as the information detailed in article 15 GDPR. All this, with the understanding that, at the very least, the documents indicated in this legal basis must be delivered, as well as any other information relating to the claimant, which is in the possession of the claimed entity.

5.- Therefore, 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 Foundation for the Open University of Catalonia so that, within 10 days from the day after notification of this resolution, exercise the claimant's right of access, providing him with a copy of all personal data that are in his power - unless he agrees

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an exception to those provided for in art. 23 of the RGPD-. 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.

For all this, I resolve:

- 1.- Estimate the guardianship claim made by Mr. (...) against the Foundation for the Open University of Catalonia.
- 2.- Request the Foundation for the Open University of Catalonia so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access exercised by the person claiming in the terms set out in the 3rd legal basis. Once the right of access has taken effect, within the same period of 10 days the claimed entity must report to the Authority.
- 3.- Notify this resolution to the Foundation for the Open University of Catalonia and to the person making the claim.
- 4.- Order the publication of the Resolution on the Authority's website ([www.apd.cat](http://www.apd.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 Law 39/2015 or 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,