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File identification

Resolution of the rights protection procedure no. PT 147/2021, brought against the company Ferrocarril Metropolità de Barcelona, SA (FMB) which is part of the TMB Group.

Background

1. On 26/11/2021 it was submitted to the Catalan Data Protection Authority, for referral of a claim presented to the Commission for the Guarantee of the Right of Access to Public Information (GAIP) - with number 1029/2021 -, a letter from Mr. (...) (henceforth, the claimant), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before Grup TMB. Dissatisfaction with the response provided by Grup TMB to the person making the claim is the subject of the claim.

Specifically, the claimant provided several emails exchanged with the claimed entity, among others, provided the email sent, on 10/29/2021, to the address correspondencia@tmb.cat (corresponding to Grup TMB), through which he exercised the right of access to his data, indicating the following: "Please indicate in the email cited by this part from what day and what place and at what time I can access and see physically all the information and documentation that the organization has about my work activity in this aforementioned company".

2. On 12/29/2021, the claim made against TMB Group - which was received on 01/03/2022 - was transferred, so that within 15 days it could formulate the allegations that he considered appropriate.

3. On 01/25/2022, he made allegations by means of a letter dated 01/02/2022, in which he set out, in summary, the following:

- That "(...) the claimant's contracting company during the period in dispute was FERROCARRIL METROPOLITÀ DE BARCELONA, SA", and that this entity is part of the TMB Group.
- That the exercise of the right of access was attended to within the legally established deadlines, given that, "on November 4, 2021, only three working days after receiving the request, the claimant is contacted (ANNEX II) to inform you of the status of the operations in reference to your request where it was indicated that the actions necessary to locate your personal information were being carried out."

- That "On November 12, 2021, the staff of this party contacted the claimant again to inform him that, after the procedures carried out, he makes available to the claimant the personal information of his ownership that it is in our systems not being able to do the same with the physical file because it could not be located, since it was sent to an external archive, because it is a file with information between the years 1991 and 1994, and the company that managed it does not locate it."
- That after this email of 12/11/2021, "(...) it does not go get a response from the claimant."
- That "(...) in no case was this party partially or totally denied the right of access since at all times it was cooperative and offered to give it access to the personal information contained therein" .
- That the entity "(...) acted in accordance with the Regulations, complying with the established deadlines and even informing him of the operations carried out with complete transparency and in good faith". And he added that "Having not received a response to the offer made to show him in person the personal information that FMB had at his disposal, it was understood that perhaps the claimant had given up continuing with the exercise of his right, not having been able to give him access to his personal information, despite the offer to show him the available information (...)".
- That "(...) we continue to analyze the possible causes that the referenced file has not been located".

The entity accompanies the following documents:

- The e-mail that the claimant sent to Grup TMB requesting the right of access to his file (29/10/2021), where he requested "(...) starting from que día ya qué lugar y en What time can I physically access and see all the information and documentation that the organization has on my work activity (...)".
- The reply email sent by TMB Group to the person making the claim (04/11/2021), where he was informed that since it was "information and documentation from the years 1991-1993, the current computer systems do not they collect virtually nothing and the physical files were stored outside of TMB; These storage companies that took care of it have been changing, and this makes it even more difficult to locate".
- The email sent by Grup TMB to the claimant (12/11/2021), where the interested person was informed that "(...) his file has not appeared in the external storage", and that " If, however, you want to come check the 'little' information contained in the systems

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computers, I have no problem receiving it. Write to me in response to this email, or call me, and let's make an appointment”.

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. In advance, it must be specified that, the TMB Group stated in its statement of objections dated 01/25/2022 that "(...) the contracting company of the claimant during the period in dispute to be FERROCARRIL METROPOLITÀ DE BARCELONA, SA", and that this entity is currently part of the TMB Group. In this respect, it should be borne in mind that all the companies that belong to the TMB Group, including the entity FERROCARRIL METROPOLITÀ DE BARCELONA (hereinafter, FMB) are - as indicated by the TMB Group on its website <https://www.tmb.cat/ca/politica-proteccio-dades-personals> - "Correspondents of the Treatment" (article 26.1 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 circulation thereof (hereafter, the RGPD)), and in accordance with the information provided by FMB itself, it follows that according to the activity actually carried out by FMB during the disputed period, this entity is responsible for processing the data of the person making the claim, regardless of which entity of the TMB Group the person making the claim addressed their request to exercise the right of access, in accordance with the article 26.3 of the RGPD which provides that "Independ In accordance with the terms of the agreement referred to in paragraph 1, the interested parties may exercise the rights recognized by this Regulation in front of, and against, each of the responsible parties. Given the above, in this resolution we will refer to the entity responsible for the treatment, such as FMB.

3. Article 15 of the RGPD, regarding the right of access of the person concerned, 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, paragraphs 3 to 5 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. 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 of submitting a claim before a control authority and exercise judicial actions.
5. The information provided under articles 13 and 14 as well as any communication and any action carried out under

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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.

2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.

However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.

3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it

4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that her choose behavior In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."

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. The interested persons who are denied, in part or in full, the exercise of the rights of access, rectification, cancellation

or of 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."

In the present case, to the extent that the requested documentation refers to information of the person claiming here due to her status as a former employee of FMB, the regime applicable to the access request is that provided for in the article 15 of the RGPD.

4. Having explained the applicable regulatory framework, it is then necessary to analyze whether FMB resolved and notified in time the right of access exercised by the person making the claim.

In this respect, it is certified that, on 10/29/2021, a letter from the person here claiming was received at the email correspondence@tmb.cat through which he requested to exercise his right of access to his personal data, specifically, he requested "from which day and which place and at which time I can physically access and see all the information and documentation that the organization has on me work activity".

Likewise, it is certified that FMB responded to the request to exercise the right of access -first on 04/11/2021, and then on 12/11/2021-, by email sent to the address provided by the interested person, as this person expressly indicated in his email addressed to FMB on 10/29/2021. Therefore, FMB formally responded to the person requesting access, within the period of one month provided for in the regulations (article 12.3 of the RGPD and article 21 of Law 39/2015, of 1 d October, of the common administrative procedure of public administrations (hereinafter, LPAC).

5. Regarding the substance of the present claim, it is necessary to analyze whether FMB made effective the right of access exercised by the person making the claim.

The response of FMB, to the request for access of the person here claiming in which he literally asked "from what day and what place and at what time I can access and see physically all the information and documentation that the organization dispose of my work activity", was:

- in a first email (04/11/2021) that when it comes to "information and documentation from the years 1991-1993, the current computer systems do not collect practically anything and the physical files were stored outside TMB; These storage companies that took care of it have been changing, and this makes it even more difficult to locate".

- a second email (12/11/2021) through which he made available to the claimant the personal information of his ownership that was contained in the computer systems, not being able to do the same with the physical file because it had not could be located. And he was told that "If, however, you want to come and check the 'little' information that is in the computer systems, I have no problem receiving it.

Write to me in response to this email, or call me, and let's make an appointment" (emphasis added).

This last answer therefore corresponds to the specific terms of the request of access of the person here claiming to FMB, which consisted of asking to know at what time and place he could physically access and see the information and documentation related to his work activity, given that on 11/12/2021 he was facilitate the means to arrange an appointment for the purposes of attending to his request, and to be able to physically examine the information available to FMB at that time.

In this regard, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their personal data that is the subject of treatment, and to obtain it from the person responsible for the treatment a copy of this data, without, logically, being able to provide data that it does not have in its possession.

Therefore, from the perspective of the right of access in Article 15 of the RGPD, the obligation of the data controller includes confirming to the person requesting access if you are processing personal data that affect you and, in such case, provide you with a copy of this data when you request it. In the case at hand, it is stated in the actions that FMB offered to the person here claiming the possibility of accessing the personal data he had, thus responding to the specific terms of his request in exercise of this right, that is to say, making it easier for him to make an appointment to physically see the information that was the subject of his treatment, without the claimant making use of this offer.

In accordance with the above, it is appropriate to dismiss the present claim filed for the possible disregard of the right of access of the person making the claim, and this without prejudice to the statements of FMB in the sense that its computer systems collect little information about the work activity of the person requesting access, and who has also not been able to locate his physical file, determines the origin of initiating ex officio actions by the Authority with the opening of a period of prior information in accordance with the provisions of article 7 of Decree 278/1993, to be able to know which data of the person making the claim are the subject of its treatment

current, and to confirm that certain permanent conservation information about this person's work activity is not available, if this fact would lead to a breach of data protection regulations personal

For all this, I RESOLVE:

1. Dismiss the guardianship claim for neglect of the right of access made by Mr. (...) against Ferrocarril Metropolità de Barcelona, SA, in accordance with the 5th legal basis.

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2. Open a preliminary information phase in order to investigate the circumstances of the facts that have given rise to the present claim, and depending on its result, determine whether FMB's conduct may have breached the regulations on data protection.
3. Notify this resolution to Ferrocarril Metropolità de Barcelona, SA, and to 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,