

File identification

Resolution of the rights protection procedure no. PT 148/2021, relating to the Municipal Institute of Social Services of Barcelona City Council.

Background

1. On 11/26/2021, 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 of access to his personal data, which he had previously exercised before the Municipal Institute of Social Services (hereinafter, the IMSS).

Specifically, the object of his claim, presented to the GAIP on 19/11/2021, was to complain that the IMSS, once the deadline for resolution had been exceeded, which the entity had agreed to extend, had not responded to his request for access to certain information.

The claimant provided various documentation relating to the exercise of this right, including the following:

- Copy of the request addressed to the IMSS, dated 3/10/2021, through which you request:

"Se Facilite me todos los correos e-mails / internal communications and any document that is open in the possession of the Municipal Institute of Social Services of Barcelona City Council, received from 12/06/2020 to 01/10/2021, by part of the following administrative units: ¿ Consorcio de Servicios Sociales de Barcelona ¿ Servicios territoriales de Barcelona Ciudad o Comarcas of the Previous Department of Work Social Affairs and Family (DTASF) and of the current Department of Social Rights. ¿ Secretary of Social and Family Affairs and General Directorate of Personal Autonomy and Disability of the former DTASF and the current department of Todo ello in relation to the Home Care Service of (...)
REQUEST FOR ACCESS TO PUBLIC INFORMATION ADDRESSED TO THE MUNICIPAL INSTITUTE OF SOCIAL SERVICES OF THE CITY OF BARCELONA "

- Copy of the document " *Comunicación Derecho de acceso a la información pública* " from the Department of Transparency and Good Practices of Barcelona City Council, in which you are informed, among others, of the date of entry in the register of your request (3/10/2021), the date of referral of the request to the unit responsible for its processing (4/10/2021), the unit responsible for processing (IMSS), the responsible body to issue the resolution (Management of the area of Social Rights, Global Justice, Feminism and LGTBI) and the file number ((...)).
- Copy of the deadline extension agreement, agreed by the Department of Transparency and Good Practices of Barcelona City Council, through which they inform the person making the claim that the deadline of one month to resolve their request will be extended by another 15 days, and sets the deadline for resolving the request on 11/18/2021.

2. On 11/28/2021, the claimant submits a letter to this Authority, through which he states that he has received a response to his request, and in relation to this, he complains that the response does not have issued the IMSS, which is the entity to which he addressed his request, but a different entity, the Barcelona Public Health Agency (henceforth, ASPB).

The claimant provides various documentation, including a copy of the email that was sent to him on 11/26/2021 from a generic ASPB email address, through which they respond to any request for right of access that he would have presented and that the entity identifies with the file number (...).

3. On 12/17/2021, all the documents related to the claim were transferred to the IMSS so that within 15 days it could formulate the allegations it deemed relevant.

4. The IMSS made allegations in a letter dated 12/22/2021, in which it set out, in summary, the following:

- That " *On October 3, 2021, Mr. (...) (XXX) made a request for access to public information through an instance submitted by electronic registration with entry number no. (...)*
- That " *On date On October 4, 2021, the Barcelona City Council's Transparency Department assigned the aforementioned request for information file number (...) and referred it to this Institute as the body responsible for its processing (...)*"
- That " *On November 3, 2021, the Transparency Department of Barcelona City Council notified the applicant of the extension of the deadline to resolve until November 18, 2021.*"
- That " *On November 18, 2021, this Institute responded to the access request made by Mr. (...) by sending by email (to the address indicated in the same (...)) the Notification of the Resolution of the Manager of the IMSS dated November 18, 2021 to which s "attached the report of the Territorial Director of the District of (...) of the same date."*

The claimed entity provided different documentation, among others, the following:

- copy of the email with the subject title " (...). REFERRAL NOTIFICATION RESOLUTION IMSS MANAGER ", sent from the "Legal Services" of the "Area of Social Rights, Global Justice, Feminism and LGTBI" to the person making the claim, on 11/18/2021.

In the body of the message, the addressee is informed that a response has been given to " *your request for access made last October 3, 2021* " and that the " *Notification of the Resolution of the Manager of the IMSS dated November 18, 2021 to which is attached the report of the Territorial Director of the District of (...) of the same date*".

- copy of the document " NOTIFICATION OF THE RESOLUTION BY WHICH THE REQUEST FOR ACCESS FORMULATED BY MR. (...) (...) UNDER THE PROTECTION OF LAW 19/2014, OF DECEMBER 29, ON TRANSPARENCY,

ACCESS TO PUBLIC INFORMATION AND GOOD GOVERNANCE , dated 11/18/2021.

In said Notification it is communicated that the following has been resolved:

"FIRST.- PARTIALLY INADMIT the access request made on October 3, 2021 by Mr. (...) (NIF. XXXX), by means of an instance submitted by electronic registration, with entry number no. (...), **regarding the request for emails and internal communications** , pursuant to the provisions of article 29 of Law 19/2014, of December 29, on transparency, access to public information and good government and to article 65 of Decree 8/2021, of February 9, on transparency and the right of access to public information, given that these would **be included in the category of informal communications that do not constitute procedures of the procedure** (in this case, of the procedure leading to the provision of the Home Care Service (SAD) to the applicant's son, to which he refers in his request).

SECOND.- DELIVERY to the applicant the report issued on November 18, 2021 by the Territorial Director of Social Services of the District of (...).

THIRD.- NOTIFY this Resolution to the person concerned ."

- Copy of the screen print in which it is indicated that , in relation to the message with the subject " (...). REFERRAL NOTIFICATION IMSS MANAGER RESOLUTION ", which was sent to the claimant's email address " *delivery to these recipients or groups has been completed, but the destination server has not sent a delivery notification* ".

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 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 thereof (in hereinafter, 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 person in charge of the treatment confirmation of whether or not personal data that concern them 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 responsible for the treatment will provide the interested party with information related to his 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 requests. 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 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 16.1 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. Having explained the applicable regulatory framework, it is then necessary to analyze whether the IMSS resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim.

In accordance with article 12.3 of the RGPD, the IMSS 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 legality. It is worth saying that this term can be extended by another 2 months (3 in total), taking into account the complexity or number of requests.

As a premise, reference must be made to the fact that, from the beginning, the request to the IMSS is treated and processed as a request for the right of access to information provided for in Law 19/2014, of December 29, on transparency, access to public information and good governance (hereafter, LTC). So things are, the Department of Transparency and Good Practices of the Barcelona City Council, by virtue of article 27 of the LTC, informed the applicant that the number had been assigned to his application of file (...). Also, the date of entry of the application into the electronic register (03/10/2021), the date on which the application is submitted to the body responsible for its processing (04/10/2021) and the deadline for its resolution (03/11/2021). Likewise, on 03/11/2021, the applicant is informed that it has been agreed to extend the deadline to resolve until 18/11/2021. Finally, it is certified that, on 18/11/2021, the IMSS sent an email to the private address of the claimant here attaching the notification of the resolution by which a response was given to the request of access.

In said notification, the claimant was informed that, on 18/11/2021, the IMSS had adopted the resolution by which it was decided to partially reject the access request dated 03/10/2021. In this sense, the resolution provides, on the one hand, to reject the request "regarding the request for emails and internal communications", by virtue of article 29 of LTC

and article 65 of Decree 8/ 2021, of February 9, " *given that these would be included in the category of informal communications that do not constitute procedures of the procedure* ", and, on the other hand, deliver " *the report issued on November 18, 2021 by Territorial Director of Social Services of the District of (...).*"

Well, as has been explained, although from the beginning the request dated 03/10/2021 is treated as a request for access to the LTC, it must be indicated that said request it is also clearly a request to exercise the right of access regulated in Article 15 of the RGPD. In this regard, it should be noted that, despite the fact that in the wording that the claimant here made in the request, he referred to a " *PUBLIC INFORMATION ACCESS REQUEST*", which could have induced the claimed entity to discard its treatment as a GDPR right of access, the truth is that, from the point of view of the right of access to your own data (or that of your representative) which regulates the personal data protection legislation, the determination as to whether or not what is being requested fits the aforementioned right of access does not depend on the qualification that the interested party can make in his writing, but on the claim that is specifically made. In this regard, taking into account the claim made by the claimant here - access to a series of e-mails, internal communications and documents received by the entity which allegedly contained his personal data (or those of representative office)-, the request dated 10/03/2021 must be granted the nature of an exercise of the right of access of the RGPD.

Having said this, it should be noted that, although the claimed entity did not process the request as a GDPR right of access, it is also true that it could be considered that the entity, through the date resolution 18/11/2021, would have given a concrete answer to the claims made by the person claiming in his request: not to admit access to the emails and internal communications requested, but to deliver a certain report. However, regarding this, it is also necessary to bear in mind that the maximum period established in the RGPD is for resolution and notification (art. 21 LPAC), so that before the end of the established period it should be to have notified the resolution, or at least to have produced the duly accredited notification attempt (art. 40.4 LPAC). Therefore, it was important that the entity make the notification by one of the means provided to record its receipt, as provided for in the LPAC. Well, in this case, the IMSS sent the notification of the resolution dated 11/18/2021 via email, as evidenced by the proof provided during the claims process, but the use of this means, although it certifies the sending of the mail by the entity to the applicant's particular e-mail address, does not certify its receipt by the recipient, and it is this, that the notification of the resolution to the applicant cannot be understood as practiced.

This situation is further confirmed by the fact that the claimant, in the letter of complaint presented to the Authority on 11/28/2021, does not make any reference to the email sent by the IMSS, but to a later communication sent by the ASPB in relation to another request , which has been assigned a file number (...) different from the one assigned to the request addressed to the IMSS ((. . .)), which has nothing to do with the complaint submitted to the IMSS. From this it is inferred that the claimant had not received, or had not detected in the inbox of his email account, the response to his request that the IMSS sent him on 18/ 11/2021.

As things stand, it must be considered that although the IMSS resolved on 18/11/2021, the access request made by the person claiming, has not proven that he had received the response to his request , nor within the period of one month (extendable for two more months) provided for the purpose, nor subsequently.

4. Once the above has been established, it is necessary to analyze the merits of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms usually tender the person claiming.

As a starting point, 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 own personal data that is the subject of treatment and, in such case, access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

Having said that, it should be made clear that the entity, in the resolution issued on 11/18/2021 regarding the request submitted by the person making the claim, rejected access to emails and internal communications, considering that, in accordance with article 29 of the LTC and article 65 of Decree 8/2021, of February 9, "*these would be included in the category of informal communications that do not constitute procedures of the procedure.*"

In this regard, it is necessary to specify that the right of access to personal data provided for in article 15 of the RGPD has a different scope and nature than the right of access to public information provided for in the LTC, which is the regulation which was applied in the resolution of the referenced request. The right of access in Article 15 of the RGPD is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition. This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

Therefore, the cases provided for in the LTC to reject a request for access to public information cannot be taken into account when resolving a GDPR access request. In this regard, it should be noted that article 24.3 of LTC expressly provides that requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data.

So things are, regardless of whether or not the e-mails requested by the person making the claim fit within one of the cases provided for in the LTC to reject a request, the fact is that every natural person has right to access personal information about herself or those people she represents, in accordance with article 15 RGPD.

In accordance with this, the right of access to personal data recognized in article 15 of the RGPD means that the person making the claim here would have the right to access, in any case, the information that could be contained in an eventual email or communication received by the claimed entity, containing your personal data or that of your child, and a copy of the same. Likewise, he would have the right of access to documents containing his personal data or that of his child. In this regard, it should be noted that, from the notification

of the resolution of 18/11/2021, it is inferred that the entity would have, at least, a report in which the said personal data appear (" *the report issued on November 18, 2021 by the Territorial Director of Social Services of the District of (...)*"). In this regard, taking into account what was indicated in the previous section, that the IMSS has not certified the practice of notifying the claimant of the resolution of 18/11/2021, from a formal point of view there is no evidence that said report was delivered to the person making the claim. Therefore, this document would also form part of the documentation that the entity should deliver to the person making the claim, in compliance with the right of access in Article 15 of the RGPD . This, notwithstanding that any of the limitations provided for in article 23 of the RGPD may apply.

None of these causes apply in the present case, so the interested person has the right to have his right of access enforced.

In short, the present claim for the protection of the right of access should be considered, given that in the present procedure it has been proven that the person making the claim exercised the right of access before the IMSS with respect to certain documentation, and it is also stated certified that the right of access exercised was not effective. All this, notwithstanding that in its response the entity may indicate to the person making the claim that it does not have the information requested in exercise of the right of access.

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 person in charge of the file must be required so that within 10 days make the exercise of the right effective. In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the claimant's right of access . 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 Municipal Institute of Social Services of Barcelona City Council.
- 2.** Request the Municipal Institute of Social Services of the Barcelona City Council 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 making the claim , in the form indicated in the 5th legal basis . Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
- 3.** Notify this resolution to the Municipal Institute of Social Services of Barcelona City Council 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,

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