

File identification

Resolution of the rights protection procedure no. PT 149/2021, relating to the Department of the Presidency

Background

1. On 26/11/2021, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), 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 Department of the Presidency (hereinafter, Department of PRE).

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

- Online application (reference (...)) submitted by the claimant here through the generic processor, dated 10/26/2021, and addressed to the PRE Department. In the request he requested:

"Access to corporate emails, WhatsApp messages, and other types of telephone messaging services, in the exercise of its functions in relation to (...).

REQUEST FOR ACCESS TO INFORMATION WITHIN THE SCOPE OF ITS FUNCTIONS DEPARTMENT OF THE PRESIDENCY, OFFICE OF THE PRESIDENT OF THE GENERAL IN ALL ITS COMPETENT AREA IN RELATION TO THE CASE OF (...), IN ALL THAT CONCERNS ITS RE-ENTRY AND COMPLEX CASES, AND THOSE THAT HAVE BEEN ISSUED IN A GENERAL MANNER. WITHIN THE SCOPE OF THE EXERCISE OF ITS FUNCTIONS OF THE ORGAN ADMINISTRATOR CORRESPONDING TO THE ASPB PLEASE MAKE ME A COPY OF ALL CORPORATE ELECTRONIC MAILS, WHATSAPP MESSAGES AND ALL TYPES OF TELEPHONE MESSAGE SERVICES ISSUED BY THE CATALAN INSTITUTE OF HEALTH, BETWEEN MARCH 12, 2020, AND JULY 31, 2021 AND THOSE THAT ARE ISSUED LATER THE DATE OF 07/31/2021."

- The "Resolution of the director of the Office of Strategy and Communication of the President and the Government, by which the request for access to public information with processing code (...) ((...)) is not accepted", dated 11/18/2021.

In this regard, it should be noted that the said resolution expressly states the following:

"once the appropriate checks have been carried out by the Office of Strategy and Communication of the President and the Government, it has been verified that the requested information is not contained in any documentary format and, consequently, it is not possible to recognize the right of access to same."

2. On 12/17/2021, the claim was transferred to the PRE Department so that within 15 days it could formulate the allegations it deemed relevant.

3. On 12/21/2021, the Department of PRE requested an extension of the deadline to formulate allegations. In this respect, this Authority granted the extension of the deadline to the entity for 7 more days, that is, until 19/01/2022.

4. On 13/01/2022 the Department of PRE formulated allegations by means of a letter of the same date, in which it set out, in summary, the following:

- That *"according to the derivation from the Guarantee Commission of the Right of Access to Public Information (GAIP), as well as from Mr. (...)’s own claim that is attached, we must face of a request for access to public information of those regulated in Law 19/2014, of December 29, on transparency, access to public information and good governance, since this is how the claimant raised it in his moment."*

ÿ That *"According to the Information Unit of the Department of the Presidency, the claimant on October 26, 2021 submitted a request for access to public information before the Department of the Presidency which was resolved by express form and on time on November 18, 2021, and notified on November 19, 2021, in the sense of not admitting it because the information that was requested was not included in any documentary format, case of non-admission of those provided for in article 29.1 and 2 of Law 19/2014, and in article 64.1 in reference to article 53 of Decree 8/2021, of February 9, on transparency and the right of access to the public information".*

- That *"In the same way, although, Mr.’s letter (...) was circulated as a request of exercising the right of access to personal data provided for in article 15 of the RGPD, the answer would go in the same direction, given that the data/information to which Mr. (...) intends to access does not exist in Department of the Presidency."*

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 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data (hereafter, 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 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 all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifest

unfounded or excessive, especially due to its 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 response given by the PRE Department to the request to exercise the right of access of the person making the claim, was in accordance with the provisions of the regulations for the protection of data

As a first consideration, it is necessary to refer to the allegation made by the PRE Department during the hearing procedure, in which it denies the nature of the request for access rights of article 15 of the RGPD, in the letter that the person claiming here addressed to the entity, on 10/26/2021.

In this respect, it should be indicated that from the outset, the entity considers that the request submitted by the claimant here is 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 (hereinafter, LTC). Based on this premise, the entity processes the request based on the LTC, and issues the resolution, dated 18/11/2021, by which it rejects access to the information requested by the claiming

Well, regarding this, it should be noted that contrary to the considerations formulated by the PRE Department, the letter that the person making the claim addressed to the entity on 10/26/2021 would indeed fit within 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 person making the claim here in the request referred to a "REQUEST FOR ACCESS TO INFORMATION", which could have induced the Department of PRE to discard its treatment as a right of access under the RGPD, the truth is that, from the point of view of the right of access to one's own data (or that of its representative) which regulates the legislation on the protection of personal data, the determination as to whether or not what is 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 formulated. In this regard, taking into account the claim made by the claimant here - access to a series of emails and mobile phone messages which supposedly contained his personal data (or those of his representative) -, it is necessary to grant the request dated 26/10/2021 the nature of an exercise of the right of access of the RGPD.

Having said that, it should be noted that article 15 of the RGPD recognizes the right of every person to access the information that concerns him and that is the subject of treatment by the person in charge of treatment, as a manifestation of the fundamental right to data protection (Article 18.4 CE), which guarantees everyone control over their data.

In accordance with this, the right of access recognized in article 15 of the RGPD entails that the person making the claim here has the right to access, in general, the information that may eventually be contained in the emails sent by the Departments of PRE, as long as said documents contain data relating to the person making the claim or their child (represented). All this, without prejudice to the exceptions that may derive from rules with the status of law in accordance with article 23 of the RGPD, and the limitations that may derive from the existence of rights of third parties (art. 15.4 GDPR).

However, in this particular case, it should be emphasized that, in its resolution dated 18/11/2021, the PRE Department indicated that, once it had carried out the appropriate checks, *"it has been verified that the information requested it is not included in any documentary format and, consequently, it is not possible to recognize the right of access to it"*.

In this same sense, the entity, in the statement of objections presented during the hearing procedure of the present rights protection procedure, ratified that *"the data/information to which Mr. (...) does not exist in the Department of the Presidency."*

Well, starting from this information, and taking into account that the necessary premise to be able to exercise a right of access is that the personal data to which it is intended to be accessed have been the subject of treatment by the person responsible for the treatment in to which the request is addressed, the response that the Department, through the resolution dated 18/11/2021, gave to the claimant here is considered to be in accordance with the right to data protection rejecting access to the requested data, since he could not give access to information that he did not have as data controller. That being the case, it should be noted that, although the request had been processed as a right of access under Article 15 of the RGPD, it is unquestionable that the Department's final response would coincide with the response already gave through the resolution dated 11/18/2021. Therefore, it must be considered that the request for the right of access in which the applicant formulated a specific claim, also obtained a specific response with said resolution in which he was informed of the non-possibility to exercise the right of access given the non-existence of the information.

In short, given that the PRE Department responded within the time limit to the request made by the claimant here and that its response conformed to that prescribed by the data protection regulations, the claim must be dismissed.

For all this, I resolve:

1. Dismiss the guardianship claim made by Mr. (...) against the Department of the Presidency.
2. Notify this resolution to the Department of the Presidency and the person making the claim.
3. 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,