

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

File identification

Resolution of the rights protection procedure no. PT 152/2021, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 12/22/2021, the Catalan Data Protection Authority received a letter from Ms. (...) on behalf of Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to personal data that he had previously exercised before the Management General of Police (hereinafter, DGP).

The person making the claim certified that, by means of a letter dated 01/11/2021 -with entry registration dated 03/11/2021-, he had requested from the DGP the exercise of the right of access to his personal data that appeared in the files of the information systems of the Generalitat Police (SIP PF and PFMEN), but was not attached documentation certifying the representation that the claimant would have given to the person acting as their representative.

2.- By official letter dated 12/30/2021 this Authority required the person acting as representative of the person making the claim to amend the claim for protection of the right of access to personal data submitted on 22 /12/2021, and also informed him that, in order to consider the claim formally presented, it was necessary for him to prove the representation that the claimant would have given him. For these purposes, he was granted a period of 10 working days in order to correct this defect, with the express warning that, in the event that he did not provide the required documentation within the period granted, his claim would be rejected.

3.- On 07/01/2022 the person acting on behalf of the person making the claim sent this Authority a letter, together with which he provided certified copy of your DNI, copy of the claimant's NIE and copy of the authorization of representation signed by hand by the claimant.

4.- By order dated 01/10/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

5.- The DGP made allegations by means of a letter dated 02/09/2022 - which was submitted to the APDCAT on 02/14/2022, basically setting out the following:

- That on 03/11/2022, Ms. (...), on behalf of Mr. (...), he requested access to your personal data recorded in the files of the SIP scope (SIP PF and SIP PFMEN).

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

- That on 01/13/2022 (with departure registration of 01/21/2022) he was required to provide a certified photocopy of the identification document in force of the interested person and of the documentation that unequivocally and reliably accredits the representation held by the person interested in exercising the right of access to the personal data contained in the files in the SIP area (SIP PF and PFMEN), and pointed out that "This representation can be accredited by any valid means in right that leaves reliable evidence of its existence; that is to say, in front of a public official".
- That "When the interested party responds to the request, the processing of the file will continue and the right of access requested will be effective".

The DGP provided various documentation, including: copy of the access request (03/11/2021), copy of the request for amendment or improvement of the request (registered with exit date 21/01/2022). Likewise, he also attached simple photocopy of the DNI of the person acting on behalf of the applicant, simple photocopy of the NIE of the applicant, and simple photocopy of the representation (10/31/2021).

6.- On 03/01/2022 a letter was sent to the DGP so that, within 5 days from the day after its receipt, it would report whether or not the person concerned gave an answer to the request dated 13/01/2022, if you had resolved your request for access dated 03/11/2021, and in case of an affirmative answer, provide the supporting documentation of said resolution and of its notification to the person claiming

7.- On 03/14/2022 - even though the deadline that this Authority had granted to the DGP to respond to the information request sent on 03/01/2022 - had already passed, the DGP sent the resolution issued on 07/03/2022 by the director of the DGP, declaring the withdrawal of the person requesting access to the data contained in the files of the SIP area (PF and PFMEN), given that the deadline granted to amend the request, and the interested person had not provided the required documentation.

The DGP provided a copy of the resolution (03/07/2022) declaring the withdrawal of the person requesting access to data (11/03/2021), and a copy of the official notification dated 03/09/ 2022.

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.- The personal data processed by the DGP referred to in this claim relating to the request to exercise the right of access

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

presented to the registry of the DGP on 03/11/2021, fall within the scope of application of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of criminal sanctions (LO 7/2021), which entered into force on 06/16/2021.

3.- In accordance with the above, it is necessary to refer to article 22 of LO 7/2021, which in relation to the right of access provides the following:

"Article 22. Right of access of the interested party to his personal data.

1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him is being processed. In the event that the treatment is confirmed, the interested party will have the right to access said personal data, as well as the following information: a) The purposes and legal basis of the treatment.

b) The categories of personal data in question. c) Recipients or categories of recipients to whom personal data have been communicated, in particular, recipients established in States that are not members of the European Union or international organizations. d) The retention period of personal data, when possible, or, if not, the criteria used to determine said period. e) The existence of the right to request from the controller the rectification or deletion of personal data relating to the interested party or the limitation of its treatment.

f) The right to submit a claim to the competent data protection authority and its contact details. g) The communication of the personal data subject to treatment, as well as any available information about its origin, without revealing the identity of any natural person, especially in the case of confidential sources.

(...)"

Likewise, it should be borne in mind that in the event of restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment, it is necessary to refer to articles 24 and 25 of LO 7/2021, which determine what:

"Article 24. Restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment.

1. The controller may postpone, limit or omit the information referred to in article 21.2, as well as deny, in whole or in part, requests to exercise the rights contemplated in articles 22 and 23, provided that, having taking into account the fundamental rights and legitimate interests of the affected person, it is necessary and proportionate to achieve the following goals:

a) Prevent inquiries, investigations or judicial proceedings from being obstructed. b) Avoid causing damage to the prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions. c) Protect public safety. d) Protect National Security. e) Protect the rights and freedoms of other people.

2. In case of restriction of the rights contemplated in articles 22 and 23, the person responsible for the treatment will inform the interested party in writing without undue delay, and in any case, within one month from the date of knowledge of said restriction, of the reasons thereof, as well as of the possibilities of filing a claim before the data protection authority, without prejudice to the remaining judicial actions that can be exercised by virtue of the provisions of this Organic Law. The reasons for the restriction may be omitted or replaced by neutral wording when the disclosure of the reasons for the restriction may jeopardize the purposes referred to in the previous section.

3. The person responsible for the treatment will document the de facto or derecho grounds on which the decision denying the exercise of the right of access is based. This information will be available to the data protection authorities".

"Article 25. Exercise of the rights of the interested party through the data protection authority.

1. In cases where there is a postponement, limitation or omission of the information referred to in article 21 or a restriction of the exercise of the rights contemplated in articles 22 and 23, in the terms provided for in article 24, The interested party may exercise their rights through the competent data protection authority. The data controller will inform the interested party of this possibility.

2. When, by virtue of what is established in the previous section, the rights are exercised through the data protection authority, this must inform the interested party, at least, of the completion of all the necessary checks or the corresponding review and of his right to file a contentious-administrative appeal".

In paragraph 1 of article 52 of LO 7/2021, regarding the regime applicable to the procedures processed before the data protection authorities, it is foreseen that:

"1. In the event that the interested parties appreciate that the processing of personal data has violated the provisions of this Organic Law or their request to exercise the rights recognized in articles 21, 22 and 23 has not been met, they will have the right to file a claim before the data protection authority (...)".

In line with the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, provides the following:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, deletion 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."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP attended to the right of access exercised by the person making the claim within the period provided for by the applicable regulations, since the reason for the complaint of the person who initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In the case we are dealing with here, in accordance with article 20.4 of LO 7/2021, the DGP had to resolve and notify within a maximum period of one month from the date of receipt of the request of access presented by the person here claiming.

Well, as can be seen from the actions taken, it is certified that on 03/11/2021 the DGP received the request for access from the person who claimed to act on behalf of the owner of the data, and that the request for amendment or improvement of this request has an exit record from the DGP dated 01/21/2022, that is, when the resolution deadline of one month legally established had already been exceeded, so it must be concluded that the DGP did not give any response to the person here claiming within the legally established deadline. In fact, as part of the present complaint procedure, the DGP has provided the resolution of this request which was issued on 03/07/2022.

5.- Having established the above, it must be agreed that together with the request for access to the data, submitted to the DGP (03/11/2021) by a third person who declared to act on behalf of the interested person, a simple photocopy of the DNI of the person claiming to act as a representative, a simple photocopy of the NIE of the person represented and a simple photocopy of the document certifying the representation was also provided (31/10/ 2021).

In relation to this, it is certified that the DGP sent a request for amendment to the person who acted as the representative of the interested person - with departure registration of 01/21/2021-, so that, on the one hand, providing a certified photocopy of the DNI, passport, or NIE in force that identifies the interested person, and on the other hand, providing a photocopy notarized attestation of the representation conferred to exercise the right of access to the person's data represented in the files of the SIP scope (PF and PFMEN) of the DGP.

For the purposes of accrediting the representation, the DGP indicated in the request (13/01/2022) that "This representation can be accredited by any valid legal means that leaves a reliable record", and also reiterated this in the response that

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

send to this Authority on 02/14/2022, specifying in addition that it had to be recorded "in front of a public official". In this request, a period of 15 days was granted, so that the lack of representation could be rectified, warning that once the period has passed, without having done so, it would be considered that the interested person had given up their request for access. So things are, as set out in the 7th precedent of this resolution, the DGP agreed to declare the withdrawal of the interested person regarding the request for access to the personal data contained in the files of the SIP area (PF and PFMEN), given that the deadline granted by the DGP to its request for amendment, passed without the representation of the person making the claim here having been reliably certified, in accordance with the provisions of article 5.4 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (hereafter, LPAC), which determines that "The representation can be accredited by any means valid in law that leaves reliable evidence of its existence. For these purposes, the representation made by means of "apud acta" power of attorney made by personal appearance or electronic appearance at the corresponding electronic office, or through the accreditation of its registration in the electronic register of powers of attorney is considered accredited competent public".

Likewise, it should be pointed out that, on 12/30/2021, this Authority also required the accreditation of the representation of the person acting on behalf of the person making the claim, but this representation has also not been accredited in the terms required by article 5.4 of the LPAC.

In this regard, it must be noted that the right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. By means of the right of access, the owner of the data can find out which data about him/her are being processed and, in addition, can be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

But when the right of access is exercised by a third party on behalf of the person who owns the data, as in the present case, it is necessary to take the most guarantees to ensure that the data is made available to a person authorized by the owner, and one of these guarantees is that the representation of the third party that requests access to data is duly accredited, invoking the status of representative of the holder of this data, in accordance with the provisions of article 5.4 of the LPAC.

Given the above, the claim relating to the request for access to personal data contained in the files of the SIP area (PF and PFMEN) of the person making the claim must be dismissed, given that it is not accredited, even at the time of exercise the right before the DGP, nor when the present claim has been made, the representation invoked by a third party other than the owner of the data, which is why the resolution of the DGP declaring the withdrawal of the request for access, taking into account, in addition, that he had previously been warned of this legal consequence if the representation of the person on whose behalf this right was exercised was not reliably accredited.

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

This resolution does not prevent the claimant from submitting another one claim for the protection of the right of access to personal data, and this because such a claim is not subject to a deadline, although the request must have previously been made to the person responsible for the processing of the personal data in relation to which wants to exercise the right of access, and in the event that a third person acts on his behalf, the representation must be accredited in accordance with the provisions of article 5.4 of the LPAC.

For all this, I RESOLVE:

1. Declare extemporaneous the resolution issued by the General Directorate of the Police, dated 07/03/2022, in relation to the request for access to the data made by Mr. (...), in accordance with what is stated in the 4th legal basis.
2. Dismiss this claim for the reasons indicated in the 5th legal basis.
3. Notify this resolution to the DGP and the person making the claim.
4. Order the publication of the Resolution on the Authority's website (apdcat.gencat.cat), in accordance with article 17 of Law 32/2010, of October 1.

Against this resolution, which puts an end to the administrative process in accordance with articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, in the period of two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,