

File identification

Resolution of the rights protection procedure no. PT 153/2021, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 13/12/2021 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 to delete personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The claimant provided various supporting documentation for his request, but did not provide the request to exercise the right of deletion presented to the DGP.

2.- By letter dated 12/14/2021 -received by the person here claiming on 01/04/2022-, the Authority sent him a request so that, within 10 working days from day following its receipt, provide a copy of the documentation proving that you have exercised the right before the person in charge of the file or processing, before the filing of the claim presented to this Authority. In this regard, he was expressly warned that, in the event that he did not provide the required documentation within the aforementioned period, he would be considered to have given up the claim presented to the Authority, in accordance with article 68 of Law 39/2015, d October 1, of the common administrative procedure of public administrations (hereinafter, LPAC).

3.- On 11/01/2022, the Authority received the letter in response to the request dated 12/14/2021, together with the request to exercise the right of deletion presented by the claimant to the DGP on 07/29/2021.

4.- By official letter dated 01/20/2022, 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 02/22/2022, where basically stated the following:

• That on 07/29/2021, the person claiming requested the deletion of the personal data recorded in the files of the SIP (PF) area in relation to police proceedings no. (...) (relating to his arrest for domestic abuse).

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- That on 11/19/2021 (with exit registration 11/23/2021), the DGP sent to the person claiming "a request for amendment or improvement of the application in which he is asked to accredit the definitive filing of the actions derived from the Urgent Proceedings-Quick Trial no. (...), initiated by the Court of Violence against Women (...) of Badalona, given that it provided an interlocutory order of provisional dismissal."
- That on 07/12/2021, the claimant submitted a "letter of response to the request making his allegations. However, it does not provide any judicial certificate of the definitive archive of the proceedings, nor any clarification in this regard."
- That on 09/12/2021 (with exit registration 14/12/2021), the DGP sent the claimant a second request to amend or improve the application in the same sense as the first, but "Given the lack of response from the interested party to this second request, the file is reviewed and arrangements are made directly with the investigating court in order to clarify certain aspects of the judicial proceedings."
- That on 04/02/2022, the director general of the Police issued a resolution in which he agreed to make effective the deletion of the personal data of the claimant related to police proceedings no. (...) contained in the file of the SIP area (PF), and that the aforementioned resolution was sent to the address that the claimant had indicated for notification purposes.

The DGP provided various documentation, including a copy of the deletion request (29/07/2021), a copy of the file documentation, a copy of the decision issued (04/02/2022), and copy of the notification office - without the date of departure registration - but did not provide the document certifying that the notification of the estimated resolution had been effective to the claimant.

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 to deletion presented to the registry of the DGP on 29/07/2021, 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.

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3.- In accordance with the above, it is necessary to refer to article 23 of LO 7/2021, which in relation to the right of deletion provides the following:

"2. The person responsible for the treatment, on his own initiative or as a consequence of the exercise of the right of deletion of the interested party, will delete the personal data without undue delay and, in any case, within a maximum period of one month from the date of knowledge, when the treatment infringes articles 6, 11 or 13, or when personal data must be deleted by virtue of a legal obligation to which it is subject.

3. Instead of proceeding with the deletion, the controller will limit the processing of personal data when any of the following circumstances occur:

a) The interested party doubts the accuracy of the personal data and its accuracy or inaccuracy cannot be determined.

b) Personal data must be kept for evidentiary purposes.

When the treatment is limited by virtue of letter a), the person responsible for the treatment will inform the interested party before lifting the limitation of the treatment".

"(...) 5. When the personal data have been rectified or deleted or the treatment has been limited, the person responsible for the treatment will notify the recipients, who must rectify or delete the personal data that are under their responsibility or limit their treatment".

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 the legitimate interests of the affected person, it is necessary and proportionate to achieve the following ends: 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

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resolved within the established deadline, 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 resolved and notified, within the period provided for by the applicable regulations, the right of deletion exercised by the person making the claim, since precisely the reason for the person's complaint that 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.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that on 07/29/2021, the person making the claim presented a letter to the DGP through which he exercised the right of deletion.

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 deletion submitted by the person claiming. In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

Well, as can be seen from the documentation provided in this file, the DGP sent the person two requests to amend his application, the first of them on 19/11/2021 (with exit registration 23/11/2021), that is to say, when the resolution deadline of one month planned for the purpose had already been exceeded, and that until 04/02/2022 he did not issue the resolution in response to the deletion request dated 07/29/2021. So things can be concluded that the DGP resolved the claimant's request extemporaneously.

Regarding the merits of the request for the deletion of the personal data appearing in the SIP PF file, the DGP has certified that it has agreed to the deletion of this data in the terms requested by the person making the claim, as can be seen from the resolution of 04/02/2022, which the DGP has provided to this Authority.

5.- Given that, although the DGP has certified that it issued the estimated resolution dated 02/04/2022, regarding the deletion request made by the person making the claim, there is no documentary evidence that this resolution has been notified, this Authority considers it appropriate to require the DGP so that within the term of 10

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counting days from the day after the notification of this resolution, certify that the resolution dated 02/04/2022, estimating the right of deletion, has effectively been notified to the person making the claim.

For all this, I RESOLVE:

1. Declare extemporaneous the resolution of the General Directorate of the Police dated 04/02/2022 that considers the request of Mr. (...) of deletion of their personal data included in the file of the SIP area, without entering into other considerations regarding the fund, given that the DGP has attended to the right exercised by the person making the claim, and has agreed to delete this data .
2. Request the DGP so that, within 10 counting days from the day after the notification of this resolution, it accredits the notification to the claimant of the estimated resolution dated 02/04/2022, in the terms 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,