

File identification

Resolution of the rights protection procedure no. PT 154/2021, petition against the Terrassa City Council.

Background

1. On 21/12/2021, 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 of access to his personal data, which he had previously exercised before the Terrassa City Council.

The person making the claim provided the documentation relating to the exercise of this right, specifically, the request that on 28/09/2021 he had made before the City Council of Terrassa in which he literally set out:

"I ASK AGAIN, for the fifth time, after instances 073354 of 03/02/2021, 2021049583 of 03/08/2021, 2021051879 of 11/08/2021 and 890194 of 09/09/2021

- THAT I be told the name of the person or entity that transmitted the EATAF report to Social Services, a document for the exclusive use of the Terrassa family court and that Social Services used, interpreted and biased to draw up a transfer report to the foundation (...) of our family situation for the psychological monitoring of our minor son without me being informed;

- KNOW the name of the official who requested and received it, or only receive it if it has not been requested at any time;

- KNOW why, from November 2019 (that Mrs. (...) declares to have this document) until December 2020 (when Mr. (...) discovers that they had it and how they were using it 2021050193) I was not informed of his possession and use they were making, or I was not made to sign any documentation for their use and information;

- BECAUSE in the response with exit registration 2021050193 of 09/08/21, Ms. (...) send me the referral report to (...) again, deleting the information that quotes and interprets the EATAF report in a biased way, when instead in the document of December 18, 2020 yes it was there and that's how I found out about your bad practice and discrimination towards this father".

2. On 20/01/2022, the claim was transferred to Terrassa City Council so that within 15 days it could formulate the allegations it deemed relevant.

3. On 07/02/2022 the Terrassa City Council formulated a statement of objections, in which it set out the following:

a) That, regarding the context in which the claim made by Mr. (...) it is interesting to note that "since 2012 Mr. (...) and the mother of his son have carried out various

requests for support from municipal social services, until in 2015 they announced that they were starting judicial separation procedures. From then until the present we have made, separately, continuous demands, in which each of the members expressed that the other party did not take care of their child properly (...), and that the will of the other party was to act with the intention of harming the 'ex partner'. That between August and September 2019, as part of the custody and custody procedure for the minor being processed in a Court of Terrassa, the Technical Advisory Team in the Family Area (EATAF) which advises the said In court, he asked for the collaboration of the City Council's social services and conveyed the need for the minor to have a therapeutic resource. That from that moment Mr. (...) through the presentation of several instances to the City Council, it shows its disagreement with certain actions of the social services, which will intensify from the year 2020 with a "continuum of instances, of reiteration of petitions presented by Mr. (...) before the town council of Terrassa, as well as maintaining the disqualifications of the municipal staff in each of his writings".

b) That, with regard to the specific instance presented on 09/28/2021, which is alluded to in the claim that has given rise to the present guardianship procedure, it must be said that, although in said instance the claimant here complains that the information requested there (see background 1) had already been requested in previous instances -which he details- and that it had not been provided to him; this is uncertain, according to the following:

b.1) In the instance 03/02/2021, among others and for what is of interest here, the claimant here requested access to the "*comprehensive document of the referral to (...)*" of the case of his minor son, by the City Council's social services.

He had certainly already requested this document previously (in instances of 04/12/2020 and 08/12/2020), and the City Council already provided him with a copy of it on 18/12/2020. As the claimant here was not satisfied with the copy that was provided to him, in which the data of third parties had been hidden, he formulated on 03/03/2021 a claim for the protection of rights before the Authority, which resulted in procedure no. PT 29/2021, which ended with the director's resolution of 04/16/2021 dismissing his claim.

b.2) In the instance of 08/03/2021, among others and for what is of interest here, the claimant here he is again asking for a copy of "*the referral report that Social Services makes to the Foundation (...)*", which was sent back to him hiding the data of third parties, by means of a letter dated 09/03/2021.

b.3) In the instance of 09/28/2021 subject of this claim, "*Mr. (...) states that he is reiterating a request already made to the City Council in date 11/08/2021 with number 51879 and which has never been answered. On 08/11/2021 Mr. (...) presented two instances but by mistake indicates that they have the number 51879. The two instances he presents on that day 08/11/2021 have the numbers 883905 and 883908*".

- That in instance 883905 of 11/08/2021 the claimant here asked to be given response to three previous instances dated 02/20/2020, 10/14/2020 and 02/03/2021. That the instances dated 02/20/2020 and 10/14/2020 have nothing to do with the claim that has given rise to this procedure, since the first of them

claimed from the City Council compensation for moral damages due to discrimination; and, in the second, he demanded that the City Council speed up the procedure to grant his son a therapeutic resource. That, with regard to the instance of 02/03/2021, as already stated above (section b.1/ precedent), he requested a copy of the referral document, a request that had already been attended to.

- That in instance 883908 of 11/08/2021 the claimant here made a request that has nothing to do with the claim that has given rise to this procedure.

b.4) In instance 890194 of 09/09/2021 (last mentioned in the instance of 09/28/2021), he reiterates again that an answer is given to his instances of 02/03/2021, 10/14 /2021, 02/20/2020, 08/03/2021, which content has already been scanned.

c) With regard to the specific requests made by the claimant here in his instance of 09/28/2021, *"with respect to the identification data of the person in the court, of the care team psychology who contacted the city council and the name of the social worker who attended to, they are not part of the right of access contained in Article 15 EU Regulation 2016/679 of the European Parliament"*. And, with regard to his statement in which he asks for explanations as to why he was provided with a referral report on his son's case to the Foundation (...) *"biased"*, it must be insisted that this report has already been sent to him provide -hiding the data of third parties that appeared there - and that the Authority pronounced on this in its resolution of the rights protection procedure no. PT 29/2021 in which he dismissed the claim that Mr. (...) had filed a complaint complaining that the City Council had not provided him with a full copy of the controversial referral report.

d) What must be done considering that Mr. (...) *"abuses his right, (...) confusing the information of the instances to which he refers, of different procedures, different requests, taking advantage of this in each instance he presents, not only those mentioned in this writing throughout 2021, but many others that he has presented throughout this time to accuse municipal workers of all kinds of discriminatory, unprofessional and abusive behaviour. He repeatedly states that nothing has been answered, but the answers he refers to that have not been given to him are provided in this writing, when he himself in later instances refers to the answer he receives from the town hall of previous instances"*.

Along with its statement of objections, the City Council provided various documentation:

a) copy of all the instances that the claimant mentioned in turn in his instance of 09/28/2021, which lack of response (according to the claimant) is the reason for the claim that has initiated the present rights protection procedure; except for instance no. 51879 of 11/08/2021 which, according to the City Council, the claimant here confuses with one of those that he did present on that date (numbers 883905 and 883908) which copy he also provides.

b) Copy of various offices that the City Council has addressed to the claimant here responding to their requests, among which there is none that gives an express response to the request of 09/28/2021.

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 RGD, paragraphs 3 to 5 of article 12 of the RGD, 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 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 your choice behaves. 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. 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 City Council resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for his 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.

In this respect, it is certified that on 09/28/2021 the entity received a letter from the person claiming through which he exercised the right of access to his personal data, among other requests unrelated to this right, as will be seen later.

In accordance with article 12.3 of the RGPD, the Terrassa City Council 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

Well, the City Council of Terrassa has not proven to have responded to the request for access made by the person making the claim, neither within the period of one month (extendable for two more months) provided for the purpose, nor later. It must be said that this lack of response must be understood, with regard to the right of access guaranteed by article 15 of the RGPD, solely and exclusively with regard to the request of the herein claimant to know the person or entity that would have provided Terrassa's social services with the EATAF report, since as will be analyzed later, the rest of the requests referred to by the claimant here in his instance of 28//09/2021, it was information that cannot be included in the right of access guaranteed by the data protection regulations.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access, it must be declared that the City Council did not resolve and

notify in form and time the said request presented by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

4. Once the above has been settled, it is necessary to analyze the substance 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 that request of the person making the claim.

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 own personal data that is the subject of treatment and, in such case, to access to the said data and the 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.

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. 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. The reasons for denying the right of access can be found in article 23 of the RGPD, which must be foreseen *"through legislative measures"* (art. 23.1 RGPD).

Prior to the analysis of the merits of the claim, it must be said that, although the claimant states in his letter of 09/28/2021 that he has repeatedly requested all the information detailed there, the truth is, as as the City Council has proven in its statement of objections, that this statement does not correspond to reality.

Having said that, it is first necessary to examine whether all the information requested by the person claiming in his instance of 09/28/2021 is part of the content of the right of access regulated in article 15 of the RGPD above transcribed; and in relation to that information that is part of it, analyze whether or not the person making the claim has the right to access it. These extremes will then be addressed separately for each request.

4.1 With regard to *"notifying you of the name of the person or entity that transmitted the EATAF report to Social Services, a document (...)"*.

In this regard, in its pleadings the City Council has stated that it would not be part of the right of access guaranteed by the data protection regulations to provide *"identifying data of the person in the court, of the psychological care team who contacted the city council (...)"* (letter with 3rd antecedent)

Well, in this respect it must be specified that the person making the claim did not only ask, as the City Council seems to have understood, for the identification of the person from the Court who would have facilitated

to their social services the EATAF report, but to know *"the name of the person or entity that had provided the report to the EATAF"*, that is to say, of any person or entity that, having had access to the said report, provided a copy to the City Council's social services.

The right of access regulated in article 15 of the RGPD determines that the person affected by the treatment has the right to know the origin of their data, and this is provided for in section 1.g) of said precept: *"the interested party will have the right to obtain from the person in charge of the treatment (...) right of access to personal data and the following information (...) g/ when the data when the personal data have not been obtained from the interested party, **any information available on its origin**".*

In view of the provisions of this precept, and to the extent that the EATAF report included the data of the claimant here and of his minor son (of whom he would hold his legal representation), the City Council must provide any information you have regarding its origin, as required by the transcribed precept, which includes the right to know - if this information is available - the name of the person employed by the court who would have provided the report. It should be noted that the aforementioned section is not limited to providing information on the transferors (or categories of transferors) of the data, as it does in relation to the recipients (or categories of recipients) - art. 15.1.c/ RGPD- but requires that any information available on the origin of the data be reported.

Likewise, as has been advanced, in the event that the controversial report has been provided to the social services by some other entity or natural person, the City Council should also give this information to the person making the claim.

However, it must be said that the right of access, like any other right recognized in the RGPD, is not absolute, so that, apart from the limits provided for in article 23 of the RGPD through legislative measures, it is necessary to have taking into account that article 15 of the RGPD, *"provides the right of access of those affected by a treatment to their own information held by the person responsible for the treatment, with the limit of not negatively affecting the rights and freedoms of others people"* (CNS opinion 23/2021, which can be consulted on the website of this Authority). And in this sense, recital 63 of the RGPD determines that *"this right must not negatively affect the rights and freedoms of third parties, including commercial secrets or intellectual property and, in particular, intellectual property rights that protect programs computers However, these considerations should not result in the refusal to provide all the information to the interested party.*

So, despite not being an action expressly provided for in the data protection regulations, nothing would prevent the City Council, once the specific situation has been analyzed, to transfer to the people whose data may be affected by the requested access, of the request for access made by the person making the claim, so that they make the appropriate allegations.

This transfer, before deciding on access, would be based on article 21 of the RGPD which regulates the right of opposition (*"The interested party will have the right to oppose at any time, por motivos relacionados con su situación particular, a que datos Personal data that concern you are subject to treatment based on the provisions of article 6, section 1, letters e) of), including the creation of profiles based on those provisions. The controller will stop processing personal data, except*

that proves compelling legitimate grounds for treatment that prevail over the interests, rights and freedoms of the interested party, or for the formulation, exercise or defense of claims").

4.2 Regarding *"KNOW the name of the official [of the City Council] who requested and received it, or only receive it if it has not been requested at any time" [refers to the report of the EATAF].*

In this regard, it must be said that this Authority has already highlighted in several resolutions, opinions and reports (for all, PT 58/2021, CNS 53/2019 and IAI 4/2022), that it is not part of the right of access foreseen in article 15 of the RGPD, to know the identification of the personnel responsible for the treatment (in this case of the City Council) who has accessed the data or files processed by it. And this because, in essence, this type of access cannot be considered a communication of data to third parties; and, consequently, it cannot fit into section 15.1.c) of the RGPD, as information that the affected person has the right to know in the exercise of his right of access (*"the recipients or the categories of recipients in those who communicated or will be communicated personal data, in particular recipients in third parties or international organizations"*).

4.3 Regarding *"KNOW because, from November 2019 (that Ms. (...) declares to have this document) until December 2020 (when Mr. (...) discovers that they had it and how they were using it 2021050193) I was not informed of their possession and use, or I was not made to sign any documentation for their use and information"*

This request is not part of the right of access guaranteed by the data protection regulations, since it cannot fit into any of the sections related to article 15.1 of the RGPD; consequently, it is not appropriate to make any pronouncement from the point of view of this right, which eventual lack of attention is the object of this rights protection procedure. Having said that, and with regard to this request, it is not superfluous to say that this Authority initiated a preliminary information file following the complaint made by the claimant here in which he complained precisely that the City Council had not complied with the your right to information, file that is currently being processed.

4.4 Regarding *"WHY in the response with outgoing record 2021050193 of 08/09/21, Ms. (...) resend me the referral report to (...) deleting the information"*

These explanations, in their strict terms, would also not be information that is part of the right of access guaranteed by article 15 of the RGPD.

Having said that, it is not superfluous to point out here, first, that it is proven that the City Council provided the claimant here, at least on two occasions, with the report that the City Council's social services issued on the occasion of the derivation of his son's case at the Foundation (...), and that on both occasions the City Council will give him a copy of the report in which the data of a third person was hidden; and, second, that the analysis on the alleged access to the complete information contained in the controversial referral report, from the perspective of the right of access regulated in Article 15 of the RGPD, as already has said, it was expressly analyzed in the resolution that put an end to the rights protection procedure no. PT 29/2021 in which the claim by Mr. (...), to which we refer.

In view of all the above, the present claim for the protection of the right of access should be considered, solely with regard to knowing, "*the name of the person or entity that transmitted the EATAF report to Social Services*", in the terms set out in section 4.1 of this legal basis and in accordance with the provisions of article 15.1.g) of the RGPD; and this without prejudice to the fact that the City Council, once the request has been analyzed and the eventual impact on other rights, may reject in whole or in part this specific request for access based on the concurrence of a limit.

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 protection of rights, the manager of the file must be required so that within the term of 10 days to 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 right of access of the person making the claim, facilitating- the identity of the person and/or entity (in the latter case, with the identification of the working person, if this information is available) that transmitted the EATAF report to Social Services, except for the procedure of hearing that is granted to the person or persons interested results in some reason that justifies limiting access to their identity. In the latter case, taking into account that the City Council would have granted a period to the person or persons affected by the access to make allegations, the period that the claimed entity would have to notify the party claiming the decision what finally adopted on your request for access, it will be 2 months from the day following the notification of this resolution.

The City Council must report to the Authority within ten days of the decisions it adopts and of its notification to the person making the claim.

For all this, I resolve:

1. Partially estimate the guardianship claim made by Mr. (...) against the Terrassa City Council.
2. Request the Terrassa City Council to carry out the actions set out in the 5th legal basis within the period indicated in each case.
3. Notify this resolution to Terrassa City Council 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 directly file a contentious administrative appeal before



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the administrative contentious courts of Barcelona, within two months from the day after their notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating the 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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