

## Identification of the file

Resolution of the procedure for the protection of rights no. PT 3/2022, urged by Mrs. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat de Catalunya.

## Background

1.- On 12/01/2022 , a letter from the Catalan Data Protection Authority was sent to the Mrs. (...) (hereinafter, the complainant), by which he made a claim for the alleged breach of the right of access to personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

By means of a letter dated 24/09/2021 -with entry registration dated 27/09/2021-, the claimant proved that he had requested the DGP to exercise the right of access to his data. personal data that appeared in the files in the field of information systems of the Generalitat Police (SIP PF and SIPFMEN), and also stated *Lo sollicité on 27/09/2021 . As of today , January 12 , 2022 , I have not had response to the data access request personal registered in the files Mossos d'Esquadra police officers "*.

2 .- By ex officio dated 18/01/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed pertinent.

3.- The DGP made allegations in writing dated 22/02/2022, where it basically stated the following:

- That on 27/09/2021, the complainant requested access to his personal data recorded in the files of the SIP PF area.
- That on 16/12/2021, the Director General of Police issued a resolution in which he agreed to make effective access to the personal data contained in the SIP PF file of the claimant, *"he was informed of the condition who showed in the proceedings (victim / complainant, detainee, accused, identified, visit, ...) the date of the events, the number of police proceedings, or the identification, the investigating unit and the reason for the action . "*
- That the aforesaid resolution and the office of notification had been sent to the address which the claimant had indicated for the purposes of notification.

The DGP provided various documentation, including a copy of the application for access (27/09/2021), a copy of the resolution of date ( 16/12/2021) , a copy of the notification of dated 24/01/2022 (with departure registration dated 26/01/2022 ) , and also provided an acknowledgment of receipt of the notification of the resolution (08/02/2022) .

## 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 1 October, of the Catalan Data Protection Authority.

2.- The personal data subject to processing by the DGP referred to in this claim relating to the application for the exercise of the right of access submitted to the DGP register on 27/09/2021, are included in the scope of application of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purpose of prevention, detection, investigation and prosecution of criminal offenses and enforcement of sanctions criminal law (LO 7/2021), which came into force on 16/06/2021.

3.- Okay with the above, it is necessary to go 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 data personal .*

*1. The interested party will have right to obtain from the controller confirmation of whether they are dealing with no data personal that you concern . In case the treatment is confirmed , the interested party will have right to access such information data personal as well as to the next information :*

*a) The purposes and legal basis of the treatment .*

*b) The categories of data personal issues in question .*

*c) The recipients or categories of recipients to whom hayan been communicated the data personal , in particular, the recipients established in non - member States members of the European Union or organizations international .*

*d ) The data retention period personal , when sea possible , or, failing that, the criteria used to determine that term .*

*e) The existence of the right to request from the data controller the rectification or deletion of the data personal concerning the interested party or the limitation of his treatment .*

*f) The right to file a claim before the data protection authority \_\_ competent authority and its contact details .*

*g) The communication of data personal object of treatment , as well as any information available on its origin, without revealing the identity of any natural person, especially in the case of sources confidential .*

*(...) ”*

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

*“ Article 24. Restrictions on the rights of information , access , rectification , deletion of data personal and to the limitation of their treatment .*

1. The person in charge of the treatment will be able to defer , limit or omit the information referred to in Article 21.2, as well as deny, in whole or in part , requests for the exercise of provided for in Articles 22 and 23, provided that the rights are taken into account fundamental interests and interests legitimate of the affected person, it turns out necessary and proportionate for the achievement of the following purposes:

- a) Prevent them from getting in the way inquiries , investigations or proceedings judicial .
- b) Prevent it from being caused prejudice to the prevention , detection , investigation and prosecution of infringements criminal law or the enforcement of criminal sanctions .
- c) Protect public safety .
- d) Protect National Security.
- e) Protect the rights and freedoms of others people .

2. In case of restriction of rights referred to in Articles 22 and 23, the controller inform the interested party in writing sin delay improper , and in any case, within one month of having it knowledge , of happiness restriction , the reasons for it , as well as the possibilities of filing a claim before the data protection authority , without \_\_ to the detriment of any other legal action that may be taken exercise in accordance with the provisions of this Law Organic . The reasons for the restriction may be omitted or replaced by a neutral wording when the disclosure of the reasons for the restriction can endanger the purposes referred to in the previous section .

3. The person in charge of the treatment document the factual or legal basis on which the decision is based denial of the exercise of the right of access . Happy information it will be available to 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 on the exercise of rights referred to in Articles 22 and 23, in the terms provided for in Article 24, the person concerned will be able to exercise up rights through the data protection authority \_ competent . The person in charge of the treatment inform the interested party of this possibility .

2. Where , pursuant to the provisions of the preceding paragraph , the rights are exercised through the data protection authority , the data protection authority shall inform the data subject at least of the performance of all checks . necessary or review corresponding and its right to file resource contentious-administrative " .

Section 1 of Article 52 of LO 7/2021, relating to the regime applicable to procedures processed before data protection authorities, provides that:

"1. In the event that the interested parties appreciate the processing of the data personal be violated the provisions of this Act Organic or not been

*attended su request for exercise of rights recognized in Articles 21, 22 and 23 shall have right to file a claim before the data protection authority ( ... ) ”.*

In accordance with the above, Article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, provides as follows:

*“1. Interested parties who are denied, in part or in whole, the exercise of their rights of access, rectification, deletion or opposition, or who may consider their application rejected because it has not been resolved within within the established period, they can file a complaint with the Catalan Data Protection Authority. ”*

4.- Having set out the applicable regulatory framework, it is then appropriate to analyze whether the DGP complied with the right of access exercised by the claimant. within the period provided for by the applicable regulations, since the reason for the complaint of the person who initiated this procedure for the protection of rights was the fact that he had not obtained a response within the period provided for this purpose.

With regard to the alleged violation of the right that is the subject of the claim, it is established that on 27/09/2021, the person claiming here presented in the entry register of the DGP a letter through which he exercised the right of access.

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

Well, according to the actions taken, the DGP on 16/12/2021 issued the resolution in response to the request for access submitted to its registry on 27/09/2021, but the said resolution was not notified to the claimant until 08/02/2022, ie, the deadline for resolution and notification of one month provided for this purpose has been far exceeded, so it is appropriate to conclude that the DGP untimely resolved the claim of the person claiming here. In this sense, the present claim must be considered, since it is based on the lack of response to the request to exercise the right within the legally prescribed period.

5.- With regard to the merits of the request for access to personal data contained in the SIP files (PF and PFMEN), it is established that the DGP issued a resolution dated 16/12 /

Carrer Rosselló, 214, Esc. A, 1st 1st  
08008 Barcelona

2021 in which it was agreed to provide the person claiming access to the personal data contained in the SIP PF file. In this regard, as to the merits and in relation to access to data in the SIP PF file, it is not necessary to make other considerations in this regard, nor to require the DGP to facilitate the person claiming access to their processed data. in this particular file.

It should be noted, however, that the complainant, in his application dated 27/09/2021, in addition to requesting the exercise of the right of access regarding his data contained in the SIP PF file, also requested the access to the data contained in the SIP PFMEN file, but the DGP has not proven that it has given an answer. In this regard, it should be borne in mind that the right of access also covers the right to know whether or not personal data are being processed. Therefore, and with regard to the case before us here, the complainant had the right to know whether or not his SIP PFMEN file contained his personal data, and in the event that they did not appear, the DGP should also have informed him of the non-existence of his personal data in the said file. . In short, the DGP did not give a full answer to the request made by the person claiming here.

That is why, depending on the content of the application submitted by the complainant, the DGP resolution dated 16/12/2021 should also have included information on whether or not the SIP PFMEN file contained data. personal of the person here claiming.

In view of the above, it is appropriate to consider the access claim, as the DGP's response has been incomplete.

**6.-** In accordance with the provisions of articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for protection of rights, the person responsible for the file must be required to within 10 days, exercise the right in relation to the data of the claimant.

In the present case, the DGP has proved to this Authority that it has issued the estimated resolution dated 12/16/2021 , referring to the request for access to data made by the claimant regarding his personal data contained in the file. SIP PF, and also the notification of the same to said person on 08/02/2022.

However, in relation to the request for access to the data of the claimant contained in the SIP PFMEN file, it is necessary to require the requested entity so that, within the same period of 10 days from the following the notification of this resolution, make effective the exercise of the right of access of the claimant , in accordance with the provisions of the 5th legal basis. Once the right of access has become effective in the terms set out and the claimant is notified, within 10 days the requested entity must report this to the Authority.

For all this, I RESOLVE:

Carrer Rosselló, 214, Esc. A, 1st 1st  
08008 Barcelona

1. Estimate the claim filed by Ms. (...) against the General Directorate of the Police, in the terms indicated in the 4th and 5th law bases.
2. To request the DGP, so that within 10 days from the day after the notification of this resolution the right of access exercised by the claimant in relation to the data that may appear in the file becomes effective. SIP PFMEN, in the manner indicated in the 6th legal basis, and once the right of access has become effective, within the next 10 days, the requested entity must report it to the Authority.
3. Notify the DGP and the complainant of this decision.
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 1 October.

Against this resolution, which puts an end to the administrative procedure in accordance with articles 26.2 of Law 32/2010, of 1 October, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, approving the Statute of the Catalan Data Protection Agency, interested parties may, on an optional basis, lodge an appeal for reversal before the Director of the Catalan Data Protection Authority, in within one month from the day after its notification, in accordance with the provisions of article 123 et seq. of the LPAC or the period of two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of 13 July, regulating administrative contentious jurisdiction.

Interested parties may also bring any other action they deem appropriate to defend their interests.

The director,