

File identification

Resolution of the rights protection procedure no. PT 4/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 17/01/2022 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for his dissatisfaction with the "Lack of telematic channel" to be able to exercise the right of access to personal data before the General Directorate of the Police (hereinafter, DGP).

The person making the claim accompanied the response, dated 12/01/2022, sent by the DGP to his request dated 11/01/2022, where the entity told him "(...) *it is not yet possible to do this procedure electronically. In the meantime, if this is not possible, you can submit the documentation to the register of the general direction of the Police, to the registers of the different police regions or to any register of documents of the Generalitat de Catalunya, we provide you with the link: <http://sac.gencat.cat/sacgencat/AppJava/registre.jsp>, where you will find the contact details of each of them*".

It is worth noting, however, that this person did not provide a copy of the request of 11/01/2022 that would allow this Authority to assess whether his reason for complaint was the response to a query made to the DGP in order to know how to present, electronically, the request to exercise the right of access - as seemed to be inferred both from his claim and from the response sent to him by the DGP - or if in fact, he formulated a single request to exercise the right of access before the DGP.

2.- In view of the above, by means of a letter dated 02/04/2022 - which was received on 02/14/2022 -, this Authority required the person making the claim to send him a copy of the content of your request forwarded to the DGP on 11/01/2022, in order to prove that you have exercised the right before the person responsible for the file or treatment, before the filing of the claim presented to the Authority on 01/17/ 2022. In this regard, she was granted a period of 10 working days in order to provide the documentation referred to above, with the express warning that, in the event of not doing so within the period granted, she would be considered to have withdrawn from her claim

3.- On 02/25/2022, he received the letter of response from the person claiming, where he stated "I have not received any response today", and together with which he provided the following documents:

- Copy of the request sent to the DGP (11/01/2022), specifically asking: *"How do I apply through recognized telematic means (proving my identity through DNI-e or digital certificate) the rights relating to my personal data? Because through the web, it only allows me to do it in person at the police station, and not electronically, contravening the applicable data protection regulations"* .
- Copy of your request for access to the data contained in the files of the Police Information Systems (SIP PF and PFMEN) - submitted through the electronic registry of the Generalitat - addressed to the DGP in date 01/17/2022. In this respect, although the filing of the claim for neglect of their right of access was premature, this Authority decided to continue with the processing of the procedure for procedural economy, given that the 1 month period had already passed for the resolution of your request without having received any response in this regard.

4.- By order dated 02/28/2022, 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 03/10/2022 - which was entered in the APDCAT on 03/14/2022 - where, basically, it stated the following:

- That on 17/01/2022, the interested person requested access to the personal data recorded in the files of the SIP (PF) area.
- That on 03/04/2022, a letter of amendment or improvement of the application was sent to the interested person, given that he had not provided the identification document that was necessary to be able to carry out the corresponding checks.
- That *"When the interested party responds to the request, the processing of the file will continue and it will be resolved."*

The DGP provided various documentation, including:

- Copy of the request for access to personal data contained in the files of the Police Information Systems (SIP PF and PFMEN) submitted to the DGP on 01/17/2022, through electronic procedures that incorporated authentication by electronic means.
- Copy of the request for amendment or improvement of the application dated 03/04/2022 - without the date of departure registration -, where the interested person was required to provide a certified copy of their DNI, NIE or passport in force, with the express warning that, in the event that you do not provide the required documentation within the period of 15 counting days from the day following the receipt of the request, you will be considered to have withdrawn your request, in accordance with the provisions of article 68 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC). The DGP did not provide the document certifying that the notification of said requirement had been made to the person making the claim.

6. - On 04/01/2022 the Authority sent a request to the claimant - which was received on 04/04/2022 - to send him a copy of the supporting document of the date on which he provided the his identification document before the DGP, as requested by this entity on 03/04/2022.

7. - On 04/04/2022 the person making the claim responded to the request sent by this Authority, stating that *"Having submitted on January 17 an access request using an electronic form signed using a digital signature issued by the FNMT in front of the DGP, and requesting electronic processing, and notice by email, they request me on March 23 by postal notification, excusing themselves in art. 25, RD 1720/2007 of December 21, photocopy of the DNI "forced", this being impossible in a telematic file, and placing excessive impediments for telematic consultation of my personal data. A statement of objections is made as indicated in art. 25, RD 1720/2007 of December 21 relative to the electronic authentication of my identity, and providing a simple copy of the scanned ID for informational purposes"* [the underlining is from this Authority] .

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 the present complaint relating to the request to exercise the right of access submitted to the DGP registry on 01/17/2022 , fall within the scope of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of sanctions penal laws (LO 7/2021), which entered into force on 06/16/2021.

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 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. If 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 the 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 person responsible for the treatment 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.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that, on 17/01/2022, the person making the claim here through the Generalitat's electronic register - submitted a letter addressed to the DGP exercising the right of access to their data contained in the SIP scope files.

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 interested person.

Well, it is proven that the DGP received the request for access from the person here claiming on 17/01/2022 and, according to this person's statements, on 25/02/2022 he had not yet received any answer. In fact, from the allegations presented by the DGP in the framework of the present complaint procedure, it is found that its first action is a request

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

for amendment or improvement of the access request addressed to the person interested in date 03/04/2022, well past the legal deadline of one month to dictate and notify the resolution of the request.

5.- Regarding the substance of the claim, and taking into account that the DGP has not proven to have resolved the request for access to the data made by the person making the claim, it is considered necessary to make the following considerations in this regard.

As a preliminary matter, it should be borne in mind that the person making the claim here initially (11/01/2022) went to the DGP to consult how he could send his request for access to personal data and prove his identity electronically. In relation to this, it is certified that the DGP on 12/01/2022 made it clear that it was impossible for the interested person to send directly their request to exercise the right electronically. For these purposes, he provided him with the web address <http://sac.gencat.cat/sacgencat/AppJava/registre.jsp> so that he could submit his application electronically by directing it to the DGP through other registers electronic of the Generalitat.

Likewise, it is also certified that on 17/01/2022, the person claiming here requested access to his data electronically to the DGP through the electronic register of the Department of the Interior, without providing a copy of the supporting documentation of your identity.

Well, the DGP has made it clear in the allegations presented in the framework of this claim procedure, that it sent an amendment request (03/04/2022) to the interested person, so that he could identify himself in accordance with the provisions of article 25 of Royal Decree 1720/2007, of December 21, which approves the Regulation for the implementation of Organic Law 15/1999, of December 13, on the protection of personal data (RLOPD), and provided a certified copy of the DNI, passport or NIE in force, in the terms provided for in article 27.2 of the LPAC, warning her that she had the deadline of 15 days from the day following her reception, to provide this documentation, and that otherwise, she would be considered to have withdrawn her request.

Likewise, the DGP, in its statement of allegations of 03/10/2022 (registered at the Authority on 03/14/2022), reaffirmed before the Authority the need for the applicant to prove his identity in the required form, for the purposes of processing his request for access.

In this regard, it should be specified that, with regard to the authentication of the identity of the person requesting access, article 25 of the RLOPD provides that, "(...), *the exercise of the rights it must be carried out through a communication addressed to the person in charge of the file, which must contain: a) Name and surname of the interested party; photocopy of the national identity document, or of the passport or other valid document that identifies him and, where appropriate, of the person representing him, or equivalent electronic instruments; as well as the document or electronic instrument certifying this representation. The use of an electronic signature identifying the affected person exempts*

from the presentation of photocopies of the DNI or equivalent document (...) [the bold is from this Authority].

In relation to this, as can be seen from the actions carried out in the present case, this Authority is on record that when the interested person submitted - through the Generalitat's electronic register - his request for access to personal data before the DGP (17/01/2022), he did it through electronic procedures that incorporated authentication by electronic means.

In this respect, with regard to the accreditation of the digital identity, it is necessary to go to article 9.2 of the LPAC which provides the following: *"Those interested can be identified electronically before the public administrations through any system that has of a previous registration as a user that allows to guarantee their identity. In particular, the following systems are supported:*

"(...) b) Systems based on recognized or qualified electronic certificates of electronic seal issued by providers included in the "Trusted List of Certification Service Providers" (...)."

In this sense, and with regard to the electronic signature, article 10.2 of the LPAC, determines that:

"2. In the event that interested parties choose to relate to public administrations through electronic means, they are considered valid for signature purposes:

(...)

b) Recognized or qualified electronic seal systems and advanced electronic seal systems based on recognized or qualified electronic seal electronic certificates included in the "Trusted List of Certification Service Providers". And in section 4 of this same article, the LPAC provides that: *"4. When the interested parties use a signature system of those provided for in this article, their identity is understood to have already been accredited through the same act of signature."* [the underlining is from this Authority].

Well, from the above it follows that, on 17/01/2022, the person making the claim submitted electronically the request for access to personal data addressed to the DGP, and that his identity was verified when he electronically signed said request using a certificate issued by the National Mint and Stamp Factory (F NMT), an entity that provides certification services that allow identification and the completion of procedures securely over the Internet, which is included in the Trusted List of Trusted Electronic Service Providers (TSL) created by the Ministry of Economic Affairs and Digital Transformation, in accordance with the Commission's Implementing Decision (EU) 2015/1505 of September 8, 2015, establishing the technical specifications and formats related to trust lists in accordance with article 22.5 of Regulation (EU) 910/2014 of the European Parliament and of the Council of 23 July of 2014 on electronic identification and trust services for electronic transactions in the internal market.

In accordance with the above, the present claim must be upheld, given that the DGP has not provided the information requested by the person making the claim in the exercise of his right of access, invoking an improper reason for not granting access, such as the lack of accreditation of the identity of the person concerned, when the current regulations

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

consider the applicant's identity accredited if, as in the present case, he submits the application by electronic means and signs electronically through a certificate issued by an accredited entity.

6.- 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 person in charge of the file must be required to make it effective the exercise of the right in relation to the claimant's data. That is why, 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 exercise of the claimant's right of access to the data from the SIP scope files (PF and PFMEN). Once the right of access has taken effect in the terms set out, in the following 10 days the claimed entity must report to the Authority.

For all this, I RESOLVE:

1. Estimate the claim presented by Mr. (...) against the General Directorate of the Police, in accordance with the 4th and 5th fundamentals of law.
2. Request the DGP, so that within 10 counting days from the day after the notification of this resolution, the right of access exercised by the claimant in the terms indicated in the 6th legal basis becomes effective . Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
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,

Machine Translated