

## File identification

Resolution of the rights protection procedure no. PT 5/2022, urged by Mr. (...) against the City Council of Deltebre.

## Background

1. On 01/17/2021, 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 personal data, which he had previously exercised before the Deltebre City Council, and subsequently before the Consortium Open Administration of Catalonia (hereinafter, Consorci AOC).

The claimant bases his claim on the facts that are transcribed verbatim below:

*"[...] I am sending you a complaint after several unsuccessful attempts to exercise my right to the deletion of personal data, in relation to the publication of personal information by one of the web domains of the Consorci de l'Administración Oberta de Catalunya and with reference to my personal data published in the link I attach below: <http://media.seu-e.cat/acteca/4390180001/2021/6b79301a-7d0a-425d-8ec8-c62843a1feb2/01202021%20extraord.%20urgent.pdf>*

*Indeed, if you access it, you will be able to check that it is published on Google, my DNI number, my address and other personal data (see annex 3). This information is easily accessible by putting my name in the Google search engine. As you can understand, this is extremely sensitive information, because its inappropriate use can lead to cases such as identity theft. It seems that the source of the data is a minute of a municipal meeting related to the electoral census of the Deltebre City Council. At no time have I consented to the publication of this data. In the event that they consider that the dissemination of the same can be justified by legitimate interest, it is appropriate to remind them that the Spanish Data Protection Agency, in its guide "Data Protection and Local Administration" and, specifically, in its section 3.2, it lists the principles that must be observed during the publication of the minutes of municipal meetings on the Internet: consider a communication from them, the publication of the minutes of the municipal plenums will be in accordance with the aforementioned regulations when: a) Containing personal data they refer to acts debated in the Plenum or dispositions subject to publication in the corresponding Official Gazette (without prejudice to the exercise of the right of opposition or cancellation of those affected). b) In the other cases, to publish the minutes containing personal data, it will be necessary and the prior consent of those affected".*

*On April 19, 2021, after having complained to the Deltebre City Council, who initially published my data, I received a response from their DPD to the effect that they had proceeded to anonymize my personal data. Despite the previous extreme, as you can see in the link, my data continues to appear on the domain owned by the Consorci de*

*"Administración Oberta de Catalunya and on the Google search engine , which is why I have also been forced to contract with Google . The internet service company tells me that it cannot do anything to stop the publication of the data (see annex 2) and that it should contact the same Consorci de l'Administración Oberta de Catalunya. I contacted the Consorci de l'Administración Oberta de Catalunya (as you can see in annex 4), and more than 30 days later, I still have not received a response, therefore, the entity has breached the deadlines set by the General Regulations of Data Protection. That being the case, I ask you, as the Catalan Data Protection Authority, to delete immediately and in accordance with the provisions of the General Data Protection Regulation, my personal data from the web domain that I have attached to the beginning of the email and, alternatively, I ask that if this is not possible, they are anonymized . [...]"*

The complaining party also points out that given that the City Council of Deltebre, despite the response of its DPD, did not effectively delete the personal data contained in the municipal minutes 1/2021 of the Plenary meeting of 01/20 /2021, on 11/30/2021 he sent an email to the AOC Consortium, through which he requested the deletion of the personal data contained in the Reference Act that continued to appear by accessing the following link: [http:// media.seu-e.cat/acteca/4390180001/2021/6b79301a-7d0a-425d-8ec8-c62843a1feb2/01202021%20extraord.%20urgent.pdf](http://media.seu-e.cat/acteca/4390180001/2021/6b79301a-7d0a-425d-8ec8-c62843a1feb2/01202021%20extraord.%20urgent.pdf)

2. On 01/28/2022 the Authority's Inspection Area carried out a series of checks via the Internet on the facts subject to the claim. Thus, it was found that when doing a search with the name and surname of the person making the claim together with the name of the Council being claimed, the first result offered by the internet search engine " Google " was a file in pdf format with the name "1/2021 DAT - seu-e.cat", located under the web address <http://media.seu-e.cat> , which allows the download of the document "Minutes of the urgent extraordinary session of the Plenary municipal" which corresponds to Act 1/2021, dated 01/20/2021, and which contains the following personal data of the claimant: first and last name, ID and postal address. It was also found that this document is also accessible from the transparency and government actions section of the City Council's electronic headquarters.

3. On 02/07/2022, the claim was transferred to Deltebre City Council so that within 15 days it could formulate the allegations it deemed relevant. In this regard, it should be noted that, despite the claimant addressing his claim to the AOC Consortium, the person responsible for publishing on the Internet the Minutes of the Plenary Session that is the subject of this procedure, is the Deltebre City Council, which has been able to publish the document through its electronic headquarters.

4. On 02/23/2022 the Deltebre City Council made allegations by means of a letter of the same date, in which it set out, in summary, the following:

- "By means of a letter dated February 21, 2022, a letter was sent to the Consorci d'Administración Oberta de Catalunya requesting the depublication of the minutes of plenary session number 1 dated January 20, 2021 [...].
- On February 22, a letter was received from the Consorci d'Administración Oberta de Catalunya communicating that the display of the indicated minutes and the link to the same from the transparency and open data portal have been removed is no longer active".

The letter is accompanied by the communication that the City Council addressed to the Consortium, on 2/21/2022, requesting the withdrawal of the Municipal Act 1/2021, as well as the response from the AOC Consortium, confirming that in date 02/22/2022 " *the display of the indicated minutes has been removed* " and that " *the link to this minutes from the transparency and open data portal is no longer active* ".

5. On 03/04/2022, Deltebre City Council is required to, within ten days, send the request to exercise the right that the claimant made.
6. On 03/07/2022, the City Council responded to the request indicated in the previous precedent, delivering documentation that was already in the possession of this Authority, and without providing the request to exercise the right by the 'now claiming
7. On 03/07/2022, the Authority's Inspection Area reiterated the checks indicated in the second precedent, finding that it was no longer possible to access the controversial Act by doing a Google search for the name and surnames of the person making the claim, nor by searching for the Minutes through the City Council's electronic headquarters.

### 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 Catalan Data Protection Authority.
2. Article 17 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 thereof (in hereinafter, the RGPD), regarding the right of deletion of the interested person, provides that:

*"1. The interested party has the right to obtain from the data controller, without undue delay, the deletion of the personal data affecting him. The person in charge must delete them without undue delay, when any of the following circumstances apply:  
a) The personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed.*

- b) *The interested party withdraws the consent on which the treatment is based, in accordance with article 6, paragraph 1, letter a), or with article 9, paragraph 2, letter a), and this is not based on another legal basis.*
- c) *The interested party objects to the treatment, in accordance with article 21, paragraph 1, and there are no other legitimate reasons for the treatment or the interested party objects to the treatment, in accordance with the article 21, section 2.*
- d) *The personal data have been treated unlawfully.*
- e) *The personal data must be deleted, to fulfill a legal obligation established in the law of the Union or of the member states to which the data controller is subject.*
- f) *The personal data have been obtained in relation to the offer of information society services mentioned in article 8, paragraph 1.*
2. *If the person in charge of the treatment has made personal data public and, by virtue of the provisions of section 1, is obliged to delete this data, taking into account the available technology and the cost of applying it, the person in charge of processing must take reasonable measures, including technical measures, to inform those responsible who are processing this data of the data subject's request to delete any link to this personal data, or any existing copy or replica.*
3. *Sections 1 and 2 do not apply when the treatment is necessary:*
- a) *To exercise the right to freedom of expression and information.*
- b) *To fulfill a legal obligation that requires the processing of data imposed by the law of the Union or of the member states to which the data controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of conferred public powers to the responsible*
- c) *For reasons of public interest in the field of public health, in accordance with article 9, section 2, letters h) ii), and section 3.*
- d) *For archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right mentioned in paragraph 1 may make it impossible or hinder seriously the achievement of the objectives of this treatment, or*
- e) *To formulate, exercise or defend claims."*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes the following:

*"3. The person responsible for the treatment must provide the interested party with information related to their actions, if the request has been made in accordance with articles 15 to 22 and, in any case, within one month of from the receipt of the request. Considering the complexity and number of requests, if necessary this term can be extended by two months; in this case, within one month of receiving the request, the person in charge must inform the interested party of the extension and must indicate the reasons for it. If the interested party submits the request by electronic means, whenever possible the information*

*must be provided by these same means, unless the interested party requests that it be done in another way.*

*4. If the data controller does not process the interested party's request, without delay and at the latest after one month, he must inform him of the receipt of the request, of the reasons for the its non-action and the possibility of presenting a claim before a control authority and of exercising judicial actions.*

*5. The information provided under articles 13 and 14, as well as any communication and action carried out under articles 15 to 22 and 34, must be free of charge. If the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the data controller may opt for one of the following actions:*

*a) Charge a reasonable fee, in accordance with the administrative costs that have been incurred to facilitate the information or communication, or to carry out the requested action.*

*b) Refuse to act on the request.*

*It is up to the data controller to demonstrate the manifestly unfounded or excessive nature of the request".*

For its part, article 15 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 of deletion:

*"1. The right of deletion must be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.*

*2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge may retain the identification data of the affected person necessary in order to prevent future processing for direct marketing purposes."*

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 exposed the applicable regulatory framework, it is necessary to analyze whether the City Council has resolved and notified, within the period provided for by the applicable regulations, the request made by the person making the claim.

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

The object of the present complaint procedure is the deletion of the personal data of the person making the claim, which are contained in the Minutes of the Municipal Plenum, published under a single link linked to the electronic headquarters of the City Council, which could be accessed by two different ways: (1) from the same website of the City Council, specifically in the transparency and government actions section of the electronic headquarters, where the various acts of the Municipal Plenum that you wish to consult are collected, among these, Act 1/2021; and (2) doing a search based on the name and surname of the person making the claim along with the name of the Deltebre City Council through the Google search engine .

In this regard, it is certified that on 04/19/2021, in response to the claimant's data deletion request, the DPD of the Deltebre City Council informed him that he would have proceeded to modify the municipal act in order to anonymize your data. It is also documented that on 11/30/2021, the claimant addressed a request to the AOC Consortium asking for the deletion of his personal data since, despite the City Council's response, they continued to be published under the referenced link linked to the headquarters electronic of the City Council (<http://media.seu-e.cat>) .

That being the case, it should be noted that, although within the framework of this claim procedure, the exact date on which the claimant submitted the request to exercise the right of deletion to the City Council is not recorded, it is evident that this had to be prior to the answer given by the City Council. In other words, the request would have been made on a date prior to 19/04/2021, or on the same day if the City Council had responded immediately. In relation to this, it should be noted that the City Council's response to the claimant informing him that it had proceeded to anonymize the data of the Municipal Act published openly on the internet, cannot be considered to be a response that complies with the 'exercise of the requested right of deletion, since said deletion of the data of the claimant here did not materialize, given that on 01/28/2022, as this Authority has noted, the personal data of the claimant were still published. Likewise, in the allegations presented by the City Council in the present procedure, the City Council has stated that it was not until 22/02/2022 , when it proceeded to withdraw the display of the accessible minutes from the transparency and government actions section of the City Council's electronic headquarters.

In this regard, it should be pointed out that the Authority's Inspection Area has noted, on 07/03/2022, that Municipal Act 1/2021 is no longer accessible by doing a Google search for the name and surnames of the person making the claim together with the name of the Deltebre City Council, nor by searching for the Minutes through the City Council's electronic headquarters, since the link where it was published has ceased to exist active

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In summary, it is clear that the City Council did not attend to the right of deletion of the person making the claim within the legally established deadline, and this because despite its response of 04/19/2021, informing it that it had proceeded to anonymize your data from the published Municipal Act, it is not until 02/22/2022, when the City Council became aware of the complaint procedure before this Authority, that it proceeded to effectively attend to the right subject to the sole data deletion request, which is the reason for the assessment of the present claim.

However, given that the City Council has finally proceeded to delete the personal data of the person making the claim in the terms requested, and this has been verified by the Inspection Area of this Authority, it is not necessary to make any request so that proceed to delete the personal data of the person claiming the object of their request.

However, the City Council of Deltebre has not certified that it has communicated to the person making the claim that their personal data which is the subject of the present claim is no longer publicly published on the internet. That is why this Authority considers it appropriate to require the City Council to, within a period of 10 counting days from the day after the notification of this resolution, accredit the Authority that it has notified the person here claiming, the effective fulfillment of his right of deletion

For all this, I resolve:

1. Estimate the claim of Mr. (...) regarding the Deltebre City Council for not having exercised the right of deletion within the period established in the applicable regulations, in accordance with what is set forth in the 3rd legal basis.
2. Request the City Council of Deltebre so that within 10 counting days from the day after the notification of this resolution, it accredits the Authority that has notified the person making the claim of the effective fulfillment of his right to deletion
3. Notify this resolution to the City Council of Deltebre and to the person making the claim.
4. Order the publication of the resolution on the Authority's website ([apdcat.gencat.cat](http://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,

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