

Identification of the file

Resolution of the procedure for the protection of rights no. PT 17/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat de Catalunya.

Background

1.- On 10/02/2022 he received a letter from the Catalan Data Protection Authority . (...) (hereinafter, the complainant), for which he made a claim for the alleged negligence of the right to the deletion of personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The complainant certified that, by means of a registered letter of entry dated 05/01/2022, he requested the DGP to delete his personal data contained in the file in the field of information systems. of the Generalitat Police, specifically in the file (SIP PF) , and provided various documentation.

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

- That on 05/01/2022, Mr. (...) requested the deletion of various personal data recorded in the SIP PF file.
- That on 02/03/2022, after making the relevant checks and inquiries, the Director General of Police issued a resolution in which he agreed to make the deletion of personal data contained in the SIP PF file, as requested by the person claimant.
- That the said 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 request for deletion (05/01/2022), a copy of the documentation of the file, a copy of the resolution issued (02/03/2022), and of the office of notification (09/03/2022) -without stating the date of registration of departure-, but did not provide the document proving that the notification of the estimating resolution had been made 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 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 suppression submitted to the register of the DGP on 05/01/2022, fall within 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 the execution of criminal sanctions (LO 7/2021), which entered into force on 16/06/2021.

3.- Okay with the above, it is necessary to go to article 23 of LO 7/2021, which in relation to the right of suppression provides the following:

"2. The data controller, on his own initiative or as a consequence of the exercise of the right of suppression of the data subject, will delete the personal data without undue delay and, in any case, within a maximum period of one month from the time he becomes aware, 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 deleting, the controller will limit the processing of personal data in the event of any of the following circumstances:

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

b) Personal data must be kept for evidentiary purposes.

Where treatment is limited under point (a), the controller shall inform the data subject before lifting the limitation of treatment. "

"(...) 5. When personal data have been rectified or deleted or the processing has been limited, the controller shall notify the recipients, who shall rectify or delete the personal data under their responsibility or limit their treatment ".

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 personal data and the limitation of their processing.

1. The controller may 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 the rights referred to in Articles 22 and 23, provided that taking into account the fundamental rights and legitimate interests of the person concerned, it is necessary and proportionate for the achievement of the following purposes:

- a) *To prevent the obstruction of investigations, investigations or judicial proceedings.*
 - b) *Prevent harm from 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 others.*
2. *In the event of a restriction on the rights referred to in Articles 22 and 23, the controller shall inform the data subject in writing without undue delay and, in any event, within one month of becoming aware of such delay. restriction, the reasons for it, as well as the possibilities of filing a complaint with the data protection authority, without prejudice to any other legal actions that may be exercised under the provisions of this Organic Law. The reasons for the restriction may be omitted or replaced by a neutral wording where the disclosure of the reasons for the restriction could jeopardize the purposes referred to in the preceding paragraph.*
3. *The controller shall document the factual or legal grounds on which the decision refusing to exercise the right of access is based. That information shall be made 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 the information referred to in Article 21 has been postponed, limited or omitted or a restriction on the exercise of the rights referred to in Articles 22 and 23, in the terms provided for in Article 24, the data subject may exercise his rights through the competent data protection authority. The data controller will inform the data subject 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 completion of all necessary checks or the corresponding review. of its right to lodge a contentious-administrative appeal "*

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 consider that the processing of personal data has infringed the provisions of this Organic Law or that their application for the exercise of the rights recognized in articles 21, 22 and 23 has not been granted, they will have the right to file a complaint. 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 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 resolved and notify, within the period provided for in the applicable regulations, the right of suppression exercised by the claimant, as precisely the reason for the complaint of the person initiating the present procedure for the protection of rights was the fact of not having received a response within the time limit provided for this purpose.

With regard to the alleged disregard of the right that is the subject of the claim, it is proven, in accordance with the provisions of the 3rd antecedent of this resolution, that on 05/01/2022, the person claiming here presented in the entry register of the DGP a writ through which he exercised the right of suppression.

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 suppression filed 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).

In accordance with the above , it has been established that although the complainant submitted the application for the exercise of the right to delete data before the DGP on 05/01/2022, the DGP issued the estimated resolution of your request on 02/03/2022, that is, when it had already been exceeded the one-month resolution period provided for this purpose. That being the case, it is appropriate to conclude that the DGP untimely resolved the request of the person claiming here.

With regard to the merits of the request for the deletion of personal data contained in the SIP PF file, the DGP has certified that it has agreed to the deletion of such data in the terms requested by the claimant, as follows from the resolution of 02/03/2022 , that the DGP has contributed to this Authority.

5.- In the last, although the DGP has proven to have issued the estimated resolution dated 02/03/2022, relating to the request for deletion made by the claimant, there is no documentary evidence that this resolution has been notified to him, which is why it is

considered appropriate to require the DGP to certify that within 10 days from the day after the notification of this resolution, the resolution issued on 02/03 / 2022 , estimating the right of suppression, has been effectively notified to the claimant.

For all this, I RESOLVE:

1. To declare the resolution of the General Directorate of the Police dated 02/03/2022 , which considers the request of Mr. (...), deletion of your personal data contained in the SIP PF file , without entering into other considerations regarding the fund, as the DGP has resolved to delete its data.
2. Require the DGP so that, within 10 days from the day after the notification of this resolution, it proves the notification to the claimant of the estimated resolution dated 02/03/2022, in the terms indicated in the foundation of law 5th.
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,