

File identification

Resolution of the rights protection procedure no. PT 18/2022, urged against the Pere Mata Institute.

Background

1. On 02/21/2022, the Catalan Data Protection Authority received a letter from Ms (...) (hereinafter, the person making the claim), in which she made a claim for the alleged disregard of the right of opposition to the processing of his personal data, which he had previously exercised before the Pere Mata Institute on 01/19/2022.

The letter of complaint contains the following arguments: "*I am not satisfied with the response of the Pere Mata Group saying that they are not processing my personal data. I was monitored for the first time when I arrived at my parents' house, in 2012, I am again receiving online messages of a personal nature regarding me, my partner and our relationship, in 2019. I am attaching the documents of the response given by the Pere Mata Group and what I am asking for with the Pere Mata Institut university hospital registration. These violate my right not to want any of the services offered to me for personal reasons already explained. (...) I ask that my case be reviewed, I ask that my personal data be protected, that they stop sending me online messages via mobile phone and that the Pere Mata Group offer services that leave me at ease My partner and I talked about getting married.*"

The claimant attaches the following documentation:

- Request registered on 01/19/2022, submitted to the Pere Mata Institute and addressed to the Head of Admissions and Citizen Services, through which the claimant now exercises his right to object to the treatment of your personal data.
- Application registered on 01/19/2022, submitted to the Pere Mata Institute and addressed to the Head of Admissions and Citizen Services at the Tarragona Nord Adult Mental Health Center (hereinafter, CSMA), from the Pere Mata Institute itself, through which the claimant now exercises his right of opposition to the processing of his personal data.
- Two letters dated 01/26/2022 and 01/27/2022 through which the Pere Mata Institute informs us now claiming that: "*we do not process data for marketing purposes or illegally. We always use them in accordance with the purpose for which they were given. Currently, following your request dated 07/12/2021, we do not have any data from you as a user in our files, since we proceeded with its complete cancellation on 10/12/2021.*"

2. On 03/13/2022, the Authority transferred the claim to the Pere Mata Institute so that within 15 days it could formulate the allegations it deemed relevant.

3. On 03/21/2022, the claimed entity made allegations in writing which, in summary, set out the following:

- "*Our entity, Institut Pere Mata SA, HAS ALWAYS COMPLIED with all the requirements and instructions given by Ms. (...), in relation to the processing of your data.*"

- *It is also not true that Ms. (...)he has not been able to exercise his right of opposition received at Institut Pere Mata on 09-12-2021. He was certainly answered on 09-12-2021 via email that we also attach . At this time all the files of Ms. (...)are in a situation of total cancellation. In other words, Institut Pere Mata does not currently have personal data of the interested party since 10-12-2021, the day we proceeded to cancel all the files definitively."*

4. On 04/09/2022, this Authority required the claimed entity to respond to the two requests that the claimant attached to the claim letter, submitted on 01/19/2022 to the Pere Mata Institute. Likewise, given that one of these instances was addressed to the CSMA Nord Adults of the Pere Mata Institute and the other to the Pere Mata Institute, the entity was required to confirm whether the two requests had as their object the same medical data.

5. On 09/05/2022 the claimant sent to the Authority the letter from the Head of the Admissions Service and the UAU dated January 27, 2022 (Register No. 244), which he had already attached to his letter of claim, when he initiated the present guardianship procedure.

6. On 05/13/2022, a communication from the Pere Mata Institute was entered in the register of this Authority through which it is informed that the requests presented by the now claimant were answered through the letters dated 26/ 01/2022 and 01/27/2022, indicated in the first antecedent of this Resolution, and which were notified on 01/27/2022 and 01/31/2022, respectively. Likewise, they report that the requests were not aimed at accessing the same medical data.

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 21 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 circulation thereof (in hereinafter, the RGPD), regarding the right of opposition of the interested person, provides that:

"1. The interested party has the right to object at any time, for reasons related to his particular situation, to the personal data that concern him being the object of a treatment based on the provisions of article 6, section 1, letters e) or), included the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail over the interests, rights and liberties of the interested party, or for the formulation, exercise or defense of claims.

2 . When the processing of personal data is aimed at direct marketing, the interested party will have the right to object at all times to the processing of personal data that concerns him, including the creation of profiles to the extent that it is related to said marketing.

3. When the interested party objects to the treatment for direct marketing purposes, the personal data will cease to be processed for these purposes.

4. *At the latest at the time of the first communication with the interested party, the right indicated in sections 1 and 2 will be explicitly mentioned to the interested party and will be presented clearly and apart from any other information.*

5. *In the context of the use of services of the information society, and notwithstanding the provisions of Directive 2002/58/EC, the interested party may exercise his right to object by automated means that apply technical specifications.*

6. *When personal data are processed for scientific or historical research or statistical purposes, in accordance with article 89, section 1, the interested party shall have the right, for reasons related to their particular situation, to oppose the processing of personal data that they concern him, unless it is necessary for the fulfillment of a mission carried out for reasons of public interest."*

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 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 requests. 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 18 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 opposition:

"1. The right of opposition, as well as the rights related to automated individual decisions, including the creation of profiles, must be exercised in accordance

with what is established, respectively, in Articles 21 and 22 of Regulation (EU) 2016 /679.

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 Pere Mata Institute resolved and notified, within the period provided for by the applicable regulations, the right of opposition exercised by the person making the claim.

In accordance with article 12.3 of the RGPD, the Pere Mata Institute 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

In relation to the above, it should be noted that the claimant provided two requests to exercise the right of opposition submitted on 01/19/2022, to the register of the Pere Mata Institute, as well as two letters from response from the claimed entity, dated 01/26/2022 and 01/27/2022, notified on 01/27/2022 and 01/31/2022, respectively, which were intended to inform the now claimant that the your data was completely deleted on 12/10/2021. In this regard, it should be noted that, although one of the requests was addressed to the Adult Mental Health Center of the Pere Mata Institute, the claimed entity responded to both the request addressed to the Adult Mental Health Center as in the request that was addressed directly to the Institute.

In accordance with the above, the claimed entity has confirmed to the Authority that the letters dated 01/26/2022 and 01/27/2022 were notified to the person making the claim, on 01/27/2022 and 31/01/2022, respectively, in response to applications submitted on 19/01/2022. Consequently, it must be concluded that the claimed entity resolved and notified the aforementioned requests in a timely manner.

4. Once the above has been established, 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 the opposition to the processing of the data in the terms that request of the person making the claim.

Article 21.1 RGPD regulates the right of opposition as the right of the affected person to avoid the processing of their personal data due to the cessation of this in certain cases, unless one of the exceptions provided for in the same article applies .

In response to the requests of the person claiming here in exercise of his right of opposition, the claimed entity informed him that the Pere Mata Institute has never processed his data for marketing, illegal or contrary purposes the purpose for which they were transferred, and also

informed him that his personal data was deleted on 10/12/2021, that is to say, prior to his first opposition request these data.

In this regard, it should be noted that the right of opposition presupposes that the data controller is processing the personal data of the person concerned, based on article 6, section 1, letters e) of), including the creation of profiles on the basis of these. In literal terms, the referred article provides:

1. *Treatment will only be permitted if at least one of the following conditions is met:
(...)*
 - e) *The treatment is necessary for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person responsible for the treatment;*
 - f) *The treatment is necessary for the satisfaction of legitimate interests pursued by the person responsible for the treatment or by a third party, provided that such interests do not prevail over the interests or fundamental rights and freedoms of the interested party that require the protection of personal data, in particular when the interested party is a child .*

Taking into account that the Pere Mata Institute has informed that the personal data of the person making the claim, the subject of their opposition requests, have been deleted and, therefore, that they are not the subject of treatment, it does not apply, in this case, the necessary presupposition to be able to exercise this right, which is that the person in charge is processing the data of the person who objects to this treatment.

In short, and from the perspective of the right of opposition, the present claim for the protection of the right should be dismissed, given that the Pere Mata Institute attended to the requests from which this procedure derives, when it informed the now claimant of the deletion of your personal data dated 12/10/2021.

For all this, I resolve:

1. Dismiss the guardianship claim made by Mrs (...) against the Pere Mata Institute.
2. Notify this resolution to the Pere Mata Institute and the person making the claim.
3. 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,

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