

## File identification

Resolution of the rights protection procedure no. PT 20/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 02/23/2022, 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 that he had previously exercised before the General Directorate of the Police (hereinafter, DGP).

The person making the claim certified that, by means of a letter dated 14/01/2022 -with entry registration of that same date-, he had requested from the DGP the exercise of the right of access to his personal data that appeared in the files of the information systems of the Generalitat Police (SIP PF and PFMEN), and provided other documentation.

2.- **By order** dated 02/28/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it considered relevant.

3.- The DGP made allegations by means of a letter dated 03/10/2022 -which was entered in the APDCAT on 03/14/2022-, which basically set out the following:

- That on 14/01/2022, the person claiming here requested access to his personal data recorded in the SIP PF area file.
- That on 02/03/2022, the director general of the Police issued a resolution in which he agreed to make effective the access to the personal data contained in the SIP PF file, where he was also *"informed of the condition that held in the actions (arrested, denounced, victim/complainant, identified, or owner of vehicle, ...) of the date of the events, of the number of police proceedings, of the non-current or identification requirement, of the investigating unit and of the reason for the action"*.
- That the applicant *"is of legal age, for which reason and in compliance with what is provided in article 2.8 of the Regulation of Organic Law 5/2000, of January 12, regulating the criminal liability of minors, and article 8.2 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 the execution of criminal sanctions, when it has that the need to delete all personal data must be*

*reviewed (...) paying particular attention to the age of the person affected, among others, the data registered of minors may not be used in procedures of 'adults when they reach the legal age of majority. For this reason, there are no minor data ."*

- That the previously mentioned resolution and the service of notification had been sent to the address that the interested person had indicated in his application for notification purposes.

The DGP provided various documentation, including copy of the access request (14/01/2022), copy of the file documentation, and copy of the notification letter (03/09/2022) - without the date of exit registration , but did not provide the document certifying that the notification of said documentation had been made to the person making the claim.

## 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 this claim relating to the request to exercise the right of access submitted to the DGP registry on 01/14/2022 , 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 exposed the applicable regulatory framework, it is then necessary to analyze whether the DGP attended to the right of access exercised by the person here claiming within the period provided for by the applicable regulations, since the reason for his complaint that initiated the present rights protection procedure was the fact of not having obtained a response within the period provided for that purpose.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that on 01/14/2022, the person making the claim submitted a letter to the DGP entry register through which he exercised the right of access

7/2021, the DGP had to resolve and notify within a maximum period of one month from the date of receipt of the request for access presented by the person claiming. In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at

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the instance of a party (as is the case) it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

Well, as can be seen from the documentation provided in this file, the DGP did not issue a resolution in response to the access request submitted on 01/14/2022 until 03/02/2022, i.e. , well past the one-month deadline, without it being recorded that this resolution has been notified to the person making the claim, so it must be concluded that the DGP resolved extemporaneously.

5.- Regarding the substance of the request of the person here claiming access to his personal data that appeared in the files of the SIP area (PF and PFMEN), it is certified that the resolution of the DGP of date 02/03/2022 agreed to provide him with the personal data contained in the SIP PF file.

However, the request also included access to the data corresponding to his minor age contained in the SIP PFMEN file. In the context of this claim, the DGP has indicated to the Authority that the person is of legal age, which is why *"there is no data on minors"* , but the resolution of the DGP of 02/03/2022 does not include any information on this end, nor does the Authority know that this information has been provided to the person herein claiming by another means.

In this regard, it should be borne in mind that the right of access includes the right of the person who exercises it to know whether or not their personal data is being processed in the area specified in their request. Therefore, and taking into account the content of the access request made by the person making the claim, which included access to the data in the SIP PFMEN file, the DGP also had to inform him that there was no corresponding personal data to his minority in this file ( SIP PFMEN). This being the case, it must be concluded that the response provided by the DGP to the person making the claim was incomplete.

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 the protection of rights, the manager of the file must be required so that in the period of 10 days to make effective the exercise of the right in relation to the data of the person making the claim.

In the case at hand, although the DGP has certified that it issued the estimated resolution dated 02/03/2022, regarding the request for access to data contained in the SIP PF file, made by the person here claimant, there is no documentary evidence that this resolution has been notified to him, which is why this Authority considers it appropriate to require the DGP so that within 10 counting days from the day after the notification of this resolution, accredit that the resolution dated 02/03/2022, estimating the right of access relative to the personal data of the SIP PF file, has effectively been notified to the person making the claim.

Likewise, it is necessary to require the claimed entity so that within the same period of 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the right of access of the person making the claim regarding in the data of the SIP PFMEN file , in accordance with what is stated in the 5th legal basis. Once the right of access has been made effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must report to the Authority.

For all this, I RESOLVE:

1. Declare extemporaneous the resolution of the General Directorate of the Police dated 02/03/2022, which considers the request of Mr. (...), to access your personal data contained in the SIP PF file.
2. Partially estimate the claim regarding the disregard of the right of access to the data of the SIP PFMEN file, in accordance with what is stated in the 5th legal basis.
3. Request the DGP so that within 10 days from the day after the notification of this resolution:
  - Accredite the effective notification of the resolution dated 03/02/2022 to the claimant, in accordance with the 6th legal basis.
  - Give effect to the claimant's right of access with regard to the data in the SIP PFMEN file, in the terms indicated in the 5th legal basis. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
4. Notify this resolution to the DGP and the person making the claim.
5. 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.

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Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

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