

## File identification

Resolution of the rights protection procedure no. PT 22/2022, petition against Almacelles City Council.

## Background

1. On 03/04/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim against the Almacelles City Council for not having responded to two requests for access, one of them for access to his own data, and the other of access to the images captured relating to him and other people he identified, by a video surveillance camera located in the council building.

The claimant provided the request to exercise the right of access to own data presented on 09/28/2021 before the Almacelles Town Council (Entry Reg.: (...)), which would not have been response, as well as the request for access to the images captured by a security camera for video surveillance purposes, also submitted on 28/09/2021 (Entry Reg.: (...)), which would also not have been answer. With respect to this last instance, the applicant specifies the following: "*Que por este documento requests the images obtained with the following points:*

- 1- *Located in the council building. In Plaza de la Vila, 1*
- 2- *Time limit: 07/09/2021, between 11:16 a.m. and 1:50 p.m.*
- 3- *Throughout the building and specifically in the corridor leading to the Peace Court*
- 4- *Identification of D. (...)(...)as parte demandante and D.(...)y Dña. (...) as defendants, to withdraw summons before the justice of the peace for 09/21/2021 at 11:30 a.m.*
- 5- *Description of the persons, duly known by the local police of this town.*
- 6- *The speaker's clothing, short-sleeved shirt and jean pants, of the other people is not remembered in this request, but they are still easily identifiable*
- 7- *Attached image "*

The request for access to the images captured by a camera for video surveillance purposes was accompanied by a photograph of the now claimant, as well as a copy of his national identity document.

2. On 03/18/2022, the claim was transferred to Almacelles City Council, so that within 15 days it could formulate the allegations it deemed relevant. The granted deadline has already passed, and the claimed City Council has not submitted any allegations.

## 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 15 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 access of the interested person, provides that:

*"1 . The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:*

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

*2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.*

*3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.*

*4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."*

Likewise, Instruction 1/2009, of February 10, on the processing of personal data through video surveillance cameras (hereinafter, Instruction 1/2009) provides in its article 13:

*" Through the right of access, the person holding the image, and where appropriate the voice, has the right to have the person responsible for the treatment inform them about whether their image has been captured through video surveillance systems, the purpose of capture, if the image is recorded in a file, if it is the subject of any other treatment, if any communication has been made or planned and what is the retention period of the images or voices. When the interested person so requests, he also has the right to access the images or voices and obtain a copy of them, as well as any subsequent elaborations that have been made of them. In the event that the exercise of the right also affects images or voices of third parties, unless their consent is obtained, access requires the prior dissociation of the images and their voices*

*by any means that prevents their identification When the dissociation exerts disproportionate efforts in attention to the time lapse recorded or the high number of third parties affected, the responsible person can request that the recording period to which it is intended to have access be reduced.*

Article 17 of Instruction 1/2009, in relation to the procedure for exercising rights, provides for the following specificities:

*"17.1 To exercise the rights of access, rectification, cancellation and opposition, it is necessary to formulate a request addressed to the person in charge of the file or, where appropriate, to the person in charge of the treatment, indicating the place, the date and the approximate time, in intervals of no more than two hours, when its image could be captured. The application must be accompanied by an image of the applicant that corresponds to the period in which it was taken, in such a way as to allow identification. In order to check the match between the provided image and the recorded images, image recognition tools can be used.*

*17.2 In video surveillance systems that record the voice, the right of access can be exercised by providing a recording of the affected person's voice. For these purposes, the person responsible for the video surveillance systems that record the sound must have voice recognition tools that allow checking the coincidence of the voice recording provided with one of the recorded voices.*

*17.3 If the image or voice provided does not provide enough definition or elements to allow identification, an amendment period of 10 working days must be granted to be able to provide another image or voice recording.*

*17.4 The processing and resolution of the request is governed by the regulations for the protection of personal data and by this Instruction. The obligation to resolve persists, regardless of whether the images have not been recorded or have already been canceled at the time the right is exercised. In the latter case, the resolution can be limited to exposing this circumstance and reporting the material impossibility of satisfying the right exercised.*

*17.5 The request to exercise the rights of access, rectification, cancellation or opposition may be refused when the required requirements are not met, or when the level of coincidence between the image or the voice provided with the request and those that have been the object of treatment does not allow to ensure that the latter corresponds to the person concerned. It can also be refused when they have not been registered or have already been cancelled.*

*17.6 In the face of the denial of the exercise of the right or in the face of the failure to receive a response within the established period, the affected person can make a claim for protection before the Catalan Data Protection Agency."*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establish 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 applications. 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 13 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 access:

*"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.*

*When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or the processing activities to which the request refers.*

*2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.*

*However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.*

*3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it*

*4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."*

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 Almacelles City Council resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for his complaint that initiated the present procedure for the protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 09/28/2021 two written submissions from the person claiming were received by the entity through which he exercised, on the one hand, the right of access to his personal data, and on the other hand, the right of access to the images captured by a video surveillance camera located in the council building.

In accordance with article 12.3 of the RGPD, Almacelles City Council had to resolve and notify these requests within a maximum of one month from the date of their receipt. However, within the framework of this rights protection procedure, Almacelles City Council has not proven to have responded to the request for access to its own data made by the person making the claim, nor to the request of access to the images captured by a camera for video surveillance purposes, within the period of one month provided for the purpose, nor subsequently.

It should be borne in mind that, regarding the request for access to the images captured by a video surveillance camera, article 17.3 of Instruction 1/2009, of February 10, provides that the obligation to resolve the request persists, regardless of whether the images have not been recorded or have already been canceled at the time the right is exercised. And, in relation to the request for access to the images captured by video surveillance cameras, the same article provides that this must indicate the place and the date when the image could be captured, it must be accompanied by an image of the applicant, for the purpose of being able to check the correspondence between the image provided and the image allegedly recorded, and must indicate the approximate time of the alleged capture of the image, in a range not more than two hours. In this regard, in accordance with the wording of the request submitted by the now claimant, the period in relation to which access to the images was requested was *between "11:16 a.m. and 1:50 p.m."*, exceeding the two-hour period indicated by the said precept. This fact, however, despite not having been invoked by the City Council, could not justify ignoring the reference request given that, in accordance with article 68 of Law 39/2015, of 1 October, of the common administrative procedure of the public administrations, the Administration could have required the amendment of the request, in case it was considered appropriate.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access to their data and to the request for access to the images captured by a

specific video surveillance camera , it is necessary to declare that the Almacelles City Council did not resolve and notify in the form and time frame the reference requests submitted by the affected person.

4. Once the above has been established, it is necessary to analyze the merits of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms usually tender the person claiming.

In relation to the request for access to own data (Reg. Entry: (...))

As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case , access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. The reasons for denying the right of access are found in article 23 of the RGPD, which must be provided for "*through legislative measures*" (art. 23.1 RGPD) .

None of these causes are relevant in the present case, and given that in the present procedure it has been proven that on 09/28/2021 the now claimant exercised before the Almacelles City Council the right of access regarding his data, and that the City Council has not proven that it has responded to your request, it is necessary to assess the claim with regard to the claimant's right of access to his own data.

In relation to the request for access to the images captured by a video surveillance camera (Reg. Entry: (...))

With regard to the request for access to the images captured by a video surveillance camera located in the City Hall building, in addition to the considerations set out on article 15 RGPD, the provisions of the article must be taken into account 13 of Instruction 1/2009. This precept specifies that through the right of access, the person holding the image has the right to have the person responsible for the treatment inform them about whether their image has been captured through video surveillance systems, the purpose of the capture, if the image is recorded in a file, if it is the subject of any other treatment, if any communication has been made or planned and what is the retention period of the images or voices. Likewise, it also makes it clear that the interested party, when he requests it, as in the present case, has the right to access the images and obtain a copy of them.

Finally, in the event that the exercise of the right also affects images of third parties, the Instruction contemplates that, unless their consent is obtained, access requires the prior dissociation of the images and their voices with any means that prevent its identification. This precision is particularly relevant in the present case, given that the now claimant requested that, in relation to the images captured by the video surveillance camera located in the council building, identify *“D. (...) and Mrs. (...) como demandados”* and that the description of the people *“duly known by the local police of this town”* be included. In this regard, it should be noted that the right of access provided for in article 15 RGPD and article 13 of Instruction 1/2009 does not protect the right to access the images of third parties, captured by video surveillance cameras, but is limited to access to the applicant's data and images.

In accordance with the above, the claim regarding access to the images of the claimant captured by the video surveillance camera that identifies the claimant (application no. registration (...)) should be considered, and reject access to the personal data (images or voices) of third parties that may appear there. Likewise, in the event that the City Council has proceeded to delete the requested images, it is necessary to indicate this.

**5.** 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 person in charge of the file must be required so that within 10 days make the exercise of the right effective. In accordance with this, 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. 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.** Estimate the guardianship claim made by Mr. (...) against Almacelles City Council, regarding their requests for access to their personal data and access to the images captured by the video surveillance camera identified by the claimant, and to dismiss it by regarding access to personal data (images or voices) of third parties that may appear in the recordings.
- 2.** Request the City Council of Almacelles so that, within 10 days from the day after the notification of this resolution, it makes effective the right of access exercised by the person making the claim, in the manner indicated in the foundation of right 4th. 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 Almacelles City Council and 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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