

## File identification

Resolution of the rights protection procedure no. PT 29/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 15/03/2022 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person claiming), for which he made a claim for the denial of the right to delete his personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The claimant certified that he had requested the DGP to delete his personal data in relation to police proceedings no. (...) (for the crime of sexual assault) that appeared in the file Information System of the Police of the Generalitat de Catalunya for physical persons (SIP PF). These police proceedings resulted in preliminary proceedings no. (...) instituted by the Court of Inquiry no. (...) of Esplugues de Llobregat.

Specifically, the claimant provided, among others, the following documents:

- Copy of the request to delete your data submitted to the DGP on 07/28/2021.
- Certificate from the Court of Inquiry nº (...) of Esplugues de Llobregat, issued on 20/07/2021, which indicates that, on 12/01/2021, a final interlocutory order was issued by which agree on the provisional dismissal and filing of the case.
- Copy of the resolution of the DGP dated 02/02/2022, by which the deletion of the personal data contained in the SIP PF file was denied, given that the personal data *"continue to be necessary in relation to the investigations that motivated the its storage, and considers the need to keep the data until the conclusion of the purpose of this, and until the prescription of the facts"* .

2.- On 03/21/2022, the Authority transferred the claim to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The deadline has been far exceeded and no allegations have been submitted.

## 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.- The personal data subject to treatment by the DGP referred to in this claim relating to the request to exercise the right of deletion presented to the DGP on 07/28/2021, are within the scope of application of Organic Law 7/2021, of 26 May, 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 (LO 7 /2021).

3.- Okay with the above, it is necessary to go to sections 2 and 5 of article 23 of LO 7/2021 which, in relation to the right of deletion, provides for the following:

*"2. The person responsible for the treatment , on his own initiative or as a consequence of the exercise of the right of deletion of the interested party , will delete the data personal yes procrastination improperly and, in any case, on time maximum of one month to count from the time you have knowledge , when the treatment infringes articles 6, 11 or 13, or when the data personal must be deleted by virtue of a legal obligation to which it is subject \_ (...)  
5. When the data personal there are been rectified or deleted or the treatment has been limited , the data controller will notify the recipients , who must rectify or delete the data personnel who are under su liability or limit su treatment ."*

For its part, sections 1 and 3 of article 8 of LO 7/2021, referring to the terms of conservation and review, determine the following:

*"1. The person responsible for the treatment will determine that the conservation of the data personal have place only during the time necessary to fulfill the purposes provided for in article 1.  
(...)  
3. In general terms , the term maximum for data deletion \_ it will be twenty years , except that factors such as the existence of investigations concur abiertas or crimes that don't exist prescribed , non - completion of the execution of the sentence, recidivism , need for protection of the victims or others circumstances motivated to do the processing of the data is necessary for the fulfillment of the purposes of article 1."*

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 data personal and its limitation \_ treatment \_*

*1. The person responsible for the treatment will be able postpone , limit or omit the information referred to in article 21.2, as well as deny, in whole or in part , requests to exercise rights contemplated in articles 22 and 23, provided that, taking into account the rights fundamentals and interests legitimate of the affected person, result necessary and proportionate for the achievement of the following purposes:*

- a) Prevent them from getting in the way inquiries , investigations or procedures judicial \_*
- b) Prevent it from happening prejudice to the prevention , detection , investigation and prosecution of infractions criminal charges or the execution of criminal sanctions .*
- c) Protect public safety .*
- d) Protect National Security.*
- e) Protect the rights and freedoms of others people \_*

*2. In case of restriction of rights contemplated in articles 22 and 23, the person responsible for the treatment will inform the interested party in writing yes procrastination improperly , and in any case, within one month from the date of receipt knowledge , of happiness restriction , of the reasons thereof , as well as of*

*the possibilities of presenting a claim before the data protection authority , sin \_\_ prejudicial of any remaining legal actions \_ exercise under the provisions of this Law organic \_ The reasons for the restriction may be omitted or replaced by neutral wording when the reasons for the restriction are disclosed can put at risk the ends referred to in the previous section .*

*3. The person responsible for the treatment will document the de facto or legal grounds on which the decision is based denial of the exercise of the right of access . Dicha information will be available to the data protection authorities . ”*

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 treatment of the data personal hay violated the provisions of this Law Organic or not been served su request to exercise rights \_ recognized in articles 21, 22 and 23 will have 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 within the established period, they can submit a claim to the Catalan Data Protection Authority."*

**4.-** Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP attended to the right of deletion exercised by the person making the claim within the period provided for by the applicable regulations.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that, on 28/07/2021 , the person making the claim presented through the Virtual Office of Procedures of the Generalitat of Catalonia a letter through which exercised the right of deletion.

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 deletion request submitted by the person making the claim.

Well, according to the documentation provided in this file, the DGP did not issue a resolution in response to the deletion request submitted on 07/28/2021 until 02/02/2022, that is to say, exceeded by far the one-month deadline, so it must be concluded that the DGP resolved extemporaneously.

**5 .-** With regard to the substance of the request of the person making the claim, it should be borne in mind that the present claim refers to the denial of the right to deletion exercised with respect to his data contained in police proceedings no. (...), by means of a resolution issued by the DGP on 02/02/2022.

As a starting point, it should be borne in mind that, in accordance with article 23.2 of LO 7/2021, the interested person can request the deletion of their data when they infringe articles 6, 11 or 13 of LO 7 /2021 or when the personal data must be deleted by virtue of a legal obligation to which the data controller is subject.

However, LO 7/2021 foresees a series of limitations to the deletion of data, which are provided for in article 24.1. This precept allows the controller to deny, in whole or in part, requests to exercise the right of deletion when the processing of the data is necessary to prevent inquiries, investigations or judicial proceedings from being hindered (art. 24.1.a) or to prevent damage to the prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions (art. 24.1.b), among other circumstances.

In order to justify the denial of the deletion of the linked claimant's data, despite having provided a judicial certificate of the provisional dismissal of the procedure derived from the aforementioned police proceedings, the DGP precisely invoked article 24 of the LO 7/2021 in its resolution dated 02/02/2022. In turn, in said resolution the DGP affirmed that the data *"will be deleted when they are not necessary for the investigations that motivated their storage, and for these purposes the need to keep the data will be considered especially, among others until the conclusion of the purpose of this, and until the prescription of the facts."*

Thus things, the manifestations of the DGP in its resolution dated 02/02/2022, would have their place in the provisions of article 24.1.a) of LO 7/2021, given that despite having having proven the existence of a firm judicial interlocutory decree in which the provisional dismissal of the judicial proceedings that led to the police proceedings is decreed, it is necessary to keep the data for eventual inquiries or police investigations that may be carried out before the prescription of the facts. And this, as indicated by the DGP, due to *"the characteristics of the criminal act, the typology and severity of the acts as well as their proximity in time and, on the other hand, that a provisional suspension does not definitively close the process, the which can be reopened at any time if sufficient evidence appears to prove the commission of a crime or the guilt of those prosecuted, and until the statute of limitations expires"*, this statement can only be interpreted, in the sense that the DGP has reliable evidence that the statute of limitations for the facts investigated in the controversial police proceedings would not have occurred. In this regard, it is taken into account that the controversial events referred to in the police investigations that were the subject of the deletion request happened in 2019 and that the right was exercised in 2021. In other words, the deletion it was requested only two years after the facts referred to a possible crime of sexual assault occurred, the limitation period for which is 5 years, at least, in accordance with art. 131.1 of the Penal Code, which leads to the conclusion that these facts would not have prescribed.

In accordance with all the above, the pronouncement of this Authority in relation to the claim of deletion of data relating to police proceedings no. (...) formulated by the person claiming, must be dismissive, given that the judicial pronouncement of provisional dismissal, as the DGP maintains, does not prevent the police investigation from being kept open, when the corresponding limitation period has not passed.

**6.-** Although the present claim is dismissed, the DGP should be requested so that, within 10 counting days from the day after the notification of this resolution, it makes a notation regarding the provisional dismissal decreed by means of a firm interlocutory order, in order to avoid the obvious damages that could be generated in the person here claiming the fact of keeping in the police file the data contained in the police proceedings no. (...) without more,

that is to say, without including the circumstance relating to the provisional dismissal decreed by firm interlocutory. In this way, the needs of police investigations will be respected, and the right to data protection of the affected person will be guaranteed, thus complying with the requirements of the principle of accuracy of data set out in article 6.1.d) of LO 7/2021 which provides that the personal data will be “*Exactos y, si fuera necessary , updated . They will be adopted all measures \_ reasonable for them to be deleted or rectified, sin procrastination improperly , the data personal that they are inaccurate with respect to the purposes for which they are treated .*”

Once this entry has been made in the terms set out, within the same period of 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 02/02/2022, which resolves the request of Mr. (...), denying the deletion of data, rejecting the substance of the claim in this respect to the denial of the deletion of data relating to police proceedings no. (...), in accordance with what is indicated in the 5th legal basis.
- 2.- Request the DGP so that within 10 counting days from the day after the notification of this resolution, make an entry in the SIP PF, in the manner indicated in the 6th legal basis. Once it has been carried out, within the same period of 10 days the DGP will have to report it to the Authority.
- 3.- Notify this resolution to the DGP 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,