

In this resolution, the mentions of the affected population have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected population, the physical persons affected could also be identified.

File identification

Resolution of the rights protection procedure no. PT 30/2022, urged against (...).

Background

1. On 03/17/2022, the Catalan Data Protection Authority received a letter from Ms. (...) (hereafter, claimant), for which he formulated a claim for the alleged denial by (...) (hereafter, claimed entity), of the right to portability that he had exercised in respect of a document that appeared in the archives of this entity, and that certified him as a victim of gender violence in the workplace. The claimant requested the portability of this document to consider, on the one hand, that it was a document that the Specialized Care Service (SIE) of Mataró-Maresme had mistakenly sent to (...) (*claimed entity*), since it was the affected person (here claimant) who had to collect it from the SIE and deliver it to the work center; and on the other hand, because he no longer worked at the hospital (...) (*claimed entity*).

The claimant provided a copy of the letter dated 02/16/2022, whereby the claimed entity denied him the right to portability of said document.

In the letter of claim, the claimant also referred to the alleged neglect by this same entity of a request for access to this same document, reiterating what was indicated in the claim dated 09/11 /2021 that he formulated for this reason and that gave rise to the rights protection procedure no. PT 138/2021.

2. On 03/22/2022, the claim was transferred to the claimed entity so that within 15 days it could formulate the allegations it deemed relevant.

3. The claimed entity formulated allegations by means of a letter dated 04/11/2022, accompanied by the following three documents:

3.1. An email that the claimant sent on 02/17/2022 to said entity requesting portability, in which he stated the following :

*“ I would like the original documentation, therefore the portability of the document .
The HR department does not require me to not have a contract from June 2021.*

In September, the documentation was requested with a negative response from the entity, nor any allusion to the circuit established through the data protection delegate.

Now that I have access, I want to exercise my right to portability (...)”

As a document attached to this email, there was an application form for the right of portability, through which the claimant stated the following:

"I request the portability of the COMMON MODEL FOR THE ACCREDITATION OF GENDER VIOLENCE on which my name appears.

Portability had been requested in the month of October 4, 2019, rejected by Mrs. (...), by email 2-A through my lawyer (...)."

In the section of the form in which the reasons for the request were set out, the claimant stated the following:

"The reasons are the submission to judicial proceedings of the applicant. In the period 2019-2022 I could not present said documentation because it was in the possession of the HSP"

- 3.2. An email that the claimed entity sent on 02/17/2022 to the claimant, with an attached document corresponding to the written response to the portability request, in which the right exercised was denied based on three reasons that are briefly explained:

"(...) In this case we cannot consider that the processing of the data subject to the right to portability is based on the legal basis of consent, nor on the existence of a contract to which the interested party is a party, but that this treatment is necessary for the fulfillment of specific legal obligations in this area that fall on the person responsible for the treatment (...) (claimed entity). Therefore, we can consider that the requirement established by article 20 is not met in this case, since the processing of the data is not based on consent or on the existence of a contract in which the interested party is part (...).

Secondly, it is necessary that the processing of the data on which portability is requested, is carried out by automated means. In this case the document was sent by the SIE Mataró-Maresme using a physical document (paper). What is automated is a copy, of what we already provided a copy of.

Thirdly, in accordance with article 20, paragraph 1, to be included in the scope of the right to data portability, these must be:

- personal data pertaining to the person in question i*
- that this has facilitated a person in charge of the treatment.*

In this case the data does fall to the interested party, but it must be remembered that the document was not provided by the interested party, but was sent from SIE Mataró Maresme to the Directorate of Human Resources (...) (entity claimed)."

In the statement of objections dated 04/11/2022, the claimed entity stated the following:

- Regarding the submission of the portability request:

"That on February 17, 2022, at 4:11 p.m., Mrs. (...) sends an email to the address (...).cat, requesting the right to portability of the same documentation cited (documentation that accredits him as a victim of violence of gender in the workplace) (...) That a response was given to the exercise of the right to portability on March 17, 2022 (...)."

- With regard to the reasons for denying the right to portability, the reasons for denial were reproduced in the written response (section 3.2), although, with regard to the first reason given, the following was specified:

"In this case we understand that this condition is not given since the treatment is necessary for the fulfillment of specific legal obligations in this area (Royal Legislative Decree 2/2015, of October 23, by which the revised text is approved of the Workers' Statute Law) that fall to (...) (claimed entity) . Therefore, we consider that the processing of this data is not based on the consent of the interested party or on a contract to which the interested party is a party. It is also considered that it is necessary to keep the original documentation that SIE Mataró-Maresme sent at the request of (...) (claimed entity) , until the possible actions for possible infractions in the workplace are prescribed (3 years). "

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 20 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 to data portability provides that:

"1. The interested party has the right to receive, in a structured, commonly used and machine-readable format, the personal data that affect him and that he has provided to a data controller. He has the right to transmit them to another person in charge, without being prevented from doing so by the person in charge to whom he had provided them, when:

- a) The treatment is based on consent, in accordance with article 6, paragraph 1, letter a), with article 9, paragraph 2, letter a), or in a contract in accordance with article 6, section 1, letter b), i.*
- b) The treatment is carried out by automated means.*

2. When exercising his right to data portability in accordance with paragraph 1, the interested party has the right to have the personal data transmitted directly from person in charge to person in charge, when technically possible.

3. The exercise of the right mentioned in paragraph 1 of this article is understood without prejudice to article 17. This right does not apply to the processing necessary to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the data controller.

4. The right mentioned in paragraph 1 must not negatively affect the rights and freedoms of others."

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraph 3 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 (...)"

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. Next, it is necessary to analyze whether, in accordance with the precepts transcribed in the previous legal basis, the right to data portability applies in the terms requested by the person making the claim.

As explained in the background, on 17/02/2022 the person claiming sent an email to the claimed entity, by which he requested the portability of a document that appeared in its files entity - by referral from the Specialized Care Service (SIE) of Mataró-Maresme-, and which certified her as a victim of gender-based violence in the workplace. The claimed entity denied him such right by means of a letter dated 02/16/2022, to consider, in essence, that the requirements set out in article 20.1 of the RGPD do not meet, that is, that the treatment of data that is the subject of the portability request is not based on the consent of the claimant or on a contract to which the claimant is a party; that the required document was sent by the SIE in paper format; that the document was not provided by the interested party, but was sent from SIE Mataró-Maresme to the Human Resources Department of the claimed entity. To this he added that the document is necessary to comply with the obligations of the claimed entity derived from Royal Legislative Decree 2/2015, of October 23, which approves the revised text of the Law on the Statute of workers (hereinafter, ET). And in the statement of objections that the entity presented in the hearing phase, it added as a new reason for denying the right to portability, that the claimed entity must keep the original document sent by SIE mentioned *"until they prescribe the possible actions for possible violations in the labor field (3 years)."*

First of all, it should be noted that article 20.1 of the RGPD only recognizes the right to portability with respect to personal data that the affected person *has previously provided to a data controller*. This requirement does not apply in the present case, since it is not a disputed fact that the document that is the subject of the portability request was not delivered by the person claiming to the claimed entity, but rather by the SIE of Mataró- Maresme who sent it to him at the request of the claimed entity.

Second, Article 20.1 of the GDPR only recognizes the right to data portability when (a) the processing is based on consent or a contract, and (b) is carried out by automated means. These two requirements are not met in the present case, since, with regard to the first

requirement (a), the processing of the data of the requested document obeyed the fulfillment of the legal obligations of the data controller, as an employer of the person claiming . Regarding the second requirement indicated (b), the object of the portability request is an *original document* , which was sent to the claimed entity in paper format and, therefore, the right would not be exercised with respect to a processing by automated means.

Specifically, in the rights protection procedure no. PT 138/21 records that the SIE of Mataró-Maresme sent the disputed document to the claimed entity, following a request made by this entity for the SIE to inform it if the person making the claim *"had at that time the condition of to be a victim of gender-based violence within the meaning of art. 23 of LO 1/2004* , in reference to Organic Law 1/2004, of December 28, on Comprehensive Protection Measures against Gender-Based Violence. LO 1/2004 regulates the means to accredit the situations of gender violence that give rise to the recognition of the labor and Social Security rights provided for in articles 21 and 22 of this same rule, which include the right to the reduction or rearrangement of working time, the right to geographic mobility, the right to change work center, the right to suspend the employment relationship with job reservation, and the right to terminate the employment contract, as well as provided for in the seventh and eighth additional provisions of this Organic Law, relating to the modification of certain precepts of the Workers' Statute Law and the General Social Security Law, respectively. Thus, the claimed entity collected the controversial document referring to the claimant, in order to be able to comply with the labor and Social Security obligations introduced by LO 1/2004.

Lastly, and in relation to the statements made by the claimant in the portability request, where he indicated that: *"I would like the original documentation, therefore the portability of the document"*, it should be indicated that the right to portability provided for in article 20 of the RGPD, as it only applies to treatments carried out by automated means, they do not buy the right to obtain the original documentation containing the data of the person who exercises this right , but only includes the right to receive this data in a structured, commonly used and machine-readable format. Having said that, we cannot fail to point out that the claimed entity claims to have delivered a copy of the disputed document to the person making the claim.

For the reasons stated, the claim made by the claimant must be rejected.

For all this, I resolve:

1. Dismiss the guardianship claim made by Ms. (...) , for the reasons set out in the 3rd legal basis.
2. Notify this resolution to (...) 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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