

File identification

Resolution of the rights protection procedure no. PT 33/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 29/03/2022 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 claimant certified that, on 05/01/2022, he had requested from the DGP the exercise of the right of access to his personal data that appeared in the files in the area of the Police information systems of the Generalitat (SIP PF and SIP PFMEN).

2.- On 31/03/2022 the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The term has passed without the DGP having presented 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 the Catalan Data Protection Authority.

2.- The personal data processed by the DGP referred to in the present claim relating to the request to exercise the right of access, submitted to the DGP registry on 05/01/2022, fall within the scope of application 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 (LO 7/2021).

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 controller 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.
(...)"*

Regarding the general conditions for exercising the rights of the interested parties, article 20 of LO 7/2021, establishes the following:

- "1. The person responsible for the treatment must provide the interested party, in a concise, intelligible, easily accessible and with clear and simple language for all persons, including those with disabilities, all the information contemplated in article 21, as well as that derived from the articles 14, 22 to 26 and 39. In addition, the controller must take the necessary measures to guarantee the interested party the exercise of his rights referred to in articles 14 and 22 to 26.*
- 2. The interested party, with capacity to act, may act in his own name and representation or through representatives, in accordance with the regulations on the common administrative procedure of Public Administrations.*
- 3. The information will be provided by any suitable means, including electronic means, trying to use the same medium used in the request.*
- 4. The data controller will inform the interested party in writing, without undue delay, about the course given at their request. The request will be considered rejected if, after one month has passed since its presentation, it has not been expressly resolved and notified to the interested party.*
- 5. The information referred to in section 1 will be provided free of charge. When the requests of an interested party are manifestly unfounded or excessive, in particular due to their repetitive nature, the person in charge of the treatment may reject them for processing, by means of a reasoned resolution. The person responsible for the treatment must demonstrate the manifestly unfounded or excessive nature of the request. In any case, it will be considered that the request is repetitive when three requests are made on the same assumption during the period of six months, unless there is a legitimate reason for it (...)."*

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 within the established period, 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 DGP attended to the right of access exercised by the person making the claim within the period provided for by the applicable regulations, since the reason for complaint by

the person who initiated the present rights protection procedure was the fact of not having obtained a response within the period provided for the purpose.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that on 05/01/2022, the person making the claim submitted a letter to the DGP entry register through which he exercised the right of access

In the case we are dealing with here, 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 request of access submitted by the claimant.

However, as explained in the background, the DGP has not accredited the Authority to have responded to the request for access made by the person claiming on 01/05/2022, nor within a month provided for the purpose, nor subsequently.

4.- Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 3rd legal basis, in this case access to the data in the terms that request of the person making the claim.

In the case at hand here, the claimant exercised his right of access to the personal data contained in the files in the SIP area (PF and PFMEN).

In this regard, it should be borne in mind that article 22 of LO 7/2021 configures the right of access as the right of the affected person to obtain confirmation from the person in charge as to whether he is processing his personal data and, in in such case, to access said data and the information detailed in article 22.1 of LO 7/2021.

The right of access is a very personal right, and constitutes one of the essential faculties that integrate the fundamental right to the protection of personal data. As already advanced, through the right of access, the owner of the data can know which data about his person are the object of treatment. In addition, this right could be the basis of the exercise other rights, such as rectification, deletion or limitation.

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 regulated in article 24 of LO 7/2021.

Therefore, in view of the documentation provided by the person claiming, and given that it is recorded in the credit that the DGP did not respond to the request submitted by the person here claiming on 05/01/2022 and that neither has expressed his opposition to access in the complaints procedure citing some circumstance that could prevent the person here claiming access to the requested data, the claim for access to the data contained in the files of the SIP area (PF and PFMEN).

5.- In accordance with what is established in articles 16.3 of Law 32/2010 and 50.b) of LO 7/2021, in cases of estimation of the claim for protection of rights, the person in charge must be required of the treatment in order to 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 the General Directorate of the Police of the Department of the Interior, regarding the request for access made on 05/01/2022.
2. Request the DGP so that within 10 counting 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 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.
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), 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,