

## File identification

Resolution of the rights protection procedure no. PT 34/2022, petition against the Catalan Health Institute.

## Background

1.- On 30/03/2022 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he formulated a claim for the alleged neglect of the right of access, which he had previously exercised before the Catalan Institute of Health (hereinafter, the ICS).

In order to certify the exercise of this right, the claimant provided the following documentation:

- a) The request to exercise the right of access presented to the claimed entity on 10/02/2022, in which the claimant here requested the details of the registrations contained in the ICS computer register in relation to with her data as an employee of said entity and for three specific periods of time that she specified.
- b) Letter of 02/24/2022, in which he asked to add another period of time to those already petitioned on 02/10/2022. In this letter, the person making the claim stated that *"before you respond to the request, I would appreciate it if you could add the following periods to the requested periods (...)"*.

2.- On 04/19/2022, the claim was transferred to the ICS so that, within 15 days, it could formulate the allegations it considered relevant, and provide the supporting documentation for the resolution of the request and of its notification, in case it has been resolved.

3.- On 11/05/2022, the ICS's statement of allegations was entered in the register of this Authority which, in literal terms, said the following:

- *In relation to the mentioned procedure, the entity informs that the applicant provided three e-wallets to justify his requests and the lack of response. In this case, the entity makes it clear that in these e-valises the content is a bit mixed and therefore, it is necessary to follow the chronology and the thread of questions and answers. In addition, in order to be able to trace the requests, other documents and information are missing. Despite this, in all cases he has been given some kind of answer and always within the deadline.*
- *To this end, the Directorate of Economic-Financial Resources of the Territorial Management of Central Catalonia of the ICS informs that on May 2nd a response was sent to the interested party by e- notum.*

Apart from the transcribed allegations, the ICS did not provide any supporting documentation of the resolution of the request, nor of its notification.

4.- On 05/18/2022, this Authority sent a letter to the claimant informing him that, in view of the demonstrations made by the ICS, it was interpreted that he would have attended to his

right to 'access; and that unless within ten working days it argued otherwise, it would be considered that the claimed entity had satisfactorily resolved its request.

5.- On 2/06/2022 this Authority received a letter from the person claiming through which he stated that " *Indeed the ICS notified me of a resolution on 2/05/2022, in response to the electronic wallet that I sent on February 24, 2022, with which I consider that the claimed entity has satisfactorily resolved my request.*" Along with the letter, he provided the response of the ICS and the notification evidence of 05/03/2022.

## **Fundamentals of Law**

1.- The director of the Catalan Data Protection Authority is competent to issue this resolution, in accordance with articles 5.b) and 8.2.b) of Law 32/2010, of October 1, of the 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 of these (hereafter, 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."*

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 right of access of the affected person it has to exercise Okay with what it establishes article 15 of Regulation (EU) 2016/679.*

*When the person in charge processes a large amount of data relating to the affected person exercise your \_ right of access without specifying whether it refers to all or part of the data, the person in charge can request , before providing the information , that the affected specify the data or processing activities to which it refers the request . \_*

*2. The right of access it is understood granted if the data controller provides the affected party with an access system remote , direct and secure access to personal data that guarantees permanent access to your data totality \_ To this one effect , the communication from the person in charge to the affected in the manner as this can access the aforementioned system is enough to take care of the request \_ of exercising the right .*

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

*3. Als effects established in article 12.5 of Regulation (EU) 2016/679 can be considered repetitive the exercise of the right of access month once during the term of six \_ months , unless there is a legitimate reason to do so .*

*4. When the affected choose a medium different from what you know offers to incur a cost disproportionate , the request \_ must be considered excessive , so the affected mentioned must assume the excess costs that his choose behavior \_ In this case, only the person in charge of the treatment is 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 the rights of access , rectification , cancellation or opposition , or that they may understand dismissed their request by fact of not having been resolved within the deadline established , they can file a claim in front the Authority Catalan Data Protection Authority."*

**3.-** Having explained the applicable regulatory framework, it is then necessary to analyze whether the ICS 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 that initiated the present procedure for the protection of rights, is the fact of not having obtained a response within the period provided for the purpose.

The background first shows that the claimant submitted a request for the right of access and an extension thereof (respectively, on 10/02/2022 and 24/02/2022) through which he requested the access to the details of the registrations contained in the ICS computer register in relation to her data as an employee of said entity and for four specific periods of time.

In accordance with article 12.3 RGD, the ICS had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request. In relation to this issue, 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 (hereinafter, LRJPCat ), on the one hand, the calculation of the maximum term in procedures initiated in party instance (as the case may be) starts from the date on which the request was entered in the register of the competent body for its processing. In the case at hand, the calculation of the term would begin to count from 02/24/2022, the date on which the claimant presented an extension of the request initially made on 02/10/2022 (precedence 1 ), in which he requested access to more information, thus expanding the object of his initial request for access. And to the above, it should be added that the person making the claim expressly asked the ICS not to resolve their access request without taking into account this additional request for information (precedent 5th).

However, it is proven that the ICS did not respond to the reference request until 05/03/2022, that is to say, when the deadline for the resolution of another one foreseen in the effect That being the case, it must be concluded that the ICS has extemporaneously resolved the request for access of the person making the claim.

**4.-** With regard to the substance of the claim, it should be borne in mind that the ICS, within the framework of the present rights protection procedure and in response to the request for access of the person making the claim, in the who requested access to a series of data as an employee of the ICS, has notified her on 3/05/2022 of a document that would include a complete list of the requested data.

On the other hand, on 06/02/2022, in response to this Authority's request, the person making the claim has informed that he considers that the entity has satisfactorily resolved his request for access.

Article 21.1 LPAC provides for the following:

*" The Administration is obliged to issue a resolution express and notify it in all the procedures whatever its form of initiation . \_\_ In cases of prescription , waiver of the right , expiry of the procedure or withdrawal of the request , as well as of disappearance arising from the object of the procedure , the resolution consists of the declaration of the circumstance that occurs in each case , with indication of the facts produced and the applicable rules (...)"*

Article 53.2 of the LRJPCat is pronounced in the same sense .

Therefore, I resolve:

1. Declare the ICS response to the access request of Mr. (...), without going into other considerations regarding the substance, when the claimant's right has become effective, in accordance with what has been indicated in the 4th legal basis.
2. Notify this resolution to the ICS 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 Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within 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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