

File identification

Resolution of the rights protection procedure no. PT 36/2022, petition against the Department of Education.

Background

1. On 31/03/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim due to his disagreement with the response received in relation to the right to delete the data from his employment file, which he had previously exercised before the Department of education

Specifically, the complainant complained that the Department of Education had refused the request to delete the data relating to the usual address. The person making the claim motivated the deletion request in which *"according to Law 39 and Law 40 of administrative procedure all communications must be in electronic format"*, and added that *"if your request is accepted, the same was communicated to each of the recipients to whom it had been communicated by the Department of Education"*.

The claimant provided the deletion request submitted to the Department of Education on 03/18/2022 and the resolution of 03/25/2022 by which the Department denied the request because the processing of this data was necessary for comply with a legal obligation.

2. On 04/13/2022, the claim was transferred to the Department of Education so that within 15 days it could formulate the allegations it deemed relevant.

3. On 04/05/2022, the Department of Education sent the Authority its statement of objections in which it set out, in summary, the following:

- What the Department of Education understands that none of the circumstances contained in article 17 of Regulation (EU) no. 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data and which repeals Directive 95 /46 / CE (hereinafter, RGPD) to estimate the deletion of the data referring to the usual address.
- That Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC), foresees the obligation of the Administration to relate to its employees, but this does not prevent that your usual address continues to be available, given that this data may be necessary for different purposes related to the management of the employment relationship.

First of all, the exercise of some of the rights of employed persons requires knowledge of this data, such as permits for relocation, hospitalization or death of a family member, in which the leave days vary depending on whether the event occurs in the same municipality of residence or in another, for example.

Secondly, due to the fact that employees are also likely to receive paper notifications for which it is necessary to know this postal address. A clear example is notifications from

courts and tribunals when they address documents to the Department that must be transferred and served on paper to the addressee.

- That *"it is necessary to remember what article 40 of Law 39 says regarding notifications and the jurisprudence has come to emphasize, the requirement of diligence that is required of the administrations to seek success in the communication of the notification for the utmost relevance for the exercise of the rights and the defense of the interests that you want to assert before a certain administrative action."*
- That *"the retirement situation represents the end of the official or employment relationship, and therefore, of the obligation to receive notifications and communications electronically and even of the medium used (eValisa)".* And he adds that *"Even if the electronic channel is the means of relationship with the Administration chosen by the interested party, there may be some residual procedure related to his previous professional relationship with the Department that requires knowing this address in order to address- to the person concerned, even if it is for the first time as also provided for in Law 39/2015 (40.4), taking into account also that the claimant has not indicated an alternative personal email address that can be used to the effect of notifying him of certain acts"*.
- That article 17.3.b) provides that sections 1 and 2 they will not apply when the treatment is necessary for the fulfillment of a legal obligation or for the fulfillment of a mission in the public interest or the exercise of public powers conferred on the person in charge.
- That the data of the postal address is part of the personnel file in the service of the public administrations and that Law 10/2001, of July 13, of archives and documents of Catalonia which establishes that no public document can be removed if the regulations and procedure established by regulation are not followed.
- That the document evaluation and access table that applies to personnel files with code 80 (documentary series *"Personnel files in the service of the public administration"*), brings together the documents that incorporate the acts referring to the administrative life of the personnel at the service of the Public Administrations. These documents will always remain as proof of the employee's administrative career, defining access and the exercise of rights and duties and administrative situations until their termination.
- That *" While it is true that it is not entirely comparable to talk about eliminating documentation in accordance with the aforementioned law and its evaluation tables and documentary access to eliminating some specific data, in this case, due to the fact that the data is considered necessary in the personnel files that are in the active phase, it must be considered that in application of the aforementioned law their elimination is not appropriate either."*
- That it can also be considered that the claimant has exercised the right of opposition.
- That in accordance with additional provision 12a of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD) and articles 6, 18 and 21 *" the treatments of records of public sector personnel, as is the case, are understood - lawfully - carried out in the exercise of the public powers conferred*

on those responsible (Department of Education- (...), since the said treatment is necessary for the fulfillment of a task carried out in the public interest."

- *That point 3 of additional provision 12 of the LOPDGDD "provides that the data that may have been limited under article 18.2 of the RGPD may be the subject of treatment when necessary for the development of personnel procedures , to consider it a reason of important public interest."*
- *That "the interested party has the right to object, but the data controller may stop processing the personal data (including the address), unless it proves legitimate reasons for the processing of this data and that these reasons prevail with respect to the interests, rights and freedoms of the interested party", and specifies "that the interested party has also not expressed reasons related to his particular situation except to say that the relations must be electronic" in accordance with the LPAC.*
- *That "the applicant is a career civil servant, of the body of inspectors, public authority and in active service. The Department understands that in accordance with what has been mentioned, the personal address should not be deleted, and the fact that communications are made to the requesting official electronically in accordance with current legislation (Law 39/2015), they do not mean that the postal address is maintained, precisely because it is processing data necessary for the development of some personnel procedures and for the benefit of the rights of the interested party.*
- *That in the weighting marked by article 21.1 of the RGPD "the Department understands that by maintaining the postal address data of public employees, more benefits prevail than harm: both for the reason of the public interest that is being defended (the 'eventual notification and communication of certain personnel procedures) as to strengthen the guarantee of the same rights of the interested party that could be affected if it were to be deleted" , and "That the Department has this data gives more guarantees to the claimant since it allows notifications to be sent in case of need or, even, of technical failure of the electronic system, to a postal address, in addition to the electronic and corporate one", this being the reason for the denial of the deletion of the personal data to the person making the claim.*

The Department of Education also provided the response dated 25/03/2022 to the request for the right of deletion and the proof of delivery of said response by e -Valisa.

It should be made clear that the present rights protection procedure refers only to the claim of neglect of the right to deletion made by the person making the claim before this Authority on 03/31/2022, and not to the right of opposition to which it refers the Department in its response letter, given that the right of opposition is not part of the claim made by the person making the claim.

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 17 of the RGPD regulates the right to deletion in the following terms:

"1. The interested party will have right to obtain yes procrastination Unauthorized deletion of data by the data controller personal that _ concern , which will be forced to delete sin procrastination misuse the data personal when any of the circumstances occur following :

- a) the data personal they are no longer necessary in relation to the ends for those who were collected or otherwise treated ; _*
- b) the interested party withdraw the consent on which the treatment is based in accordance with article 6 , section 1, letter a), or article 9, section 2, letter a), and this is not based on another foundation juridical ;*
- c) the interested party opposes the treatment in accordance with article 21, section 1, and they do not prevail others reasons legitimate for the treatment , or the interested party opposes the treatment in accordance with article 21, section 2;*
- d) the data personal there are been treaties unlawfully ;*
- e) the data personal deban be suppressed for the fulfillment of a legal obligation established in the Law of the Union or of the States members that apply to the person in charge of the treatment ;*
- f) the data personal are there obtained in relation to the offer of information society services mentioned in article 8, section 1.*

3. Sections 1 and 2 will not apply when the treatment be necessary :

- a) to exercise the right to freedom of expression and information ;*
- b) for the fulfillment of a legal obligation that requires data processing imposed by the Law of the Union or of the States members that apply to the person responsible for the treatment , or for the fulfillment of a mission made in interest public or in the exercise of powers public given to the person in charge;*
- c) for reasons of interest public in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;*
- d) for filing purposes public , scientific or historical research purposes or statistical purposes , in accordance with article 89, section 1, to the extent that the right indicated in section 1 could do impossible to hinder you seriously the achievement of said objectives _ treatment , or*
- e) for the formulation , exercise or defense of claims .*

For its part, article 15 of the LOPDGDD determines the following, also in relation to the right of deletion:

"1. The right of deletion will be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679 .

2. When the deletion deriving from the exercise of the right of opposition pursuant to article 21.2 of Regulation (EU) 2016/679, the person in charge may retain the data identifiers of the affected necessary in order to prevent treatments futures for direct marketing purposes . "

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 responsible for the treatment will facilitate the interested party information related to sus 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 . Dicho plazo podra extend 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 of these extensions within one month of receipt of the request , indicating the reasons for the delay . When the interested party present the request by media electronic , the information will be provided by media electronic when be possible , unless the interested party request that it be provided in another way.

4. If the data controller does not comply with the request of the interested party , the will inform yes delay , no later than one month has passed since the receipt of the request , the reasons for its non - action and the possibility of presenting a claim before a control authority and take legal action .

5. The information provided under articles 13 and 14 as well as all communication and anyone performance carried out under articles 15 to 22 and 34 will be entitled free _ When the requests they are manifestly groundless or excessive , especially due to him character repetitive , the person in charge may :

a) charge a fee reasonable based on administrative costs faced to facilitate information or communication or perform the action requested , or
b) refuse to act in respect of the request .

The person responsible for the treatment will bear the burden of proving character manifestly groundless or excessive 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. Having explained the applicable regulatory framework, it is then necessary to analyze whether the Department of Education resolved and notified, within the period provided for by the applicable regulations, the right of deletion exercised by the person making the claim, since precisely the reason for his complaint which started the present rights protection procedure, it was the fact of not having obtained a response within the period provided for the purpose.

It is certified that on 18/03/2022 the Department of Education received a letter from the claimant through which he exercised the right of deletion with respect to the data relating to the usual address.

Likewise, it is also certified that the Department of Education responded to the deletion request made by the person claiming by means of a letter dated 03/25/2022. Therefore, the Department of Education formally responded to the person requesting the deletion, within the one-month period provided for in the regulations (Article 12.3 of the RGPD and Article 21 of

the LPAC). This notwithstanding what will be said below regarding the substance of the claim.

4. Having exposed the applicable regulatory framework, it is necessary to analyze whether, in accordance with the precepts transcribed in the 2nd legal basis, the deletion of the data in the terms requested by the person making the claim proceeds in this case.

In advance, it is necessary to make a clarification regarding the statement made by the Department of Education in its statement of allegations, which could be considered that the person making the claim was also exercising his right of opposition.

In this respect, in accordance with the request that the claimant addressed to the Department of Education on 03/18/2022, it is established that the unequivocal will of the claimant was only to exercise his right of deletion with respect to the data relating to the habitual address, which is reinforced by the fact that the person making the claim expressly requests that the deletion be communicated to each of the eventual recipients to whom that data had previously been communicated. In other words, the will of the person making the claim is not for the Department to stop processing the data relating to their usual address for some specific purpose, but for it to be removed from their information systems.

That is why the facts analyzed here are limited solely to the right of deletion.

Having established the above, taking into account that the right to deletion regulated in article 17 of the RGPD is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. However, this right conditions its exercise to the concurrence of one of the cases provided for in its 1st section, and as long as none of the exceptions noted in section 3 of this same article is given.

The person making the claim did not specify which of the specific cases provided for in article 17.1 of the RGPD justified their deletion request (in their request they transcribed all of article 17.1 of the RGPD).

In this regard, the person making the claim requested the deletion of the data relating to the usual address, because he considered that relations between the Public Administration and public employees, as is his case, must be carried out by electronic means. In this respect, article 14.2.e) of the LPAC provides that are obliged to relate through electronic means with the public administrations to carry out any procedure of an administrative procedure *"Employees of the public administrations for the procedures and actions they carry out with them by reason of their status as public employees, as determined by the regulations of each Administration."*

Thus, it seems to be inferred that, to exercise the right of deletion, the claimant invoked the circumstance provided for in article 17.1.a) of the RGPD. In other words, he considered that the usual address was no longer necessary in relation to the purposes for which it was collected or processed. And this due to the fact that being obliged to relate to the Administration through electronic means, the usual address was no longer necessary to maintain the link with the Department of Education.

The Department of Education justified its refusal to delete this data of the person claiming, on the one hand, in which said data is necessary due to the employment relationship with the

person here claiming, such as, for example, to manage residence transfer permits, death or accident of family members; as well as this data could also be necessary until after the employment relationship has ended, such as now, in the retirement situation.

And on the other hand, the Department stated that based on article 17.3.b) of the RGPD, the processing of said data is necessary to fulfill a legal obligation. In this regard, he alleged that article 9 of Law 10/2001, of July 13, on archives and document management, is applicable, which establishes that *"Once the active and semi-active phases have been concluded, the evaluation regulations must be applied to all public documents, on the basis of which their conservation is determined, due to their cultural, informational or legal value, or their elimination. No public document can be removed if the regulations and procedure established by regulation are not followed."*

In this regard, the Department specified that *"While it is true that it is not entirely comparable to talk about eliminating documentation in accordance with the aforementioned law and its evaluation tables and documentary access to eliminating some specific data, in this case, due to the fact that the data is considered necessary in the personnel files that are in the active phase, it should be considered that in application of the aforementioned law, its elimination is not appropriate either."*

Article 10.1 of Decree 13/2008, of January 22, on access, evaluation and selection of documents provides that *"The evaluation tables and documentary access are applied to public documentation and determine, for each documentary series, the retention period and the criteria for the application of the regulations governing access to documents"*. In this regard, the Department of Education maintained that the documentary series *"Personnel files in the service of the public administration"* (code 080), is the one that applies regarding the conservation of documentation relating to the public employees of the Department. In this table, it is anticipated that the retention period of the information contained therein is permanent.

Therefore, to the extent that the data referring to the usual address would be included in the personnel file, the assumptions provided for in letters a) (legal obligation) and d) (purposes with archive in the public interest) of the Article 17.3, which would justify the denial of the right of deletion.

In addition, in the present case it is clear that there is a link between the claimant and the Administration consisting of a statutory relationship, since the claimant is an official who provides services in the Department.

It is clear that the link between the Department and the person making the claim cannot be carried out properly if the Administration does not have the data relating to the usual address, given that it is necessary data for the management of human resources, such as for certain permits provided for by public service regulations in which the address is relevant data (transfer permit, etc.) or to practice notifications to that address in specific cases, as invoked by the Department of Education in his statement of allegations.

Therefore, it is not considered appropriate to delete the data relating to the habitual residence to consider that its treatment is necessary for the fulfillment of a legal obligation applicable to the person responsible for the treatment in accordance with the public service regulations and to practice certain notifications at that address, so that the case described in

article 17.3.b) of the RGPD is applicable, which establishes that the deletion is not applicable when the treatment is necessary to fulfill a legal obligation that requires the treatment of data imposed by law of the Union or of the member states to which the controller is subject, or to fulfill a mission carried out in the public interest or in the exercise of public powers conferred on the controller.

For all this, I resolve:

1. Dismiss the guardianship claim made by Mr. (...) against the Department of Education.
2. Notify this resolution to the Department of Education 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,