

## File identification

Resolution of the rights protection procedure no. PT 57/2022, brought against Barcelona City Council.

## Background

1. On 06/06/2022, the Catalan Data Protection Authority received a letter from Mrs. (...) (hereafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before Barcelona City Council on 27/03/ 2022. The person making the claim stated that he had requested the City Council " *to know for what purpose my data was accessed and/or transferred to third parties in the last year* ", but that the City Council's letter resolving the his request did not respond to these ends.

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

a) Request to exercise the right of access presented to the City Council on 27/03/2022 (with entry registration no. (...),) which indicated that *"Recently, I am receiving repeated phone calls and upset about the (...) who identifies himself as saying that he is doing a security study for Barcelona City Council and that I have been "selected" to carry out a survey. They are asking for me, with my new number Merxe, which I changed last year, and which only official bodies have updated, so it must be certain that the data has come from the Barcelona City Council", and that is why he asked "that I report on the veracity of said information, for what purpose my data has been accessed and/or have they been transferred to third parties in the last year and in any case express my opposition to said treatment, that is to say, I do not want my data to be in no way transferred to third parties and much less to carry out surveys or any other type of statistical study."*

b) Response from the City Council, dated 04/25/2022, in which the person claiming here was informed that, in relation to the calls about a security survey that he stated that he received, this survey *"is part of the official statistics of Catalonia, protected by statistical secrecy in accordance with Law 23/1998, of December 30, on statistics of Catalonia, which allows the administration that carries out the survey access to the municipal register of inhabitants to contact the person selected to do the interview."* And he added that *"Given that you are registered in Castelldefels, we inform you that you must direct your request to oppose the processing of your data to the Metropolitan Area of Barcelona, as it is the body responsible for the survey."*

2. On 07/18/2022, the claim was transferred to the City Council so that within 15 days it could formulate the allegations it deemed relevant.

3. The City Council made allegations in a letter dated 07/22/2022, in which it set out, in summary, the following:

- That the City Council's Data Protection Delegate's Office contacted the City Council's Municipal Data Office and it was identified that the survey referred to by the person

- making the claim was carried out by the Metropolitan Area of Barcelona to several municipalities included in its territorial scope.
- That, on 04/25/2022, *"the aforementioned request was answered, which was made available on 04/28/2022 and accepted on 05/1/2022"* by the claimant.
  - That in the answer given *"it was reported that it was a survey carried out with the purpose of carrying out a security study that was part of the official statistics produced by the bodies of the Statistical System of Catalonia, protected by statistical secrecy regulated by the Law 23/1998 of December 30, on the statistics of Catalonia, and which allows, among others, access to data from the municipal register in order to design the appropriate samples for each survey."*
  - That since the applicant was not registered in Barcelona, he was informed that, to exercise his right, he had to contact the entity responsible for the survey (the Àrea Metropolitana de Barcelona), or, your municipality of registration.

### **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. In advance, it is necessary to clarify the claim presented by the interested person to this Authority. Well, although the request that the person making the claim presented to the Barcelona City Council referred both to the exercise of the right of access and the right of opposition, the claim presented by the person concerned to the 'Authority focuses solely on the right of access exercised. This is why the facts analyzed here are limited solely to the right of access.
3. 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 thereof (in hereinafter, 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.”*

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 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. This period can be extended 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 such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.*

*4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.*

*5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:*

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

*The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.  
(...)”*

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 affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.*

*When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or the processing activities to which the request refers.*

*2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.*

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

*3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it*

*4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only 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 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."*

4. Having explained the applicable regulatory framework, it is then necessary to analyze whether the City Council resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim.

In accordance with article 12.3 of the RGPD, the City Council had to resolve and notify this request to exercise the requested right within a maximum period of one month from the receipt of the request. In relation to the question of the term, it should be borne in mind that, in accordance with article 21 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC), the maximum term is for resolving and notifying, so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt must have occurred (art. 40.4 LPAC).

In this regard, it is certified that on Sunday 27/03/2022 a letter from the person claiming was received at Barcelona City Council through which he exercised the right of access. This day

(Sunday) was a non-working day in accordance with article 30.2 LPAC, so in accordance with article 31.2.b) of the LPAC, the presentation on a non-working day is understood to have been made in the first hour of the first following business day, that is to say, Monday 28/03/2022. Taking into account everything that has been set out, the one-month deadline for this purpose ended on 04/28/2022.

In the present case, the City Council resolved the request for access on 04/25/2022 and made available to the person claiming the notification of this resolution on 04/28/2022, within the legally provided deadline.

5. Once the above has been established, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data, in the terms usually · legality of the person claiming.

As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case , access said data and information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

With regard to the substance of the claim, it should be borne in mind that the person making the claim focused his request for access on certain information regarding the processing of his data following calls he received on the occasion of a survey, which inferred that the 'City Hall of Barcelona. Specifically, the person claiming wanted to "*know for what purpose my data has been accessed and/or transferred to third parties in the last year*".

In response to his request for access, Barcelona City Council informed the person making the claim that the security survey that is the subject of his request for access "*is part of the official statistics of Catalonia, covered for statistical secrecy in accordance with Law 23/1998, of December 30, on the statistics of Catalonia, which allows the administration that carries out the survey access to the municipal register of inhabitants to contact the person selected to conduct the interview*". Likewise, he indicated to the person claiming that, in order to exercise his rights, he had to direct his request to the Metropolitan Area of Barcelona, who was responsible for the processing of the data for carrying out the 'security survey of people registered in their population (Castelldefels).

So things are, it must be considered that the City Council attended to the right of the person claiming in accordance with the provisions of article 15.1 of the RGPD, which establishes that when the right of access is exercised, it must inform whether or not it is processing your data.

At this point, it should be noted that the action of the Barcelona City Council was not limited to informing the person here claiming that the Council was not carrying out the processing in

respect of which the right of access was exercised, but that moreover, he carried out a series of actions to be able to inform the person making the claim about the specific survey to which his request referred, the possible legal basis that legitimized the treatment consisting in carrying out the survey and entity that was responsible for the treatment (the Metropolitan Area of Barcelona), so that you could contact it to exercise your rights.

In short, it should be considered that the City Council's response was in accordance with the law.

For all this, I resolve:

1. Dismiss the guardianship claim made by Ms. (...) against Barcelona City Council.
2. Notify this resolution to the City Council and the person making the claim.
3. 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,