

File identification

Resolution of the rights protection procedure no. PT 58/2022, urged against the City Council of La Garriga.

Background

1. On 07/06/2022 the Catalan Data Protection Authority received a letter from Ms. (...) (hereinafter, the person making the claim), for which he formulated a claim for the alleged neglect of the rights of access and rectification of his personal data, which he had previously exercised before the City Council of La Garriga (hereinafter, the City Council).

Specifically, the complainant stated that his complaint was in relation to the "door to door" waste collection service .

The claimant provided various documents:

- Copy of the e-mail from the City Council (12/04/2022), which attached the proof of delivery of the material for the selective collection of waste, and which stated that the address of the interested person was "(...)" .
- Copy of the interested person's email (14/04/2022), where he indicated to the City Council that his correct address was "(...)" .
- Copy of the e-mail from the City Council (16/04/2022), indicating "We take note" [of the correct address].
- Copy of the email addressed to the DPD of the City Council (14/04/2022), where the interested person makes a series of considerations about the content of the right to information and requests the following:
 - a) Certain information about the "door-to-door collection service and closed areas with access control and its subsequent control and monitoring " (what the service consists of; the company in charge of managing the services or subcontractors - if they can access to the register and the data generated by the waste collection system - if it was planned to implement a system of payment per generation, and if so the procedure to implement the fair rate; and if companies will be hired for subsequent monitoring).
 - b) Information on whether conduct or behavior profiles were drawn up and whether these types of profiles could have consequences for the person using the waste collection service.
 - c) Withdraw your consent in the event that this is the legal basis that legitimizes the treatment.
- Letter of response from the City Council of 04/29/2022 (notified on the same date), where, in summary, the interested person was told the following:
 - That, on the one hand, in his email, the person making the claim raised a series of observations regarding data protection; and on the other, he requested access to certain public information.
 - That respects the request for access to public information, for the purposes of complying with what is provided for in article 26.1 of Law 19/2014, of December 29, on transparency, access to public information and good governance (henceforth, LTC), it was necessary to present it through the general registry of the City Council.

- That the data processing linked to the door-to-door collection service *"will appear registered in the next update of the Processing Activities Register - henceforth, RAT- (...) which is updated at the end of the year"*.
 - That in relation to the withdrawal of your consent, you are informed that it is not necessary to do so given that the legal basis that legitimizes the processing of the collection of material is not your consent, but the fulfillment of a public interest mission (art. 6.1.e RGPD) and the fulfillment of a legal obligation (art. 6.1. RGPD).
 - *"La Garriga zero waste"* registration form (05/05/2022), submitted by the claimant to the City Council in order to request the card that gives access to the emergency point for waste collection.
 - Copy of the e-mail from the City Council (05/05/2022), where the proof of delivery of the material for the selective collection of waste was attached, and where the incorrect address of the person concerned was again listed.
 - Copy of the request for access to public information (05/05/2022) (with registration (...)), in which he requested *"Copy of my data personal data that are the subject of treatment for the treatment that I have been informed about: "Provision of the door-to-door collection service and closed areas with access control and its subsequent control and monitoring", the purposes of the treatment , as well as the categories of data personal data treated , the recipients or categories of recipients to whom my data has been communicated personal , or will be communications , if they exist decisions automated , including the elaboration of profiles, significant information about the logic applied, as well as the importance and consequences provided for by dicho treatment ."*
 - Copy of the request for access to public information (05/05/2022) (with registration (...)), in which he requested *" Copy of my data personal data that are the subject of processing for the processing that I have been informed about: "delivery of material for the selective collection of waste", the purposes of the processing , as well as the categories of data personal data treated , the recipients or categories of recipients to whom my data has been communicated personal , or will be communicated , if there are automated decisions , including profiling , significant information about the logic applied, as well as the importance and consequences provided for by dicho treatment ."*
 - Copy of the interested person's email (06/05/2022), where, among others, it stated the following:
 - Various considerations regarding the information that the City Council will facilitate in the collection of your data for the purpose of delivering the material.
 - That, despite having asked for the rectification, the City Council has once again put its address incorrectly on the proof of delivery of the material on 05/05/2022, which is why it reiterates its rectification.
 - That requests information on whether your personal data have been communicated to people or companies external to the City Council and, if applicable, whether they have been stored in applications external to the City Council.
 - Requests information on what is the data processing or data processing, if there are several, its purpose, legitimacy, data communications to other recipients, etc.
- 2.** On 10/14/2022, 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 10/28/2022, in which it set out, in summary, the following:
- That on 04/14/2022 the person concerned requested information on the processing of their data, sending an email message to the Data Protection Delegate's mailbox.

- That on 04/29/2022 the City Council responded to the interested party by electronic notification which was accepted the same day.
- That on 05/05/2022, the interested party submitted an instance requesting information on the processing of their data.
- That on 06/21/2022, through the Mayor's resolution of 06/15/2022, the City Council responded to the request submitted by the interested person on 05/05/2022 ((...)), which requested a copy of its data for the *"Provision of the door-to-door collection service and closed areas with access control and its subsequent control and monitoring"*, information on whether there are automated decisions (including the profiling) and meaningful information about the logic applied (importance and intended consequences). In this regard, the City Council basically indicated the following:
 - That with regard to the *"Provision of the door-to-door collection service and closed areas with access control and its subsequent control and monitoring"*, the following information was provided:

"- Categories of personal data:

Identification data: (...)

- Handwritten signature.

- Purpose of treatment:

The provision of the door-to-door collection service and the management of closed areas with access control.

- Recipients to whom the personal data have been communicated or will be communicated:

The data will not be communicated to third parties.

- Conservation period:

The data will be deleted within the terms provided for in the documentary evaluation tables, approved by the National Commission for Documentary Evaluation and Selection and according to the applicable specific regulations.

- Legal basis of treatment:

Fulfillment of public interest mission (art. 6.1.e RGPD) and compliance with legal obligation (art. 6.1.c RGPD).

- Data transfer to third countries or international organizations:

They are not carried out.

- Existence of automated decisions, including profiling:

These operations are not carried out."

[In the information provided, the address of the person making the claim has already been corrected.]

- That on 06/10/2022 the Mayor's Resolution was approved incorporating the treatment *"Door-to-door waste collection service and management of closed areas with access control"* in the RAT.
- That the information on the door-to-door collection service requested by the claimant via email was also provided to him through the document attached to the resolution of 06/15/2022.

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. As a preliminary matter, it should be borne in mind that the person claiming submitted two requests for access to public information on 05/05/2022 (with entry records number (...) and (...)), in relation to the treatments linked to the "delivery of the material for the selective collection of waste" and the "Provision of the door-to-door collection service and closed areas with access control and its subsequent control and monitoring". In this regard, it is worth saying that neither of the two requests made showed that the person in question requested access to public information, but rather that what was requested there was the exercise of the right of access with respect to their data subject to treatment.

Therefore, in view of the content of their requests, it must be concluded that the object of their claim was not the right of access to public information regulated by the LTC, but the exercise of the right recognized in the regulations of protection of personal data (art. 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 - hereinafter, the RGPD-), given that the affected person only wanted to access information about his personal data, as detailed in the background.

In this regard, it should be noted that article 24.3 of the LTC provides the following:

"3. Requests for access to public information that refer only to the applicant's personal data must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data."

Therefore, access to the applicant's own data must be regulated in accordance with article 15 of the RGPD.

Given the above, in the present case, the present resolution will only be the subject of the request for rectification of personal data dated 04/14/2022, the information on the creation of profiles requested from the City Council by email of 04/14/2022; as well as requests for access to information regarding your personal data (with registration number (...) and (...)).

On the other hand, the present claim is not the subject of the considerations made by the person making the claim in relation to the right to information granted to him by the City Council, nor the RAT, nor the public information that was requested, such as the operation of the service.

3. The regulatory framework for rights of access and rectification is then set out.

Regarding the right of access, article 15 of the RGPD provides that:

"1. The interested party will have right to obtain from the person in charge of the treatment confirmation if they are processing or not data personal that _ concern and, in such case, right of access to the data personal and next information :

a) the purposes of the treatment ;

b) the categories of data personal in question ;

- c) the recipients or the categories of recipients to whom they will or will be communicated data communicated _ personal , in particular recipients in third parties or organizations international ;
 - d) if possible , the expected data retention period personal or, if not possible , the criteria used to determine this period;
 - e) the existence of the right to request the rectification or deletion of data from the person in charge personal data or the limitation of data processing personal relating to the interested party , or to oppose said treatment ;
 - f) the right to file a claim before a control authority ;
 - g) when the data there are no personal ones obtained from the interested party , anyone available information about its origin;
 - h) the existence of decisions automated , 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 consequences provided for by dicho treatment for the interested party .
2. When they will be transferred data personal data to a third country or an international organization , the interested party will have right to be informed of the guarantees appropriate under article 46 relating to the transfer . _
3. The person responsible for the treatment will provide a copy of the data personal object of treatment . The person in charge may perceive by anyone another copy requested by the interested party a canon reasonable based on administrative costs . When the interested party present the request by media electronic , and unless it 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 affect negatively to the rights and freedoms of others .”

For its part, in relation to the right of access, article 13 of Organic Law 3/2018, of December 5, on the protection of personal data and the guarantee of digital rights (hereinafter LOPDGDD), determines the following :

- "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."

On the other hand, with regard to the right of rectification, article 16 of the RGPD provides that:

"The interested party will have right to obtain yes procrastination Unauthorized data rectification by the data controller personal inaccurate that the concern _ Considering the purposes of the treatment , the interested party will have right to have the data completed personal that they are incomplete , inclusive through a statement additional "

And article 14 of the LOPDGDD determines that:

"When exercising the right of rectification recognized in Article 16 of Regulation (EU) 2016/679, the affected person must indicate in his request which data he refers to and which correction must be made. It must be attached, when necessary, the supporting documentation of the inaccuracy or the incompleteness of the data being processed".

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."

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 rights of access and rectification exercised by the person making the claim, since precisely the reason for their complaint that initiated the present procedure for the protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

4.1. Regarding the right of access.

In accordance with article 12.3 of the RGD, the City Council 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 legality

In the present case, the claimant requested access to certain information (about the creation of profiles) by email of 04/14/2022.

The City Council responded to this request on 04/29/2022, therefore within one month.

In turn, on 05/05/2022 he also requested access in relation to the treatments linked to the "Delivery of material for the selective collection of waste" (...) and the "Provision of the service of door-to-door collection and closed areas with access control and its subsequent control and monitoring" (...). The City Council resolved these requests on 06/15/2022 and notified the claimant on 06/21/2022. That is to say, once the deadline for that purpose had been exceeded.

Consequently, it must be concluded that the City Council did not notify or respond to the access requests submitted by the person making the claim on 05/05/2022 within the legally prescribed period.

In addition to the above, although the claimant differentiates between the treatments linked to the "Delivery of material for the selective collection of waste" and the "Provision of the door-to-door collection service and closed areas with access control and its control and subsequent monitoring", the truth is that it is inferred that we would not be faced with two different treatment activities, but that both refer to the same treatment linked to the provision of the waste collection service.

4.2. Regarding the right of rectification.

In relation to the exercise of the right of rectification, it is certified that, on 04/14/2022, the person claiming exercised this right and that on 04/16/2022, the City Council responded to the person claiming indicating "Let's take note".

Therefore, it must be concluded that the City Council resolved and notified the request to exercise the right of rectification within the maximum period of one month.

5. Once the above has been established, it is necessary to analyze the merits of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case the access and rectification of the data in the terms that requested by the person making the claim.

5.1. Regarding the right of access.

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. In addition, article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data for which access has been requested.

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.

In this regard, on 04/14/2022 the person claiming requested information on the creation of profiles. And on 05/05/2022 he requested access to the data subject to treatment, information on the legitimacy of the treatment, as well as it was inferred that he also requested access to the information established in article 15.1 of the RGPD that must provide the interested person when the right of access is exercised. All this linked to the door-to-door waste collection service implemented by the City Council.

Likewise, it is also noted that in the resolution of 04/29/2022 the City Council did not provide any information on the eventual creation of profiles. Instead, through the resolution of 06/15/2022, the City Council made the right of access effective by facilitating the data that was the subject of treatment, indicating what was the legal basis that legitimized the treatment and providing the information that Article 15.1 of the RGPD provides, except for the extremes indicated below.

With regard to the retention period of the data (art. 15.1.d RGPD), the City Council informs that *"The data will be deleted within the periods provided for in the documentary evaluation tables, approved by the National Commission for Access Evaluation and Documentary Selection and according to the applicable specific regulations."*

Well, article 15.1.d) of the RGPD determines that it must be provided *"The expected period of conservation of personal data. If this is not possible, the criteria used to determine this term."* In the present case, where it was possible to determine the specific period of data conservation, it is not appropriate to refer to the criteria for establishing this period.

In relation to the information on *"The existence of the right to request the person responsible for the rectification or deletion of personal data or the limitation of the processing of personal data relating to the interested party, or to oppose said processing"* (art . 15.1.e RGPD), the City does not provide this information.

This is how things should be considered for this claim, given that the City Council has not provided the specific information established in clauses d) and e) of article 15.1 of the RGPD.

5.2. Regarding the right of rectification.

In relation to the exercise of this right, it is recorded that the person claiming exercised the right of rectification on 04/14/2022 and that the City Council gave him an answer on 04/16/2022, informing him that took note of such rectification.

Subsequently, on 05/05/2022, the person making the claim received an email from the City Council in which he was attached the proof of delivery of the material for the selective collection of waste, in which his wrong address Given this, it can be inferred that the City Council did not rectify the data relating to the postal address of the claimant in accordance with his request dated 04/14/2022.

Despite the above, it should be pointed out that, although initially the City Council did not carry out the rectification requested by the person making the claim, in the documentation working in this procedure presented by the City Council it was stated that proceed with said rectification, as stated in the response given by the City Council to the person claiming on 21/06/2022 (regarding the exercise of the right of access where the correct address of the claimant).

In short, with regard to the right to rectification, the present claim should be upheld, given that in the present procedure it has been proven that, despite the City Council's response of 04/16/2022, no action was taken to rectify the address of the person claiming, until 06/21/2022.

6. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the person in charge of the file must be required so that within 10 days 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 providing the information provided for in clauses d) and e) of article 15.1 of the RGPD, in the terms indicated in the legal basis 5.1 . 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.

With regard to the right of rectification, no request is made to the City Council, given that in the framework of the present procedure it appears that the address of the person making the claim was rectified.

For all this, I resolve:

1. Estimate the guardianship claim made by Ms. (...) against La Garriga City Council.
2. Request the City Council of La Garriga so that, within 10 counting days from the day after the notification of this resolution, make effective the right of access exercised by the person claiming, in the manner indicated in the foundation of right 6th 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 City Council 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,