

File identification

Resolution of the rights protection procedure no. PT 61/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 08/06/2022 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), for which he made a claim for lack of "*concreción in the suppression of the data cancelados por parte de la DAI*" [Division of Internal Affairs] of the Directorate General of Police (hereinafter, DGP).

The person making the claim (Generalitat Police officer-Mossos d'Esquadra) provided a copy of the application submitted to the DGP on 03/26/2022, where he requested the "*cancellation of all the documentation in reference diligence (...) DAI AD (including the cancellation of the record of photographs and videos)*", among others.

The person making the claim accompanied various documentation, including a letter dated 06/05/2022 in which the DGP informed him that, in relation to the deletion of personal data related to police proceedings (...) DAI AD, "*the Internal Affairs Division has made the corresponding deletion.*"

2.- By order dated 06/14/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 07/07/2022, the DGP sent his letter of allegations, which basically set out the following:

- That on 03/26/2022, the claimant requested the deletion [from the Police Information System of physical persons -SIP PF-] of the personal data related to Preliminary Diligences no. (...), instituted by the Court of Inquiry (...) of Barcelona, following the police proceedings (...)4 DAI AD.
- That on 05/09/2022, in response to a request for information from the claimant dated 04/15/2022, the DGP sent him a letter, in which he indicated that his letter with (registration number (...)) had been referred to the DAI, which was responsible for providing him with the information and giving him instructions on how to delete the requested data, given that these were not included in the files SIP (PF) / SIP (PFMEN), but were contained in a DAI application.
- That on 05/18/2022, an attempt was made to notify the interested person of another letter, with unsuccessful results, which was finally notified on 05/19/2022, in response to his request of 03/26 /2022, in which he was again told that the requested data was not in the SIP PF file and that the DAI was in charge of deleting it. He was also informed that the DAI had deleted the data requested by the person concerned.

The DGP provided various documentation.

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.- Although initially, in view of the terms of the claim, it was considered that the right of deletion exercised by the claimant was regulated by Organic Law 7/2021, of May 26 (LO 7/2021), a closer examination of its content and of the allegations presented by the claimed entity has shown that the personal data subject to treatment, to which the present claim relating to the request refers of exercise of the right of deletion formulated before the DGP on 03/26/2022, do not fall within the scope of application of the aforementioned LO 7/2021, given that the purpose of processing this data is not corresponds to those provided for by this legal norm, specifically the "*purposes of prevention , detection , investigation and prosecution of infractions criminal or execution of criminal sanctions , including protection and prevention in the face of threats against public security* " (art.1 LO 7/2021) . In the present case, the proceedings carried out by the Internal Affairs Division of the Department of the Interior, and which are subject to the exercise of the right of deletion, were carried out within the framework of the person's employment relationship here claiming with the Department of the Interior, for which 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 (hereafter, the RGPD).

Given this, it is appropriate to refer to article 17 of the RGPD, which regulates the right of 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 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 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."*

On the other hand, article 32 of the LOPDGDD regulates the duty to block deleted data in the following terms:

*"1. The person responsible for the treatment is obliged to block the data when carrying out the rectification or deletion.
2. The blocking of data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.
After this period, the data must be destroyed.
3. Blocked data cannot be processed for any purpose other than that indicated in the previous section. (...)"*

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 , a month later after the reception of the request , of the reasons for its non - action and of 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.- Next it is necessary to analyze whether the DGP has taken care of the right of deletion exercised by the person here claiming in accordance with the regulatory framework of application.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that, on 03/26/2022, the person making the claim exercised before the DGP the right to delete their personal data contained in the SIP PF files and SIP PFMEN; as well as the deletion of documentation linked to the proceedings (...) DAI AD.

In accordance with article 12.3 of the RGPD, the DGP 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 .

Well, the DGP responded to the request for deletion on 06/05/2022 by means of an office that was first attempted to be notified on 18/05/2022, with unsuccessful results (this office was finally notified on 19/05/ 2022). That is to say, both the response letter from the DGP, as well as the first attempt to notify it, took place once the one-month period planned for the purpose had been exceeded. That being the case, it can be concluded that the DGP gave an extemporaneous response to the request of the person making the claim.

4.- Regarding the substance of the request for deletion of the data of the person making the claim, it should be noted that the person making the claim is not referring to the deletion of the SIP data (which he also requested), but that he only focuses his claim on the deletion of his personal data related to the police proceedings (...) DAI AD.

Well, it is certified that by means of official notice of 06/05/2022 (which was also provided by the person claiming), the DGP had already informed him that the DAI (administrative body that depends on the DGP) had already deleted the your data related to the aforementioned police proceedings.

Therefore, it is proven that when the claimant made the present claim, the DGP had already informed him that he had proceeded to the deletion of the data linked to the police proceedings (...) DAI AD.

Having said that, from the letter of claim, it is inferred that the will of the person making the claim is to specify which data have been deleted.

Well, from the letter of the DGP it is already inferred that all the data linked to those proceedings of the DAI have been deleted, so no further clarification is necessary.

In accordance with what has been set forth, the present claim must be dismissed.

For all this, I resolve:

1. Declare extemporaneous the response of the General Directorate of the Police of the Department of the Interior of 06/05/2022, where it is reported that the deletion of the data requested by Mr. (...)
2. Dismiss the guardianship claim made by the person claiming against the DGP.
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,