

**In this resolution, the mentions of the affected entity have been hidden in order to comply with art. 17.2 of Law 32/2010, given that in case of revealing the name of the affected entity, the physical persons affected could also be identified.**

## File identification

Resolution of the rights protection procedure no. PT 63/2022, urged against the City Council of (...).

## Background

1. On 09/06/2022 the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, the claimant), 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 the City Council of (...).

The person making the claim stated, in summary, the following:

- That on date (...) he exercised the right of access, in which he requested various documentation from the City Council regarding the processing of his data.
- That on 03/15/2022 the City Council notified him of the access resolution, through which he was provided with part of the requested information.
- That I respect the various communications requested (emails sent by the Human Resources director, the Occupational Risk Prevention coordinator, the Urban Planning director, the head of the Urban and Economic Development Area and the head of the Urban Planning Section , with each other or with third parties ), the City Council argued that, if such communications had existed, they were not preserved *"due to the storage capacity of the corporate mailbox which forces the periodic emptying of emails"*.
- That after having submitted the request for access ((...)) and, before the City Council resolved the request (15/03/2022), on 25/02/2022 he received several notices from emails that were being deleted by the City Council's Human Resources director.
- That this would prove that information was kept and that it began to be deleted upon request , which is why the right of access is obstructed .
- That the information requested and not provided contradicts other information received.
- That the people referred to in the access request are related to the events that occurred (work incidents) and the information refers to messages exchanged with data relating to their person, such as messages between each other and between third parties
- That in this case, article 14.5.a) 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 circulation thereof (hereinafter, the RGPD), invoked by the City Council, given that it is information exchanged between third parties that it does not have and that is why it is requesting it.
- That information relating to his person was requested that was available to the Prevention Service, whether or not it was part of a file. And, if you are part of one, know which one and have access to it.
- That he also requested to know if the emails he sent (it is inferred that to the Prevention Service) were forwarded to someone and to whom, given that *"article 13.1.e) RGPD includes the recipients"* .

The claimant provided the access request, specifically requesting the following:

- a) *"Copy of the complete file of Psychosocial Risks, dated (...) and Set of Information with data of Ms. (...), at the disposal of the Occupational Risk Prevention Service, whether or not it forms part of any file, including the Analysis of the cause of the IT of (...) and (...).*
- b) *Copy of the communications received and made, with data from Ms. (...), which has the Director of HR/Head of Prevention, the Coordinator of PRL, the Director of Urbanism and the Head of the Urban and Economic Development Area, among themselves and with third parties, since the inception of the psychosocial risk procedure in date (...) until today. Including specifically the communications sent by Ms. (...) from (...), reporting on Occupational risks and messages arising from them.*
- c) *Copy of the Information provided by the Occupational Risk Prevention Coordinator, to the PRL technician, Mrs. (...), for the management of Health Surveillance, taking into account the measures adopted with Priority 1, in the Action Procedure inchoate.*
- d) *Copy of the communications received and made, with data from Ms. (...), which has the Head of the Urbanism Section, from (...) to the Present.*
- e) *Copy of the email from the Head of Area dated (...) "it's very good", email dated (...) "congratulations for the work done", email dated (...) "we'll get it " and dated (...) "You were ahead of your time !".*
- f) *Copy of the letter from the Director of Urbanism dated (...) "I congratulate you", dated (...) " Perfecto . Thank you " in the matter of (...), dated (...) of the Railway Infrastructure. As well as mail dated (...), towards the Responsibilities of the Heads.*
- g) *Copy of the email sent by Ms. (...) to the Director of Urbanism, reporting the assignment of tasks to Mrs. (...).*
- h) *Copy of the Planning and distribution of tasks carried out in the Urban Planning and Heritage Service, on 1 (...), 1 October and 1 (...) of the past 2021. As well as the one planned in the present and the coming months, in application of the planning of measures for the prevention of occupational risks."*

In this letter, the person making the claim emphasized through a box the information transcribed in sections b), c) and d), which is the information that it is inferred that, in the judgment of the person making the claim, the City Council would not have provided him.

The person making the claim also provided automatic emails generated by his email server, in which it was reported that 3 emails he had sent to the Director of Human Resources of the City Council on dates (...), (...) and (...), had been deleted without having been read on 02/25/2022.

Based on these emails, the person making the claim stated that *"he believes that it is possible for the City Council's IT Service to have backup copies"* (of the emails), which is why he requested this Authority to use the power of 'investigation attributed to the control authorities in article 58.1.f) of the RGPD, which contemplates access to all the premises of the person in charge and of the person in charge of the treatment, including any data processing equipment and means, in accordance with the procedural law of the Union or the member states.

2. On 20/06/2022, the claim was transferred to the City Council of (...) so that within 15 days it could formulate the allegations it considered relevant.

3. On 01/07/2022, the City Council of (...) made allegations through a letter, in which it set out, in summary, the following:

- That the City Council responded to his request for access in which part of the requested documentation was sent to him, and with respect to the rest it indicated that it either already had the documentation it requested, or it did not there was data about it.
- That the reason for the claim presented to the Authority is the fact that it does not agree with the answer issued by the City Council (not having done any previous procedure with this to clarify the information received).
- That in relation to the obstruction of the exercise of the right of access, it must be emphasized that access to the personal data available to the City Council has not been denied, which is amply justified in the fact that their access requirements have been met, to the extent that the technical and human means allowed it.
- That the claimant's assertion that information has been deleted because he requested it, is his assessment, an assumption, and is not substantiated or substantiated.
- That the documents provided prove, indeed, that on 02/25/2022 the Director of Human Resources deleted a series of emails.
- Having consulted the IT services, they indicate that according to the tests they have done, the notification procedure is as follows:
  - The claimant sends the mail with the tracking options (delivery/reading) checked.
  - The Director of Human Resources receives the mail, does not open it and at some point deletes it. This action moves the mail to the *"Deleted Items"* folder but does not send a deletion notification.
  - At some other time, the Human Resources director, cleaning the *"Deleted items"* folder, clicks on *"Empty folder"* or deletes certain emails. This option permanently deletes the mail from the mailbox and sends a deletion notification to the sender. Depending on your Outlook settings, the notification is sent automatically or requires authorization.
  - Complainant receives unopened deleted mail notification.
- That this explanation confirms two facts:
  - a) That if the claimant was able to have access to the notice that the mail has been deleted, it is because he himself was part of the mail history as a recipient or sender and, therefore, already had knowledge of the content of this.
  - b) That the mail could have been deleted previously, that is, it could have been deleted before the claimant's access request, despite remaining on the server in the deleted items folder as a residual folder.
- What if the director of Human Resources, the coordinator of Occupational Risk Prevention, the director of Urban Planning, the head of the Urban and Economic Development Area and the head of the Urban Planning Section report that they no longer have emails with each other or with third parties, which contain personal data of the person making the claim, *"we must believe their claims, bearing in mind that they are public employees and act based on the principles and ethics provided for in the applicable regulations."*
- That, in relation to the claimant's assertion that the City Council is obliged to preserve and maintain the archives for a long period of time and in relation to the backup copies, it should be noted that he is referring to e-mails, which are not actually files that need to be kept nor are they part of any file based on art. 164.1 Royal Decree 2568/2986 of 28 of (...), which approves the Regulation of Organization, Operation and Legal Regime of

- Local Entities and article 70.4 of Law 39/2015, of 1 d October, of the common administrative procedure of public administrations (henceforth, LPAC).
- That these e-mails are managed from an auxiliary application which, as the complainant was informed at the time, has storage limitations, which motivates the deletion and continuous cleaning of e-mails.
  - That in relation to the fear expressed by the person claiming that, by formally requesting the emails from the City Council, this will also delete possible existing backup copies, as already explained, the emails are being deleted due to storage limitations and once removed from the " *deleted items*" tray , they are effectively removed.
  - That in relation to the assertion that the information requested and not provided contradicts other information received, and therefore has been removed, to indicate that this assertion of the claimant is an assumption, not proven or accredited. In addition, it must be borne in mind that the mails that have been deleted, the person claiming had already had access to be the recipient or sender, and therefore, already knew their content, and does not prove that it was different from the information that it was already made easy for him.
  - That in response to this request for access, other mails have been provided that he requested and that the City Council had. It's just that they haven't been given those emails that they no longer had.
  - That in relation to the fact that article 14.5.a) RGPD is not applicable, given that it is precisely information exchanged between the Human Resources director, the Occupational Risk Prevention coordinator, the Urban Planning director, the head of Urban and Economic Development Area and the head of the Urban Planning Section, between themselves or with third parties, insist that the City Council has provided all the information and communications it had, not being able to provide information that has been destroyed or deleted
  - That in relation to whether the emails sent by herself since her reinstatement on date (...) are part of any file or not, as has already been said the emails as such are not part of any administrative file based on article 70.4 of the LPAC.
  - That if he wants to have access to some other administrative file, he can request it, as he has done so far.
  - That you have not been informed in relation to whether your emails have been forwarded to someone else, given that you have never asked for it, but in any case, you should limit which emails you are referring to and which personal data contained and intended to protect, in order to limit the search, given that the claimant is prolific in sending e-mails, by quantity and by multiple recipients, and is now asking to go back from (...) to the present . This search, in the hypothetical case that the e-mails sent by the person claiming to some public employee may have been forwarded, could be exhaustive and complicated in an organization such as the City Council of (...).

4. On 07/07/2022 a new letter from the person claiming was received. In this letter, among others, he stated the following:

- That in January 2022, a company called (...) which was hired by the City Council of (...) to manage staff layoffs, fell into temporary incapacity again (hereafter, IT), contact her, who communicated the cause of the IT, to amend it quickly.
- That given that the access request includes messages "*between themselves and between third parties*" , this is noted, given that there could be messages with your personal data with this company, or others (such as (...)) or (...), with which he also had dealings.

- That when the health surveillance report was issued in the month of (...) 2021, she was informed that different people were talking about it, prior to the adoption of the measure against her health and that she considers that what was said about it is relevant.
- 5.** On 07/22/2022, the City Council of (...) was required so that the person responsible for the Information and Telecommunications Systems Service (hereafter SSIT) certifies, among others, about the following ends:
- Whether or not backups are made regarding the e-mails received or sent by City Council staff using corporate e-mail addresses, as well as the e-mails that are deposited in the deleted items tray.
  - In the event that backups exist, if they contain the following emails:
    - *"communications received and made, with data from Ms. (...), which has the Director of HR/Head of Prevention, the Coordinator of PRL, the Director of Urbanism and the Head of the Urban and Economic Development Area, among themselves and with third parties, since the inception of the psychosocial risk procedure in date (...) until today. Including specifically the communications sent by Ms. (...) from (...), reporting on Occupational risks and messages arising from them."*
    - *Communications received and sent " by the Occupational Risk Prevention Coordinator, to the PRL technician, Ms. (...), for the management of Health Surveillance, taking into account the measures adopted with Priority 1, in the Action Procedure inchoate" , aside from the two chains of mails that the City Council already provided to the person claiming*
    - *"communications received and made, with data from Ms. (...), which has the Head of the Urban Planning Section, from (...) until now."*
- 6.** On 12/08/2022, the City Council of (...) responded to the aforementioned request by providing the certificate issued by the head of the Basic Information and Corporate Applications Section of the SSIT. This certificate stated that copies of personal and generic e-mail mailboxes were made with a retention period of 30 days.
- It was not specified, however, if the backup copies contained the e-mails identified in the previous antecedent.
- 7.** On 08/18/2022, he received a letter from the person claiming through which he made allegations regarding the non-adoption, until that moment, of the measure he requested in his letter of claim and which is provided for in article 58.1.f) of the RGPD.
- 8.** On 08/24/2022, the City Council of (...) was requested again so that the person responsible for the Information and Telecommunications Systems Service (SSIT) certified if the previously identified emails were in the backups.
- 9.** On (...), the City Council of (...) provided a new certificate issued by the head of the Basic Information and Corporate Applications Section of the SSIT, which stated that *"given the great diversity of communications that could have been made between all public employees that are related to the processing of the various files in which the complainant is an interested party, from 2019 to the present, regardless of whether they contain personal data*

*or no, the search for these emails is an exorbitant and difficult task to perform, and therefore, if they are interested in some specific emails, they could be searched.”*

**10.** Given the manifestations of the City Council, on 04/10/2022, the Authority carried out an inspection act at the premises of the SSIT of the City Council of (...), in order to carry out a series of searches in the backup copies of corporate email accounts, without viewing the contents of the messages.

The Authority's inspection staff verified the following:

- 10.1. That the City Council of (...) had backup copies of the corporate e-mail accounts. The oldest copy corresponded to (...), from which the following checks were carried out.
- 10.2. That the backup copies of the corporate e-mail accounts of the City of (...) included e-mails located in inboxes, sent items, deleted items and permanently deleted e-mails (deleted e-mails from the deleted mailbox) which are retained for a few days (7 days according to the inspected entity).
- 10.3. That in the backup copies of the e-mail accounts of the Human Resources director, the Occupational Risk Prevention coordinator, the Urban Planning director and the head of the Urban and Economic Development Area, e-mails were searched that contain the claimant's first surname, in the period between (...) and (...).
  - 10.3.1. That 350 emails were found in the email account of the Director of Human Resources in which the first name of the person making the claim was mentioned.
  - 10.3.2. That 3 e-mails were located in the e-mail account of the Occupational Risk Prevention coordinator in which the first surname of the person making the claim was mentioned.
  - 10.3.3. That 139 emails were found in the e-mail account of the Director of Urbanism in which the first surname of the person making the claim was mentioned.
  - 10.3.4. That in the e-mail account of the head of the Urban and Economic Development Area, 130 e-mails were located in which the first surname of the person making the claim was mentioned.
- 10.4. That in the backup copies of the e-mail account of the head of the Urbanism Section, a search was made for the e-mails containing data of the person claiming between (...) and (...), including the emails that could have been sent by the person making the claim.
  - 10.4.1. That 6 e-mails were located in the aforementioned e-mail account in which the first surname of the person making the claim was mentioned.
- 10.5. That in the backup copies of the e-mail accounts of the Occupational Risk Prevention coordinator and of the occupational risk prevention technique identified by the claimant, a search was made for the e-mails that contained the first surname of the claimant between the (...) and (...).
  - 10.5.1. That in the e-mail account of the Occupational Risk Prevention coordinator, no e-mail sent or received from the mentioned technique was located.
  - 10.5.2. That in the e-mail account of the occupational risk prevention technician, 41 e-mails were located in which the first surname of the person making the claim was mentioned and which he had received from the coordinator of Occupational Risk Prevention or that he had sent to him . It was not possible to determine if these emails corresponded to the *"Health Surveillance management, taking into account the measures adopted with Priority 1, in the Action Procedure incoat"* .

**11.** On 13/10/2022, the director of the Authority agreed to adopt the precautionary measure consisting in requiring the SSIT of the City Council of (...) so that, within one working day the day after the notification of the Agreement, in relation to the corporate e-mail accounts that were the subject of the verifications carried out by the Authority's inspector staff in the inspection act carried out on 10/04/2022 ( e-mail accounts of the Human Resources director, the Occupational Risk Prevention coordinator, the Urban Planning director, the head of the Urban and Economic Development Area, the head of the Urban Planning Section and the prevention technique occupational risks identified by the person making the claim), blocked the information (mails) contained in the backup copy corresponding to (...) or, failing that, in the oldest backup copy.

This Agreement was notified to the City Council of (...) on 10/14/2022.

**12.** On 10/20/2022, the City Council of (...) reported that the SSIT had complied with the said precautionary measure, and specifically, that it had blocked the information (e-mails) contained in the copy of security of (...).

**13.** On 10/11/2022, the claimant submitted a new letter. In this writing, he sets out, in summary, the following:

- Which infers that he has the right to access all the information located in the act of in-person inspection, so he requests that an estimated resolution be issued on his claim.
- That the deadline for attending to the right of access was widely exceeded, as well as that he considers that his right has been obstructed.
- As a result of poor management of the situation, he fell into temporary incapacity again, which reinforces his right and legitimate interest in accessing all the information requested.
- That *"it is clarified regarding the initial Instance, that although a box was made indicating (correctly) the most relevant part, the rest of the points requested in it are not waived. Among these, the 1st point specifies "Set of information with data of Ms. (...), at the disposal of the Occupational Risk Prevention Service, whether or not it forms part of the file" . In relation to the above, given that "he sent numerous notices alerting the PRL Coordinator in relation to occupational risks, and instead, from the Notification received from the APDCAT it can be seen that this person may have practically deleted them in its entirety . It is considered appropriate to confirm the existence of these emails, whether or not they form a part ."*
- That in relation to the Planning and distribution of tasks, if it does not exist, a certificate is issued in this regard either by the Coordinator or by the Head of Prevention.

**14.** On 14/11/2022, the claimant submitted a new letter in which, in summary, he requests that the precautionary measures adopted in this procedure be extended to certain email accounts, which do not correspond to any of those that were subject of the access request that has given rise to the present rights protection procedure. The claimant provided various documents.

## **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 15 of the RGPD regarding the right of access of the person concerned, 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 ."*

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 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, it 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 any 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 its 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. (...)"

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."*

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

In this respect, it is certified that on date (...) the entity received a written statement from the person making the claim through which he exercised the right of access to his personal data.

In accordance with article 12.3 of the RGPD, the City Council of (...) 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 City Council of (...) resolved and notified this request for access on 15/03/2022, that is to say, once the resolution and notification period of one month provided for in the effect. That being the case, it can be concluded that the City Council resolved the request of the person making the claim out of time.

4. 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 access to the data in the terms usually tender 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. 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.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. The reasons for denying the right of access are found in article 23 of the RGPD, which must be provided for *"through measures legislative"* (art. 23.1 RGPD).

The City Council has not invoked the concurrence of any of these causes in the present case.

Having said that, the person making the claim believes that they have not been provided with all the information they requested. According to the terms in which the initial claim was formulated (which was underlined by means of a box), it must be concluded that this initial claim referred only to the following information:

- Copy of the communications received and made with the claimant's data (from (...) until the time of submitting the request -(...)-), which the Director of Human Resources, the coordinator of Occupational Risk Prevention, the director of Urbanism, the head of the urban and economic development area and the head of the Urbanism section (in relation to this person, the communications made from (...) to (...)). In particular, the claimant also requested access to the communications that she had sent from (...), informing about occupational risks and the messages that could have been derived from them.
- Copy of the information provided by the Occupational Risk Prevention coordinator to a certain prevention technique, for the management of health surveillance, regarding which the City Council provides the two email chains that it stated it kept.
- Information on the eventual recipients of the emails, in the terms set out below.

On the other hand, although the claimant did not expressly mention it in his initial letter of claim, nor was it one of the extremes that he had noted through a box in his request for access provided together with the your claim (unlike the information transcribed in sections "b", "c" and "d" which has been transcribed in precedent 1), this resolution will also analyze the denial of access to the c copy of the mail sent by a certain person to the Director of Urbanism, informing about the assignment of tasks to the person making the claim; as well as the copy of the planning and distribution of tasks carried out in the Urbanism and Heritage Service, from (...) to (...) of 2021.

Subsequently, by means of a letter dated 07/07/2022, the claimant also referred to the communications with personal data between the City Council and the companies (...), (...) or others; and what other people would be talking about her when the health surveillance report was issued in the month of (...) 2021.

And finally, on 11/10/2022 (5 months after the initial claim), the claimant submits a new letter in which he states that "it is clarified *regarding the initial instance, which despite the fact that a box indicating (correctly) the most relevant part, the rest of the points requested in this one are not waived.*"

Next, it is appropriate to decide, separately, whether the City Council should facilitate access to the information now claimed by the person making the claim.

#### 4.1. Copy of the communications received and made with the claimant's data between several people who identify the claimant.

As has been advanced, the claimant requests the communications received and made with the claimant's data (from (...) until the time of submitting the request -(...)-), which the director of Human Resources, the coordinator of Occupational Risk Prevention, the director of Urban Planning, the head of the Urban and Economic Development Area, each other or third parties, and the head of the Urban Planning Section (in relation to this person, the communications made from (...) to (...)) were requested. The person making the claim pointed out that these communications should also include the e-mails that she had sent from (...), informing about occupational risks and the messages that derive from them.

In this regard, the City Council reiterated in its statement of objections that it could not provide this information given that the persons mentioned had indicated that they did not keep those communications (a statement that would also include the emails sent by the person claiming from (...), in which he would have reported the occupational risks and any messages that may have arisen from them). In particular, he explained that, if said communications had been made, they would have already been deleted given the storage capacity of the corporate mailbox, which requires a periodic deletion of emails, as he stated the City Council.

Well, as part of the on-site inspection carried out on 04/10/2022 at the premises of the SSIT of the City Council of (...), the Authority's inspector staff found that in the backup copy of the emails corporate electronic files of the City Council of (...), corresponding to (...), the people identified by the person making the claim kept more than 600 emails in which the person making the claim was mentioned by their first surname.

Therefore, it must be concluded that the statement made by the mentioned persons that there were no more e-mails referring to the person making the claim, does not correspond to reality.

Having said that, the person making the claim has the right to access the e-mails that he himself had sent to any of the people he identified in his access request. In turn, and without prejudice to what is set out below, the person making the claim also has the right to access the e-mails that had been sent or received by said persons during the time period that the person making the claim specified in their request for 'access, as long as and when they contained data of the person making the claim.

In this sense, in accordance with article 15.1.g) of the RGPD, the person claiming has the right to obtain information about the origin of the data. This would give the claimant the right to access not only the direct information about him that may be contained in the e-mails in which he is mentioned, but also the identity of the senders or recipients of the e-mails. In other words, the person making the claim may have a right to know what was said about them (a point to be addressed later) and who said it.

However, as indicated by this Authority in the resolution of the rights protection procedure no. PT 67/2019 (in which the claimant and claimed parties are the same), this right is not absolute and may conflict with other rights. In this sense, it should be borne in mind that the information on the origin of the data (identity of the people sending the emails) would not only be personal information of the person making the claim but would also be personal information of those people. Therefore, the claimant's access to this data would also affect the right to data protection of the authors of the emails.

In this sense, taking into account that it is logical to infer that most of the e-mails located by the Authority's inspector staff would have been sent by the City Council staff who identified the person making the claim, the disclosure of what these people may or may not say employees regarding the person making the claim (also an employee of the City Council) could end up negatively affecting the labor relations of these people.

As pointed out in the resolution of PT 67/2019, although the regulations on personal data protection do not expressly provide for the transfer of an access request, nothing prevents it

from being carried out in order to allow the third parties can exercise their right of opposition in accordance with article 21 of the RGPD, while invoking personal circumstances or reasons that could justify preserving their identity.

In accordance with what has been set out, unless the City Council proves that said people are opposed, based on a particular situation, to access to the emails they sent and which contain personal data, it cannot be limited the right of the person claiming to access the information regarding the origin and, therefore, the identity of the people who have provided it.

Therefore, in order to comply with the provisions of article 15.1.g) of the RGPD, it is necessary to identify the people who have provided information about the person making the claim, together with the information of the person making the claim object of treatment.

In turn, it should be borne in mind that information linked to facts, behaviors or attitudes that may have been described by third parties identified by the claimant in the e-mails, which could be related to their state of mind, psychological or physical, is third party information.

As advanced, the complaining individual may have a right to know what has been said about them, but this right is not absolute and conflicts with the right to data protection of others.

At this point, the principle of data minimization contemplated in article 5.1.c) of the RGPD also applies, according to which personal data must be "*adequate, relevant and limited to what is necessary in relation to the ends for those who are treated*". Therefore, this principle requires that access is limited to the minimum data necessary to achieve the intended purpose of this treatment.

This principle, together with the expectations of privacy that the people who sent emails with information about the person making the claim, in which this person was not one of the recipients, could have, must lead to the prevailing in this case the right to data protection of these third parties and, therefore, limit the claimant's access to information that may refer to the work situation, the state of mind, psychological or physical of the person who sent the mail electronic

Therefore, the set of circumstances that have just been outlined must result in denying access to the statements, opinions or explanations made by the different people interviewed regarding their own employment situation, or their state of 'mood, psychological or physical.

In turn, it cannot be ruled out that any of the more than 600 emails that the inspector staff found in the on-site inspection of 04/10/2022 from the first last name of the person making the claim, did not refer to this one, but to another person who has the same last name. In this eventuality, the person making the claim would not have the right to access e-mails that refer to a third person (art. 15.4 RGPD).

Regarding the rest of the information that does not conform to what has just been set out in this section and that may have been provided by third parties in relation to the person making the claim, access must be provided.

Therefore, the guardianship must be estimated in relation to the communications linked to the persons mentioned, without prejudice to the limitations that have just been exposed.

Linked to the communications addressed in this section, it is necessary to refer to the fact that the person claiming, by means of a letter submitted to the Authority on 07/07/2022, considers that the access exercised should also include any communications containing personal data relating to his person between the City Council and the companies (...), (...) or others.

Well, here it must be specified that when the right of access was exercised, the person making the claim specified which communications, in which she was not the recipient or sender, she wanted to access. Specifically, he requested the following:

*"Copy of the communications received and made, with data from Ms. (...), which has the Director of HR/Head of Prevention, the Coordinator of PRL, the Director of Urbanism and the Head of the Urban and Economic Development Area, among themselves and with third parties, since the inception of the psychosocial risk procedure in date (...) until today. Including specifically the communications sent by Ms. (...) from (...), reporting on Occupational risks and messages arising from them."*

On the other hand, in his letter of 07/07/2022 he makes an extensive interpretation and considers that this would also include any communication between the City Council and other companies such as (...) or (...).

Well, in the present procedure for the protection of rights, it is only necessary to pronounce on the terms in which the initial request for access was formulated before the City Council, so that only possible communications can be the subject of this procedure that had been carried out, solely, between the people employed by the City Council who identified the claimant and other companies, such as (...) or (...).

On the other hand, it is necessary to refer to the communications between the person making the claim and the City Council employees previously identified. In this sense, it should be borne in mind that the article invoked by the City Council in the resolution of the access request (art. 14.5.a RGPD), would in no case prevent access to this information, since this precept refers to the possibility of not providing the right of information to the affected persons when their data has been collected through another means, as long as the person concerned already has the information stipulated in the sections 1 and 2 of article 14 of the RGPD.

In the present case, the right of information is not being exercised, but the right of access regulated in article 15 of the RGPD. Therefore, article 14.5.a) of the RGPD does not apply.

Therefore, regardless of whether the person making the claim was the sender or recipient of the communications, the City Council must provide the person making the claim with the communications between the person making the claim and the director of Human Resources, the Occupational Risk Prevention coordinator, the director of Urbanism, the head of the Urban and Economic Development Area, from (...) to (...). And, as regards the communications between the person making the claim and the head of the Urban Planning Section, these must refer to the period between (...) and (...).

In line with the above, access must also include the electronic communications that the claimant sent from (...), reporting occupational risks and the messages that could have resulted from them.

All this, as long as the limitations set out in this section do not apply (among which, it can be proven that the opposition to the access of the affected third parties is based on a particular personal situation).

#### 4.2. Information regarding health surveillance management.

Next, the claimant asked for a copy of the information provided by the Occupational Risk Prevention coordinator to a certain prevention technique, for the management of health surveillance regarding the claimant.

As already explained, along with the resolution of the access request, the City Council provided the claimant with two email chains.

In the face-to-face inspection of 04/10/2022, it was found that, although in the corporate email account of the Occupational Risk Prevention coordinator, no email exchanged with the risk prevention technique was located employment documents that identified the person making the claim, in the corporate email account of this technique, 41 emails were found in which the first name of the person making the claim was mentioned and which he had received from the coordinator or had sent to him. In the act of inspection, however, it was not possible to determine whether these 41 emails referred to the *"management of Health Surveillance, taking into account the measures adopted with Priority 1, in the Action Procedure incoat"*, as requested by the person making the claim.

Therefore, taking into account the terms in which the access request was formulated, where it was requested to obtain a copy of the information provided by the Occupational Risk Prevention coordinator in said technique, it must be concluded that the City Council of (...) must provide, beyond the two chains of mails already delivered, a copy of any information that the coordinator may have provided to said technician *"for the management of [the] Health Surveillance"* (including a copy of the e-mails that the said coordinator had sent to the technician with the motivation required by the person making the claim), without prejudice to the application of any of the limitations set out in the previous section.

On the contrary, it must be made clear that the eventual e-mails sent by the technician to the Occupational Risk Prevention coordinator were not the subject of the access request, so the e-mails that the technician had sent are not the subject of this procedure

Ultimately, the claim must be partially upheld on this point.

#### 4.3. Information on the assignment of tasks to the claimant and on the planning and distribution of tasks carried out in the Urban Planning and Heritage Service.

The person claiming also requested a copy of the mail sent by a certain person to the Director of Urban Planning, informing about the assignment of tasks to the person making the claim; as well as a copy of the planning and distribution of tasks carried out in the Urbanism and Heritage Service, from (...) to (...) of 2021.

In this regard, the City Council stated that, according to the Urban Planning and Heritage Service, this information was not documented, but was provided verbally.

The person making the claim did not provide any elements to contradict this statement. As things stand, the claim in relation to this information must be dismissed.

On the other hand, in the letter of 10/11/2022, the claimant requests that a certificate be issued on the non-existence of this information. In this respect, it is necessary to point out that the right of access does not include the right to obtain a certificate on this end. Having said that, this resolution states that the City Council has specified that this information is not documented.

#### 4.4. Information on the eventual recipients of the mails.

In his letter of claim submitted to the Authority on 06/09/2022, the claimant indicated that in his request for access he requested information that *"was available to the Prevention Service, whether or not it was part of "a file," with data relating to her person, including "emails sent by herself since her reinstatement on date (...)" and to know whether "they are part of any file or not." And, in a favorable case, know which one and have access. As well as knowing if the emails I sent were forwarded to someone and to whom, given that art. 13.1.e RGPD includes recipients."*

In relation to this end, the City Council indicated in its statement of objections that the person making the claim had not been informed as to whether their e-mails had been forwarded to someone else, given that at no time had requested, and considered that the claimant had to limit which emails he was referring to and what personal data they contained, in order to limit the search, given that the claimant *"is prolific with sending emails, in terms of quantity and by multiple recipients and is now asking us to go back to (...) to the present day. This search, in the hypothetical case that emails sent by her to a public employee containing personal data may have been forwarded, can be exhaustive and complicated in an organization like the City Council of (...)."*

Well, certainly, in his request for access and with regard to the e-mails, apart from requesting access to the occupational risk file, the person claiming referred to the communications between *"the Director of HR/Head of Prevention, the Coordinator of PRL, the Director of Urbanism and the Head of the Urban and Economic Development Area, with each other and with third parties", and then added that he also asked for the e-mails that she had sent from (...) until the date of submission of the access request ((...)). And at the beginning of his access request he expressly stated that he was asking for information about the recipients.*

Therefore, it cannot be admitted, as the City Council maintains, that information about the recipients had not been requested, information to which the person making the claim has the right to access in accordance with article 15.1.c) of the 'RGPD.

With regard to the need to specify which emails he was referring to, it is necessary to highlight that article 13.1 of the LOPDGDD provides that *" 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 specify the data or the processing activities to which the sole refers request."*



Likewise, with regard to the complexity of searching for the requested information, it is also appropriate to point out what Article 12.3 of the RGPD allows the data controller, taking into account the complexity and number of requests, extend the initial period of one month to attend to the request by two months (that is, three months in total). In these cases, within one month of receiving the request, the person in charge must inform the person concerned of the extension and must indicate the reasons for it. Therefore, if such complexity were to be observed, the City Council could have asked for a specification of the terms of its request and, where appropriate, agreed to extend the deadline to resolve and notify the access request.

Having said that, it should be pointed out that in the claim made by the person making the claim before this Authority, it refers to the information "*available to the Prevention Service*". Taking into account what the claimant stated in his claim and the terms in which the access request was formulated (which referred to specific people), it must be interpreted that the present claim focuses solely on the mails emails sent by the people identified by the claimant and who are part of the Prevention Service, i.e. the "*HR Director/Head of Prevention*" and the "*PRL Coordinator*".

Linked with the information about the recipients, it is necessary to specify that article 15.1.c) of the RGPD establishes that, when the right of access is exercised, information about the recipients must be provided. Neither the people employed by the City Council, nor those in charge of the treatment of the City Council are considered recipients.

#### 4.5. About the conversations.

Finally, by means of a letter dated 07/07/2022, the claimant stated that during the month of (...) 2021, when the health surveillance report was issued, "*she was informed that different people were talking about it, prior to the adoption of the measure against their health.*"

Well, this specific request was not included in the initial access request presented to the City Council of (...), so it cannot be the subject of the present rights protection procedure and the request must be dismissed claim in relation to this end. In any case, it should be noted that the person making the claim refers to mere conversations, that he does not identify who would have held them and that he does not provide any indication of their existence.

#### 4.6. About the rest of the information.

As has been advanced, on 10/11/2022, the claimant submitted a new letter in which "*clarifications are made regarding the initial instance, which despite the fact that a box was made indicating (correctly) the most relevant part, the rest of the points requested in this are not waived.*"

The person claiming does not specify what is the rest of the information requested from the City Council that he considers should not have been provided to him, with the exception of the "*Set of information with data from Mrs. (...), at the disposal of the Occupational Risk Prevention Service, whether or not it forms part of the file*".

In relation to this information, in said written statement the claimant specifies that "*he sent numerous notices alerting the PRL Coordinator in relation to occupational risks, and on the*

*other hand, from the Notification received from the APDCAT it can be seen that this person can having erased them practically in their entirety.” For this reason, the claimant requests that “the existence of these emails be confirmed, whether or not they form part [of the file] .”*

In this regard, it is necessary to specify that in legal basis 4.1 of this resolution access to e-mails containing data of the claimant, received and sent, by the Occupational Risk Prevention coordinator (among d other people). At the same time, in this same basis of law 4.1, access is also addressed to the communications that the claimant sent from (...), such as those in which he would have reported on occupational risks.

That is why the referral to what has been exposed there is appropriate.

Without prejudice to the above, the person making the claim requests that the City Council of (...) be required to certify from the said coordinator whether the emails exist or whether they have been deleted in their entirety.

As discussed above, the right to access does not include the right to obtain a certificate. Having said that, this resolution states that in the face-to-face inspection of 04/10/2022, 3 emails were found in which the first name of the person claiming was mentioned in the email account of the Prevention of Work risks. Therefore, if in these 3 e-mails to which the person making the claim has the right to access (unless there is a limitation expressed in legal basis 4.1), the ones that the person making the claim would have sent to said coordinator are not included, it is because this person deleted them.

In short, in accordance with what has been set out in this legal basis, the present claim should be considered with regard to access to the following information:

- Copy of the communications received and made with the claimant's data (from (...) until the time of submitting the request -(...)-), which are contained in the corporate email account of director of Human Resources, the coordinator of Occupational Risk Prevention, the director of Urban Planning, the head of the urban and economic development area and the head of the Urban Planning section. In relation to this last person, you have the right to access the communications made from (...) to (...) with the claimant's data.

This must also include access to the communications that the claimant sent from (...), such as those in which he would have reported the occupational risks and the messages that could have been derived from them; as well as the communications received and made with the claimant's data between several City Council employees who identify the claimant, including communications between them and an external company, such as (...) or (...). In this last sense, it is necessary to identify the recipients of the e-mails (legal bases 4.1 and 4.4).

- Copy of the information that could have been provided by the Occupational Risk Prevention coordinator to a specific prevention technique identified by the claimant, in relation to health surveillance management. This, in addition to the two email chains that the City Council has already provided to the person making the claim (legal basis 4.2) .

All this, without prejudice to the City Council of (...) certifying, in some specific case, the concurrence of any of the limitations set out in the legal basis 4.1

Instead, the claim should be dismissed with regard to the following information:

- Information on the assignment of tasks to the claimant; as well as the copy of the planning and distribution of tasks carried out in the Urban Planning and Heritage Service, from (...) to (...) 2021 (legal basis 4.3).
- Conversations that someone would have had during the month of (...) of 2021 (legal basis 4.5).

**5.** 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 claimant with the following information:

5.1. Copy of the communications received and made with the claimant's data (from (...) until the time of submitting the request -(...)-), which are contained in the corporate email account of director of Human Resources, the coordinator of Occupational Risk Prevention, the director of Urban Planning, the head of the urban and economic development area and the head of the Urban Planning section. In relation to this last person, you have the right to access the communications made from (...) to (...) with the claimant's data.

This must also include access to the communications that the claimant sent from (...), such as those in which he would have reported the occupational risks and the messages that could have been derived from them; as well as the communications received and made with the claimant's data between several City Council employees who identify the claimant, including communications between them and an external company, such as (...) or (...). In this last sense, it is necessary to identify the recipients of the e-mails (legal bases 4.1 and 4.4).

5.2. Copy of the information that could have been provided by the Occupational Risk Prevention coordinator to a specific prevention technique identified by the claimant, in relation to health surveillance management. This, in addition to the two email chains that the City Council has already provided to the person making the claim (legal basis 4.2) .

Access to electronic communications must be made from the messages contained in the backup corresponding to (...), which includes the more than 600 emails that the Authority's inspector staff located in the face-to-face inspection act of 04/10/2022 from the first surname of the person claiming, as long as these emails effectively refer to the person claiming and not to a third person who has the same surname.

In the event that the City Council considers that, in some specific case, the previous limitation or any other of those set out in basis 4.1 applies, it must prove this to the Authority.

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.

6. In the processing of the present rights protection procedure, a series of facts have come to light that could constitute a violation of the regulations on data protection, with regard to the right of access.

Firstly, it is recorded that the Director of Human Resources deleted 3 emails sent by the complainant on dates (...), (...) and (...), which detected the complainant through notices generated by your email server informing you of said deletion. This deletion took place on 25/02/2022, once the person had already submitted the request for access to the City Council of (...) ((...)) and before the request was resolved of access (on 03/15/2022). It happens that the person who deleted said emails is the same person who resolved the access request submitted by the person making the claim.

Secondly, as stated in the statement of objections from the City Council of (...) dated 01/07/2022, the Director of Human Resources, the Coordinator of Occupational Risk Prevention, the director of Urban Planning, the head of the Urban and Economic Development Area and the head of the Urban Planning Section informed that they had no more e-mails than those provided to the person making the claim and that contained his personal data, the which in the face-to-face inspection carried out on 04/10/2022 at the premises of the SSIT of the City Council of (...) it was found that it did not conform to reality. In the same sense, it was stated in the resolution of the City Council of (...) of 03/15/2022 of the access request object of complaint that, *"interested in this documentation, the indicated persons are informed that those communications are not preserved, if they have existed, due to the storage capacity of the corporate mailbox which forces the periodic emptying of e-mails."*

And, thirdly, in response to the second request of this Authority in order to certify whether the backup copy of the emails contained the emails identified in the factual background 5th, on date (...) the SSIT of the City Council of (...) indicated that *"given the great diversity of communications that could have been made between all the public employees who are related to the processing of the various files in which the complainant is an interested party , from the year 2019 to the present, regardless of whether they contain personal data or not, the search for these emails is an exorbitant and difficult task to perform, and therefore, if they are interested in some specific emails, they could Search."* Also in its letter of allegations of 07/01/2022, the City Council stated that *"This search, in the hypothetical case that the emails sent by her [the person claiming] to some public employee that contain data from of a personal nature may have been forwarded, it can be exhaustive and complicated in an organization like the City Council of (...)."*

On the contrary, in the act of in-person inspection carried out on 04/10/2022 at the premises of the SSIT, more than 600 pieces of mail were located, without difficulty and in a short period of time (in just two hours and fifteen minutes) emails in which the claimant's first surname was mentioned in the corporate email accounts corresponding to the employees identified by the claimant.

Likewise, it should be pointed out that in the response to the first request in order to certify the previous one, among other aspects to be certified, this point regarding whether the said emails were included in the backup copies was omitted .

7. As a last resort, address the request made by the person claiming, on 14/11/2022, to extend the precautionary measures adopted within the framework of the present rights protection procedure, in order to block the information contained in certain email accounts in order to be able to access, in the future, the communications relating to your person that may appear there.

The person making the claim announces that *he will "submit a relevant Application to the APDCAT, to exercise the right of Access to personal data"*.

Therefore, this request to extend the precautionary measures adopted in this rights protection procedure is not part of the access request (the request is for other email accounts) which is the subject of this procedure, but refers to an eventual request for access that, as indicated by the person making the claim, he intends to submit.

For this reason, this request to extend the precautionary measure adopted in the present procedure must be denied.

For all this, I resolve:

1. Estimate the guardianship claim made by Ms. (...) against the City Council of (...) regarding access to communications between the claimant and the Director of Human Resources, the Coordinator of Occupational Risk Prevention, the Director of Urban Planning, the head of the Urban and Economic Development Area, from (...) to (...); as well as with regard to the communications between the person making the claim and the head of the Urbanism Section from (...) to (...), in the terms set out in legal foundations 4.1 and 4.4; as well as with regard to access to the information that could have been provided by the Occupational Risk Prevention coordinator to a certain prevention technique identified by the claimant, in relation to health surveillance management; and dismiss it as regards the rest.
2. Request the City Council of (...) so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access exercised by the person making the claim, in the manner indicated to the foundation of law 5th. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
3. Open a preliminary information phase for the purpose of elucidating whether the City Council of (...) has committed any infringement of the regulations on data protection in accordance with the 6th legal basis.
4. Deny the claimant's request dated 11/14/2021, to extend the precautionary measures to certain email accounts, in accordance with the 7th ground.
5. Notify this resolution to the City Council of (...) and to the person making the claim.
6. 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,

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