

File identification

Resolution of the rights protection procedure no. PT 65/2022, petition against the Borges del Camp City Council.

Background

1. On 06/15/2022, the Catalan Data Protection Authority received a letter from Mrs. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Borges del Camp City Council (hereinafter, the City Council).

The claimant provided a copy of the access request submitted to the City Council on 10/05/2022, in which, based on "the Transparency Law", he requested "a copy of my corrected exam with the correct answers".

2. On 08/24/2022, the claim was transferred to the Data Protection Delegate of the City Council (...) so that within 15 days he could formulate the allegations he considered relevant.

3. On 08/30/2022, the Authority received the City Council's statement of objections, which stated, in summary, the following :

- That the right of access is the faculty of every person to know if their personal data is being processed.
- That the protection of the right of access is constituted as a guarantee, of *"The interested persons who are denied, in part or in full, the exercise of the 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 and sent within the established deadline, they can submit a claim to the Catalan Data Protection Authority"* (article 16 of Law 32/2010, of October 1, of the Catalan Data Protection Authority), as long as the exercise of these actions is related to the data defined by the RGPD as "personal data".
- That *"the request exposed by the interested person has no relationship at all type with the scope of material application of the regulations governing the protection of personal data and guarantee of the rights digital."*
- That *"the claim filed before the Catalan Data Protection Authority for the protection of the right of access identified with number PT 65/2022 be declared inadmissible"*.
- That in view of the above requests that *"the Catalan Data Protection Agency be declared incompetent to resolve the request" object of claim in the protection procedure PT 65/2022.*

4. On 07/10/2022, the Authority accessed via the internet, the minutes of the Tribunal of the selection process for the establishment of an administrative assistant job board for the City Council of les Borges del Camp, in which the results of the selection process were approved, as well as the classification of the job board was established.

Fundamentals of Law

1. As a preliminary matter, it is necessary to address whether the Authority is competent to resolve the request for access made by the person concerned.

In its letter of 08/30/2022, the Borges del Camp City Council alleges the lack of competence of this Authority to rule on the claimant's request for access to his corrected exam, given that *"the request presented by the interested person has no relationship of any kind with the scope of material application of the regulations governing the protection of personal data and the guarantee of digital rights."*

Faced with this allegation of the Authority's incompetence, it is first necessary to refer to article 156 of the Statute of Autonomy of Catalonia (EAC), in which the following is determined: *"The Generalitat is responsible for executive competence in the matter of personal data protection which, respecting the guarantees of fundamental rights in this matter, includes in any case: (...) a) The registration and control of the files or the processing of personal data created or managed by the public institutions of Catalonia, the Administration of the Generalitat, the local administrations of Catalonia, the autonomous entities and the other entities under public or private law that depend on the regional or local administrations or that provide services or carry out activities on their own account through any form of direct or indirect management, and the universities that make up the Catalan university system."* [the emphasis is from this Authority].

In accordance with the provisions of art. 156 of the EAC, article 3 of Law 32/2010, of October 1, of the Catalan Data Protection Authority, determines that:

"Article 3. Scope of action.

The scope of action of the Catalan Data Protection Authority includes the files and the treatments carried out by: (...)

c) The local bodies.(...)"

In the present case, it is clear that the requested information (the examination made by the corrected claimant) contains the claimant's personal data, understood as *"all information about an identified or identifiable natural person ("the interested party"); an identifiable natural person will be considered any person whose identity can be determined, directly or indirectly, in particular by means of an identifier, como por ejemplo a number, an identification number, location data, an online identifier or one or several elements propios of the physical, physiological, genetic, psychological, economic, cultural or social identity of said person"* (art. 4.1 of Regulation (EU) no. 2016/679 of the European Parliament and of the Council, of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data - hereinafter, RGPD-).

Therefore, in the present case, the data protection regulations come into play and, consequently, the right of access regulated in article 15 of the RGPD.

It is true that the complainant invoked the transparency regulations in his application for access made after the selection process had already ended. Well, Law 19/2014, of December 29, on transparency, access to public information and good governance establishes in its article 24.3 that *"requests for access to public information that refer only to data personal data of the applicant must be resolved in accordance with the regulation of the right of access established by the legislation on the protection of personal data."*

Precisely, in the present case, the claimant did not request access to data of third parties (such as the other applicants), but only requested to obtain a copy of his corrected exam. Therefore, the provisions of article 24.3 of Law 19/2014 previously transcribed would be applicable here, so this request for access had to be processed in accordance with the regulations on personal data protection.

Consequently, this Authority is competent to protect the right of access exercised by the person making the claim.

2. Given the above, 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 1 October, from the Catalan Data Protection Authority.

3. 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 , 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 . _

(...)"

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

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

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

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

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

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

4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, provides the following:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within the established deadline, they can submit a claim to the Catalan Data Protection Authority."

4. Having explained the applicable regulatory framework, the City Council has not proven to have resolved the request for access made by the person making the claim within the period of one month (extendable for two more months) provided for that purpose (art. 12.3 of the 'RGPD').

It is therefore appropriate to declare that the City Council did not resolve and notify in form and time the said request presented by the affected person. This notwithstanding what will be said below regarding the substance of the claim.

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.

Well, as a starting point it should be taken into account 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 the 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).

In the present case, it is not observed that there is any reason for denying the requested information (the corrected examination that the person making the claimant did). In turn, the City Council has also not invoked any cause that prevents access to the information, beyond considering that *"the request presented by the interested person has no relationship of any kind with the scope of material application of the regulations governing the protection of personal data and guarantee of digital rights"*, which has already been addressed in a previous foundation.

In short, the present claim for protection of the right of access should be upheld, given that the claimant has the right to obtain a copy of his corrected exam.

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 you with a copy of your corrected exam.

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.

For all this, I resolve:

- 1.** Estimate the right of access protection claim made by Ms. (...) against the Town Council of Borges del Camp.
- 2.** Request the City Council to make effective the right of access exercised by the person making the claim within 10 days from the day after the notification of this resolution, in the manner indicated in the 6th legal basis. 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,

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