

## File identification

Resolution of the rights protection procedure no. PT 69/2022, urged against Hostalric City Council.

## Background

1. On 06/28/2022, the Catalan Data Protection Authority received a letter from Ms. (...) (hereinafter, the person making the claim) for which he made a claim for the alleged neglect of the right to delete personal data, which he had previously exercised before the Hostalric City Council (hereinafter, the City Council).

The person making the claim indicated that, on 02/23/2022, the City Council published the rules governing the selection process, through open competition, for an interim civil servant position in the administrative category of the registration office, and the creation of a job board for possible replacements at the City Council. Specifically, the claimant stated that, according to the rules, the practical test had to be oral, but that *"When I appeared for the test, the Court provided me with a computer and indicated that I had to connect to the ZOOM platform as they would record me"*.

The person making the claim also added that on 05/05/2022 the results of the selection process were published on the Transparency Portal of the Hostalric City Council, where he was listed as not suitable.

Likewise, he specified that on 05/09/2022 he requested the deletion of the recording of the practical test he took on 05/04/2022, as well as his personal data (name and surname) in the City Hall Transparency Portal.

The claimant provided various documentation relating to the exercise of this right.

2. On 07/27/2022, the claim was transferred to the City Council so that within 15 days it could formulate the allegations it deemed relevant.

3. The City Council made allegations by means of a letter dated 10/08/2022, in which it set out, in summary, the following:

- That on 10/08/2022, the City Council resolved to estimate the request for deletion of personal data presented by the person here claiming, for which it deleted *" the recordings made through the Zoom program of the tests taken carried out during the selection process in question, in which the interested party participated, since despite being informed in advance of this recording by Human Resources and being able to deny this recording, express consent is not available"*.
- That also deleted the name and surname of the person claiming from the final result of the selection process. For these purposes, the City Council provided the link where said deletion could be verified.
- That, on 10/08/2022, the claimant was notified of the estimated resolution of his request for deletion of personal data.

The City Council provided various documentation, including the accreditation of the notification of the estimated resolution of the deletion request.

4. On 25/08/2022, the person making the claim sent a letter to the Authority stating " *In relation to my claim for the protection of rights (PT 69/2022), relating to the Hostalric Town Council , I inform you that I have received a late response from the denounced administration" .*

The claimant provided a copy of the estimated resolution.

### **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 17 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement thereof (in hereinafter, the RGPD), regulates the right of deletion in the following terms:

*"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:*

- a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;*
- b) the interested party withdraws 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 legal basis;*
- c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;*
- d) personal data have been treated unlawfully;*
- e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;*
- f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.*

*3. Sections 1 and 2 will not apply when the treatment is necessary:*

- a) to exercise the right to freedom of expression and information;*
- b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;*
- c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;*
- d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to*

*the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said 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 must be exercised in accordance with the provisions of article 17 of Regulation (EU) 2016/679.*

*2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge may retain the identification data of the affected person necessary in order to prevent future processing 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 in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.*

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

*5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:*  
*a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or*  
*b) refuse to act in respect of the request.*  
*The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.*  
*(...)"*

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 resolved and notified, within the period provided for by the applicable regulations, the right of deletion exercised by the person making the claim, since precisely the reason for his complaint that initiated the present procedure for protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 09/05/2022 a letter from the person claiming was received at the City Council through which he exercised the right of deletion.

In accordance with article 12.3 of the RGD, the City Council had to resolve and notify the request to exercise the requested right within a maximum period of one month from the receipt of the request.

In this regard, it is certified that the deletion request made by the person concerned before the City Council on 05/09/2022 was resolved and notified on 08/10/2022, that is to say, once it had been far exceeded the legally provided deadline for resolution and notification.

Consequently, since the claim was based on the lack of response to the request to exercise the right of deletion dated 05/09/2022, it must be declared that the City Council did not resolve and notify in the form and time said request submitted by the affected person.

**4.** Regarding the substance of the data deletion request, the City Council has informed that it has deleted the controversial recording and has certified the deletion of the complainant's data in the Transparency Portal, in the terms requested by the claimant, although extemporaneously.

For all this, I resolve:

1. Declare extemporaneous the resolution of the Hostalric City Council , dated 08/10/2022, by which it considers the deletion request made by Mrs. (...), for not having given an answer within the period established in the applicable regulations, without making any other pronouncement or any request regarding the substance, when the claimant's right has become effective, in accordance with what is 'has indicated the foundation of law 4t.
2. Notify this resolution to the City Council and the person making the claim.
3. Order the publication of the resolution on the Authority's website ( apdcat.gencat.cat ), 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,