

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 73/2022, urged against the City Council (...).

Background

1. On 07/05/2022, the Catalan Data Protection Authority received a letter from Ms. (...) on behalf of Mrs. (...) (hereinafter, the claimant), for which he made a claim for the alleged disregard of the right to delete the data of his minor son that he had previously exercised, on 04/28/2022, in front of the City Council (...) (hereinafter, the City Council).

The person claiming stated that the City Council published on Facebook (on (...)) and in the Municipal Information Bulletin number (...) (corresponding to the month of (...)) - on paper and in digital format - some photographs in which his minor son appeared together with the boy's father, who is a local police officer (...). As a result of his request dated 28/04/2022, to exercise the right of deletion, he also stated that the City Council deleted the photos published on Facebook ; as well as blurring the face of the minor that came out in an image on page (...) of the newsletter, but he complained about the following:

- That the image of the minor on the page (...) had not been blurred.
- That the bulletins distributed in physical format had not been withdrawn.
- That he did not know if they had been withdrawn or if the image of the minor had been anonymized from the bulletins that were in the Town Hall offices.

In order to prove these facts, the claimant provided various documentation, among others, the following:

- a) Pages (...) and (...) of the Municipal Information Bulletin number (...) (corresponding to the month of (...),) where the images of his son appear together with the child's father.
- b) Publication of images of your minor child on the City Council's Facebook account.
- c) Data deletion request (on behalf of your minor child) presented to the City Council on 04/28/2022.
- d) Response from the City Council dated 24/05/2022 which resolved, in summary, the following:
 - *"In relation to the two images published on social networks (Facebook) and those published in the newsletter in digital format, in order not to completely eliminate the photographs of the public event, the images of the minor will be anonymized in so that the recognition of the same is impossible".*

- That in relation to the images published in the newsletter in paper format that had already been disseminated prior to the month of (...) *"cannot be carried out beyond the anonymization measures that are implemented in the copies which are still recorded in the municipal offices, given that it is an impossible task"*.
2. On 07/19/2022, the claim was transferred to the City Council so that within 15 days it could formulate the allegations it deemed relevant.
3. The City Council made allegations in a letter dated 07/29/2022, in which it set out, in summary, the following:
- That on 05/24/2022, the City Council responded to the right of deletion exercised by the person claiming on 04/28/2022.
 - That the capture of images of police officials at the celebration of the local police party was legal.
 - That in response to the data deletion request submitted by the claimant, the images in the digital newsletter were *anonymized*, and they were removed from the social network in which they had been published (Facebook), as as in the anonymization of the images in the newsletter in physical format".
 - That in relation to the non-anonymized image on page (...) of the newsletter, the City Council states that *"the image was anonymized but the quality and low resolution suggested that the minor was wearing glasses"*, and that to the demonstration made by the person claiming within the framework of the present guardianship procedure, they proceeded to *"pixelate the image" of the minor even more* [an attached document containing the image of the minor is attached (page (.. .) from the newsletter) even more pixelated and which has been published on the City Council's website] .
 - That with regard to the bulletins in physical format distributed, *"after knowing and responding to the right of deletion requested by the claimant, the distribution was stopped, in order to carry out the relevant anonymization , before its new distribution"*.
 - *That the bulletins already distributed before this fact was brought to our attention "already transcend the area of action of the City Council (...), and it is impossible to proceed with their withdrawal, since the reach"*.

The City Council submitted a document (*"memorandum"*) dated 07/27/2022, which records the first anonymization of the image published on page (...) of the aforementioned newsletter, as well as the second anonymization for this to anonymize , even more, the image of the minor.

On the other hand, the City Council also provided the accreditation of the notification of the resolution to the person representing the claimant on 05/24/2022.

Fundamentals of Law

1. The director of the Catalan Data Protection Authority is competent to resolve this procedure, in accordance with articles 5.b) and 8.2.b) of Law 32/20(...), of 1 October, from the 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 circulation thereof (in hereinafter, the RGPD), regulates the right of deletion in the following terms:

"1. The interested party will have right to obtain yes procrastination Unauthorized deletion of data by the data controller personal that _ concern , which will be forced to delete sin procrastination misuse the data personal when any of the circumstances occur following :

- a) the data personal they are no longer necessary in relation to the ends for those who were collected or otherwise treated ; _*
- b) the interested party withdraw the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another foundation juridical ;*
- c) the interested party opposes the treatment in accordance with article 21, section 1, and they do not prevail others reasons legitimate for the treatment , or the interested party opposes the treatment in accordance with article 21, section 2;*
- d) the data personal there are been treaties unlawfully ;*
- e) the data personal deban be suppressed for the fulfillment of a legal obligation established in the Law of the Union or of the States members that apply to the person in charge of the treatment ;*
- f) the data personal are there obtained in relation to the offer of information society services mentioned in article 8, section 1.*

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

- a) to exercise the right to freedom of expression and information ;*
- b) for the fulfillment of a legal obligation that requires data processing imposed by the Law of the Union or of the States members that apply to the person responsible for the treatment , or for the fulfillment of a mission made in interest public or in the exercise of powers public given to the person in charge;*
- c) for reasons of interest public in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;*
- d) for filing purposes public , scientific or historical research purposes or statistical purposes , in accordance with article 89, section 1, to the extent that the right indicated in section 1 could do impossible to hinder you seriously the achievement of said objectives _ treatment , or*
- e) for the formulation , exercise or defense of claims .*

For its part, article 15 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right of deletion:

"1. The right of deletion 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 responsible for the treatment will facilitate the interested party information related to sus actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request . Dicho plazo podra extend another two months if necessary , taking into account the complexity and the number of applications . The person in charge will inform the interested party of any of these extensions within one month of receipt of the request , indicating the reasons for the delay . When the interested party present the request by media electronic , the information will be provided by media electronic when be possible , unless the interested party request that it be provided in another way.*
- 4. If the data controller does not comply with the request of the interested party , the will inform yes delay , no later than one month has passed since the receipt of the request , the reasons for its non- action and the possibility of presenting a claim before a control authority and take legal action .*
- 5. The information provided under articles 13 and 14 as well as all communication and anyone performance carried out under articles 15 to 22 and 34 will be entitled free _ When the requests they are manifestly groundless or excessive , especially due to him character repetitive , the person in charge may :*
 - a) charge a fee reasonable based on administrative costs faced to facilitate information or communication or perform the action requested , or*
 - b) refuse to act in respect of the request .**The person responsible for the treatment will bear the burden of proving character manifestly groundless or excessive request . _
(...)”*

In relation to the above, article 16.1 of Law 32/20, of October 1, of the Catalan Data Protection Authority, of the Catalan Data Protection Authority, regarding the guardianship of the rights provided for by the regulations on personal data protection, the following is available:

"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 respect, it is certified that on 04/28/2022 a letter from the person claiming was received at the City Council through which he exercised the right to delete the data of his minor child.

In accordance with article 12.3 of the RGPD, 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 04/28/2022 was resolved and notified on 05/24/2022.

Therefore, in the present case, the City Council resolved and notified the person claiming the resolution within the legally provided term, through their representative.

4. With regard to the merits of the request for the deletion of the claimant's data, it should be borne in mind that the claimant focuses his claim solely on the deletion of the personal data of his minor child that was listed on the page (...) of the aforementioned newsletter, in which the newsletters distributed in physical format had not been withdrawn and in which he did not know whether they had been withdrawn or whether the image of the minor had been anonymized from the newsletters that were in the offices of the Town hall.

As a starting point, it should be borne in mind that article 17 of the RGPD regulates the right to deletion as the right of the affected person to obtain from the data controller the deletion of the personal data affecting him if any of the circumstances provided for in article 17.1 of the RGPD.

The right to deletion is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. Without prejudice to this, it should be taken into account that, in accordance with the provisions of article 12.6 of the LOPDGDD *"the holders of parental authority can exercise on behalf of children under*

fourteen the rights of access, rectification, cancellation, opposition or any other that may correspond to them" , as happens in the case that concerns us here.

Well, in the present case it is proven that on 05/24/2022 the City Council resolved, in an estimated sense, the request for deletion of the person here claiming in which he requested the deletion of two images of his son minors published on Facebook (on (...)) and in the City Council's municipal information bulletin for the month of (...) of (...). Given the above, the City Council deleted the images of the minor published on Facebook (as the claimant admits), anonymized the photographs in which the minor appeared in the newsletter in digital format, and paralyzed the distribution of physical copies for perform anonymization before proceeding with distribution.

anonymization was carried out which, in the opinion of this Authority, was appropriate.

However, given what the claimant stated in his claim, and to the extent that, despite the anonymity , it could be considered that the minor was wearing glasses (an aspect that, on its own, would not make him identifiable), the City Council carried out a second anonymization to "*pixelate the image even more*" of the minor, which also proves.

On the other hand, with regard to the newsletters distributed in physical format, the City Council states that "*it proceeded to stop the distribution, to carry out the relevant anonymization , before its new distribution*". Therefore, this action by the City Council prevented, once the right of deletion was upheld, the dissemination of the physical bulletins containing the minor's images.

With regard to the bulletins that had already been distributed, the City Council states that it is impossible to withdraw them, given that "*the scope is unknown*". Well, at the discretion of this Authority, it must be considered that the withdrawal of the physical bulletins already delivered involves a disproportionate task.

In short, and from the perspective of the right to deletion regulated in the RGPD, the claim must be dismissed, given that in the present procedure it has been proven that the City Council has made the efforts provided to carry out the actions that were within their reach to delete the data of the minor child of the person making the claim, so that their right to deletion in the terms of the request made to the City Council on 04/28/2022.

For all this, I resolve:

1. Dismiss the guardianship claim made by Ms. (...) against the City Council (...).
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 32/20 10, of October 1, of the Catalan Protection Authority of Data.

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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