

## File identification

Resolution of the rights protection procedure no. PT 76/2022, urged against the Consorci Administració Oberta de Catalunya.

## Background

1. En data 11/07/2022, per remissió de l'Agència Espanyola de Protecció de Dades, va tenir entrada a l'Autoritat Catalana de Protecció de Dades, un escrit del Sr. (...) (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 Consorci Administració Oberta de Catalunya (hereinafter, AOC ).

Specifically, the person making the claim explained that *" I have exercised, up to two times, the right of access to my data, in front of the AOC ( Open Administration of Catalonia), one with date 07/19/2021 and another with date 20/ 04/2022 and I have not been answered to any of them."*

The claimant provided the following documentation:

- Request to exercise the right of access presented to the AOC on 07/19/2021 . In that request, the person concerned authorized the electronic notifications related to this procedure, through the electronic address (...).
  - Request of 04/20/2022, where he reiterated his request to exercise the right of access presented to the AOC on 07/19/2021, providing the same email address for notification purposes.
2. On 07/27/2022, the claim was transferred to the AOC so that within 15 days it could formulate the allegations it deemed relevant.
3. The AOC formulated allegations by means of a letter dated 02/08/2022, in which it set out, in summary, the following:
- That the access request of 07/19/2021 was resolved in an estimated sense on 08/02/2021.
  - That on 04/08/2021, the AOC made available to the person claiming the notification of said resolution through electronic means and that, on 15/08/2021, it was rejected due to lack of access of the interested person within 10 days.
  - That the access request dated 04/20/2022 was resolved in an estimated sense on 05/12/2022.
  - That on 05/13/2022, the AOC made available to the person claiming the resolution notification through electronic means and that, on 05/24/2022, it was rejected due to lack of access to the interested person within 10 days.

The AOC provides, among others, the aforementioned estimated resolutions, as well as the captures of the notification process of said resolutions through the eNOTUM program , where it is evidenced that these were not addressed to the exact electronic address that had indicated the person claiming in his writings (...) , but to another (...) .

## 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 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), regarding the right of access of the interested person, 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."*

3. Having explained the applicable regulatory framework, it is then necessary to analyze whether the AOC resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for his complaint that he initiated the present rights protection procedure, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 07/19/2021 the AOC received a letter from the person claiming through which he exercised the right of access to his personal data, a request that was reiterated in the same terms on 04/20/2022 .

In accordance with article 12.3 of the RGPD, the AOC had to resolve and notify these requests to exercise the requested right within a maximum period of one month from the date of receipt of the request legality In relation to the question of the term, it should be borne in mind that, in accordance with article 21 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) , the maximum term is for resolving and notifying, so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt must have occurred (art. 40.4 LPAC).

Well, from the documentation provided as part of the present guardianship procedure, it has been established that although the AOC resolved the requests of 07/19/2021 and 04/20/2022 on 08/2/2021 and 12/05/2022 respectively, that is to say, within the legally established one month period, the notification of these resolutions by electronic means was not carried out to the electronic address that had been indicated by the person here claiming in his written (...) , but, by mistake, notification was attempted to another email address similar to that indicated by the person making the claim but in which an "r" was missing (...).

Consequently, it must be concluded that the AOC did not notify the person claiming the response to the access requests , neither within the period of one month (extendable for two more months) provided for that purpose, nor with posteriority

That is why, as long as the claim was based on the lack of response to the requests to exercise the right of access, it must be declared that the AOC did not notify the resolutions of said sole requests submitted by the affected person, given that the notifications of the estimated resolutions of the access requests of the claimant were not made to the exact email address that this person provided to the AOC for notification purposes.

4. With regard to the substance of the access request, it is proven that the AOC resolved the access requests made by the person making the claim in an estimated sense. However, the AOC has not been certified that these resolutions have been effectively notified to the person making the claim. This is why this Authority considers it appropriate to require the AOC to certify the notification of the resolutions dated 08/2/2021 within 10 counting days from the day after the notification of this resolution and 12/05/2022 to the claimant.

For all this, I resolve:

1. Declare that the Consorci Administració Oberta de Catalunya has extemporaneously attended to the access requests of Mr. (...), since he has not proven that he was effectively notified of the resolutions corresponding to said requests, without entering into other considerations regarding the substance since the AOC decided to facilitate access.
2. Request the AOC so that, within 10 days from the day after the notification of this resolution, the right of access exercised by the person making the claim is effective, in the manner indicated in the 4th 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 AOC and the person making the claim.
4. 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,