

## File identification

Resolution of the rights protection procedure no. PT 78/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 05/08/2022 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right to cancel his personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP) .

The person claiming stated that *" I have been denied the cancellation or suppression of the data contained in SIP PFMEN, data related to an alleged criminal conduct of which they were archived [the] s diligence as shown below , I request the cancellation of the data because every time I am asked for documentation in public by the police I appear affiliated as a detainee for a supposed robbery with violence , with the consequence I treat adverse , supposedly already they are canceled But me i am appearing and following having I access these data against my will , I pray that they are data canceled and deleted \_ requested . "*

The claimant provided various documentation, including the following:

- Request for cancellation presented to the DGP on 15/06/2021 (with entry registration no. (...),) where the claimant requested the cancellation of the personal data contained in the System file of Information from the Generalitat de Catalunya Police on Minors (SIP PFMEN), referring to police proceedings no. (...).
- Answer from the director of the DGP dated 09/02/2021 (with exit registration dated 09/16/2021), referring to police proceedings no. (...), regarding which he stated that *"Taking into account what is provided in article 2.8 of the Regulation of organic law 5/2000, of January 12, regulating the criminal responsibility of minors, and the Article 22.4 of Organic Law 15/1999, of December 13, on the protection of personal data (applicable according to the fourth transitional provision of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights), the registered data of minors may not be used in adult proceedings when they reach the age of majority. Therefore, they are canceled from the age of majority."* [the emphasis is from this Authority].

In this regard, it should be borne in mind that, as reported by the DGP, police proceedings no. (...) (in which the person making the claim was not included) were the initials of police proceedings no. (...) (in which it was included).

- Archive decree for lack of known author, issued by the Juvenile Section of the Prosecutor's Office of the Superior Court of Justice of Catalonia on 11/15/2005, by which the archive of preliminary proceedings no. (...), given that *" Habiéndos I initiated the present proceedings in this Prosecutor's Office issued under certificate no . \_ (...) of the Sarrià Sant Gervasi Police Station , for an act that could constitute a criminal offence , allegedly committed by a minor under the age of 18 and over the age of 14 , and in the absence of can discover su identity , in accordance with what is provided in the ap. 2º of*

*article 16 of LO 5/2000, of January 12 , and of article 641.2º of the Criminal Procedure Law . ”*

2.- On 10/08/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 31/08/2022, the DGP made allegations where, among others, it stated the following:

- That on 06/15/2021, the claimant requested to delete the personal data from the Generalitat Police Information System file for natural persons (SIP PF) and minor natural persons (SIP MEN) related to police proceedings no. (...).
- That the aforementioned diligences *"in which it was not included, were the initials of the nos. (...) (in which it was included), regarding which the aforementioned data have been deleted upon reaching the age of majority, in compliance with current regulations (in accordance with article 2.8 of the Regulation of Organic Law 5/2000, of January 12, regulating the criminal liability of minors, and article 8.2 of Organic Law 7/2021, of May 26, on the protection of personal data processed for prevention purposes , detection, investigation and prosecution of criminal offenses and execution of criminal sanctions, when it provides that the need to delete all personal data must be reviewed (...) paying particular attention to the age of the affected, among others, the recorded data of minors cannot be used in adult proceedings when they reach the age of majority).*
- That in the response letter of 02/09/2021, sent to the person claiming, he was informed that the personal data mentioned had been cancelled.

### **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 the Catalan Data Protection Authority.

2.- The personal data processed by the DGP to which this claim refers, fall within the scope of Directive (EU) 2016/680, of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data by the competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or the execution of criminal sanctions, and free circulation of this data, in accordance with what is established in its article 1. Directive (EU) 2016/680 has been transposed into Spanish law by Organic Law 7/2021, of May 26, on data protection personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions (hereinafter, LO 7/2021), which entered into force on 06/16/2021. The request for cancellation presented to the DGP on 15/06/2021, is prior to the date of entry into force of LO 7/2021, therefore its processing related to the exercise of the right of cancellation continues to be governed by the regulations in force previously, that is, by Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), and in particular, by article 22 and its deployment provisions (in accordance with what is provided for in transitional provision 4a of Organic Law 3/2018, of December 5, on Protection of Personal Data and guarantee of digital rights) - henceforth, LOPDGDD-. Notwithstanding the above, since the claim presented to this Authority (08/05/2022) was subsequent to the effective date of LO 7/2021, the processing related to the procedure for this claim is will govern as provided for in this regulation.

3.- In accordance with the above, it is necessary to refer to article 16 of the LOPD, which in relation to the right of cancellation determines the following:

- "1. The person responsible for the treatment has the obligation to make effective the right of rectification or cancellation of the interested party within ten days.*
- 2. The personal data whose treatment does not comply with the provisions of this Law must be rectified or cancelled, where appropriate, and, in particular, when these data are inaccurate or incomplete.*
- 3. The cancellation results in the blocking of the data, and they must only be kept at the disposal of public administrations, judges and courts, for the attention of the possible responsibilities arising from the treatment, during the term of prescription of these responsibilities. Completion of this term, the deletion must proceed.*
- 4. If the rectified or canceled data has been previously communicated, the person in charge of the treatment must notify the person to whom they were communicated of the rectification or cancellation, in the event that the latter maintains the treatment, who must also proceed to cancellation.*
- 5. Personal data must be kept for the periods provided for in the applicable provisions or, where applicable, the contractual relationships between the person or entity responsible for the treatment and the interested party."*

For its part, article 31.2 of the RLOPD, provides the following:

- "2. Exercising the right of cancellation results in the deletion of data that is inadequate or excessive, without prejudice to the blocking duty in accordance with these Regulations. (...)"*

Article 32 of the RLOPD, sections 1 and 2, determines the following:

- "1. (...)In the cancellation request, the interested party must indicate which data he is referring to, and must provide the documentation that justifies it, if applicable.*
- 2. The person in charge of the file must decide on the request for rectification or cancellation within a maximum period of ten days from the receipt of the request. After the deadline has passed without an express response to the request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.*  
*In the event that it does not have the personal data of the affected person, it must also be communicated within the same period."*

Given that the right that is the subject of this resolution refers to a treatment carried out by the forces and security forces, it is necessary to refer to the specific regulation for these cases provided for in articles 22.4 and 23, sections 1 and 3, of the LOPD, which determine the following:

*"Article 22. Files of the Security Forces and Bodies.*

- (...) 4. The personal data recorded for police purposes must be canceled when they are not necessary for the investigations that have motivated their storage.*

*For these purposes, the age of the affected person and the nature of the data stored, the need to keep the data until the conclusion of an investigation or a specific procedure, the final judicial decision, especially acquittal, pardon, rehabilitation and limitation of liability.*

*Article 23. Exceptions to the rights of access, rectification and cancellation.*

*1. Those responsible for the files that contain the data referred to in sections 2, 3 and 4 of the previous article may refuse access, rectification or cancellation depending on the dangers that may arise for the defense of the State or public security, the protection of the rights and freedoms of third parties or the needs of the investigations being carried out. (...)*

*3. The affected person who is denied, in whole or in part, the exercise of the rights mentioned in the previous sections can bring this to the attention of the director of the Data Protection Agency or the competent body of each autonomous community in the case of files maintained by the police forces of these communities, or by the autonomous tax administrations, which must make sure of the origin or impropriety of the denial."*

In line with the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, 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, it is then necessary to analyze whether the DGP resolved and notified, within the period provided for by the applicable regulations, the right of cancellation exercised by the person making the claim.

With regard to the alleged neglect of the right that is the subject of the claim, it is proven that on 06/15/2021, the person making the claim submitted a letter to the DGP entry register through which he exercised the right of cancellation

In accordance with articles 16 of the LOPD and 32 of the RLOPD, in relation to the request for cancellation submitted by the claimant, the DGP had to resolve and notify its response to the claimant in the maximum period of ten days from the date of receipt of the request. In accordance with the above, it has been established that the response to your request of 06/15/2021 to cancel the data before the DGP took place on 09/02/2021 (registered of departure on 16/09/2021), that is to say, once the legally provided deadline for resolution and notification had been far exceeded.

That being the case, it can be concluded that the DGP gave an extemporaneous response to the request of the person making the claim.

On the other hand, although the claimed entity has not certified the notification of said resolution, it is worth saying that the person claiming, together with his claim, provided a copy of the DGP's resolution.

**5.-** Regarding the merits of the request to cancel the data of the person making the claim, the claimant focuses his claim on the cancellation of personal data relating to events that occurred while he was a minor, specifically, regarding police proceedings no. (...). However, in accordance with what was stated by the DGP in its letter of allegations dated 31/08/2022, even though the person claiming requested the cancellation of his personal data regarding the police proceedings no. (...) in these "*it was not included*", so it must be understood that the cancellation referred to the proceedings in which those resulted, and specifically, to proceedings number (...), where the person making the claim was listed as being included.

With respect to these proceedings, the DGP has asserted that the claimant's data was canceled when the claimant reached the age of majority, as the DGP indicated to the claimant in the 02/09 response /2021 to your cancellation request.

Therefore, based on the statements made by the DGP, the data that the claimant requested to cancel is no longer contained in the SIP files, so the present claim for the protection of rights must be dismissed, even though the DGP disposed of the request once the statutory deadline had already expired.

*the claim in his letter of claim, consisting of affirming that " every time I am asked for documentation in public by the police i appear affiliated as detainee for a supposed robbery with violence , with the consequent I treat adverse , [ data that] supposedly already they are canceled But me i am appearing and following having access to these data against my will" .*

In this regard, it is necessary to highlight that the person making the claim does not provide any evidence or evidence to support the above. However, in the event that it is proven that the claimant's data, which should have been cancelled, are still being processed by the DGP as stated by the claimant, the DGP should be warned that this could constitute an infringement in accordance with LO 7/2021.

For all this, I resolve:

- 1.** Declare extemporaneous the response of the General Directorate of the Police of the Department of the Interior of 02/09/2021, where it is reported that the cancellation of the data requested by Mr. (...), and dismiss it with respect to the merits, as the claimant's right has become effective, in accordance with what has been indicated in the 5th legal basis .
- 2.** Notify this resolution to the DGP 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,

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