

## File identification

Resolution of the rights protection procedure no. PT 82/2022, urged against the Arenys de Mar City Council.

## Background

1. On 30/08/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, claimant), 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 Arenys de Mar City Council. Specifically, the person making the claim made it clear that the City Council had not responded to the request for access to its file containing the contracts and appointments relating to the person making the claim and provided a copy of said request, dated 06/17/2022.
2. On 09/13/2022, the claim was transferred to the City Council so that within 15 days it could formulate the allegations it deemed relevant.
3. On 03/10/2022, the City Council's statement of objections was entered in the register of this Authority, which, in summary, set out the following:
  - That, on 06/17/2022, the person making the claim here *"requested from the Arenys de Mar City Council the exercise of the right of access to their personnel file in order to have a copy of their contracts and appointments"*.
  - That, *"the Arenys de Mar City Council by office dated September 22, 2022, with exit registration no. SALID 2022/(...) provides the requested documentation"*.

Attached to the statement of objections, the City Council provided a copy of said transfer office, dated 09/22/2022, signed by the mayoress, and by which it communicates the following to the person making the claim:

*- "Regarding your request of June 17, 2022, no. 2022-(...), in which he requests a copy of his contracts and appointments, we attach the requested documentation".*

The City Council also provided the evidence of the notification of said office and the documentation, practiced on the same day 09/22/2022.

4. On 04/10/2022, this Authority sent a letter to the person making the claim, informing them that, in view of the demonstrations and the documentation provided by the City Council, it was interpreted that the latter had fulfilled their right to 'access; and that unless he argued otherwise within ten days, his request would be considered satisfied. The claimant accessed the notification on 04/10/2022 and, after the period indicated, has not presented any objections to the understanding that his right of access has been satisfied.

## 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 the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:*

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, 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 expected consequences of said treatment for the interested party.*

*2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.*

*3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he 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 negatively affect 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 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 requests. 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. (...)"*

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 claimed entity resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person claiming, since precisely the reason that initiated the present procedure of rights protection, was the fact of not having obtained a response within the period provided for the purpose.

In this respect, it is certified that the person claiming, on 17/06/2022, submitted a request to the registry of the Arenys de Mar City Council, through which he requested access to his personal file where their *"contracts and appointments"* are recorded .

In accordance with article 12.3 of the RGPD, the requested City Council had to resolve and notify the request to exercise the requested right within a maximum period of one month from the date of receipt of the request. In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereinafter, LRJPCat ), on the one hand, the calculation of the maximum term in initiated procedures at the instance of a party (as is the case) it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art. 40.4 LPAC).

In view of what has been presented here, it is proven that the City Council did not respond to the reference request until 09/22/2022, that is to say, when the resolution period of one month provided for the purpose, and once this Authority had transferred the claim to said City Council. As things stand, it must be concluded that the claimed entity has extemporaneously resolved the request for access of the person making the claim.

4. With regard to the merits of the claim, as has been shown in the antecedents, it has been proven that within the framework of the present procedure for the protection of rights, the City Council responded to the person making the claim, informing him that he transferred a copy of the documentation of his personal file that is the subject of his request for access. From this response it was inferred that Arenys de Mar Council, albeit extemporaneously, would have attended to the exercise of the claimant's right of access.

On 04/10/2022, in view of the demonstrations and the documentation provided by the City Council, this Authority sent a letter to the person making the claim, to inform him that if within ten days he did not express his disagreement, it would be understood that he considered his access request granted. So well, once the deadline granted for that purpose has passed, the person making the claim has not made any statement against it, which is why it should be considered that their right of access has been satisfied in the terms of their request.

Article 21.1 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, provides:

*"The Administration is obliged to issue an express resolution and notify it in all procedures whatever their form of initiation. In cases of prescription, Waiver of the right, expiration of the procedure or withdrawal of the request, as well as of sudden disappearance of the object of the procedure, the resolution consists of the statement of the circumstances in each case, with an indication of the facts produced and the applicable rules. (...)"*

In the same sense, article 53.2 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, is pronounced.

For all this, I resolve:

1. Declare the response of Arenys de Mar City Council, dated 22/09/2022, to the request of Mr. the claimant's right of access has been exercised.
2. Notify this resolution to Arenys de Mar City Council and the person making the claim.
3. 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,