

File identification

Resolution of the rights protection procedure no. PT 85/2022, urged against the College of Architects of Catalonia.

Background

1. On 06/09/2022, the Catalan Data Protection Authority received, by transfer from the Spanish Data Protection Agency (AEPD), a letter from Mr. (...) (hereafter, 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 College of Architects of Catalonia (hereafter, COAC). Specifically, the complainant complained that the COAC had not attended to any of the requests to exercise the right of access, through which he requested a certified copy of the documentation for monitoring the work of his detached house.

In order to certify the exercise of this right, among other documents, the claimant provided the following documentation:

- Copy of the first request presented to the COAC, with date of entry in the general register on 08/26/2016, for which he requested a copy of all the documentation held by the COAC, in relation to the construction record of a " single-family *home (...)*", and at least , " *the book of orders and visits, final certificate of work and annexed documentation (modifications introduced), control tests carried out and results obtained.* "
- Copy of the second request presented to the COAC Demarcation in Tarragona, dated 10/26/2016, for which he reiterated the request for access to the " certified copy of all the documentation in his possession in the school files " (COAC), " *as well as the documentation given in custody to the architect Don (...)* in relation to the file for the construction of a single-family house in the municipality of (...)", with the indication of that he would look for this documentation " directly at the offices of the College of Architects of Catalonia, Demarcación de Tarragona " .

2. On 09/20/2022, the claim was transferred to the COAC, the claimed entity, so that within 15 days it could formulate the allegations it deemed relevant.

3. On 03/10/2022, the COAC formulated allegations in writing, in which it stated, in summary, the following:

- That " *in no case was this claim presented as an exercise of the right of access and that it was also not formulated through the channels enabled by the COAC to attend to these rights (access, rectification, cancellation and opposition, which until the year 2018 applied Law 15/1999)* ". "(...) *All exercise of rights must be sent either by regular mail or by email.*" .
"By ordinary mail it must be sent to the address (...) indicating in the subject "COAC Privacy Policy". In the event that it is done by email, the letter must be addressed to dadespersonals@coac.net and in both cases providing a copy of the DNI." .

- That *"We are facing a dispute between the owner or developer (...) and the construction manager (architect) unrelated to Data Protection. (...)"*.
- That, on 08/26/2016, the claimant presented to the COAC (Demarcation of Barcelona) a first letter which, according to the COAC's consideration, would correspond to a "Request for Collegial Intervention *addressed to the Incidents Committee of the demarcation of Barcelona.*" and that, in turn, on 09/21/2016, *" was sent to the Demarcation of Tarragona for its resolution (...)"* .
- That, on 03/10/2016, the Demarcation of the COAC in Tarragona responded to this first letter, (*" Request for Collegiate Intervention "*), *" through the Incidents Committee "*. In this regard, the COAC responded to the claimant by means of a statement, dated 09/29/2016, signed by (...) of the COAC in the Tarragona Region, which informed *"that the requested documentation was given in custody to the architect author of the project, (...)"* .
- That, on 10/26/2016, the claimant submitted a second letter, (*" a handwritten letter"*), before the COAC's Demarcation in Tarragona, *"In terms similar to his Request for Collective Intervention legal letter addressed to the Commission of Incidents"* , dated 08/26/2016, through which the claimant requested *"the same documentation"* .
- That, on 09/11/2016, *" in order to respond "* to the requests of the person making the claim, the COAC required the architect to deliver the requested documentation, which he had in custody. In this sense, the COAC pointed out that *" it is insisted on several occasions without obtaining the requested documentation "*.
- That on 04/05/2017, a burofax of the claimant was received at the COAC Demarcation in Tarragona , *"with instructions to deliver to the notary, Mr. (...)"* the following documentation: *" 1.(...) copy of the **Libro de Ordenes y Asistencias** corresponding to my home of (...)"*, *"2.(...) the original report signed by the (...) of its demarcation (...), sealed by the College of Architects of Catalonia; that was sent to my electronic mail (...), by the (...) of his school; last October 3, 2016 (**departure register nº (...)**)" , " 3.(...) a document signed by(...) indicating the **exact dates** (...) corresponding to the following events (...) a) **Exact date of the delivery of the Book of Orders and Assistance to the architect director of the work of Don (...), corresponding to my home** b) **Exact date of return to the College of Architects of Catalonia, of the Book of Orders and Assistance corresponding to me housing (...)** " .*
- That, on 05/05/2017, by means of a letter, dated 05/04/2017, signed by (...) of the COAC Demarcation in Tarragona, he required the architect director of the work, in order that he bring *" to the collegiate offices"* the documentation *"corresponding to the work approved with the number (...) (book of works and visits, certificate of completion of work and annexed documentation relating to the modifications introduced, evidence of control and results) (...)"* .
- That , on 05/18/2017, the said architect delivered the documentation, *"by coincidence of dates we understand that personally"*, to the COAC Demarcation in Tarragona and, on 05/19/2017, *" it is sent all the documentation received from the Notary Mr. (...)."*

In this sense, the claimed entity concluded that *the COAC had "responded (...), acting diligently and sending all the documentation delivered to its Notary, as soon as this documentation was in the possession of the COAC."*

4. On 06/10/2022, the claimed entity was required to provide, within 15 days, a copy of the evidence of the notification of the sending of said documentation to the notary that the claimant had designated

Well, the deadline granted to meet the Authority's requirements has been exceeded, without having received a response.

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. As a premise, taking into account that the various requests presented by the claimant here, are located in the period between 2016 and 2017, we must refer to the regulations that would apply in this case.

In this regard, it must be said that, at the time when this resolution is issued, Regulation (EU) 2016/679 of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons by regarding the processing of personal data and the free movement thereof (RGPD) and also Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereafter, LOPDGDD). However, the right of access subject to this resolution was exercised when the former Organic Law 15/1999, of December 13, on the protection of personal data (LOPD) and Royal Decree 1720 was in force /2007, of December 21, which approves the Regulations for the deployment of the LOPD (RLOPD), these being the applicable rules in the analysis of the possible neglect of the right of access exercised by the person making the claim, and which is the subject of this resolution.

Well, article 15 of the LOPD determined the following in relation to the right of access:

"1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.

2. The information can be obtained through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, without using keys or codes that require the use of specific mechanical devices.

3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

For its part, article 27 of the RLOPD, in its first and second section, provides the following regarding the right of access:

"1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications carried out or planned for this data.

2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.

However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD established the following:

"1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request. After the deadline has passed without an express response to the access 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 those affected, it must also notify them within the same period.

2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.

3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

Lastly, article 18 of the LOPD, regarding the protection of the rights of access, rectification, opposition and cancellation, established in its sections 1 and 2 the following:

"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.

2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable, of the competent body of each autonomous community, which must make sure of the validity or inadmissibility of the refusal."

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 COAC 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 initiated the present procedure for protection of rights, was the fact of not having obtained a response within the period provided for the purpose.

two written submissions from the person claiming were received by the COAC through which he exercised the right of access to various documentation which contained his personal data. It is also certified that, on 05/04/2017, a burofax was received at the COAC Demarcation in Tarragona by which the claimant reiterated said requests for access and gave *"instructions to deliver to the notary, Mr. (...)"* the requested documentation for the purposes of obtaining *"the appropriate certifications"*.

In accordance with article 29 of the RLOPD, the COAC had to resolve and notify the request for access 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 this sense, the COAC, as part of the hearing procedure of this guardianship procedure, reported on the different actions that the entity carried out in response to the entry of each of the three requests.

In relation to the first request (dated 26/08/2016), the COAC informs that, on 03/10/2016, it responded to the person making the claim, and sent him a statement signed by (..) of the Demarcation of the COAC in Tarragona, by which the person claiming was informed that the requested documentation had been given in custody to the architect author of the project. In relation to the second request (dated 10/26/2016), for which the claimant reiterated his request for access, according to the COAC, on 11/09/2016, he required the architect that he deliver the documentation he had in custody, *" for the purpose and effect of responding "* to the requests of the person making the claim . Finally, in relation to the request sent by burofax (dated 04/05/2017), through which the claimant reiterated the said requests for access and gave *" instructions to deliver to the notary, (...), a series of documentation (...)."* , the COAC stated that, on 05/18/2017, the architect would have delivered the documentation

to the COAC Demarcation in Tarragona and that, on 05/19/2017, " *all the documentation received is sent to the Notary Mr. (...)* "

Well, according to what has been said, the COAC only responded to the first of the three requests presented by the claimant here, this response being, however, extemporaneous, given that it took place once the deadline for a month planned for the purpose. With regard to the content of what is answered there, about the fact that they did not have the requested information since it was in the custody of the architect, it is a matter that will be the subject of analysis in the 4th section of this resolution

In relation to the other two requests (dated 26/10/2016 and 04/05/2017), it should be noted that, although the entity carried out different actions to try to satisfy the right of access only tendered, the truth is that, in neither case, the claimed entity gave an answer to the applicant. So things are, in these cases the COAC would have failed to comply with the obligation established in article 25.2 of the RLOPD that: "*the person responsible for the treatment must respond to the request addressed to him in any case, regardless of whether they appear or not personal data of the affected person in their files*".

Consequently, and from a formal point of view, it must be concluded that the COAC did not resolve any of the three requests submitted by the affected person within the legally set deadline. This notwithstanding what will be said below regarding the substance of the claim.

4. Once the above has been established, it is necessary to analyze the merits of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms usually tender the person claiming.

Article 15 of the LOPD recognizes the right of the interested person to request and obtain free of charge information about their personal data that is the subject of treatment, as a manifestation of the fundamental right to data protection (Article 18.4 EC), by which every person is guaranteed control over their data. In accordance with this, article 15.2 of the LOPD expressly recognizes the right to obtain information regarding the data subject to treatment by means of writing, copy, telecopy or photocopy, certified or not.

At this point, it is necessary to make a point about the fact that in the last of the requests, the person claiming requested, among others, access to the original of a document ("*original report signed by the (...) of its demarcation*"). In this regard, it should be made clear that the right of access provided for in article 15 of the former LOPD does not include the right of access to the *original documentation* containing the personal data of the person holding the data who exercises such right, but only includes access to the information of your personal data that is the subject of treatment (art. 15.1 LOPD), as well as the right to obtain the indication of the data that is the subject of treatment by means of a copy, certified or no (art. 15.2 LOPD), but they do not purchase the right to be provided with the original documentation containing their personal data.

Consequently, the person claiming here had the right to access, in general, the certified copy of the documentation relating to the monitoring of the work on his single-family house. All this, without prejudice to the limitations that may arise from the existence of rights of third parties (article 23 LOPD).

Having said that, it is necessary to refer to the statements of the COAC regarding the fact that the requests submitted by the person making the complaint here did not have the nature of a request for the right of access to their own data.

In relation to this, it should be noted that, contrary to the considerations formulated by the COAC, the three letters that the person making the claim here addressed to the COAC (the two " *College Intervention* " requests, dated 26/08 /2016 and 26/10/2016, and the burofax, dated 04/05/2017) , would indeed fit within the right of access regulated in article 15 of the old LOPD. In this regard, it should be clarified that, despite the fact that in the text of the first letter reference was made to a "*Request for collegial intervention* ", which could have induced the COAC to discard its treatment as a right of access provided for in the old LOPD, the truth is that, in order to exercise the right of access to personal data regulated by the legislation on the protection of personal data, it is not essential that in the writing with which exercise this right of access, the interested person expressly invokes article 15 of the former LOPD or the regulations for the protection of personal data. Therefore, the determination of whether or not what is being requested fits into the mentioned right of access, does not depend on the qualification that the interested party makes of his writing or the precepts that he cites, but on the claim that is specifically formulated.

In this regard, it should be noted that, although it is true that, in none of the three requests submitted, the person claiming did not expressly invoke the exercise of the right of access to their data, they did state that what he asked for was to obtain the certified copy of various documentation ("*the book of orders and visits, final certificate of work and accompanying documentation (modifications introduced), control tests carried out and results obtained*"), referring to the construction file of the your family home ("*mi vivienda* ", "*nuestra ruinosa obra* ", "*vivienda unifamiliar*") , and consequently, access to a series of documents whose content contained your personal data or, in any case, information regarding your person or your actions.

Having said that, it is necessary to analyze whether with the different actions carried out by the COAC it could be considered that the entity would have resolved to satisfy the exercise of the requested right of access.

First of all, it should be noted that with the first response dated 10/03/2016, it could be considered that the entity complied with the exercise of the right of access, given that it gave a response (even though extemporaneous), in which they indicated to the applicant that they could not hand over the requested documentation since they did not have it ("*the requested documentation was handed over to the author architect of the project.*"). In this regard, it is obvious that the lack of availability of the requested documentation prevented their access, and therefore, the response denying access would be in accordance with the law. All this, without prejudice to the fact that from the content of said answer it may be inferred that COAC has failed to comply with the duty of custody of the documentation, since, according to the applicable sector regulations, once the work has been completed, it has to keep at the corresponding professional association (section II.1.4 of Annex II of *Royal Decree 314/2006, of March 17, by which the Technical Code of the Building is approved*). On the other hand, as the entity stated in the hearing procedure, no response was given to the applicant in the second request. And, once the claimant's third request has been received via burofax

(04/05/2017), the COAC retrieves the documentation from the architect who guarded it, and according to reports, sends it to the notary who it indicates (19/05/2017). Therefore, in this last case, although the COAC did not get to give an answer, it can be interpreted that it would have resolved the access request formulated in an estimative sense, given that it followed the instructions indicated in the letter of the interested person, in order to be able to make effective the right of access requested. However, this end has not been accredited by the COAC, given that this Authority required him to provide evidence of notification of the transfer of the documentation to the notary designated by the claimant, without the entity having complied as of today to said request. Likewise, there is no evidence that the COAC had given a response to the applicant indicating that their request for access to their own data was appreciated, and that the required documentation had been sent to the indicated notary .

5. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the person in charge of the file must be required so that within 10 days to exercise the right in relation to the claimant's data.

In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, it certifies that it transferred the documentation to the notary designated by the person making the claim, and that in the event that he had communicated this transfer to the person requesting, he would also certify such communication.

Otherwise, if it is not possible to prove the previous points, this Authority considers it appropriate to require the claimed entity so that within 10 counting days from the day after the notification of this resolution, give transfer of the documentation to the notary designated by the person claiming and notify a response to the person claiming indicating this end.

Once the right of access has been made effective, in the following 10 days the claimed entity must give an account to the Authority of the actions that have been carried out to make effective the right of access of the claimant person

For all this, I resolve:

- 1.** Estimate the guardianship claim made by the Lord (...) against the College of Architects of Catalonia (COAC).
- 2.** Request the College of Architects of Catalonia (COAC) so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access exercised by the person claiming, in the form indicated in the 5th foundation of law. 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 College of Architects of Catalonia and to the person making the claim.

4. 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,

Machine Translated