

File identification

Resolution of the rights protection procedure no. PT 89/2022, brought against Barcelona de Serveis Municipals, SA.

Background

1. On 04/10/2022, two letters from Mr. (...) (hereafter, claimant) for which he made a single claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the public company Barcelona de Serveis Municipals, SA (in forward, B:SM).

Specifically, on date (...) /2022, the claimant filed a first claim with the AEPD where he explained that, on date (...) /2022, he had asked B:SM for the list of companies " *third parties who have access to my personal data*" and complained that B:SM had not responded . Subsequently, on date (...) /2022, the claimant submitted a second claim to the AEPD, " *En relación y ampliación* " of his initial claim (dated (...) /2022), agreeing that, given the lack of response from B:SM to its first request, on (...) /2022, it had submitted a second request for the right of access to B:SM asking " *of nuevo la información* " , to which the entity had responded the same day, but in a " *clearly evasive and incomplete way* ". Finally, he explained that on (...) /2022, he asked for the same information again for the third time, without receiving any response in this regard.

The claimant accompanied his submissions with a copy of the thread of emails exchanged with B:SM, on (...) /2022, (...) /2022 and (...) /2022, with Subject " *Third Parties* ":

- Copy of the email, dated (...) /2022 at 9:29 p.m., by which the claimant addressed B:SM, ((...)), to request the " *list of companies third parties that have access to my personal data, apart from Barcelona de Serveis Municipals, SA, Parc d'Atraccions Tibidabo, SAU and Cementiris de Barcelona, SA*" .
- Copy of the e-mail, dated (...) /2022 at 09:29 hours, by which the claimant once again addressed B:SM, ((...)), to reiterate the first request, of date (...) /2022, (" *Please send information about third parties with access to my personal information*").
- Copy of the email, dated (...) /2022 at 3:52 p.m., sent from the email mailbox ((...)) and addressed to the person making the claim, for which B:SM replied as follows:

" *The assignment or communication of data is a processing of data that involves disclosing it to a person other than the owner, that is to say, to a third party to whom access is granted, as long as he is not considered to be in charge of the treatment . In this regard, the personal data collected by B:SM are only subject to transfer or communication to third parties if the consent of the interested person is obtained or if this is permitted by current legislation.*

Therefore, your personal data, except in cases of legal obligation or authorization, are currently not communicated to any third party responsible for the processing, and are only processed by B:SM and the supplier companies that act on behalf and on behalf of B:SM

- Copy of the email, dated (...) /2022 at 7:16 a.m., by which the claimant once again addressed B:SM, ((...)), stating the following: "(.. .) *his answer is incomprehensible to me and my request is not answered*" and, in this regard, he asked " *to know with which companies BSM SA has shared my data apart from Barcelona Municipal Services, SA, Parc d'Atraccions Tibidabo, SAU and Cementiris of Barcelona, SA, and for what purpose* ".
- 2. On 17/10/2022, the claim was transferred to the public company B:SM so that within 15 days it could formulate the allegations it deemed relevant.
- 3. On 08/11/2022, the claimed entity formulated allegations by means of a letter of the same date, in which it set out, in summary, the following:
 - That, on date (...) /2022 at 9:29 p.m., "the claimant submitted a request to exercise the right of access to his personal data to B:SM (...)", ("First Request"), referring to the "(...) ***list of 'third party' companies that have access to my personal data, apart from Barcelona de Serveis Municipals, SA, Parc d'Atraccions Tibidabo, SAU and Cementiris de Barcelona, SA***".
 - That, on (...) /2022 at 9:25 a.m., the claimant filed a first claim with the AEPD, "for the alleged neglect" of his request, "(...) when still the maximum period of one month had not passed to resolve his request for the right of access, given that the First Request was submitted on (...) of 2022."
 - That, on the same day (...) /2022 at 09:29 hours, "the claimant reiterated his request for access to B:SM ("Second Request") (...)", indicating the following: "(...) We pray forward information about third parties with access to my personal information."
 - That in the " (First Request and Second Request), the claimant expressly limits the scope of access requests, indicating that he only wants to know the list of "third party" companies that have access to your personal data, apart from B:SM, Parc d'Atraccions Tibidabo, SAU and Cementiris de Barcelona, SA."
 - That "From B:SM we interpret that the person making the claim is referring to article 15.1 c) of the RGPD (...)", "although, as can be seen from their requests, it only refers to third party companies as recipients of the data."
 - That "B:SM differentiates between two types of data processing: on the one hand, transfers of data to third-party companies, and, on the other hand, the supplier companies in charge of processing that act in the name and on behalf of B:SM."
 - That, on (...) /2022 at 3:52 p.m., " B:SM proceeded to respond" to the first and second requests and, among others, informed the claimant "(.. .) that currently there is no transfer of data to any third company responsible for the treatment, and only in cases of legal obligation or authorization, B:SM would proceed with the transfer of the data of the person making the claim. (...). In this sense, the Privacy Policy of B:SM (<https://B:SMsa.cat/es/aviso-legal-i-privacidad>) in the recipient section indicates that the images may be transferred to the Forces and State Security Bodies, as well as the Courts and Tribunals in compliance with a legal obligation applicable to B:SM.SA as the person responsible for the treatment .

- That "As has been made clear in the response (...) (...), it is clearly indicated by B:SM that there are no data transfers of the person claiming, responding to that alone requested by the aforementioned claimant" .
- That, on date (...) /2022, the claimant submitted a " new request for access" ("Third Request"), to find out " (...) with which companies he shared his data B:SM SA apart from Barcelona de Serveis Municipals, SA, Parc d'Atraccions Tibidabo, SAU and Cementiris de Barcelona, SA, and for what purpose. (...)" .
- That, on (...) /2022, the claimant filed a second claim with the AEPD, in which he extended the initial claim (dated (...) /2022), acknowledging that he had not received response to the third request, dated (...) /2022.
- That " B:SM has not responded to the Third Request of the person claiming because it was excessive and repetitive, in the terms prescribed by article 12.5 of the RGPD, a fact that justifies the lack of response on the part of B :SM."
- That "On the other hand, article 13.3 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights ("LOPDGDD") determines the following, also in relation to the right to access: "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 reason legitimate to do so".
- That " In the lower period of 2 months, the person claiming has requested in the three requests (and indirectly in two claims), in essence, the same information to B:SM. Therefore, considering article 12.5 of the RGPD, the CEPD Guidelines and the aforementioned article 13.3 of the LOPDGDD, the Third Request was clearly excessive and repetitive. (...)" .

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 applications. 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 B:SM 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 accordance with article 12.3 of the RGPD, the company B:SM had to give an answer to the interested party within a maximum period of one month from the date of receipt of the various requests.

In this regard, it is certified that, on (...) /2022 and (...) /2022 (at 09:29 hours), they had access to the mailbox enabled by B:SM, ((...)), two e-mails from the claimant through which he exercised the right of access to the list of "third party" companies with access to his personal data. These two emails got a response from B:SM on the same day (...) /2022 (at 15:25 hours).

Therefore, it must be concluded that the claimed entity responded to the access request within the legal deadline of one month established for that purpose.

As for the content of what is answered there, it is a matter that will be the subject of analysis in the 4th section of this resolution

On the other hand, it is also proven that, on (...) /2022, a third email from the claimant was received in the mailbox of B:SM, in which he expressed his disagreement with the terms in which he had been given an answer on (...) /2022 (" *su respuesta me resulta incomprendible* "), and he was requesting again the same information he had requested through his previous emails, dated (...) /2022 and (...) /2022.

This third request, sent by the person here claiming by email to B:SM, did not receive a response from the entity.

In the framework of the hearing procedure of this guardianship procedure, B:SM has acknowledged that it has not responded to the third request, because, in its opinion, said request was "excessive and repetitive, in the terms prescribed by article 12.5 of the RGPD". Well, in this sense, it should be noted that article 12.4 of the RGPD provides that, in the event that the data controller decides not to proceed with the request of the interested party, he has the obligation to inform to the person requesting, within a maximum period of one month from the receipt of the request, about the reasons that would justify their non-action and the possibility of presenting a claim before the control authority and exercising judicial actions. This information was not provided by B:SM, thus leaving this last request unanswered.

Consequently, from a formal point of view, it must be concluded that, although B:SM responded to the first and second requests within the legally fixed term (Article 12.3 of the RGPD), this was not the case in the third request, in which he did not get to give any answer to the applicant.

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, the right of access to the data was satisfied in the terms that · legality of the person claiming.

As a starting point, it should be borne in mind that article 15 of the RGPD defines the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case , access said data and information on the

purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

Having said that, first of all, it is necessary to analyze whether B:SM would have made effective the right of access exercised by the claimant here through the different applications submitted.

With regard to the first and second requests (of dates (...)/2022 (...)/2022), relating to the *"list of third-party companies that have access to my personal data, apart from de Barcelona de Serveis Municipals, SA, Parc d'Atraccions Tibidabo, SAU and Cementiris de Barcelona, SA"* , it is certified that, on date (...)/2022, B:SM responded to the claimant. In this response, first of all, the entity reported on how the data protection regulations define a data communication, and made special reference to those data communications between a person in charge of the treatment and the person in charge of the treatment, which under from the perspective of data protection, they do not have the consideration of data communication, as provided for in article 33.1 of the LOPDGDD. From there, the entity informed the applicant that *" his personal data, except in cases of legal obligation or authorization, are currently not communicated to any third party responsible for the treatment, and are only processed by B:SM and the supplier companies that act in the name and on behalf of B:SM"*.

Well, in relation to B:SM's response , it should be noted that, in fact, as reported by the entity, it was not necessary for B:SM to identify in its response the companies that processed personal data in the capacity of those in charge of the treatment, given that, given this nature, they are not considered recipients of the communications of personal data that may be made to them by the person in charge of the treatment under the terms of section c) of I article 15.1 of the RGPD, and consequently this information does not fall within the content of the right of access defined by said article 15 of the RGPD.

Also, in its response, the entity also rules out that the data of the reporting person have been communicated to *" any third company responsible for the treatment"*. This reference could be understood to be made to what the applicant sets out in his application about a possible communication of data to third companies of the B:SM business group - *" Barcelona de Serveis Municipals, SA, Parc d'Atraccions Tibidabo, SAU and Cementiris de Barcelona, SA"*, which , according to the information clause on data protection on the B:SM website (<https://bsmsa.cat/es/aviso-legal-i-privacidad>), are part of the same business group as B:SM and are responsible for the processing of the personal data they collect in relation to the provision of the services they offer.

Now, having said that, it should be noted that, despite the fact that the entity in its statement of allegations, defends that in its response to the person claiming " *it is clearly indicated by B:SM that there is no transfers of the claimant's data*", the truth is that, from its literal meaning, it was not clearly inferred that the entity had not really communicated their personal data to third parties, who did not have the status of data processors, in compliance with a legal obligation or via another legal authorization. In this sense, the answer is not very precise, given that, in purity, it does not give a specific answer to the request of the person requesting, that is to say, they do not specify whether their data has been communicated to third parties, but that rather, the answer seems to refer to the general policy on data protection that the entity has in the case of personal data transfer treatments, with generic reference to the legal exceptions regime.

Consequently, in accordance with the above, it is considered that although B:SM responded to the first two access requests of the person making the claim, it did so imprecisely at the time of informing whether or not your data had been communicated to third parties due to legal obligation or authorization.

Finally, in the case of the third request, dated (...)/2022, through which the interested person expresses dissatisfaction with the entity's response, considering that it is a response unclear, which is why he reiterates the right of access to his data again with the same terms as he had done in the two previous requests, it is proven that the person making the claim did not get any response in this regard.

In its allegations to the hearing procedure, B:SM justifies the lack of response by the fact that the access request was " *excessive and repetitive, in the terms prescribed by article 12.5 of the RGPD*". Despite this the truth is that the interested person has the right to receive a response to his request in exercise of the right of access, without prejudice to the fact that in this response the entity may indicate the reasons why no action based on article 12.5 of the RGPD. In other words, the entity has the obligation, in any case, to give an answer, even in the event that it is only to inform the person making the claim of the reasons for not attending to a single request for rights (article 12.4 and 12.5 of the RGPD).

Consequently, the present claim for the protection of the right of access should be considered, given that it is proven that, although B:SM formally responded to the first and second requests, this response was imprecise regarding the information on whether the data of the claimant have been transferred or not to third parties in accordance with a legal obligation or legal authorization. And on the other hand, it is also proven that he has not responded to the third request to inform the claimant here of the specific reasons why he decides not to give it a course.

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 make the exercise of the right effective. 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 gives an answer to the person making the claim, clearly confirming whether the your personal data, aside from those in charge of treatment, have been transferred or not to third parties, including communications that may have been carried out with legal authorization, and in the event of transfer, the recipients of the personal data will be identified.

Once an answer has been given, in the terms set out, and the person making the claim has been notified, in the following 10 days the claimed entity must give an account to the Authority.

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against Barcelona de Serveis Municipals SA (B:SM).
2. Request Barcelona de Serveis Municipals SA (B:SM) so that, within 10 counting days from the day after the notification of this resolution, it confirms to the person claiming whether their data has been transferred or not to third parties, in the manner indicated in the 5th 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 Barcelona de Serveis Municipals SA (B:SM) and 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,