

## File identification

Resolution of the rights protection procedure no. PT 95/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 18/10/2022 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 delete personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

Specifically, the claimant requested the deletion of his personal data related to police proceedings no. (...) (and extensions (...)) contained in the file in the area of information systems of the Generalitat Police (SIP PF), and for these purposes he provided the following documentation:

- Request to delete the data contained in the SIP PF scope file dated 04/20/2022.
- Resolution issued by the General Director of Digital Transformation of the Administration of Justice (by delegation of the Minister of Justice), by which it is estimated the deletion of criminal record data contained in the "Central Register of Penalties" *corresponding to the person claimant (executive (...))*.
- Accreditation of sending the claimant's data deletion request to the DGP through the Postal Service (admitted on 04/20/2022).

2.- By official letter dated 10/20/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 28/10/2022 the DGP made allegations where, among others, it stated the following:

- That on 04/21/2022, the applicant requested the deletion of various personal data recorded in the file of the SIP area (PF), specifically, those related to police proceedings no. (...) (and expansions (...)).
- That on 10/17/2022, the Director General of the Police issued a resolution in which he agreed to effect the deletion of the personal data contained in the SIP (PF) file that the interested party requested.
- That the resolution was sent to the person concerned at the address indicated in his request for these purposes.

The DGP provided various documentation, including:

- Copy of the request of 04/20/2022 for the deletion of the data and of the documentation that was attached, which stated that the date of entry into the DGP of said request was the 21st /04/2022.
- Copy of the resolution of the DGP issued on 17/10/2022.
- Copy of the notification of 24/10/2022, without the date of departure registration.

The DGP did not provide documentary evidence of the practice of notifying the estimated resolution to the person making the claim.

## 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 subject to treatment by the DGP referred to in this claim relating to the request to exercise the right of deletion submitted to the DGP registry on 04/21/2022, fall within the scope of application of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions (LO 7/2021).

3.- Okay with the above, it is necessary to go to article 23 of LO 7/2021, which in relation to the right of deletion provides the following:

*"2. The person responsible for the treatment, on his own initiative or as a consequence of the exercise of the right of deletion of the interested party, will delete the data personal yes procrastination improper and, in any case, within a maximum period of one month from the date of receipt knowledge, when the treatment infringes articles 6, 11 or 13, or when the data personal must be deleted by virtue of a legal obligation to which it is subject \_*

*3. Instead of proceeding to the deletion, the person responsible for the treatment will limit the processing of the data personal when any of the following occurs circumstances:*

*a) The interested party question the accuracy of the data personal and cannot be determined its accuracy or inaccuracy.*

*b) The data personal they must be kept for the purpose evidentiary \_*

*When the treatment stay limited under letter a), the person responsible for the treatment will inform the interested party before lifting the limitation of the treatment".*

*"(...) 5. When the data personal there are been rectified or deleted or the treatment hay been limited, the data controller will notify the recipients, who must rectify or delete the data personnel who are under su liability or limit su treatment".*

Likewise, it should be borne in mind that in the event of restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment, it is necessary to refer to articles 24 and 25 of LO 7/2021, which determine what:

*" Article 24. Restrictions on the rights of information, access, rectification, deletion of data personal and its limitation \_ treatment \_*

*1. The person responsible for the treatment will be able postpone, limit or omit the information referred to in article 21.2, as well as deny, in whole or in part, requests to exercise rights contemplated in articles 22 and 23, provided that, taking into account the rights fundamentals and interests legitimate of the affected person, result necessary and proportionate for the achievement of the following purposes:*

*a) Prevent them from getting in the way inquiries, investigations or procedures judicial \_*

b) Prevent it from happening prejudice to the prevention , detection , investigation and prosecution of infractions criminal charges or the execution of criminal sanctions . c) Protect public safety .

d) Protect National Security.

e) Protect the rights and freedoms of others people \_

2. In case of restriction of rights contemplated in articles 22 and 23, the person responsible for the treatment will inform the interested party in writing yes procrastination improperly , and in any case, within one month from the date of receipt knowledge , of happiness restriction , of the reasons thereof , as well as of the possibilities of presenting a claim before the data protection authority , sin \_\_ prejudicial of any remaining legal actions \_ exercise under the provisions of this Law organic \_ The reasons for the restriction may be omitted or replaced by neutral wording when the reasons for the restriction are disclosed can put at risk the ends referred to in the previous section .

3. The person responsible for the treatment will document the de facto or legal grounds on which the decision is based denial of the exercise of the right of access . Dicha information will be at the disposal of the data protection authorities "

" Article 25. Exercise of the rights of the interested party through the data protection authority .

1. In cases where there is a postponement , limitation or omission of the information referred to in article 21 or a restriction of the exercise of rights contemplated in articles 22 and 23, in the terms provided for in article 24, the interested party will be able exercise sus rights through the data protection authority \_ competent \_ The person responsible for the treatment will inform the interested party of this possibility .

2. When , by virtue of what is established in the previous section , the rights are exercised through the data protection authority , this must inform the interested party , at least , of the completion of all checks necessary or the revision corresponding and of his right to interpose resource contentious-administrative "

In paragraph 1 of article 52 of LO 7/2021, regarding the regime applicable to the procedures processed before the data protection authorities, it is foreseen that:

"1. In the event that the interested parties appreciate that the treatment of the data personal hay violated the provisions of this Law Organic or not been served su request to exercise rights \_ recognized in articles 21, 22 and 23 will have right to file a claim before the data protection authority (...) "

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, deletion or opposition, or who may understand that their request has been rejected due to the fact that it has not been resolved within within the established period, they can submit a claim to the Catalan Data Protection Authority."

4.- Next it is necessary to analyze whether the DGP has attended to the right of deletion exercised by the person making the claim in accordance with the regulatory framework of

application, given that his reason for complaint was the fact of not having obtained any response within of the period provided for the purpose.

In the present case, it is proven that, on 04/21/2022, the claimant's deletion request was entered in the DGP's entry register.

In accordance with article 20.4 of LO 7/2021, the DGP had to resolve and notify, within a maximum period of one month from its presentation, the request for deletion of the person claiming.

Well, it is proven that although the claimant submitted the request to exercise the right to delete the data before the DGP on 04/21/2022 (date of entry in the register of the claimed entity), the estimated resolution of his request was issued on 17/10/2022, that is to say, well past the one-month resolution deadline provided for the purpose. That being the case, it can be concluded that the DGP extemporaneously resolved the request of the person making the claim.

Regarding the merits of the request for the deletion of the personal data that appeared in the SIP PF file, the DGP has certified that it has agreed to the deletion of this data in the terms requested by the person making the claim, as can be seen from the resolution of 17/10/2022, provided by the DGP to this Authority.

**5.-** Lastly, although the DGP has certified that it issued the estimated resolution dated 17/10/2022, regarding the deletion request made by the person making the claim, there is no documentary evidence that this resolution has been notified, which is why it is considered appropriate to require the DGP so that within 10 counting days from the day after the notification of this resolution, certify that the resolution issued on 17/10/2022, estimate of the right to deletion, has been effectively notified to the person making the claim.

For all this, I resolve:

- 1.** Declare extemporaneous the resolution of the General Directorate of the Police dated 17/10/2022, which considers the request of Mr. (...), of deletion of your personal data contained in the SIP PF file, without entering into other considerations regarding the fund, since the DGP has decided to delete your data.
- 2.** Request the DGP so that, within 10 counting days from the day after the notification of this resolution, accredit the notification to the claimant of the estimated resolution dated 10/17/2022, in the terms indicated in the 5th foundation of law.
- 3.** Notify this resolution to the DGP 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,

Machine Translated