

## File identification

Resolution of the rights protection procedure no. PT 105/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 02/12/2022 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 of access to personal data that he had previously exercised before the General Directorate of the Police (hereinafter, DGP).

The claimant certified that, on 03/11/2022, he submitted to the DGP's entry register, the request to exercise the right of access to his personal data that appeared in the files of the area of the information systems of the Generalitat Police (SIP PF and PFMEN).

2.- By order dated 12/14/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 05/01/2022, the DGP sent the Authority its statement of objections, which basically set out the following:

- That on 03/11/2022, the person here claiming requested access to his personal data recorded in the SIP PF scope file and in the SIP PFMEN file.
- That on 02/12/2022, the director general of the Police issued a resolution in which he agreed to make effective the access to the personal data contained in the SIP PF file.
- That given that the DGP, in compliance with current regulations, did not have data in the SIP [PF] MEN, since they are deleted upon reaching the age of majority, in the resolution no express mention was made of those data.
- resolution dated 12/02/2022 and the service of notification were sent to the postal and email address indicated in the claimant's request for these purposes.

The DGP provided various documentation, including:

- 1) Copy of the access request submitted to the DGP registry (03/11/2022).
- 2) Copy of the resolution issued (02/12/2022).
- 3) Copy of the official notification of the resolution (15/12/2022) -with registration date of departure 19/12/2022-.
- 4) Proof of evidence of the deposit of the electronic notification and proof of receipt of the electronic notification to the claimant, both dated 12/19/2022 .

## 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, relating to the request to exercise the right of access submitted to the DGP's entry register on 03 /11/2022, 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 'execution of criminal sanctions (LO 7/2021).

3.- Okay with the above, it is necessary to go to article 22 of LO 7/2021, which in relation to the right of access provides the following:

*" Article 22. The interested party 's right of access to his/her data data personal \_  
1. The interested party will have right to obtain from the person in charge of the treatment confirmation if they are processing or not data personal that \_ concern \_ In case the treatment is confirmed , the interested party will have right to access said \_ data personal , as well as the following information :  
a) The purposes and the legal basis of the treatment .  
b ) Data categories personal in question .  
c) The recipients or categories of recipients to whom there are been data communicated \_ personal , in particular, the recipients established in States other than members of the European Union or organizations international \_  
 ) The data retention period personal , when be posible , or, otherwise, the criteria used to determine said term.  
e) The existence of the right to request the rectification or deletion of the data from the data controller personal relating to the interested party or its limitation treatment \_  
f) The right to file a claim before the data protection authority \_ \_ competent authority and its contact details .  
g) The communication of the data personal object of treatment , as well as any other available information about its origin, without revealing the identity of any natural person, especially in the case of sources confidential \_  
(...)"*

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 their 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 the 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 review 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.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP attended to the right of access exercised by the person here claiming within the period provided for by the applicable regulations.

In this regard, it is certified that on 03/11/2022 the DGP received a letter from the interested person, the claimant here, through which he exercised the right of access to his personal data.

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 the date of receipt of the request for access presented by the person claiming .

Well, as can be seen from the documentation provided in this file, the DGP issued on 02/12/2022 the resolution responding to the request for access submitted on 03/11/2022. However, although said resolution of the DGP was issued within a period of one month, the

same cannot be said regarding its notification, since from the documentation provided it is inferred that the practice of notification, both on paper and through electronic means, it was carried out extemporaneously.

With regard to the notification by post of the resolution dated 02/12/2022, although the DGP has not presented proof of receipt of said notification, it should be noted that, from the copy of the notification on paper, issued on 12/15/2022 and with an exit registration date of 12/19/2022, is sufficient evidence to conclude that said notification occurred outside the one-month period established for the purpose .

On the other hand, with regard to the notification through electronic means - authorized by the person here claiming in his request for access -, it is certified that the DGP, on 19/12/2022, put at the disposal of the person claiming the notification of the resolution dated 12/02/2022, which was accepted electronically on the same day 12/19/2022.

Therefore, taking into account that the maximum period set for consideration given the right of access is to resolve and notify (art. 21 LPAC), and that before the end of this period the resolution must have been notified, or at least if the duly accredited notification attempt did not take place (art. 40.4 LPAC), it must be concluded that the DGP, although it resolved within the established deadline, the notification of the resolution dated 12/02/2022 was produced after the deadline of one month from the request for access (03/11/2022).

Consequently, it must be stated that the DGP, although it resolved the access request, did not notify the resolution of the request within the legal term set to consider the right of access granted. This notwithstanding what will be said below regarding the substance of the claim.

**5.-** Regarding the merits of the claim, it is proven that the DGP has agreed to provide the claimant with access to personal data contained in the SIP PF file .

However, the claimant's request also included access to the data corresponding to his minor age contained in the SIP PFMEN file. In the framework of the present claim, the DGP has indicated to the Authority that the person is of legal age, which is why there is no data relating to his minor age and that for this reason " *no no express mention was made of that data*" in the resolution of 02/12/2022. Likewise, it should be specified that the Authority is not aware that this information has been provided to the person making the claim here by any other means.

In this regard, it should be borne in mind that the right of access includes the right of the person who exercises it to know whether or not their personal data is being processed in the area specified in their request. Therefore, and taking into account the content of the access request made by the person making the claim, which included access to the data in the SIP PFMEN file, the DGP also had to inform him that there was no corresponding personal data to his minority in this file (SIP PFMEN). This being the case, it must be concluded that the response provided by the DGP to the person making the claim was incomplete.

**6.-** Therefore, although the DGP has certified that it issued the estimated resolution dated 02/12/2022, regarding the request for access to personal data contained in the SIP PF file, the fact is that, no it can be considered that the entity has correctly attended to the exercise of the right of access requested.

In this regard, it should be noted that, on the one hand, the resolution dated 02/12/2022 was notified extemporaneously, and on the other, its content was not complied with, given that it

did not respond to the part of the request for access regarding the data that could eventually be contained in the SIP PFMEN file.

That is why, this Authority considers it appropriate to require the DGP so that, within 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the right of access of the person claiming with regard to the data in the SIP PFMEN file , in accordance with what is stated in the 5th legal basis.

Once the claimant's right of access to the personal data in the SIP PFMEN file has been exercised, the claimed entity must report to this Authority within the next 10 days.

For all this, I RESOLVE:

1. Declare that the General Directorate of the Police, in relation to the part of the request of Mr. (...) which refers to the exercise of the right of access to the data contained in the SIP PF file, has not attended to the right exercised within the deadline, without entering into other considerations regarding the fund with regard to the access to the data contained in the SIP PF file, since the resolution of the DGP dated 02/12/2022 has resolved to facilitate access to your data.
2. Partially estimate the claim with regard to the part of the request of Mr. (...) which refers to the exercise of the right of access to the data contained in the SIP PFMEN file, due to neglect of the right of access to said data, in accordance with what is stated in the 5th legal basis .
3. Request the DGP so that, within 10 days from the day after the notification of this resolution, make effective the right of access exercised by the person claiming in relation to the data that may appear in the SIP file PFMEN, in the form indicated in the 6th legal basis.
4. Notify this resolution to the DGP and the person making the claim.
5. 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 February 20, 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 term 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,