

## File identification

Resolution of the rights protection procedure no. PT 108/2022, petition against the Mataró City Council.

## Background

1. On 07/12/2022, the Catalan Data Protection Authority received a letter from Mrs. (...) (from now on, the person making the claim), of a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the company (...) ((. .)), responsible for the treatment of the Mataró City Council.

The claimant explained that he had requested the right of access on 02/17/2022 and that he had reiterated it on 02/22/2022. In this sense, it indicated that the right of access formulated referred to "all of my data", an expression that would include "e-mails exchanged with members of the Corporation and this company or with each other."

The claimant provided various documentation relating to the exercise of this right, specifically the following of interest here:

- Copy of the email sent by the claimant to (...) data from (...), on 02/22/2022. In the text of this email it is indicated: " And I reiterate the request for full access to all my data, as I have not received a response, to exercise my right of access based on art. 15 and 16 of the RGPD. "
  - Copy of the email sent by an employee of (...) ((...)) to an employee of the Mataró City Council ((...)), on 02/23/2022, and which reads as subject "Communication of request to exercise rights over personal data." In the text of this e-mail, it is indicated that "we inform you of the request we have received from an employee of the Mataró City Council regarding the exercise of rights over her personal data."
2. On 12/16/2022, this Authority required the person claiming a copy of the initial request to exercise the right of access dated 02/17/2022, which he mentioned in his claim but did not provide, in order to know the exact terms in which he had formulated the request for the initial right of access.

Also, through this request, the person making the claim was also informed that, given that the company (...) has the status of being in charge of the processing of the Mataró City Council, it is not up to it to respond to requests for exercise of rights given that, in accordance with articles 12 and 15 of the RGPD, it is an obligation of the data controller (Mataró City Council). In relation to this, he was also required to provide the eventual response that the Mataró City Council would have given to his request for the right of access, if that was the case.

On 12/20/2022 , the claimant provided various documentation in response to the amendment request, some of which he had already submitted together with his letter of claim. The documentation provided, among others, was the following:

- Copy of the email sent by the person claiming to (...), on 02/17/2022. In the text of the e-mail, among other matters, the right of access is requested with the following terms: " I request that a copy of all the documents that have been issued in relation to me be given to me, to exercise the right of access based on art. 15 of the RGPD (...)."
- Copy of the thread of emails exchanged between the claimant and Mataró City Council, from 03/17/2022 to 03/25/2022. For what is of interest here, the mentioned e-mails are linked and the parts where the request for the right of access to personal data is referred to are set out:

- 03/17/2022: email sent by the person making the claim to the City Council, which states "I asked them for all the information related to (...) consulting directly, which contained my data, and they told me that addressed directly to you."

In relation to this, he requests "to obtain all the data exchanged between this company and the City Council with my personal data. Given that of the information requested, I have only been provided with a few reports and I also request the internal emails exchanged with this company with my personal data. Can you make it easier for me?"

- 18/03/2022: response email from the City Council to the person making the claim:

"In relation to the requests you made in your e-mail, indicate the following: (...)

- obtain all the data exchanged between this company and the City Council with my personal data: the data exchanged appear in the reports it has issued the City Council and which already has.
    - I also request the internal e-mails, exchanged with this company with my personal data: Tell him that the e-mails between the company and the City Council do not contain his personal data, except for his name as a reference to the service to be performed and to set the schedule of interviews, and that in one of them it is transferred to the reports and conclusions of the Internal Investigation Commission according to the procedure (...) for cases of psychosocial risk that was constituted on its own application, which already has."
  - 03/23/2022: mail from the person claiming to the City Council, in which he indicates that "despite you saying that the data are the reports that I already have, in the reports themselves it is stated 'the correspondence of these codes has been provided in a mail aside'. So I also request these emails and any other with my data or referring to my person ."
  - 24/03/2022: response email from the City Council, in which it indicates that "from HR they tell me that there is no personal data sent in the emails between the company and the City Council."

3. On 01/16/2023, the claimant asked to know the status of the processing of this rights protection procedure, as well as other requests, which were answered on 01/18/2023.
4. On 01/21/2023, the claimant submitted a request for the right of opposition, with the aim that the letter of claim and the attached documentation not be transferred to the claimed entity (the Mataró City Council ). The person making the claim, however, does not object to the Authority being able to notify the Mataró City Council that it has submitted a guardianship claim, referring to the accompanying documentation.

On 07/02/2023, the resolution was issued in which the opposition request of the claimant is estimated.

5. On 03/15/2023, Mataró City Council was notified of the terms in which the claim had been submitted, without attaching any documents, so that within 15 days it could formulate the allegations that I thought relevant.

In this communication, the entity was requested to report on:

- If the City Council of Mataró, as responsible for the treatment, responded to the access request dated 02/17/2022 that the claimant addressed to (...), in charge of the treatment.
  - On the reasons why the City Council did not give access to the emails referred to the response sent to the person claiming on 03/18/2022. In this response, the entity indicated that it had e-mails that contained "his name as a reference to the service to be performed and to set the interview schedule." Also, to report on the date on which the rest of the information requested by the person making the claim would have been provided and which, according to the entity's reply, was documentation (reports) "already available."
  - On whether the person making the claim was given access to the email containing the codes that would make it possible to identify the people whose data had been pseudonymized with the referenced codes (" the correspondence of these codes has been facilitated in a separate email ") to the reports issued by (...).
6. On 04/04/2023, the City Council requested an extension of the deadline to respond to this Authority's letter. The request was accepted and the deadline was extended by another 7 days.
  7. On 04/14/2022, the City Council made allegations by means of a letter in which, in summary, it stated the following:
    - That " based on the annex to the service contract in which the parties agree on the processing of personal data, it is established, among the obligations of the person in charge of the processing, that of:
      - ' Assist the data controller in responding to the exercise of the following rights:
        1. Access, rectification, deletion and opposition; (...)'

"The person in charge of the treatment must solve, on behalf of the person in charge and within the established period, the requests to exercise the rights of access, rectification, deletion and opposition, limitation of the treatment, portability of data and not to be subject of automated individualized decisions, in relation to the data subject to the order."

"It is for this reason that the person in charge of the treatment gave a direct answer to the person now reporting."

- That "Despite this, and as a result of the e-mails sent by the person now reporting, both to the company (...) and subsequently (one month later), to the Data Protection Delegate, e-mails that appear in the same communication from the APDCAT, a file was opened, reference (...) (which is attached), where all the procedures carried out and the answers given on the occasion of his request were collected, in which he mixed, both the deletion of data, and access to emails and reports. Thus, and as argued in those files, the complainant sent emails to (...) on 3-17-2022 requesting access to information (...)."
- That "an administrative file was opened based on emails, given that the APDCAT reported that any form of processing RGPD rights was valid. But in this regard, inform that, having the possibility to process it by specific procedure from the electronic headquarters for the exercise of RGPD rights or by generic instance, we do not consider it appropriate to exercise these rights by email, because this means does not guarantee the content of the emails, nor the time or date of their emission/reception, and therefore, it is not a source that guarantees any traceability in the processing of an administrative file, nor the maximum date on which the request must be resolved or its expiration.(...)."

"Aside from the confusion that can arise when requests are extended via e-mail and clarifications are sought for answers given, which ultimately means the difficulty of knowing what has been answered and when, and what documentation, of all the one that ends up requesting, has it been delivered and when."

- That "HR responded to your February 2022 emails with the attached letter (recorded outgoing 3-15-2022). Despite this, the claimant sent e-mails to the (...), which led to the processing of the file (...), and once this was completed, the claimant went to the APDCAT which also opened these two files, already cited – this reference must be understood as made to the guardianship procedures PT (...)2 and PT (...) - , and now, again the PT (...)."
- That "The reply email from (...) dated 3-18-2022 (the day after the request email) already indicates that what he was now asking for had already been provided to him by HR. As HR informed the (...), the complainant requested all this information from HR and this service already provided her with all the information that had been exchanged between (...) and the City Council and that they were the reports issued in the yes of the awarded service contract (information regarding the one that also requested the deletion, which was processed in the exp. (...) and PT (...)2, both rejecting the deletion)".

"The claimant's own response by email to (...) dated 3-23-2022 already indicates that she has these reports, as she requests the correspondence of the anonymization codes to be able to interpret them."

- That, in relation to the request for the "internal emails exchanged with this company with my personal data", the entity did not grant access "to understand that nothing was said in them that she did not know, since (...) was diverted from the conversations they were having with her to do interviews and set dates."

"These answers are transcribed in the report and decree of rejection of the request made via email that gives rise to the opening of the file (...) (...). Therefore, the complainant already had these exchanged data and these emails that she requested on 17-3-2022, previously, as she was answered by the (...) on the date of 18-3-2022, and for this reason, it was not provided to him again (reiteration of requests)."

"In any case, it should be clarified that the existing emails between (...) and the City Council, in any case, are now at their disposal, due to the fact that, due to the processing of the PT file (...) of the APDCAT (and therefore, prior to the complaint that led to the initiation of the PT (...)), the complainant was already provided with the emails available in the backup copy of the mailboxes of the municipal employees who they could have communicated with the company (...) for the execution of the contracted service ."

- That "the 'code correspondences' are not personal data, but precisely, the anonymization of these through the use of codes, and therefore, the mails in which these codes were contained, there is no personal data, no complying with the conditions of the complainant's request (they do not contain her data). In addition, if the claimant were to facilitate the mail with the correspondence of codes, the report she already has would not comply with the regulations of the psychosocial risk procedure."
- That "he has not been given access to the codes he requested because these are the codes necessary to anonymize the report issued by the company (...) within the psychosocial risk file which is confidential. He was provided with all the reports and emails sent and received in relation to this procedure, but not the anonymization codes of the report, precisely because of its confidential nature, since having done so, apart from violating the legality in the processing of the file, the right of the people who intervened in the procedure to maintain their anonymity had been violated. Otherwise, no one would get involved in this kind of procedure, due to the risk of reprisals."
- That the "access request was addressed via email to (...) on 3-17-2022, receiving a response on 3-18-2022 indicating that, as HR had informed, the complainant already he had this information to which he now again requested access."
- That "these e-mails were not forwarded based on the request made via e-mail on 3-17-2022 to (...), as it was answered on 3-18 -2022, the complainant already had everything, as HR had informed, and these only included her name, which, despite being personal data, was used solely as a reference to the contracted service and to set a calendar of interviews, conveying to the company (...) the difficulty of fixing this schedule with the conversations it had with the claimant. Searching, sorting and preparing emails for delivery is a task that affects several services and takes up a lot of

time. It was considered that he already had them and that there was no relevant data in them. "

"In any case, the complainant already has these e-mails on the basis of having complied with the resolution of the APDCAT in the processing of the PT file (...)."

- That "He asked for access to the psychosocial risk file and this was provided to him throughout 2020 to comply with the requirements received by the GAIP and the APDCAT. In March 2022, access was supplemented with the latest reports on file subsequent to your initial request. Attached is the office dated 15-3-2022 (point 2)."

The City Council accompanied its letter of allegations with various documentation, including:

- Copy of the City Council's response to the claimant, registered as of departure on 03/15/2022, with all the attached documentation.

In the response letter, it is indicated that it is responding to three instances presented by the person claiming on the dates 19/01/2022, 01/02/2022 and 19/02/2022. Next, the documentation to which they give him access is detailed: in relation to the "copy of the complete psychosocial risk file", he is given "the 5 reports that complete that file"; and the copy of two emails between two employees of the entity.

The reasons for not providing the rest of the information you had requested are also set out: "a copy of the various communications in which you were one of the parties", as well as a copy of the communications exchanged between different employees of the City Council, the copy of "the complete file, on the basis of which the Decree number (...) has been processed", "access to information related to the coverage of the vacancy of head of service of Urban Planning."

- Copy of a letter from (...) to Mataró City Council, dated 02/22/2022, in which the data controller informs the City Council of the receipt of different "requests for the exercise of rights " of the person claiming, including the request for the right of access dated 02/17/2022 (the rest of the requests are associated with a data deletion right: 02/04/2022, 05/02 /2022, 11/02/2022).

The letter ends with the following text: " The above, we communicate the above to all effects and within the period provided for in the law to attend to the request for the exercise of rights formulated by your working woman (...)so that they can process a their requests in their capacity as responsible for the treatment. Likewise, and in our capacity as data controllers, we would appreciate it if they would provide us with the precise instructions in relation to subsequent requests for the exercise of rights made by said worker."

- Copy of the email from (...) to the claimant, on 02/25/2022, in response to his request for access rights dated 02/17/2022 (repeated on 22/ 02/2022).

The text informs that " we cannot attend to your petition, inasmuch as we act in our capacity as data controllers and consequently, for the exercise of rights, we should address the data controller. However, the above, in our role of assisting the person in

charge of the treatment in the exercise of rights, we immediately transfer the request for the exercise of rights made.”

- Copy of a significant amount of email threads where the conversations between (...) and the claimant, on different dates in the month of February 2022, dealing with the request for the right to deletion that the claimant also formulated on his day before (...). Also, copy of threads of e-mails where the conversations between the City Council and the person making the claim on this same matter are observed.
- Copy of the notification dated 07/06/2022 of Mayor's Decree no. (...), dated (...), to the claimant. In the dispositive part of this decree, it is resolved "Reject the request submitted on 03/23/2022, via email, by Mrs. (...), for the exercise of the RGPD right to DELETE DATA, in relation to the personal data provided by the City Council in relation to the hiring of the BH Consulting company . ”

### **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 provided for in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD establish the following:

- " 3. The person responsible for the treatment will provide the interested party with information related to his 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 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 doing 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. Once the applicable regulatory framework has been set out, it is then necessary to analyze whether the Mataró City Council resolved and notified the right of access exercised by the person making the claim within the period provided for by the applicable regulations.

In this regard, it is certified that on 02/17/2022 the claimant addressed the person in charge of the processing of the Mataró City Council ((...)), to exercise a right of access to the his personal data the following terms: " I request that I be given a copy of all the documents that have been issued in relation to me personally, to exercise the right of access based on art.15 of the RGPD, as well as the rectification of art. . 16 of the RGPD ." On 02/22/2022, the claimant sent a new email to (...) reiterating his right of access request.

At this point, it should be made clear that it is not up to the data controller to resolve this access request, even if access to personal data held by the company was requested, since it is responsible for the treatment who must attend to these requests; this, notwithstanding that he may receive assistance from his data controller (art. 12 and 15 RGPD). In accordance with this, (...), through a letter dated 02/22/2022, informed the data controller (Mataró City Council) of the various requests to exercise rights that had

submitted by the person claiming, including the request for right of access submitted on 02/17/2022, " so that they can process their petitions in their capacity as data controller." Also, on 23/02/2022, (...) sent an email to the City Council with the subject title "Communication of request to exercise rights over personal data", through the which informed the request of the person here claiming.

In this regard, it is also certified that, by means of an email dated 02/25/2022, the person in charge of the treatment informed the person claiming that his request had been forwarded to the person in charge of the treatment (in the literal which we refer to the precedent 8th of this resolution).

According to the City Council, once (...) referred the request to him, the claimant responded on 03/15/2022. However, from the documentation provided by the City Council to prove this fact, it does not appear that this communication can be considered the response to the request for the right of access dated 02/17/2022, since it refers to other requests of different dates (19/01/2022, 01/02/2022 and 19/02/2022), in which information would have been requested that would not be the same as that requested before (.. .) on 02/17/2022.

So, until that moment, the request to exercise the right of access dated 02/17/2022 continued without any formal response from the data controller. However, on 03/17/2022, the claimant sent a direct email to Mataró City Council, which must be understood as the continuation of the request to exercise the right of access that he previously had addressed to (...) ("I requested all information relating to BH Consulting directly from them, which contained my data, and they told me to contact you directly"). On this occasion, the City Council responded the very next day, 18/03/2022.

Therefore, based on the fact that the date of the first request to exercise the right of access was 17/02/2022 (reiterated before (...) on 22/02/2022 and continued before City Council on 17/03/2022), to which the data controller formally responded on 18/03/2022, it can be concluded that the City Council of Mataró responded extemporaneously, having exceeded the deadline of a more planned for this purpose.

Finally, it is necessary to make a point about the City Council's allegation that the fact that the person making the claim did not use the specific forms to submit the applications that the organization makes available to the interested parties makes it difficult to monitor the requests to exercise rights. Regarding this, it should be noted that, in accordance with article 12.2 of the LOPDGDD, the exercise of the rights of articles 15 to 22 of the RGPD cannot be limited to a single channel or application form specific created by the data controller, since it states that "The exercise of the right cannot be denied for the sole reason that the affected person chooses another means."

Having said that, it should be added that the multitude of emails exchanged between the person claiming and (...), as well as the diversity of requests presented to the City Council, means that it cannot be ruled out that this had led to a certain confusion for the entity to know what had been answered and when . In relation to this, it should be noted that article 13.1 of the LOPDGDD, which regulates the right of access, foresees the possibility that the data controller who processes a large amount of data of the person requesting a right of access may request "before providing the information, that the person concerned specify the data or processing activities to which the request refers."

4. Once the above has been settled, it is necessary to analyze the substance of the claim, i.e. whether, in accordance with the precepts transcribed in the 2nd legal basis, access to the data in the terms requested is appropriate 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 subject to treatment and, where appropriate, to access -there, and to obtain 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. In addition, Article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data to which access has been requested.

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 exercising other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to this right must be minimal, since exercising it guarantees the effectiveness of the fundamental right to the protection of personal data. The reasons for denying the right of access are found in article 23 of the RGPD, which must be provided for "through measures legislative " (art. 23.1 RGPD) .

Having said that, the person making the claim considers that they have not been provided with the information they requested. In this sense, it is necessary to take into account the terms in which the claimant made the initial request for access on 02/17/2022 (reiterated on 02/22/2022), in which he asked (. ..) to access " all the documents that have been issued in relation to me personally. " Also, the terms in which he formulates his request on 03/17/2022 before the City Council, in which he requests "to obtain all the data exchanged between this company and the City Council" and "the internal emails, exchanged with this company with my personal data", as well as the content of the rest of the emails that are exchanged from there.

Next, it is appropriate to decide, separately, whether the City Council should facilitate access to the requested information.

#### **4.1 Initial request dated 17/02/2022 (reiterated on 22/02/2022) to access " todos los documentos" with your personal data issued by (...).**

As has been advanced, despite the fact that the City Council states that it responded to this request with the letter dated 03/15/2022, this cannot be considered to be the formal response to the request dated 02/17/2022 . First of all, in the text of the text the City Council identified the requests to which it intended to respond (dated 19/01/2022, 01/02/2022 and 19/02/2022), which were from different dates than that of day 17/02/2022. It should also be added that from the content of the response it is also inferred that it is responding to other requests, in which the person making the claim

would have requested access to certain more specific information referring to personal data processed by the City Council.

On the other hand, it should also be noted that, with the letter of response dated 03/15/2022, the City Council agreed to provide the applicant with a copy of the five reports which, as indicated, would complete the request for "copy of the complete file of psychosocial risks" previously requested. From the attached documentation, it can be seen that two of these reports were drawn up by (...) and, therefore, the City Council provided part of the documents that (...) would have drawn up in relation to the claimant, although this documentation would have been delivered as part of another access request.

In accordance with the above, in its response of 18/03/2022 the City Council should have indicated to the person claiming which personal data it had processed (...) and given access to the information related to this processing, which he didn't do. And, in the event that the only information processed by the company was that contained in the reports delivered days before (15/03/2022), it should have clearly and expressly indicated this fact. He did not make this allusion nor could it be inferred from the terms in which the response was drafted, which only refers to the reports in a collateral form when, in responding to the existence of "data exchanged" between (...) and the City Council, indicates that "the data exchanged appear in the reports that the City Council has issued and that it already has."

#### **4.2 Request dated 03/17/2022 to access "all data exchanged" between (...) and the City Council and "internal emails exchanged with this company".**

As a continuation of what has been explained in the previous point, it is necessary to analyze the request that the person making the claim addressed directly to the City Council on 03/17/2022 and which received a response the following day, 03/18/2022.

On this occasion, the person claiming made his initial request of 02/17/2022 more specific, which he had presented in more generic terms. In the email sent on 03/17/2022 to the City Council, it specifies access to the "data exchanged" between the City Council and (...) and, in particular, to the "internal emails" that the two entities that would have been sent and in which their personal data appeared.

The City Council responds in two points:

- a) "obtain all the data exchanged between this company and the City Council with my personal data: the personal data exchanged appear in the reports that the City Council has issued and that it already has."

This answer must be considered incomplete, given that the references to the "reports issued by the City Council and already available" do not allow identifying the reports to which the entity refers. In this regard, it is considered that the City Council should have given some clearer information that would allow the reports referred to be perfectly identified, such as the date on which they were delivered to the applicant and their title. And, if this access had been very recent and referred to the same personal data, it should have justified the denial of access arguing, if appropriate, that it would be an excessive request based on article 12.5 of the 'RGPD'.

- b) "I also request the internal emails, exchanged with this company with my personal data."

In relation to this request, the City Council responds that the e-mails exchanged with (...) "do not contain his personal data, except for his name as a reference to the service to be performed and to set the interview schedule, and that in one of them it is transferred to the reports of the conclusions of the Internal Investigation Commission according to the procedure (...) for cases of psychosocial risk that was constituted by his request, which he already has."

This answer cannot be considered correct either, since from the moment the e-mails contained the name of the person making the claim "as a reference to the service to be performed and to set the interview schedule", these communications included a data unquestionable personal, such as the name of the person claiming.

In its statement of objections, the City Council states that these communications were not delivered since it considered that the name of the person making the claim that appeared in these e-mails "was used solely as a reference to the contracted service and to set an interview schedule, conveying to the company (...) the difficulty of setting this schedule with the conversations it had with the claimant", and that, therefore, in these e-mails "nothing was said that she didn't know."

Likewise, he argues that the conversations between the person claiming and (...) about the interview schedule were transcribed in the report and in Mayor's Decree no. (...), which was notified to him on 07/06/2022. Here it must be said that these are not the e-mails to which the claimant's request for access refers, but to those that (...) he would have exchanged with the City Council on this subject. In this sense, the entity's argument in which it invokes that there was nothing there that the claimant "didn't know" cannot be considered a valid argument, nor can it fit into any of the causes of denial of the right of access established in article 23 of the RGPD.

Finally, it is necessary to make the point that, according to the entity, emails exchanged between the City Council and (...) would now be available to the person making the claim, since they were provided to him in the framework of rights protection procedure no. PT (...).

On the other hand, regarding the part of the response in which the City Council mentions that one of these emails it sent to (...) was to forward the "reports of the Commission's conclusions of Internal Investigation", which "already has", we refer to what has been explained in section a) of this same point. In other words, to the need for the answer to be complete and to allow the full identification of the date on which the requested documentation was delivered, as well as for a possible denial of the right to be justified in a reasoned way, whether due to excessive or based on the causes established in article 23 of the RGPD.

- 4.3** Petition dated 03/23/2022, sent by the claimant following the City Council's response dated 03/18/2022, in which he requests the email between (...) and the City Council in which would include " the correspondence of these codes ."

Here, after receiving the response dated 03/18/2022 from the City Council, the person making the claim shows his dissatisfaction and focuses his complaint on the fact that there is an email from (...) to the City Council, to which they would not have been given access. This email would contain the identity of the people who were interviewed by (...) to be able to prepare the reports for the assessment and intervention of labor conflicts commissioned by the City Council, data that in these reports they were pseudonymized under some codes so as not to be identified.

The City Council responded to this email on 03/24/2022 and indicated that "there is no personal data sent in the emails between the company and the City Council." The entity also defends this argument in its statement of objections, in which it does not deny the existence of the controversial email, but rather that "code correspondences are not personal data", given that it is data " anonymized " that would serve to identify third parties and, therefore, are not personal data of the person making the claim.

Well, these codes are not " anonymized " data, but " pseudonymized ", in accordance with the definition contained in article 4.5 of the RGPD. It is data that contains information linked to a natural person to whom a code has been assigned, so that it cannot be identified directly but additional information that has restricted access is required. This type of data can be attributed to a natural person using additional information and must therefore be considered information about an identifiable natural person (recital 26 RGPD).

On the other hand, despite the fact that these codes are the tool to identify third parties, it should be noted that the identification would also form part of the exercise of the right of access of the person claiming, since this information would have a place within the relative concept to the origin of your personal data (art. 15.1. g RGPD). This, taking into account that the information that could be contained in the reports issued by (...) about the claimant could have its origin in the statements of these people with pseudonymized identities, who would have intervened in the procedure as witnesses. Therefore, the right of access in Article 15 of the RGPD would allow access to this information.

However, as this Authority has previously highlighted (IAI 15/2023), this access would be possible unless there was some element involved in the identification of these third parties because, depending on the personal situation of these persons, this access must be limited. In this sense, disclosing information about the identity of these third parties who have acted as witnesses may affect them in some way, since they are people who share the work environment and their statements may have contributed to the conclusions of the reports prepared by (...). The disclosure of what they may have said or not said regarding the person making the claim and the facts reported could end up negatively affecting the working relationships of these people.

For this reason, although the regulations on the protection of personal data do not expressly provide for an access request to be transferred, nothing prevents this from being done in order to allow third parties to exercise their right of opposition in accordance with the article 21 of the RGPD, and invoke personal circumstances or reasons that could justify preserving your identity.

That is to say, knowing what is the position of the third parties affected and the circumstances or reasons they may have for opposing access is always an element that

could be relevant when deciding to prevail on the right of access or the right to privacy of these third parties. In this sense, article 15.3 of the RGPD provides that " the right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others. Likewise, article 23 of the RGPD establishes among the causes to limit the exercise of a right that it is a necessary and proportionate measure to safeguard "i) the protection of the interested party or the rights and liberties of others."

In any case, mere opposition is not sufficient to limit access, since in order for the allegations made to be taken into consideration when weighing the rights, they must be based on specific personal circumstances that demonstrate that access to the requested information may cause real harm to their rights or interests.

Therefore, in the case at hand, in principle the person making the claim could have access to the codes that would identify the third parties who have provided information about the person making the claim, without prejudice to the fact that before giving this access the City Council considers it appropriate to transfer the request of access to the affected persons, so that, where appropriate, they oppose the processing of their personal data.

In short, it is appropriate to estimate this claim for protection of the right of access, given that it has been proven that the claimant exercised the right of access with respect to his personal data before the City Council and that with the response of the City Council City Council did not make effective the right of access exercised.

5. In accordance with the provisions of 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 to, within 10 days make the exercise of the right effective. In accordance with this, the claimed entity should be required to exercise the person's right of access within 10 days, counting from the day after the notification of this resolution claimant and give a concrete answer to their requests. You may also be required to provide the requested documentation, with the exception of the personal data linked to the codes, if in the hearing procedure that is granted to the affected persons there is a reason that justifies limiting access to his identity In the latter case, taking into account that the City Council would have granted a period to the person or persons affected by the access to make allegations, the claimed entity has a period of 2 months, starting from the day after the notification of this resolution to notify the claimant of the decision to finally adopt on his request for access.

The City Council must give an account to the Authority, within 10 days, of the decisions it adopts and of its notification to the person making the claim.

## **resolution**

For all this, I resolve:

1. Estimate the guardianship claim made by Ms. (...) against the Mataró City Council.
2. Request the City Council so that, within 10 days, counting from the day after the notification of this resolution, it makes effective the right of access exercised by the person

making the claim, in the manner indicated in the basis of law 5th Once the right of access has taken effect, the claimed entity must report to the Authority within the following 10 days .

3. Notify this resolution to the Mataró City Council and the person making the claim.
4. Order that the resolution be published 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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the interested parties may file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after notification, in accordance with the provisions of article 123 et seq. of Law 39/2015. They can also directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after their notification, in accordance with articles 8, 14 and 46 of Law 29 /1998, of July 13, governing the contentious administrative jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate to defend their interests.

The director

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