

## File identification

Resolution of the rights protection procedure no. PT 110/2022, urged by Mr. (...) against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 13/12/2022 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 08/06/2022, he submitted in the electronic register of the General Administration of the State, the request to exercise the right of access to his personal data that appeared in the files from the area of information systems of the Generalitat Police (SIP PF and PFMEN), and provided other documentation.

2.- By order dated 12/15/2022, 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 08/06/2022, 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 07/07/2022, 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.
- That the aforementioned resolution and the service of notification were sent to the address that the interested person had indicated in his application for notification purposes.
- That on 08/10/2022, the postal service returned the notification since, after the two attempts required by the current regulations, the person concerned did not withdraw it.
- That on 03/01/2023, a second notification of the resolution was sent to him again.

The DGP provided various documentation, including:

- 1) Copy of the access request (06/08/2022).
- 2) Copy of the resolution issued (07/07/2022).
- 3) Copy of the 1st decision notification office (11/07/2022) -with exit registration date 13/07/2022-.
- 4) Copy of the 2nd notification office of the resolution (03/01/2023) - without the date of departure registration.
- 5) Acknowledgment of receipt showing the two attempts to deliver the 1st notification office of the resolution (1st notification attempt on 07/29/2022 at 12.23pm, and 2nd notification attempt on 08/02/2022 at 20.10 hours) .

## 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 to which the present claim refers to the request to exercise the right of access presented, through the electronic register of the General Administration of the State (Ministry of Finance and Public Service), on 08/06/2022, are included in the scope of application of Organic Law 7/2021, of 26 May, on the protection of personal data treated with purposes of prevention, detection, investigation and prosecution of criminal offenses and execution of criminal sanctions (LO 7/2021), which entered into force on 06/16/2021.

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, since the reason for his complaint that initiated the present rights protection procedure was the fact of not having obtained a response within the period provided for that purpose.

With regard to the alleged neglect of the right that is the object of the claim, on 08/06/2022 - through the electronic register of the General Administration of the State -, the person making the claim presented the request for 'exercise the right of access to your personal data before the DGP. This is also the same date that the DGP records, as the date of entry of the request.

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, according to the documentation provided in this file, the DGP issued on 07/07/2022 the resolution responding to the access request submitted on 06/08/2022. However, although said resolution of the DGP was issued within a period of one month, the same cannot be said regarding its notification, a fact that is already evidenced by the same office of the first notification attempt, issued on 07/11/2022 and with departure registration on 07/13/2022.

In this regard, it should be noted that two attempts to notify by post of the resolution dated 07/07/2022, on the dates 07/29/2022 and 08/02/2022, have been certified, both attempts being unsuccessful in finding the claimant absent from home. Likewise, the DGP provides a copy of a new notification letter addressed to the claimant, dated 03/01/2023, from which it is inferred that the entity, days before its response to the hearing procedure of this procedure for the protection of rights, tried again the practice of notifying the resolution to the claimant, but it does not inform, and therefore it is unknown if, on this occasion, it was possible to practice said notification.

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 occur (art. 40.4 LPAC), it must be concluded that the DGP, although it resolved within the established deadline, the first notification attempt (07/29/2022) of the resolution dated 07/07/2022 occurred after the deadline of one month from the request for access (06/08/2022).

On the other hand, with regard to the notification, it should also be noted that the claimant, in his request dated 08/06/2022, provided both his postal address and his email address, and also indicated *"I accept to receive notifications and communications of administrative acts related to this request by electronic means"*. Having said that, and in relation to the practice of notifications by public administrations, article 41.3 of Law 39/2015, of October 1, on the common administrative procedure of public administrations, provides that *"In the procedures initiated at the request of the interested party, the notification must be carried out by the means designated for that purpose by that party"*. And what in the case that *"it is not possible to make the notification in accordance with what is indicated in the request, it must be done in any suitable place for this purpose, and by any means that allows you to record the receipt by the interested party or his representative, as well as the date, identity and content of the notified act."*

However, within the framework of the actions carried out, it is not recorded nor has the DGP alleged that, prior to or after the unsuccessful attempts to notify by post, it has carried out - or tried to carry out - the notification of the estimated resolution to the person claiming by other

means, taking into account that the person concerned agreed to be notified by electronic means.

Consequently, since the claim was based on the lack of response to the request to exercise the right of access, it must be declared that the DGP, although it resolved, did not notify its resolution within the legal deadline set by consider given the right of access. 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 those data*" in the resolution of 07/07/2022. 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 07/07/2022, 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.

On the one hand, the resolution dated 07/07/2022 was not complied with, given that it did not respond to the part of the access request referring to the data that could eventually be contained in the SIP PFMEN file, and on the other on the other hand, the DGP has not certified that this resolution has been notified to the person concerned.

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, and notify you of the resolution dated 07/07/2022, if at the time of the dictation of this resolution you have not yet been has notified

Once the indicated actions have been implemented, in the following 10 days the claimed entity must report to the Authority.

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 07/07/2022 has resolved to provide you with 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, it carries out the actions 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), 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,