

## File identification

Resolution of the rights protection procedure no. PT 116/2022, urged against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1.- On 12/16/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person claiming), for which he made a claim for the alleged disregard of the right to delete personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The person claiming, by means of a request dated 14/09/2022, asked the DGP to delete his personal data that appeared in the file in the area of the information systems of the Generalitat Police (SIP PF), related to actions identified in annex 1.

For these purposes, he provided various documentation, among which was the request for the deletion of the data contained in the file in the area of the Information System of the General Directorate of the Police (SIP PF) dated 09/14 /2022.

2.- By official letter dated 12/21/2022, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- The DGP made allegations by means of a letter dated 01/09/2023 (with entry date of 01/10/2023) where, among others, it stated the following:

- That on 09/14/2022, the applicant requested the deletion of several personal data recorded in the file of the SIP scope (PF).
- That on 12/28/2022, the Director General of the Police issued the resolution in which he agreed to delete the data of the person concerned.
- That the resolution and the service of notification were sent to the person concerned at the address indicated in his application for these purposes.

The DGP provided various documentation, including:

- The request to delete the personal data contained in the SIP PF file presented to the DGP by the person claiming on 09/14/2022, through the electronic register of the General Administration of the State (Ministry of Finance and civil service).
- The resolution issued by the director of the DGP (28/12/2022).
- The notification office (02/01/2023) - without recording the date of departure registration -, and without providing the document certifying that the notification of the estimated resolution has been effective to the person here claiming.

## 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 the present claim relating to the request to exercise the right of deletion, submitted on 09/14/2022, through the electronic register of the General Administration of the State (Ministry of Finance and Public Function), 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 enforcement 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 personal data without undue delay and, in any case, within a maximum period of one month from the date of knowledge, when the treatment infringes articles 6, 11 or 13, or when personal data must be deleted by virtue of a legal obligation to which it is subject.*

*3. Instead of proceeding with the deletion, the controller will limit the processing of personal data when any of the following circumstances occur:*

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

*b) Personal data must be kept for evidentiary purposes.*

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

*"(...) 5. When the personal data have been rectified or deleted or the treatment has been limited, the person responsible for the treatment will notify the recipients, who must rectify or delete the personal data that are under their responsibility or limit their 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 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 personal data and the limitation of its treatment.*

*1. The controller may postpone, limit or omit the information referred to in article 21.2, as well as deny, in whole or in part, requests to exercise the rights contemplated in articles 22 and 23, provided that, having taking into account the fundamental rights and legitimate interests of the affected person, it is necessary and proportionate to achieve the following goals:*

*a) Prevent inquiries, investigations or judicial proceedings from being obstructed.*

*b) Avoid causing damage to the prevention, detection, investigation and prosecution of criminal offenses or the execution of criminal sanctions. c) Protect public safety.*

*d) Protect National Security.*

*e) Protect the rights and freedoms of other people.*

*2. In case of restriction of the rights contemplated in articles 22 and 23, the person responsible for the treatment will inform the interested party in writing without undue delay, and in any case, within one month from the date of knowledge of said restriction, of the reasons thereof, as well as of the possibilities of filing a claim before the data protection authority, without prejudice to the remaining judicial actions that can be exercised by virtue of the provisions of this Organic Law. The reasons for the restriction may be omitted or replaced by*

*neutral wording when the disclosure of the reasons for the restriction may jeopardize the purposes referred to in the previous section.*

*3. The person responsible for the treatment will document the de facto or derecho grounds on which the decision denying the exercise of the right of access is based. This information will be available to 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 may exercise their rights through the competent data protection authority. The data controller 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 the necessary checks or the corresponding review and of his right to file a contentious-administrative appeal".*

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 processing of personal data has violated the provisions of this Organic Law or that their request to exercise the rights recognized in articles 21, 22 and 23 has not been attended to, they will have the 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.

With regard to the alleged neglect of the right that is the subject of the claim, in accordance with what was stated in the 3rd precedent of this resolution, it is established that, on 09/14/2022, the person making the claim presented -through the electronic register of the General Administration of the State-, the request to exercise the right to delete your personal data contained in the SIP PF file, addressed to 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 deletion request submitted by the person claiming . Well, from the documentation provided, it has been established that the entity issued on 28/12/2022 the estimated resolution of the request dated 14/09/2022, that is to say, once exceeded by far the legal term set to resolve and notify this resolution

That being the case, it can be concluded that the DGP extemporaneously resolved the request of the person making the claim.

**5.-** Regarding the substance 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 here claiming, as it follows from the resolution of 28/12/2022 , provided by the DGP to this Authority.

**6.-** Finally, although the DGP has certified that it issued the estimated resolution dated 12/28/2022, regarding the deletion request made by the person making the claim, there is no documentary evidence that this resolution has been effectively notified, given that among the documentation provided to accredit this end there is only the paper notification service without a departure registration date, which is why it is considered appropriate to require the DGP so that within 10 days counters from the day after the notification of this resolution, certify that the resolution issued on 12/28/2022 , estimating the right of deletion, has effectively been notified to the person here claiming.

For all this, I RESOLVE:

- 1.** Declare extemporaneous the resolution of the General Directorate of the Police dated 28/12/2022, 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 12/28/2022, in the terms indicated in the 6th 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), 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,