

## File identification

Resolution of the rights protection procedure no. PT 117/2022, urged against the Ametlla del Vallès Town Council.

## Background

1. On 19/12/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (from now on, the person making the claim), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Ametlla del Vallès Town Council .

The person claiming stated that, on 18/11/2022, he had submitted a request to exercise the right of access to the City Council, so that it would facilitate access to the recordings, minutes and documentation of the sessions of the negotiation table of the days 23/09/2022, 21/10/2022 and 17/11/2022, at which he was present as an assistant.

Regarding this, he complained that the City Council had not responded to said request, and centered the object of the claim on the fact that the City Council had not given him access to the recordings he had requested " for the purpose of checking the minutes signed by the City Council " .

At this point, it is relevant to indicate that, in the claim submitted, it was stated that the claimant already had a copy of the minutes of the negotiation table sessions. Access to the first minutes (on 23/09/2022) was facilitated because it was presented as part of a municipal meeting, and the remaining two (on 21/10/2022 and 17/11/2022 ) had been notified to him electronically by the City Council, by virtue of his capacity as (...).

The claimant provided the following documentation:

- Application registered electronically for entry to the Town Hall of Ametlla del Vallès, on 18/11/2022. In this instance the claimant requested:

" A copy is given to us where the integrity and authenticity of the electronic files are guaranteed, as well as the recordings of the same , of the minutes and their documents of the sessions of the Negotiation Table held on 09/23/2022 AND 10/21/2022."

- The electronic notification, dated 11/28/2022, of the City Council's transmission to the claimant of the copies of the minutes of the negotiation table of 10/21/2022 and 11/17/2022.
- Copy of the documents of the minutes of the negotiation table of 23/09/2022, 21/10/2022 and 17/11/2022.

In the minutes of 09/23/2022, there is the literal " the session will be recorded for the purposes of being able to draw up the Minutes of the same"; in the minutes of

10/21/2022, there is the literal " the session will be recorded for the sole purpose of drafting the Minutes."

In the minutes of 17/11/2022, unlike the previous ones, there is no reference to the recording of the session. It is only referred to at one time that the person claiming, in the framework of the discussion of the subject of the agenda (" Approval of (...)", " Requests a file of the recordings", but without that from here it can be inferred that it is the recording of that meeting or a previous one.

2. On 09/01/2023, the claim was transferred to the Ametlla del Vallès Town Council, so that within 15 days it could make any allegations it deemed relevant.

3. The Ametlla del Vallès City Council made allegations in a letter dated 01/30/2023, in which it set out, in summary, the following:

- That " The Town Council of l'Ametlla del Vallès, once the transcription of the corresponding acts was carried out , deleted the recordings of the sessions of the Negotiation Table held on September 23, 2022 and on September 21, 2022 October 2022."
- That "on November 18, 2022, when the request was submitted to exercise the right of access to the recordings of the sessions of the Negotiation Table held on September 23, 2022 and October 21 of 2022, the City Council no longer had the recordings of these sessions."

That "The Ametlla del Vallès City Council does not have any request to exercise the right of access presented by Mr. (...) in relation to the delivery of a copy of the recording of the session of the Board of Negotiation of November 17, 2022."

- That the session of the negotiation table of 17/11/2022 was not recorded "in order to avoid sterile debates with Mr. (...) for the recording to carry out the correct drafting of the minutes."
- That " in relation to the request to exercise the right of access to deliver a copy of the recordings (...) of the sessions of the Negotiation Table of the minutes and documents of the sessions held on September 23 2022 and on October 21, 2022, the Ametlla del Vallès City Council is processing the response to the request and once the supporting documentation of the resolution and the notification to the person making the complaint is available, it will be sent to this Authority ."

### **Fundamentals of law**

1. The director of the Catalan Data Protection Authority is competent to solve 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. 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 of such data ( RGD), regarding the right of access of the interested person, provides that:

" 1. The interested party will have the right to obtain from the person in charge of the treatment confirmation of whether or not personal data that concern them 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 RGD, paragraphs 3 to 5 of article 12 of the RGD, establish the following:

"3. The person in charge of the treatment will provide the interested party with information related to their 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 (LOPDGDD), determines the following, also in relation to the right of 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 do 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. The interested persons who are denied, in part or in full, the exercise of the rights of access, rectification, cancellation or opposition, or who may understand that their request has been rejected due to the fact not having been resolved within the established period, they can submit a claim to the Catalan Data Protection Authority."

3. Having explained the applicable regulatory framework, it is then necessary to analyze whether the Ametlla del Vallès City Council resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason of the complaint that initiated the present rights protection procedure was the fact of not having obtained a response within the period provided for this purpose.

Regarding this, it is certified that on 18/11/2022 the entity received a letter from the person claiming, through which he exercised the right of access to his personal data.

In accordance with article 12.3 of the RGPD, the City Council had to resolve and notify the request to exercise the requested right within a maximum period of one month, counting from the date of receipt of the request. In relation to the issue of the term, it should be borne in mind that, in accordance with article 21.3 *b* of Law 39/2015, of October 1, of the common administrative procedure of public administrations (LPAC) and the article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia ( LRJPCat ), on the one hand, the calculation of the maximum term in procedures initiated at the instance of a party (as is the case) starts from the date on which the request is entered in the register of the competent body for its processing. And on the other hand, that the maximum term is for solving and notifying (art. 21 LPAC), so that before the end of this term it is necessary to have notified the resolution, or at least to prove that the attempt has taken place of notification (art. 40.4 LPAC).

In the allegations presented on 01/30/2023, the City itself acknowledged that it had not yet formally responded to the request submitted by the person making the claim on 11/18/2022.

Likewise, the City Council also stated that " it is processing the request response and once the supporting documentation of the resolution and the notification to the person making the complaint is available will send to this Authority. " However, on the date on which this resolution is issued, the entity has not certified that it has responded to the access request made by the person making the claim; consequently, it is necessary to declare that it has not resolved or notified the above-mentioned request in a timely manner. This, without prejudice to what will be said below regarding the substance of the claim.

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data is justified under the terms request the person claiming.

As a first consideration, it is necessary to indicate that, as stated in the antecedents, in the request for the right of access dated 11/18/2022, the person claiming only referred to the sessions of the negotiation table of the days 23/09/2022 and 21/10/2022, without making

any mention of the meeting on 17/11/2022, which is indeed referred to in the subsequent claim for protection of the right of access.

In this regard, it should be noted that a right of access that has not previously been requested from the data controller cannot be the subject of a guardianship claim. Therefore, in this resolution it is not appropriate to enter into analyzing the claim for access to the recording of the meeting on 11/17/2022, since it was not included in the previously exercised right of access, which would only refer to the meetings of 09/23/2022 and 10/21/2022. All this, notwithstanding that it may be indicated that the City Council has declared that, unlike the rest of the meetings, the one on 17/11/2022 was not recorded (and the minutes of the meeting also do not indicate that 'has recorded) and that, therefore, if this recording had been part of the same request as the other two, it could not have been provided either.

Thus, the analysis of the substance of this claim will focus on what constitutes the subject of the claim presented to this Authority, that is, the lack of access to the recordings of the sessions of the negotiation table of the days 13/09/2022 and 21/10/2022, in which the claimant was listed as (...). In this sense, it is also not considered that access to the minutes of the meetings of the negotiation table is part of the object of the claim, since the person making the claim has acknowledged that he already has the written minutes of the meetings of the days 23/09/2022, 21/10/2022 - and even 17/11/2022 -, and that access to these documents is also not included in the part that makes up the petition .

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 his own personal data that is the subject of treatment, to access it and to know 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 being processed. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to the right of access 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) .

In accordance with this, the right of access recognized in article 15 of the RGPD means that the claimant has the right to access, in general, the recordings of the sessions of the negotiation table to which he has assisted, since it is unquestionable that these recordings contain your personal data (name and surname, statements, voice, etc.).

Once the above is established, it must be recognized that article 18 of Law 40/2015, of the legal regime of the public sector (LRJSP) regulates "multimedia minutes" as a system that allows the preparation of the minutes of the sessions of the collegiate administrative bodies in a faster, more transparent and safer way.

In accordance with this precept, the sessions of the aforementioned collegiate body could be recorded, although these recordings do not in themselves become the minutes of the session, but the law considers them to be instruments that can or do not accompany the minutes drawn up by the secretarial person. That is to say, the recordings of the sessions of collegiate bodies are in principle optional - unless a specific rule provides otherwise -, in the same way that the resulting file may or may not accompany the minutes.

At this point, it should be noted that the City Council has informed that the recordings of the meetings of the negotiation table on 23/09/2022 and 21/10/2022 were not preserved, but were deleted once transcribed the corresponding acts. This statement is consistent with what appears verbatim in the transcript of the minutes of the two meetings, in which it was indicated that the session was recorded solely for the purpose of writing the minutes of the meeting, a fairly common practice in the sessions of the collegiate bodies. Therefore, the recordings of the meetings were not carried out to produce minutes with a multimedia file in which you could hear what happened at each of the session points, but they would have the sole purpose of helping the person in charge of writing the minutes of the meeting.

Based on this information, it is unquestionable that the removal of the recordings of the trading table sessions of 09/23/2022 and 10/21/2022 inevitably prevents the right of access to these recordings from being exercised. Likewise, it should be emphasized that, according to the City Council, at the time when the claimant submitted the request to exercise the right of access, the entity "no longer had the recordings of these sessions ". Therefore, the answer that had been given at that time would have been to deny the right of access, in order not to have the personal data to which access was sought.

Now, in relation to the above, and despite the fact that in the statements made in the hearing procedure the entity pointed out that the request for the right of access would be denied due to the non-existence of the information requested, the truth is that the interested person has the right to receive a response from the data controller to his request; this, without prejudice to the fact that in this response the entity may indicate that it does not have the information requested in exercise of the right of access, or that access is not appropriate because one of the limits of the article applies 23 of the GDPR.

In short, this claim for the protection of the right of access should be upheld, given that in the procedure it has been proven that the person making the claim exercised before the Ametlla del Vallès City Council the right of access with respect to certain recordings of the meetings of the negotiating table and, likewise, it is also proven that the City Council did not give any response to the right of access exercised, even if it was only to indicate that the information to which access was sought was non-existent.

5. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, it is necessary to require the claimed entity because, within 10 days, counters from the day after the notification of this resolution, certify that he has responded to the request for the right of access submitted by the person making the claim. Once the right of

access has been made effective in the terms set out and the person making the claim has been notified, the claimed entity must give an account to the Authority within the following 10 days.

**resolution**

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the Ametlla del Vallès Town Council.
2. Request the City Council of Ametlla del Vallès so that within 10 days, counting from the day after the notification of this resolution, make effective the right of access exercised by the person making the claim and answer the request for the right of access that you have submitted. Once the right of access has taken effect, the claimed entity must report it to the Authority within the next 10 days .
3. Notify this resolution to the Ametlla del Vallès Town 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