

## File identification

Resolution of the rights protection procedure no. PT 118/2022, petition against the Sant Quirze del Vallès City Council.

## Background

1. On 19/12/2022, the Catalan Data Protection Authority received a letter of complaint for the alleged neglect of the right of access to data that the person making the claim had previously exercised before the Sant Quirze City Council of the Vallès. The person making the claim provided documentation relating to the exercise of this right, specifically a copy of an exchange of e-mails that this person had had with the School (...) (hereafter, the School).

Through an email to the School dated 07/07/2022, the claimant requested that "According to your email, I would like you to provide me with the purposes for which the families have authorized the use of the data" and in the claim before this Authority stated "That I have not been given the reasons why I gave them the data today and almost 6 months ago".

2. On 12/22/2022, the claim was transferred to the Sant Quirze del Vallès City Council so that within 15 days it could formulate the allegations it deemed relevant.

3. The Sant Quirze del Vallès City Council made allegations in a letter dated 01/11/2023, in which it set out, in summary, the following:

- That the School (...) did not interpret as a right of access the e-mail with which the claimant responded to a previous e-mail in which he was denied the forwarding of a particular communication to all the families of the school. For this reason, the Sant Quirze del Vallès City Council did not apply the procedure to guarantee the exercise of rights defined in the regulations on the protection of personal data.
- That, in the event that the right of access had been considered, the interested party would have been required to expand or modify the object of his request, since he was making a request about a group (the families of the school). He adds that the purposes of the treatment are duly reported in the different forms of the School (...) and also in the specific web section of the municipality's Municipal Education Service and points out that the complainant signed said forms.
- That the person making the claim did not exercise the right of access through the channels enabled and informed in the different forms, means of collection or privacy policy of the City Council's website and that, among these channels, the exercise of the right is not contemplated of access via e-mail, as it considers that this means does not allow the identity of the persons concerned to be verified.
- That there is no correlation between the request made to the School (...) and the complaint presented to the APDCAT, so that, in the first, the person making the claim referred to the collective of the families of the School for all the treatments that can be carried out there and, on the other hand, in the complaint it refers to the specific purposes that are the reason for processing your data.
- That, for the above reasons, the City Council of Sant Quirze del Vallès did not give a formal response to the claimant's e-mail as it did not interpret it as an exercise of the Right of Access and requests that the procedure be archived in both understands that there is no case of non-compliance with data protection regulations.

In its statement of objections, the City Council includes documentation consisting of several screenshots of the various municipal websites that refer to the exercise of the right of access to information.

## 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 contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes 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 the 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".*

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. Having explained the applicable regulatory framework, it is then necessary to analyze whether the Sant Quirze 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 for his complaint, which initiated the present rights protection procedure, was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that on 07/07/2022 the person making the claim sent an email to the School in which he asked to be provided with the purposes of the data processing in question, information that forms part of the content of the right of access to personal data and enables the exercise of the right, in accordance with article 15.1.a) of the RGPD.

Thus, and on the basis of article 12.3 of the RGPD, the Sant Quirze del Vallès City Council had to resolve and notify the access request within a maximum period of one month from the date of receipt of the request

Well, the Sant Quirze del Vallès City Council has acknowledged not having responded to the request for access made by the person making the claim, not even within the one-month period (extendable for two more months) provided for that purpose, nor subsequently.

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, and in the terms requested, the right to 'access of the person here 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 that is the subject of treatment and, in such case, access said data and, among other things, be informed about the purposes of the treatment.

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. 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 this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed. The reasons for denying the right of access are found in article 23 of the RGPD, which must be provided for *"through legislative measures"* (art. 23.1 RGPD).

In accordance with this, it is clear that the person claiming here would have the right to access, in any case, their own personal data that are the subject of treatment, and specifically the purposes of the treatment that properly constituted the object of the your access request. It is true, as alleged by the Sant Quirze del Vallès City Council, that, in the email addressed to the School, the interested party requested that they "facilitate the purposes for which the families have authorized the use of the data", even so it is necessary to interpret that the interested person would be included within the term "families", since it is not these as a collective, but the individual people who make up this concept, who authorize the treatment.

In summary, and in accordance with what has been presented, despite the fact that the council pointed out in its statements made in the hearing procedure that it did not interpret that the person made the request in exercise of the right of access to his data, given that in such a case, he would have been required to modify or clarify the subject of his request, the truth is that the interested party had the right to receive a response from the data controller in his sole request, without prejudice to the fact that the City Council's response consisted of providing the requested information, or requiring the amendment or clarification of its request, even with regard to the form of presentation or authorized way to exercise your right, in accordance with what is established in article 49.1 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (LRJPCat) , in accordance with article 66 of Law 39/2015.

4. In accordance with what is established in 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 so that within 10 days make the exercise of the right effective. In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, it makes effective the right of access of the person making the claim, giving an answer at your request, either informing you about the purposes of the treatment in the terms of your request, or requiring, where appropriate, the amendment or clarification of said request. Once the right of access has been made effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must report to the Authority.

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the Sant Quirze del Vallès Town Council.
2. Request the Sant Quirze del Vallès City Council so that, within 10 calendar days from the day after the notification of this resolution, make effective the right of access exercised by the person making the claim, in the manner indicated in basis of law 4rt. Once the right of access has taken effect, in the following 10 days, the claimed entity must report to the Authority.
3. Notify this resolution to the Sant Quirze del Vallès Town Council and the person making the claim.
4. Order the publication of the resolution on the Authority's website ( [apdcat.gencat.cat](http://apdcat.gencat.cat) <http://www.apd.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,

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