

File identification

Resolution of the rights protection procedure no. PT 121/2022, relating to the Ametlla del Vallès Town Council.

Background

1. On 23/12/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (henceforth, the claimant), in which he stated as the sole reason for the claim the "derecho de acceso vídeo cámaras", without any further explanation, nor identifying the claimed entity. With the letter, he attached a copy of the request he had submitted to the Ametlla del Vallès City Council on 11/18/2022, relating to the exercise of this right.

In the request addressed to the City Council, the person making the claim asked for information on various matters regarding the installation in the municipality of "video surveillance devices and license plate readers", information that it did not have the nature of personal data ("se me informe del Registro General de Protección de Datos"; "se me informe donde están instalados todos los dispositivos").

also requested information on "if there is any file of data or recordings or photographs of my person, vehicle (...)", and that, if so, a "copy, fax or photocopy, certified" would be provided, where indicate the identification of "the person who collected them and the motivation for the creation of the file and the purpose of them ."

2. On 12/29/2022, the Authority sent a letter to the person making the claim to indicate that they needed to clarify the reason for their claim and, also, which entity was claimed/reported.

In the same office, he was informed that the right to know the location of the cameras installed by the City Council is not part of the right of access guaranteed by article 15 of the General Data Protection Regulation (RGPD), but must be mediated by the transparency regulations, which recognize the right to access public information. He was also told that, given the lack of response to requests for access to public information, he could file a claim with the Commission for Guaranteeing the Right to Access to Public Information (GAIP).

On 12/29/2022, the person claiming responded to the Authority and explained that, during the month of May 2022, "photo and video captures of my person and vehicle were taken by an unauthorized person, with the municipality's video surveillance cameras." In relation to this, I requested information on the following:

- "Registro General de Protección Datos, the existence of personal data treatments, their purposes and the identity of the person responsible for the treatment."
- "If there is a file of data or recordings or photographs of my person, vehicle (...)", and in this case, a "copy, telecopy or photocopy, certified" of this data, "indicate the identification of the person who collected them and the motivation for the creation of the file and the purpose of them ."

3. On 09/01/2023, the claim was transferred to the Ametlla del Vallès Town Council, so that within 15 days it could formulate the allegations it deemed relevant.
4. The Ametlla del Vallès City Council made allegations in a letter dated 01/30/2023, in which, in summary, it stated the following:
 - That " Ametlla del Vallès City Council has video surveillance cameras for the purpose of public safety and video surveillance cameras for reading license plates in the municipality. They are cameras with 24-hour operation."
 - That "The Ametlla del Vallès City Council is processing the response to the request to exercise the right of access and, once the documentation supporting the decision and the notification to the person making the complaint is available, 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 the RGPD, regarding the right of access of the person concerned, 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 RGPD, paragraphs 3 to 5 of article 12 of the RGPD 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. 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 Ametlla del Vallès 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.

Regarding this, it is certified that on 11/18/2022 the entity received a letter from the person claiming in which he requested various information, including information about his images or recordings and those of his vehicle, captured by the video surveillance cameras installed in the municipality.

In accordance with article 12.3 of the RGPD, the Ametlla del Vallès City Council had to resolve and notify the request to exercise the requested right within a maximum period of one month, counting from from the date of receipt of the request. Regarding the deadline, article 21.3. *b* of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC), and article 41.7 of Law 26/2010, of August 3, on the legal system and procedure of the public administrations of Catalonia (LRJPCat), on the one hand, establish that 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 enters in the register of the body competent to process it. They stipulate, on the other hand, that the maximum term is for resolution and notification (art. 21 LPAC), so that before the end of

this term it is necessary to have notified the resolution, or at least to be able to prove that the notification attempt (art. 40.4 LPAC).

The City Council, in its pleadings dated 01/30/2023, acknowledges that it has not yet formally responded to the request submitted by the claimant on 11/18/2022.

In relation to this, he indicates that " he is processing the response to the request to exercise the right of access and, one once the documentation supporting the resolution and the notification to the reporting person is available, es 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 aforementioned request .

Consequently, it is necessary to declare that the entity has not resolved or notified the request presented by the affected person 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, 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 that is the subject of treatment, to access find out the 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 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 this 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) .

As explained in the background, the claimant requested access to a whole series of information, including information relating to his personal data.

Well, the City Council had to give a complete answer to the aforementioned request, that is to say, information regarding the personal data that the applicant wanted to access, and also about the rest of the information that was not referred to to your personal data, even if only to indicate that the information could not be satisfied for not finding a fit within the right of access of Article 15 of the RGPD.

Having established the above, it should be noted that the information to which the interested party requested access in his letter dated 18/11/2022 relating to the " Registro de Protection de Datos, the existence of personal data treatments, its purposes and the identity of the person in charge of the treatment" and the one relating to the location of the "video surveillance and number plate reader" devices, is not considered personal data, given that it differs from what Article 4.1 of the RGPD defines as to "personal data". Therefore, the City Council's response could be limited to indicating that the information sought to be accessed exceeds the scope of a request for the right to access one's own personal data.

Another thing is the response that the claimant's request deserves in relation to access to his own personal data. At this point, it should be remembered that the entity is only obliged to inform about the different items listed in article 15 of the RGPD, as well as to provide a copy of the personal data that is the subject of the treatment.

The claimant requested to know " if there are any files of data or recordings or photographs of my person, vehicle (...) " , and in such case, to obtain a "copy, fax or photocopy, certified", in the deadline and " where it indicates the identification of the person who collected them and the motivation for the creation of the file and the purpose of them."

As has been explained, the person in charge of the treatment must inform about the personal data of the applicants that are the subject of their treatment. In this sense, taking into account that the City Council has recognized that it has video surveillance cameras for the purpose of public safety and video surveillance cameras for reading license plates in the municipality, it must confirm to the person requesting whether they are being processed your personal data; in particular, images of him or his vehicle - identified through a specific registration number - captured by the video cameras. Likewise, if the City Council is processing this personal data, it must satisfy the right of access exercised by the person claiming, inform about the purpose of the treatment ("the motivation for the creation of the file and the finality of the same") and provide a " certified copy, telecopy or photocopy".

In relation to the way of making effective the right of access, the data controller must facilitate access to the information in any of the formats that the interested party may request, in accordance with what is established in the regulations:

- Article 15.3 of the RGPD foresees different ways : "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 submits 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."
- Article 28 of Royal Decree 1720/2007, of December 21, which approves the Regulations for the development of the previous Organic Law 15/1999, of December 13, on the protection of personal data (LOPD), in force in what does not contradict the RGPD, gives the interested party the right of choice, by guaranteeing him the right to choose to receive the information by means of display on the screen, in writing, copy or photocopy sent by mail, fax , email or other electronic communication systems or

any other system. However, this right is conditional on the system chosen by the interested party being suitable for the configuration of the file or the nature of the treatment.

Finally, in relation to the request of the person claiming that the City Council provide him with the " identification of the person who collected them", it should be indicated that this type of information is not guaranteed by the right of access article 15 of the RGPD, since it is not part of this right to know the identification of the personnel of the organization responsible for the treatment (in this case, the City Council) that has accessed the processed information. And, this because, in essence, this type of access cannot be considered a communication of data to third parties and, consequently, cannot fit into section 15.1. c of the RGPD, as information that the affected person has the right to know in the exercise of his right of access.

In summary, although the City Council must respond to the person making the claim, it is only obliged to provide information on the processing of the personal data of the person making the claim; in this case, the images captured through the video camera system installed in the municipality and, specifically, only on the points provided for in the different sections of article 15 of the RGPD.

In short, the present claim for protection of the right of access should be upheld, given that in this procedure it has been proven that the claimant exercised the right of access to his own personal data before the City Council. Likewise, it is also proven that the entity did not exercise this right, given that there is no evidence that it has responded to the person making the claim.

5. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, it is appropriate to require the claimed entity so that within 10 days, counters from the day after the notification of this resolution, make effective the exercise of the claimant's right of access. Once it has taken effect, in the terms set out and the claimant has been notified, the claimed entity must report to the Authority within 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 Ametlla del Vallès City Council that within 10 days, counting from the day after the notification of this resolution, make effective the right of access exercised by the person claiming, in the form indicated in the fundamentals of law 4th and 5th. Once the right has become effective, within the following 10 days the claimed entity must report to the Authority.
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), 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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