

File identification

Resolution of the rights protection procedure no. PT 1/2023, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1. On 01/03/2023, the Catalan Data Protection Authority received a letter from Ms. (...), on behalf of Mr. (...) (henceforth, the person claiming), for which he formulated a claim for the alleged disregard of the right to delete personal data that he had previously exercised before the General Directorate of the Police (DGP).

On 04/11/2022, the claimant submitted a request through the electronic registry of the Generalitat de Catalunya, in which he asked the DGP to delete his personal data contained in the file in the area of the systems of 'information from the Generalitat Police (SIP PF).

For these purposes, he provided various documentation, among which was the request to exercise the right of deletion.

2. By official letter dated 01/18/2023, 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 02/01/2023 (with entry date of 02/06/2023) where, basically, it stated the following:
 - That, on 07/06/2022, the DGP notified the decision to exercise the right of access that the claimant had requested.
 - That , on 04/11/2022 , the claimant requested that the personal data related to the resolution be deleted of exercising the right of access that the DGP him notified on 07/06/2022.
 - That, on 19/01/2023, a request for amendment or improvement of the application was sent to him, given that he did not provide all the supporting documentation necessary to delete all the requested data.
 - That the request for amendment or improvement of the application was made available to the claimant electronically on 01/23/2023, and was also sent to him by post.
 - That "When the representative of the interested party responds to the request and provides the requested documentation, it will be possible to continue with the processing of the deletion file."

The DGP provided various documentation, including:

- The request for amendment or improvement of the request dated 01/19/2023, which was sent electronically to the claimant on 01/23/2023. In this request, he was given a period of 15 days to provide the required documentation, with the warning that, if he did not provide it, in accordance with the provisions of article 68 of Law 39/2015, of October 1, of the common administrative procedure of public administrations (LPAC), it would be considered that he gave up his request in relation to the police proceedings identified by his numerical code.
 - The proof of the electronic notification of the request sent by the DGP to the claimant on 01/23/2023.
4. On 03/27/2023, the DGP was requested because within 10 days, counting from from the day after receipt of this request, report, among other issues, on whether the interested person had responded to the amendment request dated 01/19/2023 and, also, on whether the DPG had resolved the deletion request dated 04/11/2022, and that it provided certain documentation.
5. On 04/24/2023, the Authority reiterated the request sent to the DGP on 03/27/2023 so that, within 5 days, counting from the day after receipt, contribute to the 'Authority the required information, with the warning that if he did not do so he could incur an infringement of the data protection regulations.
6. On 04/27/2023, the DGP responded in the following terms:
- That, on 04/11/2022, the claimant requested the deletion of his data recorded in the file of the SIP PF area related to the resolution exercising the right of access dated 05/24 /2022, which was notified to him on 06/07/2022.
 - That, on 01/19/2023, once your deletion request and the documentation provided were reviewed, a request for amendment and improvement of the request was sent by electronic means, since it had not provided all the supporting documentation necessary to delete all the requested data.
 - That, on 01/23/2023, the claimant accepted the aforementioned request sent by electronic means.
 - That the deadline granted to respond to the request passed excessively, without the person making the claim having provided the required documentation.
 - That, on 04/25/2023, the director general of the DGP issued a resolution deleting the personal data for which the claimant had provided supporting documentation with his initial request.

For these purposes, the DGP provided, among other documents:

- The data access resolution issued by the general director of the DGP on 05/24/2022.
- The data deletion resolution issued by the director general of the DGP on 25/04/2023 and the notification office of 26/04/2023, without the date of the exit register of the mentioned office.

- The evidence of the deposit of the electronic notification of the notification office dated 04/26/2023 and of the resolution issued by the general director of the DGP on 04/25/2023, without having been certified that the claimant has accepted it.

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. The personal data referred to in this claim relating to the request to exercise the right of deletion submitted on 04/11/2022, through the electronic registry of the Generalitat de Catalunya (Department of the Interior), are 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 the execution of criminal sanctions (LO 7/2021).
3. OK 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, the which determine that:

"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 ends:

- 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, relating to the regime applicable to 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 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 the reason for the complaint was the fact of not having obtained any response within the stipulated period to the effect.

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 presented by the claimant person

It is certified that, on 04/11/2022, the claimant submitted a request to the DGP, through which he exercised his right to delete the personal data recorded in the SIP PF file. Likewise, it is also certified that, as part of the processing of this guardianship procedure, the DGP issued the resolution of the aforementioned request on 04/25/2023 ; that is to say, the deadline of the month expected to resolve and notify the resolution relating to the request to exercise the right has been exceeded by far.

For all of this, it must be concluded that the DGP extemporaneously resolved the claimant's data deletion request, without this conclusion being contradicted by the fact that the DGP had to require the claimant to amend his request legality And this, because the request for amendment of the DGP took place on 23/01/2023, that is to say, when the deadline of one month legally provided for since the claimant presented the sole request to delete your data.

5. With regard to the substance of the matter, that is, if the personal data of the person making the claim should be deleted, it appears in the file that, after the presentation of the claim, the DGP issued a resolution dated 25/ 04/2023 estimate of the request for deletion, so it becomes unnecessary to make a pronouncement on whether to recognize the right of deletion exercised by the person making the claim.

It should be clarified, however, that the estimate resolution of the DGP refers only to the personal data related to the police actions mentioned in the 1st precedent of this resolution. With regard to the personal data corresponding to other police actions that were also the subject of the request for deletion, in the 12th precedent of the resolution it is pointed out that the person making the claim had not provided the documentation required for this purpose.

With regard to this issue, the file states that, on 01/23/2023, the DGP required the person making the claim to amend their deletion request. In said request, the DGP specified the police proceedings in respect of which it asked the person making the claim to provide certain documentation that would justify the deletion. For these purposes, it granted him a period of 15 days from the day after receiving the request, with the warning that, if he did not do so, he would be considered to have given up his request, in accordance with that provided for in article 68.1 of the LPAC.

In the request for deletion dated 04/11/2022, the claimant acknowledged the omission of various supporting documentation for his request for deletion.

In the letter dated 04/27/2023 presented to the Authority, the DPG has stated that the person making the claim has not responded to the amendment request.

So, although the resolution of the DGP does not contain an express pronouncement on the withdrawal of the person claiming with regard to this part of the deletion request, this is clear from the amendment request - not answered - and from the 12th antecedent of the

resolution of the DGP. For this reason, it must be concluded that the resolution dated 04/25/2023 conforms to the law. This circumstance, however, does not prevent the person claiming to be able to make a new deletion request with respect to the personal data that has not been deleted and provide the documentation required for this purpose.

In short, with regard to the police proceedings that are the subject of a request by the DGP, the claim of the person making the claim must be dismissed, taking into account that he should have provided the supporting documentation of the request for deletion relating to each of the proceedings that the DGP identified by its numerical code in its request, but the claimant did not do so.

6. Lastly, although the DGP has certified that it issued the estimated resolution dated 04/25/2023, regarding the deletion request made by the claimant, there is no documentary evidence that this resolution has been effectively notified, given that among the documentation provided to prove this fact, the DGP has only provided proof of making available, by electronic means, the office of notification of the resolution. For this reason, it is considered appropriate to request the DGP so that within 10 days, counting from the day after the notification of this resolution, certify that the resolution issued on 04/25/2023, estimate of the right of deletion, has been effectively notified to the person making the claim.

resolution

For all this, I resolve:

1. Partially estimate the claim, given that the General Directorate of the Police of the Department of the Interior did not respond in time to the request of Mr. (...), and with regard to the merits of the claim, declare that the resolution of the DGP dated 04/25/2023, estimating the deletion request, conforms to the law for the reasons indicated in the basis of law 5th
2. Request the General Directorate of the Police so that, within 10 counting days from the day after the notification of this resolution, it certifies that it has notified the person claiming the estimated resolution dated 04/25/2023 , in the terms indicated in the 6th legal basis.
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 (<https://apdcat.gencat.cat>), in accordance with article 17 of Law 32/2010.

Against this resolution, which in accordance with articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, puts end of the administrative process, the interested parties may file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after their notification , in accordance with the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after your 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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