

## File identification

Resolution of the rights protection procedure no. PT 3/2023, urged against the Department of Research and Universities.

## Background

1. On 10/01/2023, the Catalan Data Protection Authority received, by transfer from the Spanish Data Protection Agency (AEPD), the letter of (...)2022 presented on behalf of and representation of Mr. (...) (henceforth, the claimant), for which he made a claim for the alleged neglect of the right of access to the personal data of his minor daughter, which he had previously exercised before the Department of Research and Universities.

Specifically, the complainant complains that the Department has not given him access to the documentation "*relating to the registration application*" for the university entrance exams (PAU) prepared by his minor daughter, who includes the supporting documentation of the circumstances that would justify the PAU payment rate being free. And in relation to this he presumes that "*the mother has been able to avail herself, improperly, of the 100% exemption from the University Entrance Test fee based on an alleged condition of being a victim of gender violence, when not the would boast.*"

The claimant provided various documentation relating to the exercise of this right, including the following:

- Copy of the generic instance form submitted on (...)2022 in the name and representation of the claimant before the Department of Research and Universities, with entry registration no. (...), and subject "*Request for documentation in relation to peace access rate on behalf of (...).*"
- Copy of the letter of request addressed in the name and representation of the claimant to the Office of Access to the University, and provided as an attached document to said generic instance of (...)2022. In this letter it was made clear, among other things, that in the year 2022 the minor daughter of the claimant, over whom she has "*shared parental authority*", would have been enrolled in the PAU and would have obtained the free the registration fee. The claimant exercised the right of access to "*all the documentation relating to the application for the enrollment of his minor child (...) in the University Access Tests, corresponding fee, and documentation attached to the same that has justified the obtaining of the bonus, reduction or exemption of 100% of its amount*".
- Copy of the resolution of (...)2022, by which the (...) of the Interuniversity Council of Catalonia of the Department of Research and Universities decides to reject the claim made by the claimant in the application dated (... )2022.

In this regard, the resolution dated (...)2022 referred to motivated the decision adopted with the following legal foundations:

*"In relation to the requested documentation, articles 21 and 22 of Regulation (EU) 2016/679 of the European Parliament and of the Council of April 27, 2016, relating to the protection of natural persons with regard to the treatment of personal data and the free circulation of this data (applicable by reference to Article 18 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights) regulate the right of opposition of persons interested in objecting at any time, for reasons related to their particular situation, to personal data concerning them being the object of treatment.*

*In the present case, the person holding the personal data contained in the requested documentation has been informed of the request submitted in the name and representation of Mr. (...) and has expressed his right to oppose agreement with a title that this Administration considers legitimate."*

2. On 30/01/2023, the claim was transferred to the Department of Research and Universities so that within 15 days it could formulate the allegations it deemed relevant.

In the same transfer office, the Authority also required the Department to, among other things, report on the elements that were taken into account to make the reasoned weighting between the exercise of the right of access of the person claiming to the requested documentation and the exercise of the affected person's right of opposition, and which finally motivated the resolution dated (...)2022, dismissing the right of access exercised by the person making the claim.

3. On 02/20/2023, the Department of Research and Universities presented a letter of allegations in which it set out, in summary, the following:

- That *"On date (...)2022 a written submission is submitted in the Registry of the Department of Research and University with no. of entry (...), through which Mr. (...) in the name and representation of Mr. (...) requests: "(...) all the documentation relating to the registration request of his minor daughter (...) in the University Entrance Tests, fee, corresponding, and documentation attached to the same that has justified obtaining the bonus, reduction or exemption of 100% of its amount."*
- That this request for information is based *"(...) on the fact that it is documentation presented in an administrative instance by his daughter, a minor, over whom she has shared parental authority, exercising, in short, the right of access on behalf of the minor (over fourteen years old), in accordance with article 53.1ai 27.4 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LCAPAP)."*
- That *"Given that the aforementioned request for information may affect the rights or interests of third parties, in accordance with article 31 of Law 19/2014, of December 29, on transparency, access to public information and good government, it is transferred from the same to the possible affected people so that they can present allegations in this regard.*
- That *"In this case, the person holding the personal data contained in the requested documentation expresses, expressly, his right of opposition, in accordance with the provisions of article 18 of Organic Law 3/2018, of December 5, on protection of personal data and guarantee of digital rights, which refers to articles 21 and 22 of Regulation (EU)*

*2016/679 of the European Parliament and of the Council of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free circulation of such data." .*

- That *"On (...)2022, the (...) of the Interuniversity Council of Catalonia issued a resolution rejecting the request submitted in the name and representation of Mr. (...) regarding the documentation contained in the "administrative file of (...) which is in the possession of this Administration."*
- That *" In the basis of said resolution it is specified that the person holding the personal data contained in the requested documentation has expressed his right of opposition in accordance with a title that the Administration considers legitimate." .*
- That *"In the claim filed by the representation of Mr. (...), it is alleged that the applicant is authorized to access, on behalf of his daughter, the data and documentation that was submitted for the processing of the University Entrance Tests, in based on article 53.1.a) and 27 of Law 39/2015 of October 1, of the common administrative procedure of public administrations and by virtue of what is established in article 236.1 of the Civil Code of Catalonia, as well as of the parental right to be informed about the progress of their daughter's learning and socio-educational integration, in accordance with article 4.1.d of Organic Law 8/1958, of July 3, regulating the right to education In this sense, it presents the presumption that the mother was able to benefit improperly from the 100% exemption from the University Entrance Test fee on the basis of an alleged condition of being a victim of gender violence that does not show " .*
- That *" The first additional provision of Law 19/2014, of December 29, on transparency, access to information and good governance, establishes that: "the access of interested parties to the documents of administrative procedures in process is governed by what determines the legislation on legal regime and administrative procedure" . For its part, article 53.1a) of law 39/2015, of October 1, on the common administrative procedure of public administrations, recognizes that people interested in an administrative procedure have the right to access and obtain a copy of the documents contained in the procedures in which they have this condition. Also, article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia, recognizes that citizens who have the status of interested persons in an administrative procedure in progress they have the right to access the file and obtain a copy of the documents that are part of it."*
- That *" On the other hand, article 236-18.1 of Book Two of the Civil Code of Catalonia, approved by Law 25/2010, of July 29, provides that the parents are holders of parental authority over minor children not emancipated (...)"*
- That *"In any case, as can be seen from the resolution of the (...) of the Interuniversity Council of Catalonia dated (...)2022, in the present case the status of a person interested in exercising the right to access of Mr. (...), as holder of the shared parental authority of the minor, over 14 years old, (...), but the concurrence of circumstances limiting its exercise." .*
- That , regarding this, *"The right of access to the administrative file is not an absolute right, but has certain limitations, in the sense indicated in article 82.1 of the LPACAP*

*which, in relation to the hearing procedure, establishes as a general criterion that when the administrative files are disclosed to the interested parties or their representatives, the limitations provided for in their case in Law 19/2013, of 9 december In the same sense, article 27.4 of the LPACAP establishes that interested parties may request, at any time, the issuance of authentic copies of public administrative documents that have been validly issued by public authorities, unless the exceptions apply derived from the application of Law 19/2013, of December 9."*

- *That "Specifically, on the exercise of the right of access, the transparency regulations establish, specifically, that if the request for public information may affect the rights or interests of third parties, it must be transferred from the request and grant time to present allegations to these affected persons (article 31 of Law 19/2014, of December 29, applicable in the area of the Administration of the Generalitat)."*
- *That " In this sense, in the exercise of the right of access, in accordance with the transparency regulations, the provisions of articles 21 and 23 of Regulation (EU) 2016/679 of European Parliament and Council of April 27, 2016, relating to the protection of natural persons with regard to the processing of personal data and the free movement of such data, applicable by reference to article 18 of the LOPDGDD , which regulate the right of interested persons to object at any time, for reasons related to their particular situation, to the processing of personal data concerning them." .*
- *That "(...) the right of access of an interested party may come into conflict or negatively affect fundamental constitutionally protected rights, such as that of data protection (art. 15.4 of the RGPD). In this case, the person responsible for the treatment must analyze each specific case, taking into account the circumstances, object and purpose of protection, appropriately weighing the conflicting interests." .*
- *That "In this sense, it is stated in the resolution of the (...) of the Interuniversity Council of Catalonia dated (...)2022, that the person holding the personal data contained in the requested documentation, having been timely informed, he expressed his right of opposition in accordance with a title that this Administration considers legitimate. (...) "*

The claimed entity accompanied the statement of allegations with various documentation, including:

- A copy of the evidence of the notification of the resolution of (...)2022. It is noted that, on (...)2022, the Department of Research and Universities made the resolution of (...)2022 available to the representative of the claimant, who accepted it on the same day (...) 2022.

## **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 thereof ( hereinafter, 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 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 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 (from now on, 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 Department of Research and Universities resolved and notified the right of access exercised in the name and representation of the person making the claim within the period provided for by the applicable regulations, since precisely the the reason for the complaint that started 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 date (...)2022 the Department of Research and Universities received a letter presented in the name and representation of the claimant , through which he exercised the right of access to *" all the relevant documentation to the registration request of your minor daughter (...) in the University Entrance Test, fee, corresponding, and documentation attached to the same that has justified obtaining the bonus, reduction or exemption of 100% of your importance."*

In accordance with article 12.3 of the RGPD, the Department 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 deadline, it should be noted that, in accordance with article 21.3. b of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), and article 41.7 of Law 26/2010, of August 3, of the legal regime and procedure of the public administrations of Catalonia (from now on, LRJPCat ), 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 was entered in the register of the body competent to process it. On the other hand, the maximum deadline is for resolution and notification (art. 21 LPAC), so that before the end of this deadline the resolution must have been notified, or at least a duly accredited notification attempt must have occurred (art. 40.4 LPAC).

As part of the hearing procedure of this guardianship procedure, the Department has certified that, on (...)2022, it notified the representative of the claimant of the resolution of (...)2022 rejecting the request submitted on (...)2022, that is, once the legal deadline of one month has expired to respond to the request to exercise the right of access.

Consequently, it must be stated that the Department, although it gave an answer to the applicant, did not resolve and notify the said request in the form and time frame. 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 and, in this case, access said data and information on the purposes of the treatment, the categories of personal data and the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in the article 15.1 of the GDPR. 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 in respect of 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 the subject of treatment. 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 its exercise 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 this case, it is necessary to point out the circumstance that the request for the right of access was not made by the person holding the personal data, who in this case was a minor, but by one of their parents who exercised the your legal representation.

In relation to this, it should be noted that the Department does not at any time question the legitimacy of the claimant to request the right of access with respect to the documentation that contained personal data of his minor daughter, presented in the registration procedure in the PAU of the year 2022. In this sense, the Department considers that the claimant exercised the right of access as holder of parental authority, in accordance with the provisions of articles 236- 1 and 236-18.1 of book two of the Civil Code of Catalonia and that, due to his status as an interested person (art. 4 LPAC) he could request the right of access established in article 53.1. a of the LPAC and article 26 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (from now on, LRJPAC). Likewise, in the case of a request for access to the personal data of the minor daughter, over which the applicant had parental authority, this access could also be conveyed through a right of access to personal data provided for in article 15 of the RGPD.

However, at this point it should be noted, as the Department bases, that in some cases, given the concurrence of certain circumstances and in accordance with the applicable regulations, the exercise of these rights by parents or legal representatives may be limited.

In this regard, it should be borne in mind that the claimant requested access to "*all the documentation relating to the registration application*" to the PAU presented by his minor daughter, which would include the supporting documentation of the circumstances that would justify that the PAU payment rate had been free.

Article 15.4 of the RGPD provides, specifically, that the exercise of the right of access cannot negatively affect the rights and freedoms of third parties, as in this case the right to the



protection of personal data could be 'a third person who may appear in the information to which it is intended to be accessed.

In relation to this, the Department has stated that, given that the request could affect the rights or interests of third parties, it was *"transferred to the possible affected persons so that they could present allegations in this regard"* . And, with respect to this, *"the person holding the personal data contained in the requested documentation expressly declares their right to object"* , in accordance with the provisions of article 18 of the LOPDGDD and article 21 of the RGPD.

Consequently, on (...)2022 the Department decided to reject the request of (...)2022 presented by the claimant. In the grounds of the resolution, it indicated that the specific reason for denying the access request was that *"the person holding the personal data contained in the requested documentation, having been timely informed, expressed his right of opposition in accordance with a title that this administration considers legitimate."*

Regarding this, this Authority required the Department to report on the elements that were taken into account to make the reasoned weighting between the exercise of the claimant's right of access to the requested documentation and the exercise of the right of opposition from the affected person, which would have motivated the resolution dated (...)2022 dismissing the right of access exercised by the person making the claim.

After analyzing the documentation that the Department has provided during the hearing procedure to substantiate the decision adopted, this Authority shares the criteria of this body and considers that the weighting exercise it carried out between the two rights in conflict (the right of access exercised by the claimant on behalf of his daughter and the latter's right - data owner - to the protection of his personal data), according to the information he had at hand, was fully adjusted to the right. Also, the resolution of (...)2022 was grounded and indicated that the reason for rejecting the request of (...)2022 was the right of opposition exercised by the person holding the data contained in the requested documentation.

Ultimately, this Authority believes that the Department acted in accordance with the law in not providing the claimant with a copy of the disputed documentation, in view of the concurrent circumstances.

## **resolution**

For all this, I resolve:

1. Partially estimate the claim, given that the Department of Research and Universities did not respond in time to the request of Mr. (...) , in accordance with what is stated in the 3rd legal basis. No action should be required, since the Department gave a legal response to the request, albeit extemporaneously.
2. Notify this resolution to the Department of Research and Universities and to the person making the claim.
3. Order the publication of the resolution 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, 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 may file an appeal 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. You can also directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its 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 for the defense of their interests.

The director,

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