

File identification

Resolution of the rights protection procedure no. PT 5/2023, relating to Barcelona Municipal Services (B:SM).

Background

1. On 18/01/2023, the Catalan Data Protection Authority received a letter from Mr. (...) (from now on, the person making the claim), dated 12/22/2022, in which he made a claim for the alleged disregard of the right to deletion, which he had previously exercised before the Barcelona de Serveis entity Municipals, SA (B:SM).

Specifically, the complainant stated that he had asked B:SM to "delete " his personal data, specifically his email address (...), and complained that he was receiving "unsolicited emails ", sent from the sender "noreplayarea@bsmsa.cat", about the ONaparc and smou applications , despite not being a user of these applications ("No soy user y nunca lo fui") . In relation to this, he indicated that the company B:SM had informed him that in their databases they only had the personal data of his " correo electrónico (...)", and that "it is the user himself who You must unsubscribe from the application directly through the 'configuration' section."

The claimant provided various documentation relating to the exercise of his rights:

- Copy of an email, dated 11/22/2022 at 11:51 a.m., sent by the claimant, (...), to B:SM, protecciodades@bsmsa.cat , with the subject "Mis data " and the following request:

"Good morning,
As I receive unwanted messages and they do not respond to unsubscribe, I request all the data that the ONaparc and smou applications have Associates at the email address (...)@gmail.com."

- Copy of an email, dated 11/22/2022 at 12:21 p.m., through which B:SM, , asked the claimant to provide " lo antes posible, copy of his DNI to process his request", which the claimant provided hours later (on 11/22/2022, at 2:10 p.m.).
- Copy of an email, dated 11/23/2022 at 1:46 p.m., in which B:SM responded to the person claiming the following:

"Good morning,

After reviewing our databases, we have verified that the email address (...) from which we are writing is associated with a different identity than the one that appears in the DNI attached to us.

On the other hand, in relation to the data that appears in your ID, we confirm that we do not have any data that matches it in our database."

- Copy of an email, dated 11/24/2022 at 5:29 p.m., in which the claimant requested the following from B:SM :

"Good afternoon,

ONaparcar and smou applications to use my personal data, including this email address. Therefore, I request that I be informed if they have been transferred to others and that they disappear from their databases."

- Copy of an email, dated 12/04/2022 at 11:35 a.m., sent by the person claiming, to B:SM, in which he indicated "I'm waiting for confirmation of my request."
- Copy of an email, dated 13/12/2022 at 2:37 p.m., sent by B:SM, with the following response:

"Good morning,

We inform you that we do not have any data associated with the DNI attached to us. However, they have not been able to transfer them to any third party.

On the other hand, the email from which he writes to us appears registered in the "OnAparcar" App Residents ", which will disappear in the next few days, as notified in the communications sent in this regard.

However, you can unsubscribe from this email , if you prefer, before it disappears, through the "configuration" section.

In any of the two cases, we confirm that your email will be blocked at that time and we will proceed to eliminate them when the established prescription period has passed."

- Copy of an email, dated 12/13/2022 at 3:58 p.m., through which the claimant requested B:SM to block his personal data ("bloqueen mi dirección de correo because I'm not a user of their App, I'm not interested in them and I don't know how to do what they propose to me (...)").
 - Copy of an email, dated 12/19/2022 at 1:56 p.m., in which the person making the claim informed B:SM that he was still "recibiendo mensajes no deseados de ONaparcar y smou ."
 - Copy of an email, dated 12/22/2022 at 9:49 a.m., in which B:SM responded to the person claiming that "it is the user himself who must unsubscribe from the application directly to through the 'configuration' section. However, during the next month the application will disappear and your mail will be blocked automatically."
2. On 01/31/2023, the claim was transferred to the claimed entity so that within 15 days it could formulate the allegations it deemed relevant.
 3. On 02/22/2023 , the claimed entity presented a statement of objections in which it set out, in summary, the following:
 - That, on 11/22/2022 at 11:51 a.m., "the claimant submitted a request to exercise the right of access to his personal data", where he specifically requested " todos los datos that ONaparcar and smou applications have Associates at the email address (...). "

- That on the same day 11/22/2022, at 12:21 p.m., B:SM asked the claimant for a "copy of his ID to give processing to his request", which the claimant provided the same day at 2:10 p.m.
- That, on 23/11/2022, "B:SM verified the non-existence of matching data" with the ID provided by the person making the claim. "However, B:SM verified that the email address (...) is associated with an identity different from that of the person making the claim and that appears in the attached ID card."
- That "both situations (non-existence of data matching the DNI and link of the e-mail address to a different identity) were made clear to the person making the claim, so that at all times he was aware of these circumstances, (. ..)."
- That, on 11/24/2022 at 5:29 p.m., "the claimant requested, on the one hand, the exercise of the right to delete his personal data and, on the other hand, for reasons unknown to this party, to be informed about whether their personal data had been subject to transfer."
- That, on 13/12/2022 at 2:37 p.m., "B:SM responded both to the request for information on the transfer of the claimant's personal data, and to that of the exercise of the right to deletion: (i) Regarding the request for information on the transfer of personal data, he was informed of the impossibility of being able to transfer his data associated with the DNI, given that there was no data associated with it . (ii) Regarding the deletion request, he was informed of the need to deregister from the App , in order to be able to proceed, first, to block his email, and subsequently, to its deletion."
- That, on 12/22/2022 at 9:49 a.m., "after the claimant has reiterated, on December 13 and December 19, his request to exercise the right of deletion, despite that he had been given a response to his first request, B:SM responded indicating the following: (...) it is the user himself who must cancel the application directly through the 'configuration' section. However, during the next month the application will disappear and your mail will be blocked automatically. (...)."
- That, on 12/22/2022 at 11:55 a.m., "the claimant replied as follows (making this answer the last communication with the claimant): (...) I am not a user of its services and I never was From now on, and to make it clearer, having some of my data, using it for whatever you want or giving it to others has a price of 10,000 euros (without VAT). (...)."
- That " the person claiming was a user of the App through the email (...)@gmail.com, as can be seen (...), from the registration of his email address in the "App ."
- That "B:SM proceeded to deactivate any impact derived from commercial communications, with the exception, logically, of those of the service. (...)."
- That, on 13/12/2022, "the effective cancellation of commercial communications to the email referred to (...)" was carried out.

- That, regarding the exercise of the right of access, "B:SM has responded in accordance with Article 12.1" of the RGPD and "has complied with the provisions of Article 12.3, as that **has provided the interested party with the appropriate information, not only within the period of one (1) month from the receipt of the request** and through the same means of communication, that is, email, but that B:SM acted within minutes of receiving the request." Regarding this, "B:SM gives a **specific and concise answer** to the information specifically requested by the person making the claim. (...)."
- That, with regard to the right of deletion, "(...) B:SM, in compliance with the RGPD and the LOPDGDD, has responded within the time legally conferred for the purpose and in the terms that are determined, that is , in a precise, transparent and specific manner while responding to the information specifically requested by the person making the claim. (...)."
- That the request for the right to deletion "has no place in this case as long as:
 - Firstly, the identification of the claimant does not correspond to the data associated with the email address from which the claimant exercises the rights (...)
 - Secondly, it should be noted that the only data that existed about the claimant at the time of exercising the right was his email address, which could not be deleted as long as he was an active customer in the App ONaparcars Residents. The legitimizing basis for this data processing was based on the existence of a contractual relationship, so B:SM proceeded to inform the claimant that, in any case, and for the correct right of deletion and subsequent blocking, the claimant had to proceed to unsubscribe from the mobile application , an end that was duly communicated to the person making the claim in a clear, simple manner and on numerous occasions (...)."

The claimed entity accompanied the letter of allegations with various documentation:

- Screenshots from B:SM's customer management program, from which it is observed that the claimant's email address, (...), is associated with an identity that does not correspond to that of the person claiming In the " Associated View" section unsubscriptions " of the customer management program, it appears that the claimant's email address, (...), was unsubscribed on 12/13/2022 at 1:31 p.m.
 - printing of the list of commercial communications sent from B:SM, relating to the OnAparcarResidents service . It is noted that, on 15/02/2022 at 11:41 a.m., B:SM sent three commercial communications to the claimant's email address, (...), with the following subjects: 1st mail electronic "Your 2023 Resident rate / Your 2023 Resident rate"; 2nd email " Residente , go to smou "; and 3rd e-mail "Residentes Barcelona is already in smou / Residents Barcelona is already in smou ."
4. On 04/24/2023, this Authority considered it necessary to require more information from the person making the claim. Therefore, he was sent a letter in which he was requested to provide a copy of the " unsolicited " e-mails that B:SM noreplayarea@bsmsa.cat would have sent to his e-mail address (...). And to also report if, after submitting the claim of

12/22/2022, you continued to receive "unsolicited" emails from B:SM, in relation to these applications.

5. On 04/29/2023, the person making the claim replied that, on 12/19/2022, he had received the last commercial communication about the "Onaparcar y smou" applications, and that, after submitting the claim dated 22/ 12/2022, I had not received any more messages from B:SM. And he complained that B:SM "at no time" had informed him about "the deletion (deletion) or transfer to others of my electronic mail."

The claimant provided a copy of the last "comunicación comercial no deseada" sent by e-mail dated 12/19/2022 at 1:26 p.m., from the e-mail address of B:SM, noreplayarea@bsmsa.cat, to the claimant, with the subject "Your 2023 Resident rate / Your 2023 Resident rate". This email contains an informative data protection clause which, among other things, informs about the means available to interested parties to exercise their rights before the data controller. And it provides them with a link, called "unsubscribe", in case they want to "stop receiving future communications that are not specific to the contracted service or product."

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 the Catalan Authority of Data Protection.
2. Article 17 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 circulation thereof (RGPD), regulates the right of deletion in the following terms:

"1. The interested party will have the right to obtain without undue delay the deletion of the personal data concerning them from the controller, who will be obliged to delete the personal data without undue delay when any of the following circumstances occur:

- a) personal data are no longer necessary in relation to the purposes for which they were collected or otherwise processed;
- b) the interested party withdraws the consent on which the treatment is based in accordance with article 6, section 1, letter a), or article 9, section 2, letter a), and this is not based on another legal basis;
- c) the interested party objects to the treatment in accordance with article 21, section 1, and other legitimate reasons for the treatment do not prevail, or the interested party objects to the treatment in accordance with article 21, section 2;
- d) personal data have been treated unlawfully;
- e) personal data must be deleted for the fulfillment of a legal obligation established in the Law of the Union or of the Member States that applies to the person responsible for the treatment;
- f) the personal data have been obtained in relation to the offer of services of the information society mentioned in article 8, section 1.

3. Sections 1 and 2 will not apply when the treatment is necessary:

- a) to exercise the right to freedom of expression and information;

- b) for the fulfillment of a legal obligation that requires the treatment of data imposed by the Law of the Union or of the Member States that applies to the person responsible for the treatment, or for the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge;
- c) for reasons of public interest in the field of public health in accordance with article 9, section 2, letters h) ei), and section 3;
- d) for archival purposes in the public interest, scientific or historical research purposes or statistical purposes, in accordance with article 89, paragraph 1, to the extent that the right indicated in paragraph 1 could make it impossible or seriously hinder the achievement of the objectives of said treatment, or
- e) for the formulation, exercise or defense of claims."

Article 15 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (LOPDGDD), also in relation to the right of deletion, determines the following:

- "1. The right of deletion will be exercised in accordance with the provisions of Article 17 of Regulation (EU) 2016/679.
- 2. When the deletion derives from the exercise of the right of opposition in accordance with article 21.2 of Regulation (EU) 2016/679, the person in charge will be able to retain the identification data of the affected person necessary in order to prevent future treatments for the purposes of direct marketing."

Article 32 of the LOPDGDD regulates the duty to block deleted data in the following terms:

- "1. The person responsible for the treatment is obliged to block the data when carrying out the rectification or deletion.
- 2. The blocking of data consists of the identification and reservation of these, with the adoption of technical and organizational measures, to prevent their treatment, including display, except for making the data available to judges and courts, the Public Prosecutor's Office or the competent public administrations, in particular the data protection authorities, for the requirement of possible responsibilities derived from the treatment and only for the limitation period thereof.
After this period, the data must be destroyed.
- 3. Blocked data cannot be processed for any purpose other than that indicated in the previous section. (...)"

In relation to the rights provided for in articles 15 to 22 of the RGPD, paragraphs 3 to 6 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.

6. Without prejudice to the provisions of article 11, when the controller has reasonable doubts in relation to the identity of the natural person making the request referred to in articles 15 to 21, he may request that the information be provided additional necessary to confirm the identity of the interested party. (...)"

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, provides the following on the protection of the rights provided for by the regulations on personal data protection:

"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 B:SM responded to the requests made by the applicant, within the period provided for by the applicable regulations. Regarding this, the first thing to indicate is that this resolution will focus on the analysis of the object of the claim presented to this Authority, referring to the disregard of the right to deletion of the personal data of the person making the claim.

In accordance with article 12.3 of the RGPD, the company B:SM had to give an answer to the request to exercise the requested right within a maximum period of one month, counting from the date of receipt of the request.

However, it cannot be overlooked that the deletion request was preceded by a request for the right to access personal data, which was received on 11/22/2022 in the mailbox enabled by B:SM (protecciodades@bsmsa.cat). On the same date, B:SM responded and required the person making the claim to provide a copy of the DNI, in order to verify their identity before making the right of access effective. On 11/23/2022, after receiving the

DNI, the entity sent an email to the person making the claim with the express response to their request for the right of access.

As a result of this response, it is certified that on 24/11/2022 a new email from the person claiming was received in the mailbox of B:SM, where he requested that the applications of B:SM ONaparcar and smou do not process your personal data. And, in relation to this, he requested to know if his personal data had been transferred to " others " and, also, that they be deleted from the B:SM database, (" que desaparezcan de sus bases de datos"). B:SM replied to this email on 12/13/2022.

In the last one, it is certified that on 13/12/2022 an e-mail was received from the person claiming, where he requested " block my address ". In relation to this, on 19/12/2022 the person making the claim informed B:SM that he was still " receiving unsolicited messages from ONaparcar y smou . " B:SM responded to these emails on 12/22/2022.

Consequently, from a formal point of view, it must be concluded that B:SM responded to the requests made by the claimant within the legally fixed term (art. 12.3 RGPD), through the same electronic means by which it had received the requests This, without prejudice to what will be said below regarding the substance of the claim.

4. Once the above has been established, it is necessary to analyze the substance of the claim, that is to say whether the answer given by B:SM conformed to the precepts transcribed in the 2nd legal basis.

As indicated in the previous section, it is necessary to start from the premise that the claim presented on 22/12/2022 is against the denial of the exercise of the right to " deletion " of the personal data of the person making the claim (specifically, of the claimant's email address), which are recorded in the B:SM databases, which is why the claimant would be receiving " e-mails electronicos no deseados " by B:SM, despite not being a user of its applications.

In this case, it is necessary to highlight the circumstance that the person claiming, before the request to exercise the right of deletion formulated on 24/11/2022, requested the right of access to their data personal on 22/11/2022. As a result of this request, the claimed entity asked the interested person to send a copy of their ID, in order to confirm their identity. This action is foreseen in recital 64 of the RGPD: " The person responsible for the treatment must use all reasonable measures to verify the identity of the interested parties who request access, in particular in the context of online services and online identifiers. " Also, article 12.6 of the RGPD establishes the following: " Without prejudice to what is provided in article 11, when the person responsible for the treatment has reasonable doubts in relation to the identity of the natural person who makes the request to which refer to articles 15 to 21, you may request that the additional information necessary to confirm the identity of the interested party be provided."

With the copy of the applicant's ID, the entity verified that the interested person was not the owner of any personal data registered in its database. Specifically, the B:SM database did not state that the claimant (now identified through his ID number and his first and last name) was the owner of the email account (...), used to formulate the request for access rights, as this email address was linked to a third party. From the text of the e-mails

exchanged between both parties, it can be seen that the entity informed the applicant of this circumstance in the response to his right of access.

It cannot be ignored that this circumstance marks the response that the entity gives to the person making the claim when, days later (11/24/2022), he precisely requests the deletion of this electronic address, of which it was not certified that was the person holding it.

In its response, dated 12/13/2022, B:SM repeated to the applicant that " we do not have any data associated with the DNI attached to us." Next, the person claiming that that email address, which was registered in the OnAparcar Residents application and associated with another person, would soon be blocked because this application was destined to disappear. It also informed her that users of the application could unsubscribe from this email address through the " apartado configuration ." And, in the last one, B:SM confirmed to the person making the claim that, in any case, that email address had been " blocked at that moment ", and that the deletion would take effect " when the established prescription period has expired". "

In the context of an exercise of the right to deletion formulated by a person who owns the personal data that requests deletion, this response could not be considered in accordance with the law. This is because article 17 of the RGPD establishes that the interested party has the right to obtain " from the person responsible for the treatment the suppression of the personal data that concern him, who will be obliged to suppress without undue delay the personal data." That is to say, strictly speaking, it is up to the data controller to delete the applicant's personal data from their archives or files. Therefore, the answer in which the interested person is told that he must be the one to carry out the actions to delete a certain personal data would not be valid. All this, regardless of the fact that, through the same application , users who want to act proactively can be given the possibility to unsubscribe.

However, in this case, the main requirement to be able to require the data controller to delete the personal data is missing, since the person who requested the deletion was not listed as the owner of the personal data to be deleted.

Regarding this, article 11.2 of the RGPD establishes that when the person in charge is able to demonstrate that he is not in a position to identify the interested party, he must inform him of this circumstance and: "In such cases no Articles 15 to 20 will apply, except when the interested party, in order to exercise his rights under said articles, provides additional information that allows his identification." Likewise, article 12.2 of the RGPD establishes that : " In the cases referred to in article 11, section 2, the person in charge will not refuse to act at the request of the interested party in order to exercise his rights under articles 15 to 22, unless he can demonstrate that he is not in a position to identify the interested party ."

From all the above, it is considered proven that B:SM could not remove the email address from its database, as requested by the person making the claim, since even though the exchange of emails 'infers that the person making the claim was the user of this email address, the entity was aware that it was owned by a third person. To this circumstance it should be added that, according to the entity, it was not possible to delete this data because in its database this data corresponded to the address of an "active customer" of the ONAparcar Residents application . And that, since receiving the deletion request from

the complainant, B:SM " ceased any type of commercial communication with the complainant."

Consequently, it has been proven that the action of B:SM has been proactive at all times, given that it required the person requesting to prove their identification, and has given a response adjusted to the circumstances of the case. In this sense, it must be borne in mind that this is the exercise of a very personal right and that he could not delete a piece of data without having proof that the person who requested it was the owner.

resolution

For all this, I resolve:

1. Dismiss the guardianship claim made by Mr. (...)against Barcelona de Serveis Municipals, SA (B:SM).
2. Notify this resolution to Barcelona de Serveis Municipals, SA and to the person making the claim.
3. 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, 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, with discretion, the interested parties can file 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 what is provided for in article 123 et seq. of the LPAC or 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, regulating administrative contentious jurisdiction .

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director