

File identification

Resolution of the rights protection procedure no. PT 6/2023, petition against Altafulla City Council.

Background

1. On 01/26/2023 , the Catalan Data Protection Authority received a letter from Mrs. (...) (henceforth, the claimant), for which he made a claim for the alleged disregard of the right to delete his personal data that he had previously exercised before the Altafulla City Council (henceforth , the City Council).

The person making the claim stated that, on 22/12/2022, he requested the City Council to delete his personal data from his electronic headquarters, given that he had already exceeded "a mb exceeds the purpose for which they were initially authorized, collected and treated". To this end, he requested the withdrawal of his data "from any physical or digital medium" for which the entity was responsible.

The person making the claim provided a copy of the request for deletion that he submitted to the City Council on 12/22/2022, which included a link to the web page on which the data to be deleted would appear.

2. On 08/02/2023 , the claim was transferred to the City Council so that within 15 days it could formulate the allegations it deemed relevant.
3. The City Council made allegations in a letter dated 02/15/2023, in which it briefly stated the following:
 - That on 12/22/2022 the request to exercise the right to deletion of the claimant was registered .
 - That, through mayoral provision, a report was requested from the data protection delegate on the request made by the person making the claim, but the position of data protection delegate was pending award and that the appointed person occupied it on 12/26/2022.
 - That by means of a decree the request made by the person making the claim was approved and the procedures were initiated to effectively delete their personal data that appeared published on the City Council's website.
 - That on 03/02/2023 the estimated resolution of his request was notified to the person making the claim.
 - That the City Council "recognizes that this resolution has been notified out of time, due to the exceptional situation in which the City Council finds itself, given that, in the absence of an active Data Protection Delegate to manage the request, this role has been assumed by the accidental secretary, who has an extra volume of work", and for this reason the notification of the resolution to the person making the claim was delayed.

- That "all the actions have been carried out in order to guarantee compliance with their rights and the information subject to the request has been removed."

The City Council provided various documentation, including:

- The Decree of 01/02/2023, through which the City Council resolved to estimate the request for deletion of the data of the person making the claim.
- Proof of notification on 02/03/2023 of the estimated resolution to the claimant.

4. In order to verify the effective deletion of the claimant's data, on 06/19/2023 the Inspection and Technical Area accessed the link that the claimant had mentioned in his deletion request and, also, on the transparency portal and on the Altafulla City Council e-Board. The search carried out did not find any information regarding the person making the claim. From the result obtained, a due diligence was carried out.

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 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 movement of such data (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."

For its part, article 15 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 deletion:

- "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."

On the other hand, 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 contained 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.

(...)"

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. In this case, it is certified that on 12/22/2022 the City Council received a letter from the person making the claim through which he exercised the right to delete his personal data; that on 01/02/2023 the City Council resolved to estimate the deletion request; and that on 02/03/202 he notified it to the claimant. In other words, the City Council resolved and notified the request for deletion when the maximum period of one month provided for this purpose had already passed (art. 12.3 RGPD).

Regarding this delay in the response, the City Council has expressed an "exceptional situation (...) given that, in the absence of an active Data Protection Delegate to manage the request, this role has been assumed by the accidental secretary, who has an extra volume of work."

Article 12.3 of the RGPD provides for the possibility of extending up to two times the one-month deadline for responding - and, therefore, extending it by another two months - due to the complexity of the legality, among other reasons. However, there is no record that the City Council had extended the procedure, and in any case it has not indicated this to the Authority. Therefore, the reason given is not valid to justify the delay in reply.

this claim, which was based on the lack of response, should be upheld .

With regard to the substance of the claim, that is, if the deletion of data requested by the person making the claim is appropriate, given that the City Council has issued and notified

the estimated resolution of the deletion request and that this Authority has verified that they have been deleted, it becomes unnecessary to issue a statement on this issue and require their deletion.

resolution

For all this, I resolve:

1. Estimate the guardianship claim made by Ms. (...) against the City Council d'Altafulla , given that the deletion request was not resolved within the deadline legally established _ It is not appropriate to make any other pronouncement or any requirement regarding the fund, as the claimant's right has become effective, in accordance with what has been indicated in the 3rd legal basis.
2. Notify this resolution to Altafulla City Council and the person making the claim.
3. Order that the resolution be published 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 Law 29/1998, of July 13, regulator of the administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate to defend their interests.

The director