

File identification

Resolution of the rights protection procedure no. PT 9/2023, urged against the General Directorate of Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 06/02/2023 the Catalan Data Protection Authority received a letter from Ms. (...), on behalf of Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to his personal data that he had previously exercised before the General Directorate of Police (hereinafter, DGP).

The claimant certified that, on 03/01/2023, he submitted in the electronic register of the General Administration of the State (Ministry of Finance and Public Service), the request to exercise the right to access to your personal data contained in the files of the Information Systems of the Generalitat Police (SIP PF/SIP PFMEN), addressed to the DGP.

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

2.- By order dated 02/08/2023, the claim was transferred to the DGP, so that within 15 days it could formulate the allegations it deemed relevant.

3.- On 02/20/2023, the DGP submitted his statement of objections, in which he set out the following:

- That on 01/03/2023, the claimant requested access to his personal data recorded in the files of the police (SIP PF/SIP PFMEN).
- That on 02/06/2023, the director general of the Police issued a resolution in which the applicant was informed that *"After consulting the aforementioned files, it is found that Mr./a. (...) with passport no. (...) no personal data is recorded in the Generalitat Police Information System file for natural persons (SIP PF)/for natural persons under the age of 10 (SIP PF MEN) managed by the General Directorate of the Generalitat Police."*
- That on 02/13/2023, the aforementioned resolution was notified to the interested person through the electronic notification application.

The DGP provided various documentation, among others:

- The request for access to personal data contained in the SIP PF/SIP PFMEN files presented by the claimant on 03/01/2023, through the electronic registry of the General Administration of the State (Ministry of Finance and civil service).
- The resolution issued by the director of the DGP, dated 02/06/2023, and the official notification dated 02/13/2023.
- Proof of evidence of the deposit of the electronic notification and proof of receipt of the electronic notification to the claimant, both dated 02/13/2023.

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 Data Protection Authority.

2.- The personal data subject to treatment by the DGP to which the present claim refers to the request to exercise the right of access presented, through the electronic register of the General Administration of the State (Ministry of Finance and Public Service), on 03/01/2023, are included in the scope of application of Organic Law 7/2021, of 26 May, on the protection of personal data treated with purposes of prevention, detection, investigation and prosecution of criminal offenses and execution of criminal sanctions (LO 7/2021).

3.- Okay with the above, it is necessary to go to article 22 of LO 7/2021, which in relation to the right of access provides the following:

"Article 22. Right of access of the interested party to his personal data.

1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him is being processed. If the treatment is confirmed, the interested party will have the right to access said personal data, as well as the following information:

a) The purposes and the legal basis of the treatment.

b) The categories of personal data in question.

c) Recipients or categories of recipients to whom personal data have been communicated, in particular, recipients established in States that are not members of the European Union or international organizations.

d) The retention period of personal data, when possible, or, if not, the criteria used to determine said period.

e) The existence of the right to request from the controller the rectification or deletion of personal data relating to the interested party or the limitation of its treatment.

its contact details .

g) The communication of the personal data subject to treatment, as well as any available information about its origin, without revealing the identity of any natural person, especially in the case of confidential sources.

(...)"

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, which determine what:

" 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 goals:

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, regarding the regime applicable to the 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 submit a claim to the data protection authority (...)"

In line with the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority (hereinafter, Law 32/2010), 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 within the established period, they can submit a claim to the Catalan Data Protection Authority."

4.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the DGP attended to the right of access exercised by the person here claiming within the period provided for by the applicable regulations, since the reason for his complaint that initiated the present rights protection procedure was the fact of not having obtained a response within the period provided for that purpose.

With regard to the alleged neglect of the right that is the subject of the claim, it has been established that, on 03/01/2023 - through the electronic register of the General Administration of the State -, the person making the claim here submit the request to exercise the right of access to your personal data before the DGP. This is also the same date that the DGP records as the entry date of the request.

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 request for access presented by the person claiming . Well, from the documentation provided in this file, it has been established that although the claimant submitted the request to exercise the right of access to his data before the DGP on 03/01/2023, the resolution of your request was issued on 02/06/2023, and was notified by electronic means on 02/13/2023, i.e. beyond the resolution and notification deadline of one month provided for in the effect.

That being the case, it can be concluded that the DGP extemporaneously resolved the request of the person making the claim.

5.- Regarding the substance of the request for access to the personal data that appeared in the SIP PF/SIP PFMEN files, the DGP has certified that it has effectively exercised the right to access the personal data requested , through the resolution of 06/02/2023, provided by the DGP to this Authority.

In this regard, it should be noted that through the referenced resolution, the DGP has responded to the request for access of the person now claiming, since through it the entity informs him that in its files does not include any of your personal data that is the subject of treatment, and in this sense it is necessary to consider given your right of access, as it provides all the information available on the person relating to the personal data that is the subject of your sole request

For all this, I RESOLVE:

1. Declare extemporaneous the resolution of the General Directorate of the Police dated 06/02/2023, which considers the request of Mr. (...) , of access to their personal data contained in the SIP PF/SIP PFMEN files, without entering into other considerations regarding the fund since the resolution of the DGP dated 06/02/2023 has resolved to make effective the right of access to your data.
2. Notify this resolution to the DGP and the person making the claim.
3. Order the publication of the Resolution on the Authority's website (<https://apdcat.gencat.cat/ca/inici>), 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 Agency Catalan Data Protection Authority, the interested parties may file, as an option, an appeal for reinstatement 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 the LPAC or to 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 13 July, regulating administrative contentious 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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