

## File identification

Resolution of the rights protection procedure no. PT 10/2023, urged against the General Directorate of the 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 Mr. (...) (from now on, the person making the claim) of a claim against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia (DGP), for having allegedly disregarded several requests for the deletion of your personal data.

In order to prove this, he provided a copy of four requests submitted on 18/11/2022 to a registry of the Generalitat in Girona and addressed to the DGP, through which he issued the deletion of his data personal data contained in the file in the field of information systems of the Generalitat Police-Mossos d'Esquadra (SIP PF) , related to various police proceedings. The complainant stated that the DGP had not responded to his requests.

2. By official letter dated 08/02/2023, 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 in a letter dated 02/17/2023, which, in summary, stated the following:
  - That, on 11/18/2022, the claimant submitted several deletion requests regarding the file in the SIP PF area and related to various police proceedings.
  - That the DGP issued the deletion resolutions for the data requested in each of the deletion requests.
  - That, in relation to the request in which the claimant requested the suppression of police proceedings no. (...), the DGP, through a request dated 07/02/2023, asked him to provide the supporting documentation for his request and indicated that, when he responded to this request, the processing of his request would continue request
  - That both the resolutions and the amendment requests were sent to the claimant by post, to the address provided for this purpose.

The DGP provided various documentation, including:

- Data deletion requests submitted by the person claiming to the DGP on 11/18/2022.
- The request to amend the request dated 07/02/2023 relating to the file AP (A)/22.
- The resolution of the file AP (B)/22, dated 02/09/2023 and the notification of 02/13/2023.
- The resolution of file AP (C)/22, dated 02/07/2023 and the notification of 02/13/2023.

- The resolution of file AP (D)/22, dated 02/07/2023 and the notification of 02/13/2023.

**4.** Subsequently, on 24/04/2023 the DGP provided additional information, in which it indicated the following:

- In relation to the amendment request referred to police proceedings number (...): he stated that the person concerned had answered it and that the DGP would resolve his request for deletion.
- In relation to the request for the deletion of the data that appeared in the letters of request: he stated that these requests were related to another request for amendment (AP (E)/22), related to the request for the deletion of the data police officers (...), (...) and (...); and that, consequently, the requirements would be removed when this police data was removed. And in the same sense, regarding the identifications.
- In relation to the request for suppression of police proceedings no. (...): stated that the person making the claim had not provided the supporting documentation justifying the deletion of this data.

Given that in order to resolve the claim it was necessary to have additional information, on 02/06/2023 the Authority required the DGP to report on the following:

- In relation to the request for the deletion of data from police records presented on 11/18/2023 at 2:05 p.m. – (file AP (B)/22): if you communicated the deletion of the claimant's data at Girona City Hall.
- In relation to the request for deletion of data from police records submitted on 11/18/2023 at 2:08 p.m. - (file AP (A)/22): that it provide a copy of the resolution regarding the deletion of the police proceedings no. (...) and of its notification to the person claiming. And in relation to the identifications (...) and (...) and the requirements (...) and (...), to report whether they were related to the amendment requirement mentioned in the supplementary information provided ( file AP (E)/22). And if he had issued a resolution, he should provide a copy and proof of notification to the person making the claim.
- In relation to the request to delete data from police records presented on 11/18/2023 at 2:13 p.m. - (file AP (D)/22): to report whether the police investigations of the identifications had been deleted ( ...) and (...), and if so, provide a copy of the resolution and proof of notification to the person making the claim.
- In relation to police proceedings no. (...): to point out the related proceedings in respect of which the claimant did not provide the documentation justifying the deletion.

**5.** On 06/16/2023, the DGP responded to the request and noted the following:

- That "P what concerns the data deletion request presented on 18/11/2023 in relation to the police proceedings (...) these were deleted by means of the Resolution falling within the file AP (B)/22 and this deletion was communicated to the Girona Municipal Police of the Girona City Council."
- That "Regarding the request to delete the data relating to the police proceedings (...) this took place through the Resolution of the file AP (A)/22."

- That " Regarding the identifications with number (...) and (...) were deleted through the Resolution of the file AP (A)/22."
- That "Regarding the identifications with number (...) and (...) were deleted through the Resolution of the file AP (E)/22."
- That "Regarding the deletion relative to the identifications (...) and (...) it should be indicated that it took place through Resolution dated April 20, 2023 in the framework of the AP file (E) /22."
- That "The police proceedings (...) are not related to other police proceedings."

The DGP provided, among other documents, the following:

- Copy of the resolution of file AP (A)/22, dated 20/04/2023, in which the deletion of data relating to police investigations (...) and identification data with number (...) and (...).
- Copy of the resolution of the file AP (E)/22, dated 20/04/2023, in which the deletion of identification data with number (...), (...), ( ...) and (...).
- Copy of the following documents certifying the notifications of the resolutions agreeing to the deletion of the data requested by the person making the claim:
  - The proof of the notification of the resolution of the AP (B)/22 file to the claimant on 03/02/2023.
  - The proof of the notification of the resolution of the AP (A)/22 file to the claimant on 08/06/2023.
  - The proof of notification of the resolution of the AP (C)/22 file to the claimant on 03/02/2023.
  - The proof of the notification of the resolution of the file AP (D)/22 to the claimant on 02/03/2023.
  - The proof of the notification of the resolution of the AP (E)/22 file to the claimant on 08/06/2023.

### **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 (Law 32/2010).
2. The processing of personal data to which the claim refers falls 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 enforcement of criminal sanctions (LO 7/2021).
3. In relation to the right of deletion, sections 2, 3 and 5 of article 23 of LO 7/2021 provide for 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 in charge of the treatment will notify the recipients, who must rectify or delete the personal data that are under their responsibility or limit their treatment."

Also, in case of restrictions on the rights of information, access, rectification and deletion of personal data and the limitation of their treatment, articles 24 and 25 of LO 7/2021 establish the following:

"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."

Paragraph 1 of article 52 of LO 7/2021, relating to the regime applicable to procedures processed before the data protection authorities, provides 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 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. 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 precisely the fact of not having obtained any response within the established period legally

In accordance with article 20.4 of LO 7/2021, the DGP had to resolve the deletion requests and notify them to the claimant within a maximum period of one month from 11/18 /2022, date on which the DGP has recognized that the deletion requests were received. Therefore, the deadline ended on 12/19/2022.

However, it is proven that the DGP did not issue the corresponding resolutions until 09/02/2023 (ex. no. AP (B)/22), 20/04/2023 (ex. no. AP (A) /22), 07/02/2023 (exp. no. AP

(C)/22), 07/02/2023 (exp. no. AP (D)/22) and 20/04/2023 (exp. no. AP (E)/22). These resolutions were notified on 02/03/2023, 08/06/2023, 02/03/2023, 02/03/2023 and 08/06/2023, respectively. That is to say, when the legal deadline of the month had already passed.

Consequently, it must be concluded that the DGP extemporaneously resolved the data deletion requests of the claimant. This conclusion is not contradicted in the case of file AP (A)/22, in which the procedure was prolonged due to a lack of documentation, because when on 02/07/2023 the DGP formulated the amendment request to the claimant the legal deadline of the month had already been exceeded.

Likewise, it is certified that on 02/07/2023, 02/09/2023 and 04/20/2023 the DGP issued five resolutions, by means of which it estimated the deletion requests made by the person making the claim, the which makes it unnecessary to make a pronouncement on the merits of the claim. Likewise, it is certified that these resolutions were notified to the person claiming on 02/03/2023 and 08/06/2023, which makes it unnecessary to make a request.

## **resolution**

For all this, I resolve:

1. Estimate the claim presented by Mr. (...) against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia, given that it did not respond in time to its requests. There is no need to make a statement on the merits or make a request, given that the General Directorate of the Police has estimated the deletion requests through the resolutions dated 07/02/2023, 09/02/2023 and 20/04/ 2023 and has certified the notification to the claimant.
2. Notify this resolution to the General Directorate of the Police and to 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