

File identification

Resolution of the rights protection procedure no. PT 22/2023, urged against the Catalan Corporation of Audiovisual Media, SA.

Background

1. On 02/28/2023, the Catalan Data Protection Authority received a written complaint from Mr. (...) (henceforth, the claimant), for the alleged disregard of the right to delete personal data that he had previously exercised before the Catalan Corporation of Audiovisual Media, SA (CCMA).

In his letter of claim, the claimant stated the following:

- That he became aware that in the loyalty department, in which he had provided services, "there are e-mails sent or received in my name, filed in different folders of these units that I created at the time and of those that I was responsible for it until 2017, to which all the member users of these units have full access and that in fact they are accessed in order to know their content."
- That, as a result of the initiation of a sanctioning case, "all my access permissions to these units were removed and therefore it was impossible for me to be able to select the personal material from the work, even though I did the written request (restitution of permits) to be able to carry out this selection and filtering in a supervised manner."
- That "[the request] was denied and I was told that all e-mails that might have been there alluding to the folders being for collective use by the department would be deleted and for so all its content was in the labor field." It added that "In response I communicated that at no time was I notified of the explicit prohibition of the use of e-mail for work purposes with [personal] connotations (personal information, third-party data, possible business or personal data facilitate personally, possible conversations, even though related to the work field, made from the proximity and trust with these third parties)."
- That "As I was assured by the management of the area, I trusted that all these files, despite not having been able to filter them or be present, I trusted that this information had been deleted as and how they committed to it."
- That "Faced with this situation, on October 10 [10/10/2022] I contacted, via Mail, the DPD (...)", which replied on 10/28/2022 "that I should to tell which network drives and folders I mean."
- That he sent the entity's data protection officer (DPD) the documents in which "the contents of the units, folders and subfolders are shown and each and every one of the e-mails archived there is visualized in each of these folders or subfolders."
- That on 12/27/2022, having not received a response, "I demand the status of the request and a response, which has not arrived today."

The person making the claim provided several emails, including the following:

- E-mail dated 10/10/2022, addressed to dpd@ccma.cat, in which the complainant stated that "(...) would ask that all e-mails that may still be deleted, under my supervision in the work units (internal or external) of the department of (...) specifically in the area (...), to consider that this fact has violated and violates my rights."
 - Email dated 10/28/2022, from the data protection delegate and addressed to the person making the claim, in which the previous email is answered that "In order to be able to manage your request we need you to indicate the unit (letter) of the folders and the name of the folders."
 - Email of 3/11/2022, addressed to the data protection delegate, in which the complainant stated that "(...) as I do not know the specific name of the folder or folders you are requesting, I am sending all the relationship that I sent in the mentioned email [refers to an email that I had sent in July 2017 to the director of the commercial and marketing area] (...) The units were: (...)."
 - Email dated 12/16/2022, addressed to the data protection officer, in which the person making the claim explained that "(...) More than a month has passed since the first email sent today and I have had no response, in one direction or another, of the actions that could have been carried out in the context of the requested mediation. From the good will and determination to solve (...) this request, I would like you to inform me of the procedures carried out."
2. On 03/13/2023, the claim was transferred to the CCMA, so that within 15 days it could formulate the allegations it considered relevant. This deadline was extended by another seven days, at the request of the claimed entity.
 3. The CCMA made allegations through a letter dated 04/17/2023, in which, in summary, it stated that on 04/13/2023 it sent an email to the person making the claim in which it responded to his request and informed her that it would allow her to "access the storage units to delete emails of a personal nature or that may contain information or conversations that are not of interest or relevance to the Corporation."

Along with its letter, the CCMA provided a copy of the email it had addressed to the person making the claim, in which it communicated the following:

- That the Systems and Information Area of the Corporation informed them that the units indicated by the interested party in their request "are shared area storage units for team or group work, to which from the moment of its creation, all people who belong to the Department or those authorized by the head of the Department can access it."
- That "to the extent that they are shared units, all the files or documents that are stored are not considered personal emails but information related to the tasks and functions entrusted to the Corporation's employees."
- That "the Corporation does not have the power or the obligation to access the network units, or the workers' workstations, to review the stored information or the existence of personal emails. "

- That "the Corporation had no obligation to inform you about the possible existence of personal emails or that they may contain information or conversations that are not of interest or relevance to the company."
 - That, notwithstanding the above, "the Corporation has decided that in the presence of an ASI technician and a person appointed by the Sales and Marketing Department you can access the referred units to review and delete the emails for you received and sent that are personal or that may contain information or conversations that are not of interest or relevance to the company."
 - That "the Corporation will contact you [the person making the claim] in order to specify the date and the mechanism to proceed with this review."
4. On 05/22/2023, this Authority asked the person making the claim that, if he was dissatisfied with the answer provided by the CCMA, he should inform him within 10 days.
 5. In response to this request, on 05/23/2023 the claimant informed this Authority that he had received the communication that the CCMA had addressed to him on 04/13/2023, but that after more than 25 days no one had contacted he
 6. On 07/06/2023, this Authority asked the CCMA to report on the following within 15 days:
 - If the CCMA contacted the claimant, to specify the date and the mechanism so that he could access the storage units to delete emails from his personal area or that contained private information or conversations, as he had communicated through the email of 04/13/2023. And prove it or report the reasons why it would not have been done.
 - If the claimant's request to exercise the right of deletion had been granted and, in this case, on what date would it have taken effect and on what date would he have been notified. Likewise, he was asked to, otherwise, report the reasons why it would not have been done.

On the date on which this resolution is issued, the claimed entity has not responded to this request for information.

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, also in relation to the right to deletion, 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:

- " 1. The right of deletion will be exercised in accordance with what is established in 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 provided for in articles 15 to 22 of the RGPD, paragraphs 3 and 4 of article 12 of the RGPD establish the following:

- " 3. The person responsible for the treatment will provide the interested party with information related to his 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 data controller does not comply with the request of the interested party, he will inform him without delay, no later than one month after receiving the request, of the reasons for his non-action and of the possibility of file a claim before a control authority and take legal action.
(...)"

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 CCMA resolved and notified the right of deletion exercised by the person making the claim within the period provided for by the applicable regulations, since precisely the reason for the complaint that initiated this procedure of rights protection was the fact of not having obtained a response within the period provided for by the regulations.

Firstly, however, it should be mentioned that the content of the documentation provided by the person making the claim shows that he requested the deletion of certain information contained in shared folders to which he currently does not have access; that is to say that, before deleting the controversial files, the complainant also requested access to these folders in order to be able to determine which of the files he wanted deleted. For this reason, it should be considered that the purpose of the access is none other than to achieve the deletion of the controversial files. Accordingly, it is understood that the right exercised by the claimant is the right of deletion.

Regarding this, it is certified that on 10/10/2022 the CCMA received an email from the person claiming, through which he exercised the right of deletion in the following terms: "(...) I would ask that all e-mails that may still be in the work units (internal or external) of the department be deleted, under my supervision of (...) specifically from the area (...), to consider that this fact has violated and violates my rights."

In accordance with article 12.3 of the RGPD, the CCMA had to respond (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. It is certified that on 04/13/2023 the CCMA sent the claimant an email regarding his request made on 10/10/2022, informing him that the entity would contact him in next few days so that he could check - together with the Corporation's technicians - if there was any of his information stored on the network units and, if necessary, delete it.

It is necessary to prove that this email was sent after the legal deadline for responding to the request had been exceeded.

Consequently, given that the claim was based on the lack of response to the request to exercise the right of deletion, it must be declared that the CCMA did not resolve and notify in form and time the request submitted by the affected person. This, without prejudice to what will be said below regarding the substance of the claim.

Regarding the substance of the data deletion request (prior access to the network units, in order to locate the information linked to the private sphere of the person making the claim), on 04/17/2023 the CCMA inform the Authority that it would allow the person making the claim, in accordance with their request, "to access the storage units to delete emails of a personal nature or that may contain information or conversations that are not of interest nor of relevance to the Corporation." As has been explained in the background, on the date on which this resolution is issued, there is no evidence that the entity has facilitated this access to the person making the claim.

As a starting point, it should be borne in mind that article 17 of the RGPD regulates the right of deletion as the right of the affected person to obtain from the data controller the deletion of the personal data that affect him, if any any of the circumstances provided for in article 17.1 of the RGPD occur.

The right to deletion is a very personal right and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. For this reason, the limitations to this right must be minimal, since exercising it guarantees the effectiveness of the fundamental right to the protection of personal data. Thus, the causes of denial of the right to deletion are regulated in articles 17.3 and 23 of the RGPD. The limitations referred

to in article 23 of the RGPD must be provided for "through measures legislative " (art. 23.1 RGPD) .

In the framework of this procedure, the CCMA has not provided enough information to allow this Authority to pronounce on the provenance or not that the person making the claim can access certain folders on the network and that, subsequently, information that may be deleted hold in. Consequently, regarding the merits of the claim, it is necessary to estimate it, with the understanding that the Corporation must give access to the person making the claim to the information linked to their person that is in the network units and delete it, always and when it refers to strictly personal matters and not at all linked to the workplace that was developed. And this, always taking into account and respecting the limits to the right of deletion established in the regulations transcribed above.

In short, and from the perspective of the right of deletion regulated in the RGPD, this claim for protection of the right of deletion should be considered, given that it has been proven that the person making the claim exercised it before the CCMA. It is also proven that the CCMA's response estimated the exercise of the right of deletion (prior access to the units in the network, in order to destroy it), although it is not known that it has materialized to date.

4. In accordance with the provisions of articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the data controller must be required to within 10 working days to make effective the exercise of the right of deletion. In accordance with this, it is appropriate to require the claimed entity to delete the person's personal information from its network units within 10 working days from the day after the notification of this resolution claimant linked to his private sphere and in no way related to the functions carried out in his workplace; and this, prior access of the person making the claim - together with the Corporation's technicians - to their personal data contained in these units, in order to remove the information liable to be deleted. Once the right of deletion has taken effect in the terms set out and the person making the claim has been notified, within the following 10 days the claimed entity must give an account of it to the Authority.

resolution

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against Corporació Catalana de Mitjans Audiovisuals, SA.
2. Request the CCMA so that, within 10 days, counting from the day after the notification of this resolution, it makes effective the right of deletion exercised by the person claiming in the manner indicated in the basis of law 4 Once it has taken effect, in the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the CCMA and the person making the claim.
4. 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 February 20, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, 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 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, in the period of two months from the day after its notification, in accordance with 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

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