

## File identification

Resolution of the rights protection procedure no. PT 31/2023, petition against the Bisbal del Penedès Town Council.

## Background

1. On 03/16/2023, the Catalan Data Protection Authority received a letter from Mr. (...) (henceforth, the claimant), for which he formulated a claim for the alleged neglect of the rights of access and opposition, which he had previously exercised before the Bisbal del Penedès City Council ( from now on, the City Council).

In the aforementioned claim, the claimant stated the following:

— That he participated in a popular consultation in his municipality, on a proposal to modify the urban planning urged by a legal entity (promoting company).

— That, in response to your participation in the consultation, on 12/12/2022 the City Council sent him an email with the following text: "I appreciate your participation and I will pass it on to the company that sent us the proposal."

— That, by means of the letter dated 15/12/2022 reiterated on 18/01/2023, and in relation to the aforementioned consultation, he informed the City Council that he did not consent to the transfer of his data to a third party person and who explicitly exercised the right of opposition to this assignment. He also exercised his right of access, as he asked the City Council "for information on the personal data communicated by making use of the right of access provided for in art. 15 of Regulation (EU) 2016/679."

— That he had not received any response from the City Council in relation to the rights he had exercised.

The claimant provided various documentation relating to the exercise of these rights, specifically, and for what is of interest here:

- 1.1. Letter that the claimant presented to the City Council on 12/15/2022 in which, on the one hand, he expressly exercised his right of opposition and asked that his data as a participant in the popular consultation not be revealed to third parties In the same letter, he requested that the City Council "certify that the personal data [of the participants in the popular consultation] have been protected and that the contents of the participation in the consultation with the promoting company or third parties."
- 2.2. Letter that the claimant presented to the City Council on 18/01/2023, in which he asked for answers to the requests made through the letter of 15/12/2022; that is to say, the exercise of their right of opposition and that the City Council "certify that personal data had been protected in relation to the promoting company and third parties." In relation to this last paragraph, in this letter he expressly alluded to article 15.1 of the RGPD and indicated that this precept "includes the right to obtain confirmation of the category of personal data and the recipients to whom "have

communicated or plan to communicate this data, together with the rest of the information."

2. On 03/31/2023, 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 04/26/2023, in which it set out, in summary, the following:
  - That, on 09/12/2022, he held a public consultation on a private urban planning initiative and that, on 15/12/2022, the person making the claim requested "not to be provided with the written participation in the consultation on (...) to the private promoter company (...) or any other promoter, technician or person involved."
  - That the person making the claim also requested that the data protection officer certify that "the personal data have been protected and that the contents of the participation in the consultation have not been delivered or facilitated, in any type of format, to the promoting company or to third parties."
  - That, on 18/01/2023, the claimant reiterated his request.
  - That he did not respond to the demands of the person making the claim.
  - That, in December 2022, the mayoress "moved the technical report summarizing the allegations presented to the company, because she requested it, but did not move the opinions of individuals expressed in public consultation."
  - That, regarding the certificate requested by the person making the claim, the City Council's data protection delegate "is not a certifying entity, and therefore cannot certify anything."
  - That takes advantage of the allegations to answer the request of the person making the claim.

### **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 21 of the RGPD, regarding the right of opposition of the interested person, provides that:

"1. The interested party has the right to object at any time, for reasons related to his particular situation, to the personal data that concern him being the object of a treatment based on the provisions of article 6, section 1, letters e) or), included the elaboration of profiles on the basis of these provisions. The person in charge of the treatment will stop processing the personal data, unless it proves compelling legitimate reasons for the treatment that prevail

over the interests, rights and liberties of the interested party, or for the formulation, exercise or defense of claims.  
(...)"

For its part, article 18 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 opposition:

"1. The right of opposition, as well as the rights related to automated individual decisions, including profiling, must be exercised in accordance with what is established, respectively, in Articles 21 and 22 of Regulation (EU) 2016 /679."

Regarding the right of access of the interested person, article 15 of the RGDPR provides that:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;
- b) the categories of personal data in question;
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;
- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;
- f) the right to present a claim before a control authority;
- g) when the personal data has not been obtained from the interested party, any available information about its origin;
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party presents the request by electronic means, and unless he requests that it be provided in another way, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

For its part, article 13 of the LOPDGDD determines the following, also in relation to the right of access:

"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before providing the information, that the affected person specifies the data or the processing activities to which the request refers.

2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.

However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.

3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it

4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."

In relation to the rights provided for in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes 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. Having explained the applicable regulatory framework, it is then necessary to analyze whether the City Council resolved and notified, within the period provided for by the applicable regulations, the rights of opposition and access exercised by the person making the claim, since precisely the reason for the complaint that initiated this rights protection procedure was the fact of not having obtained a response within the period provided for this purpose.

Regarding this, it is certified that on 15/12/2022 the City Council received a letter from the person claiming, through which he exercised the right of opposition.

With regard to the exercise of the right of access, the terms in which the letter in which the City Council was asked to issue a certificate that the personal data of the participants in the popular consultation had been protected (" in the sense that they had not been made available to the promoting company or to third parties"), together with the fact that article 15 of the RGPD was not invoked, did not allow to infer that the right of access was being exercised regulated in this precept. On the contrary, from the wording of the letter of 18/01/2023 (transcribed in precedent 1) it could be deduced that the person claiming exercised the right of access, since in this case he did expressly mention the article 15 of the RGPD. In view of this, this Authority considers that it is with this second letter that the claimant exercised his right of access.

In accordance with article 12.3 of the RGPD, the City Council had to resolve and notify the request to exercise the requested rights within a maximum period of one month, counting from the date of receipt of the request. In relation to the question of the deadline, it should be borne in mind that in accordance with article 21.3 *b* of Law 39/2015, of October 1, on the common administrative procedure of public administrations (LPAC) and article 41.7 of Law 26/2010, of 3 August, on the legal regime and procedure of the public administrations of Catalonia (LRJPCat) , on the one hand, the calculation of the maximum term in proceedings initiated at the instance of a party (as is the case) starts from the date on which the request is entered in the register of the body competent to process it. And, on the other hand, that the maximum period is for resolution and notification (art. 21 LPAC), so that before the end of this period it is necessary to have notified the resolution, or at least to be able to prove that the notification attempt (art. 40.4 LPAC).

It is proven that the City Council did not respond to the opposition request or the access request - made by the claimant on 12/15/2022 and 01/18/2023, respectively - within a more planned for this purpose, nor subsequently.

Consequently, given that the claim was based on the lack of response to the request to exercise the rights of opposition and access, the claim must be upheld with regard to this point. This, without prejudice to what will be said below regarding the substance of the claim.

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, the opposition to the treatment and access to the data in the terms that the claimant requested.

As a starting point, it should be borne in mind that Article 21 of the RGPD defines the right of opposition as the right of the affected person to object at any time, for reasons related to their particular situation, which your data is the subject of treatment based on the provisions of article 6.1.e or f - as would be the case analyzed - and establishes that the person responsible for the treatment must stop processing the data, unless he proves compelling legitimate reasons.

With regard to the right of access, it should be borne in mind that article 15 of the RGPD configures it as the right of the affected person to obtain information about their own personal data that is the subject of treatment, to access it and to know the information about the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. In addition, Article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the document containing the personal data to which access has been requested.

The rights of opposition and access are very personal rights and constitute some of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, with the right of opposition the owner of the data can object to it being processed and, through the right of access, can know which data about his person is being processed. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

This is why the limitations to these rights must be minimal, since exercising it guarantees the effectiveness of the fundamental right to the protection of personal data. The causes of denial of the rights of opposition and access are found in article 23 of the RGPD, which must be provided for "through measures legislative " (art. 23.1 RGPD) .

In the case we are dealing with, it is not known that any of these causes are involved, so the interested person has the right to exercise their rights of opposition and access. For this reason, it is appropriate to estimate this claim for the protection of rights.

In relation to this, it should be added that the City Council must respond and enforce the claimant's rights expressly and within the period specified in the following section. In no

case, the allegations made in this procedure can replace this action, as the entity intended.

This, without prejudice to the fact that it is necessary to comply with the provisions of the applicable regulatory framework regarding public consultation, derived from article 133 of the LPAC, in order to verify the conditions of treatment of the data that, without going into detail, they do not allow the communication of data in relation to which the claimant exercises the right of opposition.

5. In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of Royal Decree 1720/2007, of December 21, which approves the Regulations for the deployment of the LOPD (RLOPD) in cases of estimation of the rights protection claim, the person in charge of the file must be required to exercise the right within 10 days.

In accordance with this, it is necessary to require the City Council to exercise the right of opposition and access of the claimant (in the latter case, it is necessary to inform him of the points provided for in article 15.1 of the RGPD). Once these rights have become effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must give an account to the Authority.

#### **Resolution:**

For all this, I resolve:

1. Estimate the guardianship claim made by Mr. (...) against the Bisbal del Penedès Town Council.
2. Request the Bisbal del Penedès City Council so that within 10 days, counted from the day after the notification of this resolution, make effective the rights of opposition and access exercised by the person claiming, in the form indicated in the 5th legal basis. Once these rights have become effective, in the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the Bisbal del Penedès Town Council and the person making the claim.
4. Order that the resolution be published on the Authority's website ( [apdcat.gencat.cat](http://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 and 14.3 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Agency of Data Protection, the interested parties may file an appeal 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 Law 39/2015. They can also directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after their notification, in accordance with articles 8, 14 and 46 of Law 29 /1998, of July 13, governing the contentious administrative jurisdiction.

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

The director

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