

File identification

Resolution of the rights protection procedure no. PT 32/2023, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1. On 16/03/2023, the Catalan Data Protection Authority received a letter from Ms. (...) (henceforth, the person claiming), for which he formulated 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 the Police (henceforth forward, DGP).

The claimant certified that, by means of the written entry registered on 02/02/2023, he requested from the DGP access to his personal data that appeared in the files in the area of the systems of information from the Generalitat Police (SIP PF and SIP PFMEN).

For these purposes, the person claiming provided a copy of the request to exercise the right of access to personal data referred to.

2. By order dated 03/20/2023, the claim was transferred to the DGP so that within 15 days it could formulate the allegations it deemed relevant.

3. On 04/04/2023, the DGP presented its statement of allegations, which, in summary, set out the following:

- That, on 02/02/2023, the claimant requested access to his personal data recorded in the files of the police (SIP PF/SIP PFMEN).
- That, on 20/03/2023, the director general of the Police issued a resolution in which he agreed to facilitate access to the personal data requested by the person concerned.
- That the aforesaid resolution was notified to the person concerned by post and also by electronic means.

The DGP provided various documentation, including:

- The request for access submitted by the claimant to the DGP on 02/02/2023.
- The resolution issued by the general director of the DGP, dated 03/20/2023, and the notification office (with departure registration date of 03/27/2023).
- Proof of evidence that, on 03/30/2023, electronic notification of the DGP's decision was made to the claimant.

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 (from now on, Law 32/2010).

2 . The personal data subject to processing by the DGP to which this claim refers fall within the scope of application of Organic Law 7/2021, of May 26, on the protection of personal data processed for of prevention, detection, investigation and prosecution of criminal offenses and execution of criminal sanctions (LO 7/2021).

3. OK 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 and deletion of personal data, and the limitation of their treatment, it is necessary to refer to articles 24 and 25 of LO 7/2021, the which determine that:

" 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, relating to the regime applicable to 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 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. Once the applicable regulatory framework has been set out, it is then necessary to analyze whether the DGP attended to the right of access exercised by the person making the claim within the period provided for by the applicable regulations, since 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.

With regard to the alleged neglect of the right that is the subject of the claim, it has been established that, on 02/02/2023, the person making the claim presented in the entry register of the DGP a mediated letter which exercised the right of access to your personal data, contained in the SIP PF and SIP PFMEN files.

In accordance with article 20.4 of LO 7/2021, the DGP had to resolve and notify the resolution within a maximum period of one month, counting from the date of receipt of the request access submitted by the claimant. Well, from the documentation provided in this file, it has been established that the claimant submitted the request to exercise the right of access to his data before the DGP on 02/02/2023, the resolution of his request was issued on 03/20/2023 and notified by electronic means on 03/30/2023, that is to say, the one-month resolution and notification period provided for that purpose has passed.

For all this, it must be concluded that the DGP resolved the claimant's request extemporaneously.

5. With respect to 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 made effective the exercise of the requested right of access to the personal data through the resolution of 03/20/2023, provided by the DGP to this Authority.

Regarding this, it should be noted that, through the referenced resolution, the DGP has responded to the claimant's request for access, since, on the one hand, it facilitates access to personal data object of treatment contained in the SIP PF file and, on the other hand, in relation to the data contained in the SIP PFMEN file, informs that the said file does not contain any personal data of the person claiming to be the object of treatment.

In this regard, it is appropriate to consider their right of access, since the DGP has provided the person making the claim with all the information they have regarding the personal data that is the subject of their request.

resolution

For all this, I resolve:

1. Partially estimate the claim , given that the Department 's General Directorate of Police of Interior did not respond in time the request of Ms. (...), ok with the one presented in the foundation of law 4th. None should be required action , since the DGP gave a legal response to the request , albeit extemporaneously .
2. Notify this resolution to the DGP and the claimant .
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.

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 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 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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