

Identification of the file

resolution from procedure of tutelage of rights no. PT 33/2023, urged versus the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1.- On 18/03/2023 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the claimant), by which formulated one claim for the presumed inattention from right of deletion of the data personal that he had previously exercised before the Directorate General of Police (DGP).

The claimant certified that, on 11/23/2022, he submitted an exercise application from right of deletion in front the DGP, in what requested the deletion of the his personal data - in particular, of some police investigations that he identified by his numerical code - that appeared in the files of the information systems of the Generalitat Police (SIP PF).

A these effects, the person claiming contributed the referenced request of exercise of the right of deletion that he presented to the DGP.

2.- For office of date 22/03/2023 is go move the claim a the DGP, for such what in the term of 15 days to formulate the allegations that he considered relevant.

3.- In date 04/04/2023, the DGP go present the his written of allegations, where exposed the following:

- What in date 11/23/2022, the person claiming go apply for the deletion of personal data recorded in the SIP PF scope file.
- What the 03/22/2023, the director of the DGP go to dictate the resolution in the which go to agree the deletion of the requested personal data.
- What in date 03/27/2023 is he put a disposition of the person claiming the electronic notification

The DGP contributed diverse documentation, between others:

- The request of deletion presented for the claimant person in front the DGP on 11/23/2022.
- The resolution dictated by director of the DGP the 22/03/2023.
- the office of notification of the resolution of date 22/03/2023 - without what there record date of departure registration-
- The proof of evidence that on 03/27/2023 was deposited, by electronic means, the notification of the resolution of 03/22/2023, But no there it is known the accreditation of its receipt by the claimant.

fundamentals of right

1.- The director of the Catalan Protection Authority is competent to resolve this procedure of data, OK with the articles 5.b) i 8.2.b) of the law 32/2010, of the 1 of October, of the Catalan Data Protection Authority (Law 32/2010).

2.- The personal data subject to treatment by the DGP to which the present claim relates to the request to exercise the right of deletion made before the DGP the day 11/23/2022, they incardinate inside the scope of application of the law organic 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions (LO 7/2021).

3.- OK with the exhibit, need to come in the article 23 of the LO 7/2021, what in relationship with the right of deletion provides for the following:

"2. The person responsible for the treatment , on his own initiative or as a result of the exercise from right of suppression from interested , delete the bear data personal yes procrastination improper and, in any case, within a maximum period of one month from what have knowledge , when the treatment infringe the bear articles 6, 11 or 13, or when the data personal must be deleted by virtue of a legal obligation to which it is subject _

3. In place of to proceed a the suppression , the responsible from treatment will limit data processing _ _ personal when any of the following occurs circumstances :

a) The interested put in doubt the accuracy of the bear data personal y no can be determined its accuracy or inaccuracy.

b) The data personal they must be kept for the purpose evidentiary _ When the treatment stay limited in virtue of the letter a), the responsible of the treatment will inform the interested party before lifting the limitation of the treatment "

"(...) 5. When the data personal there are been rectified or deleted or the treatment hay been limited , the responsible from treatment the will notify a recipients , who must rectify or delete the data personnel who are under su liability or limit su treatment "

Likewise, it should be borne in mind that in the event of restrictions on the rights of information, access, rectification i deletion of data personal i a the limitation from his treatment, you have to go to articles 24 and 25 of LO 7/2021, which determine that:

" Article 24. Restrictions a the bear rights of information , access , rectification , deletion of data personal and its limitation _ treatment _

1. The responsible from treatment will be able postpone , to limit u omit the information to which article 21.2 refers , as well as denying, in whole or in part , the requests to exercise the rights contemplated in articles 22 and 23, provided that, taking into account the rights fundamentals and interests legitimate of the affected person, result necessary and proportionate for the achievement of the following purposes:

a) Prevent what yes hinder inquiries , investigations or procedures judicial _

b) Prevent it from happening prejudice to prevention , detection , investigation and prosecution of infractions criminal or a the execution of sanctions criminal _

c) Protect public safety .

d) protect the Security national

e) protect the bear rights y freedoms of others people _

2. In case of restriction of rights contemplated in articles 22 and 23, the person responsible for the treatment will inform the interested party in writing yes procrastination improperly , and in any case, within one month from the date of receipt knowledge , of happiness restriction , of the reasons thereof , as well as of the possibilities of presenting a claim before the data protection authority , sin __ prejudicial of any remaining legal actions _ exercise under _ of the willing in this Law organic _ The reasons of the restriction may be omitted or replaced by neutral wording when the reasons for the restriction are disclosed can put at risk the ends referred to in the previous section .

3. The person responsible for the treatment document the de facto or de derecho foundations in the bear what yes sustenance the decision denial from exercise from right of access . Dicha information will be available to the authorities of protection of data " .

" Article 25. Exercise of the bear rights from interested a through of the authority of data protection . _

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 rights contemplated in articles 22 and 23, in the terms provided in the article 24, the interested will be able exercise sus rights a through of the authority of data protection _ competent _ The person responsible for the treatment will inform the interested party of this possibility .

2. When , by virtue of what is established in the previous section , the rights are exercised a through of the authority of protection of data , this must inform to the interested party , at least , of carrying out all the checks necessary or the review corresponding and of his right to interpose resource contentious - administrative " .

A the section 1 of the article 52 of the LO 7/2021, relative at 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 treatment of the data personal hay infringed the dispositions of this Law organic or no hay been served su request of exercise of the bear rights recognized in the bear articles 21, 22 and 23 will have right to file a claim before the authority of protection of data (...)" .

In consonance with the previous one, the article 16.1 of the law 32/2010 has the Next:

"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 to understand dismissed their request by done of no to have been resolved 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 claimant in accordance with the regulatory framework of application, given that the reason for complain that go start this procedure was the made of no to have obtained answer within the deadline for this purpose.

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 from the date of receipt of the submitted deletion request by the person claiming. In relation to the above, it has been established that the claimant submitted the request to exercise the right to delete data before the DGP on 11/23/2022, and the estimated resolution of his request was issued on 03/22/2023, it is a fact, the resolution now is going to dictate, which increases the time limit of one month to resolve and notify planned for the purpose.

Regarding the notification of the resolution, it is certified that the electronic notification of the resolution is going to put a disposition of the person claiming the day 27/03/2023. Now well, the DGP has not certified that the notification has been carried out in full, since there is no evidence that the person making the claim has accessed its content or has rejected it. The DGP has also not provided the evidence that the notification should be considered rejected because 10 calendar days have passed since it was made available without it being accessed to its content (art. 43.2 LPAC).

For all the exhibit, please to conclude what the DGP is going to solve extemporaneously the request of the person here claiming.

5.- respect from background of the request of deletion of the data personal what figures in the SIP PF file - specifically, those linked to the police proceedings that the claimant identified in his request -, the DGP has certified that it has agreed to the deletion of this data in the terms requested by the claimant here, by resolution of 22/03/2023, provided by the DGP to this Authority.

6.- Although the DGP has certified that it issued the estimated resolution dated 03/22/2023, regarding a the request of deletion formulated for the person claiming, and also what in date 03/27/2023 the electronic notification of the resolution was made available to the interested party, there is no record that this resolution was actually notified.

Given the above, this Authority considers it appropriate to require the DGP so that within 10 counting days from the day after the notification of this resolution, accredit what the resolution of date 03/22/2023, estimate from right of deletion requested by the person claiming, has effectively been notified by electronic means.

resolution

For all this, solve:

- 1.** To love partially the claim, served what the Direction general of the Police of Department of Interior no go to answer in time limit a the request from Mr. (...), in accordance with what is stated in the 4th legal basis. No action should be required regarding the fund, to the extent that the DGP gave an adjusted response to the request, albeit extemporaneously.
- 2.** to require the DGP for such what, in the time limit of 10 days counters a leave of The next day of the notification of this resolution, I certify that the notification of the estimated resolution dated 03/22/2023 has been carried out, in the terms indicated in the 6th legal basis.

3. notify this one resolution a the DGP i a the person claiming
4. Order the publication of the resolution on the Authority's website (<https://apdcat.gencat.cat/ca/inici>), of conformity with the article 17 of the law 32/2010.

Versus this one resolution, which put the end a the road administrative in accordance with the 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, with discretion the interested parties can file an appeal before the director of the Catalan Data Protection Authority of Data, within one month from the day after its 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 the term of two months a count on starting from The next day of the his notification, OK with the articles 8, 14 i 46 of the law 29/1998, of 13 of July, regulator of the jurisdiction administrative litigation .

Equally, the parts interested they can interpose anyone other resource what deem appropriate to defend their interests.

The director

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