

File identification

Resolution of the rights protection procedure no. PT 40/2023, urged against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1. On 03/27/2023, the Catalan Data Protection Authority received a letter from Mr. (...) (henceforth, the person claiming), for which he formulated a claim for the alleged disregard of the right to delete personal data that he had previously exercised before the General Directorate of the Police (DGP).

The claimant submitted a request that he sent on 31/01/2023 by administrative mail to the DGP, by which he exercised the right to delete his data - related to police proceedings that he identified by his numerical code - which appeared in the files of the information systems of the Generalitat Police (SIP PF).

2. On 03/31/2023, the claim was transferred to the DGP so that, within 15 days, it could formulate the allegations it deemed relevant.
3. On 04/17/2023, the DGP submitted its statement of objections, in which it stated the following:
 - That, on 01/02/2023, the claimant requested the deletion of the personal data registered in the SIP PF field file and, specifically, those related to police proceedings identified with a numerical code.
 - That, on 06/04/2023, the Director General of the Police issued a resolution in which he agreed to the deletion of the requested personal data.
 - That the said resolution was notified to the interested person by post, at the address provided for this purpose.

The DGP provided various documentation, including:

- The request for deletion presented by the person claiming at a Post Office on 01/31/2023 (with entry registration at the DGP on 02/01/2023).
- The resolution issued by the general director of the DGP on 04/06/2023 and the official notification of 04/11/2023. There is no check-in date and no document is provided to prove that the claimant received it.

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 personal data referred to in the claim relating to the request to exercise the right of deletion fall within the scope of the Organic Law 7/2021, of May 26, on data protection 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 above, sections 2, 3 and 5 of article 23 of LO 7/2021 provide for the following in relation to the right of deletion:
 - "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."

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, 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 that initiated this rights protection procedure was the fact of not having received a response within the period provided 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, counting from the date of receipt of the deletion request submitted by the claimant.

In this regard, it has been established that on 01/31/2023 the claimant submitted his request for deletion at a post office, which was received by the DGP on 02/01/2023. However, it was not until 04/06/2023 that the DGP responded to the aforementioned request through the corresponding resolution. Therefore, it has done so once the resolution and notification deadline of one month provided for this purpose had been exceeded.

Consequently, it must be concluded that the DGP resolved the claimant's request extemporaneously.

5. With regard to the substance of the matter, that is, if the deletion of the personal data of the person claiming is the case, it is stated in the file that, after the presentation of the claim, specifically on 06/04 /2023, the DGP has issued an estimate resolution of the deletion request made by this person. Therefore, it becomes unnecessary to pronounce on whether it is appropriate to recognize the right of deletion that he exercised.
6. Finally, given that there is no record that the suppression resolution has been notified to the person claiming, the DGP should be required so that within 10 days, counters from the day after the notification of this resolution, provide before this Authority the documentation that accredits the notification.

resolution

For all this, I resolve:

1. Appreciate the claim, given that the Directorate General of Police of the Department of the Interior did not respond in time to the request of Mr. (...) There is no need to issue a statement on the merits, given that the DGP has estimated the deletion request through the resolution dated 04/06/2023.
2. Request the General Directorate of the Police so that, within 10 counting days from the day after the notification of this resolution, it accredits to the Authority that it has notified the suppression resolution to the person making the claim.
3. Notify this resolution to the DGP and the person making the claim.
4. Order the publication of the resolution 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 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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