

## File identification

Resolution of the rights protection procedure no. PT 41/2023, urged against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

## Background

1. On 03/28/2023, the Catalan Data Protection Authority received a letter from Mr. (...) (henceforth, the person making the claim), for which he made a claim for the alleged neglect of the right to delete personal data that he had previously exercised before the Directorate General of Police (DGP).

The claimant provided a request that he presented to the DGP on 07/03/2023, by which he exercised the right to delete his data -referring to police proceedings that he identified by his numerical code- that appeared in the files of the information systems of the Generalitat Police (SIP PF). It also requested the deletion of data relating to a specific judicial procedure, but did not indicate which police proceedings it was related to.

2. By order dated 04/17/2023, the claim was transferred to the DGP so that, within 15 days, it could formulate the allegations it considered relevant.
3. On 04/27/2023, the DGP submitted its statement of objections, in which it stated the following:
  - That, on 07/03/2023, the claimed person requested the deletion of the personal data registered in the file of the SIP PF area, related to police proceedings identified with a numerical code, and also the deletion of the data related to a certain judicial procedure, in respect of which the person making the claim did not indicate which police proceedings it was related to.
  - That, on 04/19/2023, the DGP required the person making the claim to provide their identification document and the documentation relating the judicial proceedings to the police proceedings or to the day of the events, given that the supporting documentation does not there was no reference and they could not be linked to the personal data in their file.
  - That the person making the claim responded to the DGP's request and, subsequently, on 04/24/2023, the Director General of the Police issued a resolution in which he agreed to the deletion of the requested personal data.
  - That on 04/26/2023 the decision of the DGP was notified to the interested person.

The DGP provided various documentation, including:

- The deletion request submitted by the person claiming before the DGP, on 03/07/2023.
- The resolution issued by the general director of the DGP, on 04/24/2023.

- The receipt dated 04/26/2023, relating to the electronic notification of the decision of the DGP to the interested person.

### **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 processing of personal data to which the claim refers falls within the scope of application of Organic Law 7/2021, of May 26, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and enforcement of criminal sanctions (LO 7/2021).
3. In relation to the right of deletion, article 23, sections 2, 3 and 5, of LO 7/2021 provides the following:
  - "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 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, although the claimant submitted the request to exercise the right to delete the data before the DGP on 03/07/2023, the estimated resolution of his request it was issued on 04/24/2023 and was notified by electronic means on 04/26/2023, that is to say, the one-month deadline has passed. It is worth saying that the DGP required the claimant to amend his claim, which suspends the procedure in accordance with the provisions of article 22 of Law 39/2015, of October 1, on the administrative procedure common of public administrations (LPAC). But this provision does not alter this conclusion, since the suspension period starts from the notification of the request to the interested person, which took place on 04/19/2023 and, therefore, once the maximum legal term for resolving the procedure had expired.

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 personal data of the person making the claim must be deleted, it appears in the file that the DGP has issued an estimate resolution of the request for deletion made by this person. Therefore it becomes unnecessary to make a pronouncement on whether to recognize the right of deletion that he exercised.

## **resolution**

For all this, I resolve:

1. Appreciate the claim, given that the General Directorate of the 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 04/24/2023.

2. Notify this resolution to the DGP and the person making the claim.
3. Order that the resolution be published 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 Law 29/1998, of July 13, regulator of the administrative contentious jurisdiction.

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

The director

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