

File identification

Resolution of the rights protection procedure no. PT 53/2023, petition against the General Directorate of the Police of the Department of the Interior of the Generalitat of Catalonia.

Background

1. On 09/05/2023, the Catalan Data Protection Authority received a letter from Mr. (...), on behalf of Mr. (...) (henceforth, the person making the claim), for which he made a claim for the alleged neglect of the right of access to personal data that he had previously exercised before the Directorate General of Police (DGP).

In the letter of claim, it was pointed out that on 16/03/2023 the claimant had submitted a request through the electronic registry of the Generalitat de Catalunya, in which he asked the DGP for access to his personal data contained in the files of the information systems of the Generalitat Police (SIP PF and SIP PFMEN). However, he did not provide a copy of the access request or the powers of representation.

2. On 12/05/2023, the Authority required the representative of the person making the claim to certify that this representation had been granted, as well as the request for access or documentation proving the exercise of the right of access before the person responsible for the file or treatment before submitting the claim.
3. On 05/26/2023, whoever represented the claimant provided various documentation to the Authority, including the required one.
4. By order dated 06/12/2023, the claim was transferred to the DGP so that within 15 days it could formulate the allegations it considered relevant.
5. On 06/20/2023, the DGP presented its letter of allegations in which, in summary, it stated the following:
 - That, on 16/03/2023, the claimant requested access to his personal data contained in the files of the information systems of the Generalitat Police (SIP PF and SIP PFMEN).
 - That, on 10/05/2023, the Director General of the Police issued a resolution in which he agreed to give effect to the right of access to the personal data requested by the person making the claim.
 - That the aforementioned resolution was notified by post on 06/06/2023, to the address provided by the person claiming for this purpose.

The DGP provided various documentation, including:

- The request for access submitted by the claimant to the DGP on 03/16/2023.
- The resolution issued by the director of the DGP , dated 05/10/2023, and the official notification (registered departure on 05/19/2023).

- The document certifying that the resolution of the DGP dated 05/10/2023 was notified to the interested person by post, on 06/06/2023.

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 fall 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 the execution of criminal sanctions (LO 7/2021).
3. OK with the above, article 22 of LO 7/2021 provides for the following, in relation to the right of access:

"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, 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 met, 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. Having exposed the applicable regulatory framework, 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.

On this issue, it has been established that, on 16/03/2023, the claimant submitted in the entry register of the DGP the request to exercise the right of access to his 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. From the documentation provided in this file, it has been established that the DGP did not issue the corresponding resolution until 05/10/2023, and did not notify the claimant until 06/06/2023, i.e., when the resolution and notification period of one month provided for this purpose had already been exceeded.

Consequently, the claimant's claim must be upheld, given that the DGP resolved his request extemporaneously.

5. With regard to the substantive issue, that is to say, whether the claimant's right of access should be recognized with respect to the SIP PF/SIP PFMEN files, it is stated in the file that, on 05/10/2023, the DGP has issued an estimated resolution of the access request made by this person. Specifically, with regard to the data contained in the SIP PF file, the resolution relates the police actions in respect of which the claimant's personal data is contained; and, with regard to the data contained in the SIP PFMEN file, in the resolution it is pointed out that there is no claimant data, as required by article 22.1 of LO 7/2021.

This makes it unnecessary to make a pronouncement on whether to recognize the right of access exercised by the person making the claim. Likewise, the proof of receipt of this person is included, which is positively valued at the same time as it makes it unnecessary to require it from the DGP.

resolution

For all this, I resolve:

1. Estimate the claim presented by Mr. (...), given that the General Directorate of the Police of the Department of the Interior did not respond in time to his request. There is no need to make a statement on the substance, given that the General Directorate of the Police has assessed the request for access through the resolution dated 05/10/2023.
2. Notify this resolution to the DGP and the person making the claim.
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, 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 Agency Catalan Data Protection Authority, the interested parties can 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 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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