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## File identification

Archive resolution of the previous information no. IP 193/2019, referring to the Secretary of Penal Measures, Reintegration and Victim Care of the Department of Justice (Penitentiary Center (...)).

## Background

1. On 06/26/2019, the Catalan Data Protection Authority received a letter from a person who filed a complaint against the Secretary of Penal Measures, Reintegration and Victim Support of the Department of Justice (Penitentiary Center (...) -hereinafter, CP-), due to an alleged breach of the regulations on personal data protection. Specifically, the person making the complaint stated that *"in the Second Access Unit of the Penitentiary Center of (...) on the bulletin board hanging on the wall (...)"* there was a list of people who had been denied the 'access to the CP, as well as the said list was *"exposed both to prison workers and inmates, as well as visitors."* The complainant (who had been an employee of the CP) added that he was on the said list, although he had submitted his credentials to access the CP following his retirement.

2. The Authority opened a preliminary information phase (no. IP 193/2019), in accordance with the provisions of article 7 of Decree 278/1993, of November 9, on the sanctioning procedure of application to the areas of competence of the Generalitat, and article 55.2 of Law 39/2015, of October 1, on the common administrative procedure of public administrations (henceforth, LPAC), to determine whether the facts they were likely to motivate the initiation of a sanctioning procedure, the identification of the person or persons who could be responsible and the relevant circumstances involved.

3. In this information phase, on 03/03/2020 the reported entity was required because inform, among others, about the location of the list of people who have been denied access to the CP; if it is exposed in such a way that its content can also be accessed by unauthorized staff of the CP, internal persons or visitors; and the reasons why the reporting person would appear in said list.

4. On 03/18/2020, the Department of Justice responded to the aforementioned request through a letter in which it stated the following:

- That in an internal access to the CP there is a collection on paper of the resolutions of denials of access to the center. This collection is a dossier with a cover that says *"unauthorized persons"* and, for each subsequent sheet, a resolution denying access that states the person and the duration of the prohibition
- That this collection of documents is located on a table hanging inside the second entrance of the CP which is locked from the inside.

Carrer Rosselló, 214, esc. A, 1st 1st  
08008 Barcelona

- That the listed finger is not visible from outside the cabin. Only the surveillance officer assigned to that job has access. In turn, neither inmates nor visitors or other types of CP staff can access it.
- That the reporting person has been included in these documents since 07/06/2015, which is the day before he left the center in order to avoid his access without explicit authorization from the incidents command .
- That the reason for this limitation is the history that the ex-official accumulates of complaints, denunciations and files at the center. The aim is to avoid his irregular access to the center once he no longer provides services there, nor is he actively linked as a professional in the prison services.
- That it is considered advisable to maintain the limitation of access to the center, since the risk still exists that you want to avoid with the treatment.
- That the basis of legitimation is the exercise of public powers over physical security and access to the interior of penitentiary centers conferred on the person responsible for the treatment.

5. On 04/06/2020, also during this preliminary information phase, the reported entity was again required to report, among others, on the reasons why the purpose pursued could not be achieved with the surrender of the whistleblower's credentials that identified him as a CP employee once he retired; as well as in order to justify the duration of the ban on entry to the CP regarding the complainant.

6. On 06/19/2020, the Department of Justice responded to the aforementioned request through a letter in which it stated the following:

- That at the time of carrying out the order prohibiting access in relation to the complainant, even though he was no longer part of the prison staff, he maintained a persecutory fixation with respect to the director and manager of the CP, which had specified facts against those vehicles even though they could not be objectively proven.
- That this animosity was generated by the fact that in recent years, different disciplinary proceedings were opened by the management of the CP for serious professional breaches.
- That the CP states that, considering the time that has passed since the access ban order without any serious incident, apart from continuing with his threatening speech, the said access ban order will be withdrawn from the center access control cabin.
- That in no case have the identifying data of the reporting person been exposed public
- That the person responsible for the treatment does not mention any rule of legal rank, since in the penitentiary field there is only, with legal rank, the Organic Law 1/1979, of September 26, general penitentiary (hereinafter, LO 1/1979 ), which fails to specify numerous aspects.
- That in order to legitimize the legal basis of data processing under the responsibility of the center to guarantee physical security and access to the interior of the penitentiary establishment, the data controller mentions the following precepts:

Carrer Rosselló, 214, esc. A, 1st 1st  
08008 Barcelona

- Article 280.2.5) of Royal Decree 190/1996, of February 9, which approves the Penitentiary Regulations (hereinafter, Penitentiary Regulations) which establishes that it is up to the director to adopt the necessary regime measures to prevent and , if this is the case, solve any individual or collective alteration of the order of the center.
- Article 64 of the Penitentiary Regulation which establishes the competence of the penal enforcement officials with respect to the internal security of the penitentiary establishments, taking into account the services established by the director.
- Article 63.3.l) of Decree 329/2006, of September 5, which approves the Regulations for the organization and operation of criminal enforcement services in Catalonia (hereafter, ROFSEPC) which establishes that it corresponds to access service official the ordinary surveillance, the opening and closing of access and passage units of the penitentiary center, proceeding to the identification of the people who enter or leave the establishment.

The Department of Justice provided various documentation.

#### Fundamentals of law

1. In accordance with the provisions of articles 90.1 of the LPAC and 2 of Decree 278/1993, in relation to article 5 of Law 32/2010, of October 1, of the Authority Catalan Data Protection Agency, and article 15 of Decree 48/2003, of February 20, which approves the Statute of the Catalan Data Protection Agency, the director of the Catalan Data Protection Authority.

2. Based on the account of facts that has been set out in the background section, it is necessary to analyze the reported facts that are the subject of this file resolution.

##### 2.1. On the legal basis of the treatment.

The complainant considers that he should not be on the list of people who are prohibited from accessing the CP, given that when he was terminated as an employee of the CP he already returned his access credentials.

As things stand, the complainant would question the legality of this processing of personal data.

Article 5.1.a) of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, relating to the protection of natural persons with regard to the processing of personal data and the free movement of these (hereafter, RGPD) establish that all processing of personal data must be lawful, fair and transparent in relation to the interested party (principle of lawfulness, loyalty and transparency).

In order for a treatment to be lawful, it is necessary to have, at least, a legal basis of those provided for in article 6.1 of the RGPD that legitimizes this treatment. In the field of administrations

Carrer Rosselló, 214, esc. A, 1st 1st  
08008 Barcelona

public, the legal basis provided for in letter c) of article 6.1 of the RGPD is of particular interest, according to which the treatment will be lawful when the treatment is necessary for the fulfillment of a public interest or in the exercise of public powers conferred on the data controller.

For its part, article 8.2 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter LOPDGDD) provides that the processing of personal data can only be considered justified in the fulfillment of a mission carried out in the public interest or in the exercise of public powers conferred on the person in charge (art. 6.1.e RGPD), when it derives from a competence attributed by a rule with the rank of law.

Well, article 79 of LO 1/1979 states that *"Corresponds to the Directorate General of Penitentiary Institutions of the Ministry of Justice the direction, organization and inspection of the institutions that are regulated in this Law, except with respect to the Communities Autonomous that have assumed in their respective statutes the execution of prison legislation and the consequent management of prison activity."*

Precisely, in accordance with article 168.2.b) of Organic Law 6/2006, of July 19, reforming the Statute of Autonomy of Catalonia (hereafter, EAC), the Generalitat has executive competence of the State's legislation on penitentiary matters, which in any case includes *"the entirety of the management of penitentiary activity in Catalonia, especially the management, organization, regime, operation, planning and inspection of penitentiary institutions of any type located in Catalonia."*

These powers attributed to the Generalitat de Catalunya must be understood as including the security of penitentiary centers.

In turn, as indicated by the Department of Justice, article 64 of the Penitentiary Regulation attributes the competence in internal security of penitentiary centers to the officials of penal execution, in accordance with their own functions and the distribution of services agreed by CP director.

In this sense, article 63.3.l) of the ROFSEPC determines that it corresponds to the staff of the *internal regime area "To carry out the tasks of ordinary surveillance, opening and closing of the access and passage units of the penitentiary center, proceeding to the identification of people who enter or leave the establishment and control the movements of the inmates within the penitentiary center."*

And article 280.2.5) of the Penitentiary Regulation also establishes that it corresponds to the director *"Adopt the urgent regimental measures necessary to prevent and, in his case, resolve any individual or collective alteration of the order in the center, reporting immediately to the center director ."*

Carrer Rosselló, 214, esc. A, 1st 1st  
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In accordance with the above, the data treatments that are carried out to guarantee the internal security of the penitentiary centers, which derive from a competence attributed by the EAC and LO 1/1979, can be considered necessary for compliance of a mission in the public interest or the exercise of public powers.

That being the case, bans on entry to the CP become lawful treatment in accordance with article 6.1.e) of the RGPD.

In the specific case that affected the reporting person, the CP considered that to achieve the intended purpose (preventing the reporting person from accessing the CP) it was not sufficient that the reporting person no longer had the corresponding access credentials as an employee of the CP, since the reporting person could try to access the CP without invoking his status as an employee (for example, to visit an inmate), and the assessment of the security reasons that justified this access ban corresponds to the direction of the CP.

In any case, it should be noted that in application of the principle of limitation of the retention period contemplated in article 5.1.e) of the RGPD, the Department of Justice has informed by means of a letter dated 06/19/2020, that the CP will proceed to remove from the CP access control cabin, the entry ban referring to the reporting person.

## 2.2. About access to said document.

The complainant, who was not authorized to enter the CP, stated that "*in the Segunda Unidad de Acceso del Centro Penitenciario de (...)*" there was a list of people who had been denied access. And he added that the said list could be accessed by all CP employees, inmates and visitors.

In this regard, the Department of Justice has informed by means of a letter of 18/03/2020 that the various resolutions issued to deny access to the CP, are collected in a dossier with a cover. This dossier is kept on the desk located inside the cabin of the second access to the CP, an outbuilding that is locked from the inside and to which neither the inmates, nor visitors, nor the rest of CP staff. Also, the Department of Justice pointed out that this dossier is not visible from outside the cabin.

That's the way things are, the fact that the said file with the decisions denying access to the CP is indeed in the place identified by the complainant, but that in this place only the people from the CP who provide services there have access to it and that the dossier incorporates a cover, leads to consider that, contrary to what the complainant stated, unauthorized third parties cannot access the content of the aforementioned resolutions.

3. In accordance with everything that has been set out in the 2nd legal basis, and since during the actions carried out in the framework of the previous information it has not been accredited, in relation to the facts

Carrer Rosselló, 214, esc. A, 1st 1st  
08008 Barcelona

that have been addressed in this resolution, no fact that could be constitutive of any of the infractions provided for in the legislation on data protection, it is appropriate to agree to its archive.

resolution

Therefore, I resolve:

1. File the actions of prior information number IP 193/2019, relating to the Secretary of Penal Measures, Reintegration and Attention to the Victim of the Department of Justice.
2. Notify this resolution to the Department of Justice and the complainant.
3. Order the publication of the resolution on the Authority's website (apdcat.gencat.cat), 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 article 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, the persons interested parties may file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with what provided for in article 123 et seq. of Law 39/2015. An administrative contentious appeal can also be filed directly before the administrative contentious courts, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, governing the contentious administrative jurisdiction.

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

The director,