

Carrer Rosselló, 214, Esc. A, 1r 1a
08008 Barcelona

RESOLUTION of the rights protection procedure no. PT 39/2018, urged against the Secretary of Penal Measures, Reintegration and Attention to the Victim (formerly, Directorate General of Penitentiary Services) of the Department of Justice of the Generalitat of Catalonia.

Background

1.- On 3/8/2018 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to certain information, which he had previously exercised before the Secretary of Penal Measures, Reintegration and Victim Support - henceforth, SMPRAV- (previously, Directorate General of Penitentiary Services) of the Department of Justice of the Generalitat of Catalonia.

The claimant provided a copy of the following documentation:

- 1) Letter dated 7/7/2018, registered at the Penitentiary Center (...) with no. of settlement (...), through which the claimant exercised the right of access before the DGSP (now, SMPRAV). Specifically, the claimant requested the following:
 - "Report of the social worker (...) on approval of 100.2 in the UMS to lodge a complaint for falsehood in a public document and usurpation of functions.
 - Photocopy of the original of the permits that I have made, especially the one signed by the psychologist and the last one that I did not form to file a complaint for these events.
 - Copy of the report by the order (...) (...) assistant, I was removed from the UMS at MR.3 due to threats and coercion, when my wife and I have been threatened by her to lodge a complaint.
 - Sentence or copy of the data stating that the urine analysis must be carried out by health personnel and not by UMS officials as is done to report it."

- 2) Diligence dated 11/7/2018 from the (...) through which it was stated that on 13/7/2018 the claimant had been given the following: - "Reports of the treatment team related to the proposed application of regime of life provided for in art. 100.2 RP.
 - Reports from the treatment team relating to the first permit proposal departure ordinary."

2.- In accordance with article 117 of Royal Decree 1720/2007, of December 21, which approves the Regulation implementing Organic Law 15/1999, of December 13, on data protection of personal nature (hereafter, RLOPD and LOPD, respectively), by means of an official document dated 9/18/2018, the claim was transferred to the SMPRAV so that within 15 days it could formulate the allegations that relevant estimates

3.- The Data Protection Delegate (hereinafter, DPD) of the SMPRAV formulated allegations by means of a letter dated 11/10/2018, in which he stated, in summary, the following:

- That: "(...) the data controller affirms that the request for reports dated July 7, 2018 was attended to on July 13, 2018 through the delivery of the requested documents that were in his file (reports relating to the application of the life regime provided for in article 100.2 of Royal Decree 190/1996 of the Penitentiary Regulations and permission proposals), as is demonstrated by the documentation attached by the defendant to his brief. The person in charge affirms that the documentation delivered is the one that exists in the file of the report [sic] and that it responds to the intern's requests, regardless of whether extremes are requested that have nothing to do with the personal documentation dealt with, such as the statements about the competence of the various personnel areas in the execution of penal, health or educational measures; or on parametric aspects or on the ordering of life in the center."

-That: "The claimant was transferred to the Penitentiary Center (...) on July 16, 2018 without having expressed any disagreement with the documentation received on the 13th. The management of the penitentiary center, through reports from the social services, states that the claimant presents a hostile attitude towards the professionals who treat him even though he is treated with the utmost care given this circumstance. This causes numerous claims about aspects that have already been satisfied or claims in entities external to criminal enforcement that lead nowhere. With regard to the present guardianship claim, he states that the claimant's disagreement is based on the fact that he does not agree with the technical and legal content of the documents relating to his prison life regime, not on the fact that his right of access to the documents you have requested."

Fundamentals of Law

1.- The director of the Catalan Data Protection Authority is competent to resolve 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.

2.- At the time when this resolution is issued, the personal data that were the subject of processing by the SMPRAV and to which the request for deletion referred, the Directive (EU) would apply 2016/680, of the European Parliament and of the Council, of 27/4, relating to the protection of natural persons with regard to the processing of personal data by the competent authority for the purposes of prevention, investigation, detection or prosecution of infringements criminal or enforcement of criminal sanctions, and the free circulation of this data (Directive (EU) 2016/680), in accordance with what is established in its article 1. In this regard, it should be emphasized that the Directive (EU) 2016/680, has not been transposed into national internal law within the period provided for that purpose (05/06/2018), but transitional provision 4a of Organic Law 3/2018, of December 5, of protection of personal data and guarantee of digital rights (LOPDGDD), also in force at the time of dictation and this resolution, provides that the data treatments that are subject to the

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Directive (EU) 2016/680 will continue to be governed by the LOPD, and in particular by article 22, and its development provisions, until the rule that transposes into Spanish law the provisions of the aforementioned directive, in accordance with what has been foreseen in the LOPDGDD.

Therefore, in accordance with what has been explained, this resolution is issued in accordance with the provisions of the LOPD and RLOPD, as these are the applicable rules at this time but also at the time when the right was exercised of access (7/7/2018) which is the subject of a claim here.

3.- Article 15 of the LOPD, in relation to the right of access, determines the following: "1. The interested party has the right to request and obtain free of charge information about their personal data being processed, the origin of the data and the communications made or planned to be made.
2. The information can be obtained through the mere consultation of the data through visualization, or the indication of the data that is the subject of treatment through writing, copying, telecopy or photocopy, certified or not, in a legible and intelligible form legible, without using keys or codes that require the use of specific mechanical devices.
3. The right of access referred to in this article can only be exercised at intervals of no less than twelve months, unless the interested party proves a legitimate interest for this purpose, in which case they can exercise it earlier."

For its part, article 27 of the RLOPD, in its first and second section, provides the following regarding the right of access:

"1. The right of access is the right of the affected person to obtain information on whether their own personal data is being processed, the purpose of the processing that, if applicable, is being carried out, as well as the information available on the origin of the aforementioned data and the communications made or planned for this data.

2. By virtue of the right of access, the affected person can obtain from the controller information relating to specific data, to data included in a certain file, or to all their data subjected to processing.

However, when reasons of special complexity justify it, the person in charge of the file may request the affected person to specify the files in respect of which he wishes to exercise the right of access, and for this purpose he must provide him with a list of all the files."

Likewise, also on the right of access, article 29 of the RLOPD establishes the following:

"1. The person in charge of the file must decide on the access request within a maximum period of one month from the receipt of the request. After the deadline has passed without an express response to the access request, the interested party can file the claim provided for in article 18 of Organic Law 15/1999, of December 13.

In the event that it does not have the personal data of those affected, it must also notify them within the same period.

2. If the request is approved and the person in charge does not accompany his communication with the information referred to in article 27.1, access must take effect within ten days of the aforementioned communication.

3. The information provided, regardless of the medium in which it is provided, must be provided in a legible and intelligible manner, without the use of keys or codes that require the use of specific mechanical devices.

The information must include all the basic data of the affected person, the results of any computer processing or process, as well as the information available on the origin of the data, the transferees of the data and the specification of the specific uses and purposes for which the data was stored."

Finally, article 18 of the LOPD, regarding the protection of rights of access, rectification, opposition and cancellation, establishes in its sections 1 and 2 the following:

"1. Actions contrary to the provisions of this Law may be the subject of a claim by the interested parties before the Data Protection Agency, in the manner determined by regulation.

2. The interested party who is denied, in whole or in part, the exercise of the rights of opposition, access, rectification or cancellation, may bring this to the attention of the Data Protection Agency or, where applicable, of the competent body of each autonomous community, which must make sure of the validity or inadmissibility of the refusal."

In line with the above, article 16.1 of Law 32/2010 provides:

"1. Interested persons who are denied, in part or in full, the exercise of their rights of access, rectification, cancellation 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 deadline, they can submit a claim to the Catalan Data Protection Authority."

4.- Once the above has been established, it is appropriate to analyze the merits of the claim, that is to say, if the response given by the SMPRAV to the request of the now claimant, conformed to the precepts transcribed in the legal basis previous

As a starting point, it should be noted that articles 15 of the LOPD and 27.1 of the RLOPD configure the right of access as the right of the affected person to obtain information about their own personal data that is being processed and, where applicable, about the purpose of the treatment, as well as the information available about the origin of the aforementioned data and the communications made or planned.

The right of access is a very personal right, and constitutes one of the essential powers that make up the fundamental right to the protection of personal data. As has already been advanced, through the right of access the owner of the data can find out which data about his person are the subject of treatment. In addition, this right could be the basis for the exercise of other rights, such as those of cancellation, rectification or opposition.

This is why the limitations to this right of access must be minimal given that through its exercise the effectiveness of the fundamental right to the protection of personal data is guaranteed.

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It is proven in the procedure that the claimant exercised the right of access on 7/7/2018 before the DGSP (now, SMPRAV). Specifically, as already indicated in the background, the claimant here requested access to the following documentation:

- "Report of the social worker (...) on approval of 100.2 in the UMS to lodge a complaint for falsehood in a public document and usurpation of functions.
- Photocopy of the original of the permits I made, especially the one signed by the psychologist and the last one that I did not sign to file a complaint for these events.
- Copy report because by order of (...) assistant, I was removed from the UMS at MR.3 due to threats and coercion, when my wife and I have been threatened by her to file a complaint.
- Sentence or copy of the data stating that the urine analysis must be carried out by health personnel and not by UMS officials as is done to report it."

It is also stated in the actions that the SMPRAV resolved in an estimated sense the request dated 7/7/2018, given that by means of diligence dated 7/11/2018, the SMPRAV provided the claimant with the following documentation:

- "Reports of the treatment team relating to the proposed application of the life regime provided for in art. 100.2 RP.
- Reports from the treatment team relating to the first permit proposal departure ordinary."

In this diligence, there is the signature of the person making the claim as it should have been received the cited documentation on 7/13/2018 at 1:15 p.m.

In view of the documentation provided by the SMPRAV, the claimant filed a claim with this Authority in the following terms: "(...) On July 13, the technical legal secretariat came and I facilitated "part" of requested, since it seems that she does not understand what I asked her or she was not interested (...)

I am bringing the sheet that he made me sign of documents that I have received that are not what I requested.

I explained to him that day what I need:

I need the permission orders that I must sign to enjoy them. With the last one I am satisfied that it is the one that the educator has signed (...)for me without any authorization and that has harmed me.

I understand that it will not be given to me because I want to take legal action for falsifying or supplanting my identity in a document and nothing less than an educator.

I also lack the original records of the sanctioning files that I have in order to identify the officials since someone has shown that they do

irregularities to know if they are the ones to file a complaint.

For all that

I request this Data Protection Agency to provide me with what the (...) (...)1 does not want to provide me, which is:

- a) Document that I have signed to program the permissions (the last one is the one that interests me) that is signed by the educator impersonating my identity without my authorization. That is, the sheet that is used to program the exit permits.
- b) Originals of the prison files (I have 2) to identify who has imposed the sanctions on me."

Faced with this claim, the SMPRAV through its DPD has formulated the allegations that have been transcribed in the 3rd antecedent.

(...)Well, after analyzing both the parties' statements and the documentation provided in the course of this procedure, this Authority considers that it is appropriate to partially estimate the claim dated 8/3/2018, for the reasons stated will be presented next.

First of all, in relation to the documents requested in the letter dated 7/7/2018 and which there specified the applicant, it seems that the SMPRAV would have delivered to the claimant here the relative to the " Report of the social worker (...) on approval of 100.2 in the UMS to file a complaint for falsehood in a public document and usurpation of functions", but the person now claiming had also requested "a copy of the report by order (...(...)) assistant, I was dismissed from the UMS at MR.3 due to threats and coercion, when my wife and I have been threatened by her to file a complaint".

And secondly, the person now making the claim had also requested access to certain information about their permissions. In this regard, from the diligence dated 11/7/2018 it is inferred that only "the reports of the treatment team relating to the proposal for the first ordinary exit permit" would have been delivered to him, so it does not seem that he had delivered the documentation relating to the last permit referred to by the claimant in the claim dated 3/8/2018, and with respect to which he specified that he requested access, not to the report issued by the SMPRAV, but to the document of request in which his signature would appear, although he denies having signed it: "Documento que yo he firmado para programar los permisos (the last one is the one that interests me) that is signed by the educator supplanting my identity without my authorization . That is, the sheet that is used to program exit permits." Therefore, also at this point, it is considered that the SMPRAV would not have made effective the right of access exercised on 7/7/2018.

In relation to the two types of information that have just been addressed (reports and permits), the SMPRAV has alleged in the hearing procedure of this claim, that "the documentation delivered is the one that exists in the file of the report and that responds to the intern's requests". In this regard, it should be remembered that in accordance with the provisions of articles 15 LOPD and 27 RLOPD, the right of access entails the right to hand over all the personal data subject to treatment by the data controller (SMPRAV), with regardless of whether or not these are included in his prison file, or in the "report file".

Apart from the above, the person claiming here had also requested access to the "Sentence or copy of the data that exposes that the analysis must be carried out

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urine by health personnel and not by UMS officials as is done to report it". Well, it does not seem that this information requested by the now claimant refers to his person, which is why it would not be covered by the regulated right of access to the LOPD and RLOPD. This, without prejudice to the claimant being able to obtain this information, if applicable, through the right of access to public information regulated in Law 19/2014, of December 29, on transparency, access to information public and good government.

Finally, from the comparative analysis between the access request of 7/7/2018 and the claim of 3/8/2018, it is concluded that in the latter letter addressed to this Authority, the person claimant expresses his claim to access documents that he had not requested on 7/7/2018 before the DGSP (now, SMPRAV), and which are the following: "Originals of the prison files (me constan 2) para identify who has imposed the sanctions on me." With respect to this specific request, which was not included in the initial access request, this Authority cannot consider the claim due to the fact that it was not previously requested before the data controller (SMPRAV), a necessary requirement for go to this Authority through the claim for protection of the right (article 16 Law 32/2010 in line with article 18 LOPD). However, for the reasons indicated above regarding the scope of the right of access, it would be information related to the claimant here and to which he therefore also has the right to access. So things are, for reasons of procedural economy, despite the fact that it would not be appropriate at this point to estimate the claim, it is considered appropriate to also include this information in the request made to the SMPRAV so that it delivers the claimed documentation to the claimant here .

In short, and from the perspective of the right of access regulated in the LOPD and the RLOPD, the present claim for protection of the right of access should be partially assessed, since in the present case the SMPRAV would not have delivered the entirety of the requested documentation.

5.- In accordance with what is established in articles 16.3 of Law 32/2010 and 119 of the RLOPD, in cases of estimation of the claim for the protection of rights, the manager of the file must be required so that in the term of 10 days make effective the exercise of right In accordance with this, it is necessary to require the claimed entity to provide the claimant with access to the documentation that contains data within 10 days from the day after the notification of this resolution relating to your person, taking into account what has been indicated in the 4th legal basis. Once the right of access has taken effect in the terms set out, within the same period of 10 days the claimed entity must report to the Authority.

For all that has been exposed,

RESOLVED

First.- Partially estimate the guardianship claim made by Mr. (...)against the Secretary of Penal Measures, Reintegration and Victim Support of the Department of Justice of the Generalitat of Catalonia.

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Second.- Request the Secretary of Penal Measures, Reintegration and Attention to the Victim so that within 10 counting days from the day after the notification of this resolution it makes effective the right of access exercised by the person claimant, in the manner indicated in the 5th fundamentals of law. Once the right of access has taken effect, within the same period of 10 days the claimed entity must report to the Authority.

Third.- Notify this resolution to the Secretary of Penal Measures, Reintegration and Attention to the Victim and the person making the claim.

Fourth.- Order the publication of the Resolution on the Authority's website (www.apd.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 articles 26.2 of Law 32/2010, of October 1, of the Catalan Data Protection Authority and 14.3 of Decree 48/2003, of 20 February, by which the Statute of the Catalan Data Protection Agency is approved, the interested parties can file, as an option, an appeal for reinstatement before the director of the Catalan Data Protection Authority, in the period of one month from the day after its notification, in accordance with the provisions of article 123 et seq. of Law 39/2015 or directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after its notification, in accordance with articles 8, 14 and 46 of Law 29/1998, of July 13, regulating administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

The director,

M. Àngels Barbarà and Fondevila

Barcelona, (on the date of the electronic signature)