

File identification

Resolution of the rights protection procedure no. PT 53/2018, urged by Mr. (...) against the Secretary of Penal Measures, Reintegration and Victim Care (formerly, Directorate General of Penitentiary Services) of the Department of Justice of the Generalitat of Catalonia.

Background

1.- On 22/10/2018 the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person making the claim), for which he made a claim against the Secretary of Penal Measures, Reinsertion and Victim Care (formerly, Directorate General of Penitentiary Services) of the Department of Justice of the Generalitat of Catalonia, for the alleged neglect of the right of access to lists with their information that would appear in the archives of this General Directorate. Specifically, it stated that:

"(...) although I have requested that they provide me with a copy of the departure times of 100.2 from the Brians 1 UMS, it is true that they do not provide me with them, since they know that they are illegal and against what is authorized by the JVP nº 2 of Barcelona".

The person making the claim provided, in order to certify the prior exercise of the right of access to the data controller, a letter dated 07/13/2018 on which a stamp from the Can Brians penitentiary center was printed, through which requested:

"(...) that facilitates me todas las horas de mis salidas de la UMS (...)", in allusion to the Unit of the Semi-Open Module (hereinafter, UMS).

2.- By official letter dated 10/25/2018 of the Authority, the claim was transferred to the data protection delegate (hereinafter DPD) of the Department of Justice (hereinafter, the Department), for so that within 15 days he formulated the allegations he considered pertinent

3.- On 29/10/2018, the Authority received a second letter from the person making the claim, complementary to the first, in which he stated that:

"...On October 18, I was provided with the departures from 04/27/18 to 05/23/18. This information is incomplete since it is missing from 23/05/18 to 06/07/18 in which they still made it more irregular than what was presented to the Court and finally ordered by them (...) Therefore I am requesting a complete claim of ALL 100.2 release days (release orders) from 04/27/18 to 07/06/18 (...)."

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4.- By official letter dated 10/31/2014, this second letter from the claimant was transferred to the DPD of the Department, so that within 15 days he could formulate the allegations he considered relevant.

5.- On 20/11/2018, the Authority received the statement of allegations from the DPD of the Department, which indicated the following:

"In relation to this procedure, we inform you that, according to the Legal Technical Secretariat of the Brians 1 Penitentiary Center, on November 13 a coordinator gave the inmate (...) the list of exits and entries with the relations with article 100.2 of the prison regulations.

With regard to the intern's application letters for the month of October, it seems that these were not properly processed internally at the center, causing the delay in processing the application."

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 access request referred, the Directive (EU) 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 authorities for the purposes of prevention, investigation, detection or prosecution of criminal offenses or execution 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 respect, it should be emphasized that the Directive (EU) 2016/680, has not been transposed into internal state law within the period provided for that purpose (05/06/2018), but transitional provision 4a of Organic Law 3/2018, of 5 of December, on the protection of personal data and guarantee of digital rights (LOPDGDD), also in force at the time the this resolution, provides that data processing that is subject to Directive (EU) 2016/680 will continue to be governed by Organic Law 15/1999, of December 13, on the protection of personal data (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 provided for in the LOPDGDD, enters into force.

Therefore, in accordance with what has been explained, this resolution is issued in accordance with the provisions of the LOPD and Royal Decree 1720/2007, of December 21, which approves the Regulation for the development of the 'LOPD.

- 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."

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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.- Having explained the applicable regulatory framework, it is then necessary to analyze whether the SMPRAV resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim, since precisely the reason for the complaint of the person who initiated the present procedure for the protection of rights was the fact of not having obtained a response within the period provided for the purpose.

In this regard, it is certified that the person making the claim submitted a letter dated 07/13/2018 to the entry register of the Can Brians penitentiary center, through which he requested access to information regarding the hours of their departures from the UMS. The stamp printed on the deed does not include the date of entry in the said register, but only the number of the settlement (6366) and the signature of the person who would have carried out the registration. In any case, everything seems to indicate that if the date of entry was not 07/13/2018, it would be a date close to this one.

In accordance with article 29 of the RLOPD, the SMPRAV had to resolve and notify the request for access within a maximum period of one month from the date of receipt of the request.

In relation to the question of the term, it should be borne in mind that in accordance with article 21.3 b) of Law 39/2015, of October 1, on the common administrative procedure of public administrations (hereinafter, LPAC) and article 41.7 of Law 26/2010, of August 3, on the legal regime and procedure of the public administrations of Catalonia (hereafter, LRJPCat), on the one hand, the calculation of the maximum term in initiated procedures at the request of a party - as is the case - it starts from the date on which the request was entered in the register of the competent body for its processing. And on the other hand, that the maximum term is to resolve and notify

(article 21 of the LPAC), so that before the end of this period the resolution must have been notified, or at the very least a duly accredited notification attempt has taken place (art. 40.4 LPAC).

Well, the SMPRAV has not proven to have responded to the request for access made by the now claimant within the one-month period provided for that purpose. Indeed, in the second letter that the claimant submitted to the Authority on 29/10/2018, the latter stated that on 18/10/2018 the SMPRAV had given him the lists of departures he had requested, although only those referring to a period of time, while the Department has stated before the Authority that on 13/11/2018 the requested list of entries and exits would have been delivered to the person here claiming.

Both one date and the other (18/10/2018 and 13/11/2018) are clearly subsequent to the end of the one-month period provided for the purpose. In fact, the Department itself has recognized in its statement of objections the extemporaneous nature of the response, attributing the delay to incorrect processing of the request within the penitentiary itself.

Consequently, the estimate of the claim proceeds, which was based on the lack of response to the request to exercise the right of access, since the SMPRAV did not resolve and notify the said sole application submitted by the affected person.

This notwithstanding what will be said below regarding the substance of the claim.

5.- Once the above has been established, it is appropriate to analyze the substance of the claim, that is to say, if the response given by the SMPRAV to the request of the now claimant, leaving aside its extemporaneous nature, is conformed to the precepts transcribed in the 3rd legal foundation.

As a starting point, it should be borne in mind 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 treatment and, where appropriate, on the purpose of the treatment, as well as the information available on 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.

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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.

According to the claimant himself, the SMPRAV would have given him part of the information he requested on 07/13/2018, but not all of it. Specifically, the claimant now maintains that he would not have been given the information on departure times from 05/23/2018 to 07/06/2018.

For its part, the DPD of the Department has pointed out that: "(...) according to the Legal Technical Secretariat of the Brians 1 Penitentiary Center, on November 13 a coordinator gave the inmate (...) the list of exits and entries with relations with article 100.2 of the prison regulations."

From the statements of the DPD, it follows, first of all, that the claimed entity does not question the right of access of the person making the claim to the requested data. The dispute is limited solely to elucidating whether the information provided is all that this person requested.

Regarding this, the fact that the statements made by the Department's DPD before the Authority were made after the second letter that the person presented - in which he stated that he had not yet been given the information on the departures made since 23 /05/18 to 07/06/2018-, lead to presume that finally, and following the affected person's second complaint, on 11/13/2018 he will be given the information that was missing for not having been included in the first delivery of documentation, although this end will need to be proven before the Authority, as set out in the legal basis below.

In short, and from the perspective of the right of access regulated to the LOPD and the RLOPD, regarding the merits of the claim, it is also appropriate to consider the present claim for the protection of the right of access, and to recognize that the person here claiming he had the right to access all the information requested, which would eventually have been provided to him by the Department.

6.- In accordance with what is established in articles 16.3 of Law 32/2010, in cases of estimation of the claim for the protection of rights, the person in charge of the file must be required to, within 10 days, make effective exercise of the right.

In the present case, everything seems to indicate that during the course of this rights protection procedure the SMPRAV has made effective the right of access, by delivering the requested documentation. However, for the reason indicated in the legal basis 5è in fine, the Department should be required so that within 10 days, counting from the day after the notification of this resolution, accredit before the Authority the delivery to the claimant of the personal data relating to the schedules of

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the departures made during the period of time between 23/05/18 to 06/07/2018, which the Department claims to have delivered to you on 13/11/2018.

For all that has been exposed,

RESOLVED

First.- 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.

Second.- Request the Secretary of Penal Measures, Reintegration and Attention to the Victim so that within 10 days, counted from the day after the notification of this resolution, certify to the Authority that it has taken effect the right of access in the terms set out in the 6th legal basis of this resolution.

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,