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File identification

Resolution of the rights protection procedure no. PT 102/2021, brought against The Department of Justice of the Generalitat of Catalonia.

Background

1. On 10/09/2021 the Catalan Data Protection Authority received a letter from Ms. (...) (hereinafter, the person making the claim), for which he made a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Barcelona Women's Penitentiary Center of the Department of Justice.

In accordance with the documentation he provided, on 12/08/2021, the claimant exercised the right of access to his personal data before the Management of the Barcelona Women's Penitentiary Center, specifically requesting: *"Copy of the Excel or similar document prepared and sent by the Head of the Office to the General Sub-Directorate of Human and Economic Resources as well as the dates on which said document was sent to the General Sub-Directorate of Human and Economic Resources."*

On 09/10/2021, the claimant reiterated the previous request, this time addressed to the General Sub-Directorate of Human and Economic Resources.

2. On 08/10/2022, the claim was transferred to the Department of Justice so that within 15 days it could formulate the allegations it deemed relevant.

3. The Department of Justice made allegations in a letter dated 10/25/2021, in which it stated the following:

ÿ That when he received the request from the person making the claim, he interpreted that he had not asked for access to his personal data contained in the Excel file, but that he interpreted that he merely requested a copy of this sheet of calculation, which was a document with personal data of many other people, apart from being internal or a work document, and which was issued by the head of Human Resources of the Women's Penitentiary Center and had not been neither authorized nor validated by the General Sub-Directorate of Human Resources of the Secretary of Penal Measures, Reintegration and Victim Assistance.

ÿ That on 10/21/2021 he reported the details of the personal data relating to the claimant contained in the Excel document, through a statement delivered at the same time by e-valisa and e-notum, given that the claimant did not was found providing effective services at that time.

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The claimed entity attached the statement and the two proofs of its availability.

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. Article 15 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 such data (hereafter, the RGPD), regarding the right of access of the interested person, provides that:

"1. The interested party will have the right to obtain from the controller confirmation of whether or not personal data concerning him or her are being processed and, in such case, the right to access personal data and the following information:

- a) the purposes of the treatment;*
- b) the categories of personal data in question;*
- c) the recipients or the categories of recipients to whom the personal data was communicated or will be communicated, in particular recipients in third parties or international organizations;*
- d) if possible, the expected period of personal data conservation or, if not possible, the criteria used to determine this period;*

- e) the existence of the right to request from the person in charge the rectification or suppression of personal data or the limitation of the treatment of personal data relating to the interested party, or to oppose said treatment;*
- f) the right to present a claim before a control authority;*
- g) when the personal data has not been obtained from the interested party, any available information about its origin;*
- h) the existence of automated decisions, including profiling, referred to in article 22, sections 1 and 4, and, at least in such cases, significant information about the logic applied, as well as the importance and expected consequences of said treatment for the interested party.*

2. When personal data is transferred to a third country or an international organization, the interested party will have the right to be informed of the appropriate guarantees under article 46 relating to the transfer.

3. The person responsible for the treatment will provide a copy of the personal data subject to treatment. The person in charge may charge a reasonable fee based on administrative costs for any other copy requested by the interested party. When the interested party submits the request by electronic means, and unless he requests that

otherwise facilitated, the information will be provided in a commonly used electronic format.

4. The right to obtain a copy mentioned in section 3 will not negatively affect the rights and freedoms of others."

In relation to the rights contemplated in articles 15 to 22 of the RGPD, paragraphs 3 to 5 of article 12 of the RGPD, establishes the following:

"3. The person in charge of the treatment will provide the interested party with information related to their actions on the basis of a request in accordance with articles 15 to 22, and, in any case, within one month from the receipt of the request. This period can be extended another two months if necessary, taking into account the complexity and the number of applications. The person in charge will inform the interested party of any such extension within one month of receipt of the request, indicating the reasons for the delay. When the interested party submits the request by electronic means, the information will be provided by electronic means whenever possible, unless the interested party requests that it be provided in another way.

4. If the person in charge of the treatment does not comply with the request of the interested party, he will inform him without delay, and no later than one month after receiving the request, of the reasons for his non-action and of the possibility of submitting a claim before a control authority and exercise judicial actions.

5. The information provided under articles 13 and 14 as well as all communication and any action carried out under articles 15 to 22 and 34 will be free of charge. When the requests are manifestly unfounded or excessive, especially due to their repetitive nature, the person in charge may:

a) charge a reasonable fee based on the administrative costs incurred to facilitate the information or communication or perform the requested action, or

b) refuse to act in respect of the request.

The person responsible for the treatment will bear the burden of demonstrating the manifestly unfounded or excessive nature of the request.

(...)"

For its part, article 13 of Organic Law 3/2018, of December 5, on the protection of personal data and guarantee of digital rights (hereinafter, LOPDGDD), determines the following, also in relation to the right to access:

"1. The affected person's right of access must be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679.

When the person in charge processes a large amount of data relating to the affected person and he exercises his right of access without specifying whether it refers to all or part of the data, the person in charge may request, before

provide the information, that the affected person specifies the data or the processing activities to which the request refers.

2. The right of access is understood to be granted if the data controller provides the affected person with a remote, direct and secure access system to personal data that guarantees, permanently, access to all of it. For this purpose, the communication of the person in charge to the person affected by the way in which he can access the aforementioned system is sufficient to consider the request to exercise the right.

However, the interested party can request from the person in charge the information referred to the ends provided for in article 15.1 of Regulation (EU) 2016/679 that is not included in the remote access system.

3. For the purposes established in article 12.5 of Regulation (EU) 2016/679, the exercise of the right of access more than once during the period of six months can be considered repetitive, unless there is a legitimate reason for do it

4. When the person affected chooses a means other than the one offered to him that involves a disproportionate cost, the request must be considered excessive, so the said affected person must assume the excess costs that your choice behaves. In this case, the person in charge of the treatment is only required to satisfy the right of access without undue delay."

In relation to the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, regarding the protection of the rights provided for by the regulations on personal data protection, provides the following:

"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."

3. Having explained the applicable regulatory framework, it is then necessary to analyze whether the Department of Justice resolved and notified, within the period provided for by the applicable regulations, the right of access exercised by the person making the claim.

In this respect, it is certified that on 12/08/2021 he joined the entity claimed a writing from the person claiming through which he exercised the right of access to your personal data.

In accordance with article 12.3 of the RGPD, the Department of Justice had to resolve and notify the request to exercise the requested right 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 instance of the party (as is the case) it starts from

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of 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 for resolving and notifying (art. 21 LPAC), so that before the end of this term the resolution must have been notified, or at least the duly accredited notification attempt (art.

40.4 LPAC).

Well, the Department of Justice in its pleadings has stated that it has responded to the request for access made by the person making the claim, once the one-month period provided for that purpose had been exceeded, more specifically on 21/10/2021, that is to say, when more than two months had passed since the submission of the application.

Consequently, it is necessary to declare that the Department of Justice did not resolve and notify in form and time the said request presented by the affected person.

4. Once the above has been settled, it is necessary to analyze the substance of the claim, that is to say whether, in accordance with the precepts transcribed in the 2nd legal basis, in this case access to the data in the terms that request of the person making the claim.

In its statement of objections, the Department of Justice states that *"initially it interpreted that the claimant had not requested access to his personal data contained in the Excel file, but through the writings of 11/08/2021 and 10/09/2021 was limited to requesting a copy of this spreadsheet, which was a document with personal data of many other people"*.

It should be borne in mind that article 15 of the RGPD configures the right of access as the right of the affected person to obtain information about their own personal data that is the subject of treatment and, in such case, to access said data and the information on the purposes of the treatment, the categories of personal data, the recipients to whom the personal data have been communicated or will be communicated, as well as the rest of the information detailed in article 15.1 of the RGPD. In addition, Article 15.3 of the RGPD expressly recognizes the right of any person to obtain from the data controller a copy of the personal data in respect of which access has been requested. However, the right to obtain a copy of your data cannot negatively affect the rights and freedoms of other people (art. 15.4 of the RGPD).

It should be noted that, with the information provided in the proceedings with the statement of objections, the Department of Justice has certified that it responded to the request to exercise the right of access, albeit extemporaneously. In fact, on 21/10/2021, through e-Valisa and also e-notum, he provided the claimant with access to his data contained in the Excel prepared by the head of Human Resources of the Women's Penitentiary Center of Barcelona, relating to the extraordinary services performed prior to 2016.

For all this, I resolve:

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1. Declare extemporaneous the resolution of the Department of Justice, by which it considers the request for access made by Mrs. no other pronouncement or any requirement regarding the fund once the claimant's right has become effective, in accordance with what has been indicated in the 4th legal basis.
2. Notify this resolution to the Department of Justice and the person making the claim.
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 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 the LPAC or to directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, in the period of 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, interested parties may file any other appeal they consider convenient for the defense of their interests.

The director,