

File identification

Resolution of rights protection procedures no. PT 10/2022 and PT 13/2022, urged against the Department of Justice (Mas d'Enric Penitentiary Center).

Background

1. On 26/01/2022 and 02/02/2022 the Catalan Data Protection Authority received two letters from Mr. (...) (hereinafter, the person making the claim), for which he formulated two claims for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Penitentiary Center of Mas d'Enric of the Department of justice. These same claims were also presented to the Spanish Data Protection Agency, which forwarded them to this Authority on 04/02/2022 and 09/02/2022, respectively.

These claims referred to requests for access to the reports of the penitentiary's technical team, in relation to the denial of exit permits that he had previously requested. According to the documentation provided by the claimant:

A) In relation to the claim dated 01/26/2022.

-On 05/10/2021 the Treatment Board denied the requested permission corresponding to the month of August 2021 and notified the decision to the person claiming on 07/10/2021.

-On 10/10/2021, the person making the claim requested a copy of the technical reports of the technical team of the penitentiary center corresponding to the denial of the penitentiary permit to leave the said center for the month of August 2021.

-On 11/10/2022, the Department responded to the request dated 10/10/2022, indicating that *"Regarding the permit denied by the Treatment Board dated 10/05/2022, it will be provided the report in the event that the Penitentiary Surveillance Judge claims it"*.

-On 10/14/2021, the person making the claim made a new request reiterating the same request for a copy of the technical reports made on 10/10/2021.

B) In relation to the claim dated 02/02/2022.

- On 12/01/2021 the Treatment Board denied the requested permit corresponding to the month of October 2021 and notified the decision to the claimant on 12/07/2021.

- On 16/12/2021, the claimant requested a copy of the technical reports of the technical team of the penitentiary center corresponding to the denial of the penitentiary permit to leave the said center for the month of October 2021.
- On 12/20/2021, the claimant made a new request reiterating the same request for a copy of the technical reports made on 12/16/2021.

2. On 08/02/2022, 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 02/28/2022, in which it stated the following:

A) With regard to the claim dated 26/01/2022, corresponding to the refusal of the exit permit for the month of August 2021.

- That on 08/10/2021, the claimant applied for an ordinary second degree permit.
- That on 10/05/2021, the Treatment Board of the penitentiary issued a reasoned resolution denying the requested permit, which was notified to the claimant on 10/07/2021.
- That on 10/10/2021 and 10/14/2021, the claimant requested access to the technical reports of the Board of Treatment of the denial of the permit for the month of August 2021.
- That, *"At that time the requested technical reports were not available, given that the usual practice of the center is that in the case of denial of permits, technical reports are not drawn up, unless required by the Penitentiary Surveillance Court"* , but that in any case, *"the reasons for the refusal of the permit are known to the claimant, given that they are contained in the agreement of refusal of the notified permit"* .
- That on 11/10/2021, the legal technical secretary responds to the requests submitted in the sense that he will be provided with the report in the event that the Penitentiary Surveillance Judge requests it, and that, *"This response is notified to the claimant on October 16, 2022, who signs "not compliant"* .

B) Regarding the claim dated 02/02/2022, corresponding to the refusal of the exit permit for the month of October 2021.

- That on 10/10/2021, the claimant applied for an ordinary second degree permit.
- That on 01/12/2021, the Treatment Board of the penitentiary issued a reasoned resolution denying the requested permission, which was notified to the person claiming on 07/12/2021.
- That on 12/16/2021 and 12/20/2021, the claimant requested access to the technical reports of the denial of permission from the Treatment Board for the month of October 2021.
- That, *"At that time the requested technical reports were not available, given that the usual practice of the center is that in the case of denial of permits , technical reports are not drawn up, unless required by the Penitentiary Surveillance Court"* , but that, in any case, *"the reasons for the denial of the permit are known to the person making the claim, given that they are included in the agreement denying said permit"* .

In both cases the Department of Justice provided various documentation.

4. The two claims subject to the guardianship proceedings (PT 10/2022 and PT 13/2022) have been presented by the same person, and given the identity of their object, they are resolved in this resolution, the legal foundations of which are application in both cases.

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. The personal data subject to processing by the Department of Justice to which the claims refer, object of this resolution, relating to the possible neglect of requests to exercise the right of access made by the person here claiming, 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 enforcement of criminal sanctions (LO 7/2021).

In accordance with the above, it is necessary to refer to article 22 of LO 7/2021, which in relation to the right of access provides the following:

"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.*
- f) *The right to submit a claim to the competent data protection authority and its contact details.*

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*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.
(...)."*

Regarding the general conditions for exercising the rights of the interested parties, article 20 of LO 7/2021, establishes the following:

*"1. The person responsible for the treatment must provide the interested party, in a concise, intelligible, easily accessible and with clear and simple language for all persons, including those with disabilities, all the information contemplated in article 21, as well as that derived from the articles 14, 22 to 26 and 39. In addition, the controller must take the necessary measures to guarantee the interested party the exercise of his rights referred to in articles 14 and 22 to 26.
2. The interested party, with capacity to act, may act in his own name and representation or through representatives, in accordance with the regulations on the common administrative procedure of Public Administrations.
3. The information will be provided by any suitable means, including electronic means, trying to use the same medium used in the request.
4. The data controller will inform the interested party in writing, without undue delay, about the course given at their request. The request will be considered rejected if, after one month has passed since its presentation, it has not been expressly resolved and notified to the interested party.
5. The information referred to in section 1 will be provided free of charge. When the requests of an interested party are manifestly unfounded or excessive, in particular due to their repetitive nature, the person in charge of the treatment may reject them for processing, by means of a reasoned resolution. The person responsible for the treatment must demonstrate the manifestly unfounded or excessive nature of the request. In any case, it will be considered that the request is repetitive when three requests are made on the same assumption during the period of six months, unless there is a legitimate reason for it (...)."*

Likewise, it should be borne in mind that in the event of restrictions on the rights of information, access, rectification, deletion of personal data and the limitation of its treatment, it is necessary to refer to articles 24 and 25 of LO 7/2021, which determine what:

"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".

In paragraph 1 of article 52 of LO 7/2021, relating to the regime applicable to the procedures processed before the data protection authorities, it is foreseen 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 their request to exercise the rights recognized in articles 21, 22 and 23 has not been met, they will have the right to file a claim before the data protection authority (...)"*.

In line with the above, article 16.1 of Law 32/2010, of the Catalan Data Protection Authority, 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."

Apart from the previous regulation, in the case analyzed here it is also necessary to take into account the regulations relating to the penitentiary regime that is applicable. Specifically, Organic Law 1/1979, of September 26, general penitentiary (hereinafter, Penitentiary Law), in its article 47.2 establishes that:

"2. Likewise, departure permits of up to seven days can be granted as preparation for life in freedom, with the prior report of the technical team, up to a total of thirty-six or forty-eight days per year to convicts of second or third degree, respectively, as long as they have extinguished the fourth part of the sentence and do not observe misconduct".

Likewise, Royal Decree 190/1996, of February 9, which approves the Penitentiary Regulations (hereinafter, the Penitentiary Regulations), with respect to ordinary permits, establishes that:

"Article 154

1. With the mandatory prior report of the technical team, ordinary exit permits of up to seven days can be granted as preparation for life in freedom, up to a total of thirty-six or forty-eight days per year to convicts classified in the second or third degree respectively, as long as they have served a quarter of the sentence or sentences and do not have bad conduct" (the emphasis is from this Authority) .

"Article 156

1. The mandatory report of the technical team must be unfavorable when, due to the peculiar criminal trajectory, the anomalous personality of the inmate or due to the existence of unfavorable qualitative variables, the breaking of the sentence is likely, the commission of new crimes or a negative repercussion of the release on the inmate from the perspective of his preparation for life in freedom or his individualized treatment program.

2. The technical team must establish, in its report, the conditions and controls that must be observed, if applicable, during the enjoyment of the exit permit, compliance with which must be assessed for the granting of new permits".

And about the procedure for granting exit permits:

"Article 160

Initiation and instruction

1. The technical team must make a report on the request for ordinary or extraordinary exit permits made by the intern, and must also verify that the objective requirements required to enjoy the permit are met, must assess the peculiar circumstances determining its purpose and must establish, when appropriate, the conditions and controls referred to in article 156.

2. In view of the mandatory report mentioned, the treatment board must agree to grant or deny the permission requested by the inmate".

3. Having set out the applicable regulatory framework, it is then necessary to analyze whether the Department of Justice gave effect to the claimant's right of access in the terms requested.

From the information provided by the claimant it appears that, on the one hand, on 10/10/2021 and 10/14/2021, and on the other, on 12/16/2021 and 12/20/2021 , exercised the right of access to the technical reports of the multidisciplinary team of the penitentiary where she was incarcerated, related to her requests for the corresponding exit permit, respectively, for the months of August and October 2021, which they were denied to him.

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In accordance with the provisions of article 47.2 of the Penitentiary Law in relation to article 154 of the Penitentiary Regulations, the technical reports of the technical team are mandatory and prior to the granting of ordinary permits. And article 160 of the Penitentiary Regulation provides that: " 1. *The technical team must make a report on the request for ordinary or extraordinary exit permits made by the inmate (...)*", and " 2 *In view of the mandatory report mentioned, the treatment board must agree to grant or deny the permission requested by the inmate*".

Therefore, in accordance with the precepts transcribed, the reports requested by the person claiming in exercise of their right of access should be part of the procedure instructed following their requests for ordinary exit permits for the month of August 2021 and the month of October 2021.

As can be seen from the documentation provided by the person claiming, the Treatment Board of the penitentiary center, on the one hand, responded to the requests dated 10/10/2021 and 10/14/2021, so to the exit permit for the month of August, but did not confirm to the person concerned whether or not it was processing their personal data related to the requested reports; and on the other hand, he did not give any response to the requests for the dates 16/12/2021 and 20/12/2021, regarding the leave for the month of October.

In fact, the Department of Justice, in its allegations to the Authority, has informed that it did not have the reports requested by the person concerned, because in cases of denial of permits - unless required by the Court of Penitentiary Surveillance- , said reports are not drawn up, also stating that the person making the claim already knew the reasons why the requested permit was denied.

Regarding this, it should be pointed out that this resolution will deal exclusively with the content of the right of access to the personal data of the person making the claim, given that it is not the competence of this Authority to analyze the eventual legal consequences that could arise from the fact that the technical reports for which the interested person requests access have not been drawn up, nor pronounce on the reasons for denying the permission to leave the penitentiary requested by the person making the claim.

Given the above, it is necessary to determine whether the Department of Justice satisfied the claimant's right of access in the legally established terms.

As a starting point, it should be borne in mind that article 22 of LO 7/2021 defines 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, access said data and 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 the article 22.1 of LO 7/2021. It also establishes that if the applicant requests it, a copy of the requested data that is the subject of treatment will be provided.

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 already

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mentioned, through the right of access, the owner of the data can find out which data about him is being processed. In addition, this right could be the basis for the exercise of other rights, such as those of rectification, deletion, limitation, portability or opposition.

LO 7/2021 foresees a series of limitations on access to data, as is the case of those provided for in article 24 of LO 7/2021 in the area of the processing of data for the execution of sanctions penalties. Specifically, article 24 of LO 7/2021 allows such a limitation to *"prevent inquiries, investigations or judicial proceedings from being obstructed, to avoid causing harm to the prevention, detection, investigation and prosecution of criminal offenses or the execution of sanctions criminal cases, protect public security, protect National Security, and protect the rights and freedoms of other people"*.

However, in the case that concerns us here, the Department of Justice does not adduce any of the causes listed in article 24 of LO 7/2021 to deny the right of access requested by the person here claiming, but which, as has already been said, justifies not having responded to the access request, due to the fact that when a prison exit permit is denied, technical reports are not prepared and that they are only prepared exceptionally when as required by the Penitentiary Surveillance Court. And he adds that in the present case, the person making the claim here knew the reasons why he was denied the requested exit permit.

In this regard, it should be noted that, regardless of whether the reasons for the refusal of the exit permit were known to the person concerned, this, in accordance with article 22.1 of LO 7/2021, has the right to be provided with the requested reports if they exist. And if they do not exist, logically they cannot be provided to you, but in such a case you have the right to have the data controller confirm that they do not have these reports. It is worth remembering that, in accordance with the prison regulations referred to above, these prior reports are mandatory, which further justifies that the person making the claim has the right to obtain an answer from the data controller when requests access, and this regardless of whether the Department does not have these reports, because in such a case, we insist, it had to confirm to the interested person that said reports did not exist, or that he considered that the person requesting of access was already aware of the reasons why he was denied permission to leave the penitentiary.

In accordance with the above, the present claims for protection of the right of access should be considered, given that in the present procedure it has been proven that Mr. (...) exercised the right of access to the reports of the technical team before the Mas d'Enric Penitentiary Center of the Department of Justice in relation to the requested exit permits. Likewise, it is certified, with regard to the requests dated 10/10/2021 and 10/14/2021, that the Department of Justice in its response to the person here claiming, - notified on 10/16 /2022-, did not inform him whether or not he was processing his data in relation to the reports he requested, and regarding the access requests dated 16/12/2021 and 20/12/ 2021, it is also certified that no response was given.

In short, it must be concluded that the right of access exercised with respect to the requests dated 10/10/2021 and 14/10/2021, nor with respect to those dated 16/12/2021

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and 20/12/2021, taking into account that part of the right of access is the right to obtain confirmation from the data controller on whether or not the data of the person concerned is being processed.

4. 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 protection of rights, the manager of the file must be required so that within the term of 10 days to make the exercise of the right effective. In accordance with this, it is necessary to require the claimed entity so that, within 10 counting days from the day after the notification of this resolution, it makes effective the exercise of the claimant's right of access in the terms set out in the previous legal basis regarding the access requests made by the claimant on 10/10/2021 and 10/14/2021, and on 12/16/2021 and 20/12/2021, respectively. Once the right of access has been made effective in the terms set out and the person making the claim has been notified, in the following 10 days the claimed entity must report to the Authority.

For all this, I RESOLVE:

1. Estimate the claims made by Mr. (...) against the Department of Justice, regarding the access requests made on 10/10/2021 and 10/14/2021, in relation to the technical reports corresponding to the denial of the exit permit of month of August 2021, and on 16/12/2021 and 20/12/2021, in relation to the technical reports corresponding to the denial of the permit for the month of October 2021.
2. Request the Department of Justice to respond to the exercise of the right of access exercised by the person making the claim within 10 days from the day after the notification of this resolution, in the form indicated in the 3rd legal basis. Once the right of access has taken effect, within the following 10 days the claimed entity must report to the Authority.
3. Notify this resolution to the Department of Justice and the person making the claim.
4. 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, the interested parties may file any other appeal they deem appropriate for the defense of their interests.

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The director,

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