

## File identification

Resolution of the rights protection procedure no. PT 16/2022, urged against the Department of Justice (Mas d'Enric Penitentiary Center).

## Background

1.- On 09/02/2022 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 his personal data, which he had previously exercised before the Penitentiary Center of Mas d'Enric of the Department of justice

This claim was also presented to the Spanish Data Protection Agency, which forwarded it to this Authority on 02/15/2022.

The claimant provided the following documentation:

- Copy of the request for the technical reports of the multidisciplinary team of the penitentiary center corresponding to the denial of the progression to the third level of penitentiary and also the denial of the corresponding exit permit for August 2021, presented on 10/10/ 2021 In the application form filled out by the person claiming here on 10/10/2021, there was a space designated for the resolution, which was issued on 10/11/2021 (although, according to the Department of Justice, this will not be notified to the claimant until 10/16/2021).
- Copy of the request of 10/14/2021, whereby the claimant reiterates the request for a copy of the documentation requested on 10/10/2021.

In the same request of 10/10/2021, there is a space reserved for its resolution. In this regard, it is recorded that on 11/10/2021 it was decided that the documentation would be provided to the person claiming when it was available (reports relating to the degree) or, in his case, when it was drawn up (report regarding the denied permit ).

2.- On 02/15/2022, 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 within the framework of the present rights protection procedure, by means of a letter dated 03/09/2022, in which it stated the following:

- That on 09/07/2021 the Board of Treatment of the Penitentiary Center of Mas d'Enric agreed to maintain the second degree of treatment in the internment. This resolution was notified to the claimant on 10/07/2021.
- That on 10/10/2021 and 10/14/2021, the interested person requested access to the reports related to the second degree maintenance resolution.
- That "(...) *these reports do not exist and are only drawn up at the request of the Penitentiary Surveillance Court or the executive bodies of criminal enforcement of the Department of Justice*".
- That "*The reasons for the refusal are included in the decision that is notified and are known to the claimant*".

- That the person concerned appealed to the Secretary of Penal Measures, Reintegration and Victim Support, and was informed that he would be given a copy of the reports drawn up when they were available.
- That on 10/26/2021, the intern was notified of the transfer of the file to the management center, where the content of the initially requested reports was included.

The Department of Justice provides, among others, the following documentation:

- Copy of the certificate of the Treatment Board, issued on 10/19/2021, where it was agreed to send to the Directing Center the report relating to the maintenance in the second degree agreed at the Treatment Board on 09/07/2021, and that notified the interested person on 10/26/2021.
- Copy of the resolution of the Directing Center regarding the maintenance in the second level of penitentiary in application of article 105.2 of the Penitentiary Regulation, which was received by the person concerned on 16/12/2021. At the foot of this resolution there is a space for the inmate to confirm, through his signature, that he has received a copy of the resolution. In that space, the person making the claim put his signature, stating "*not compliant*" (it is inferred that he respects the content of said resolution).

**5.-** On 04/19/2022, an information request was sent to the Department of Justice, where it was asked to, within 5 working days from the day following its receipt, certify that it had delivered to the person claiming a copy of the reports of the multidisciplinary team in relation to his request for denial of progression to the third level of penitentiary, given that the documentation provided together with the allegations dated 09/03/2022, only certified that on 16/12/2021 he was notified of the Resolution issued by the head of the Classification Service (by authorization of the Director General of Penitentiary Affairs) of maintenance in the second degree of treatment, but not that he had been given also a copy of the technical reports that are the subject of your access request.

**6.-** On 05/11/2022 the Department of Justice provided the supporting documentation of having delivered the requested report to the claimant on 04/27/2022. In the documentation provided, there is the signature of the person claiming as having received said documentation.

### **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, subject of this resolution, relating to the response provided by said department in relation to requests to exercise the right of access formulated by the person here claiming on dates 10/10/2021 and 10/14/2021, fall within the scope of application of Organic Law 7/2021, of May 26, on the protection of processed personal data for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions (hereinafter, 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.*
  - 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 *"In the case that the interested parties appreciate that the tratamiento de los datos individuals who have infringed the provisions of this Organic Law or whose request to exercise the rights recognized in articles 21, 22 and 23 have not been attended to will have the right to file a claim with 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 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), establishes that:

*"Article 39.*

*The psychiatric diagnoses that affect the prison situation of the inmates must be carried out by a technical team, made up of a specialist in psychiatry, a forensic doctor and the establishment's doctor, and in any case a report from the "observation or treatment team." (The emphasis is from this Authority)*

*"Article 63.*

*For the individualization of treatment, after the appropriate observation of each prisoner, his classification must be carried out, and he must be allocated to the establishment whose regime is most suitable for the treatment given to him indicated, and, if applicable, to the most appropriate group or section within that. The classification must take into account not only the personality and the individual, family, social and criminal history of the inmate, but also the length of the sentence and penal measures if applicable, the environment to which he is likely to return and the resources, facilities and difficulties existing in each case and moment for the good success of the treatment." (The underlining is from this Authority)*

*"Article 65.2.*

*The progression in the treatment depends on the modification of the sectors or traits of the personality directly related to the criminal activity; it manifests itself in the overall behavior of the intern, and leads to an increase in the trust placed in him and the attribution of increasingly important responsibilities that involve more freedom."*

Likewise, Royal Decree 190/1996, of 9 February, which approves the Penitentiary Regulations (hereinafter, the Penitentiary Regulations), which establishes:

*"Article 105. Review of the initial classification.*

*1. Every six months at the most, the inmates must be studied individually to evaluate and reconsider, if necessary, all the aspects established in the individualized treatment model when formulating the initial classification proposal.*

*2. When the treatment board does not consider it appropriate to propose to the management center a change in the grade assigned, the reasoned decision must be notified to the intern, who can request that the corresponding report be sent to the management center so that resolve whatever is appropriate regarding the maintenance or change of degree. The decision of the management center must be notified to the inmate and he must be told that he has the right to appeal before the supervising judge." (The underlining is from this Authority)*

*"Article 106. Degree progression and regression.*

*1. The evolution in prison treatment determines a new classification of the inmate, with the corresponding proposal of transfer to the appropriate penitentiary center or, within the same center, to another department with a different way of life.*

*2. The progression in the degree of classification depends on the positive modification of the factors directly related to the criminal activity, it is manifested in the overall behavior of the inmate and leads to an increase in the trust placed in him, which will allow the attribution of more important responsibilities that involve a greater margin of freedom.*

*(...)"*

And still, on the functions of the Treatment Board, Decree 329/2006, of September 5, which approves the Regulation on the organization and operation of criminal enforcement services in Catalonia, provides in its article 32 , what:

*"1. The Treatment Board, without prejudice to the competences of the management center and the multidisciplinary teams, must perform the following functions: e) Propose to the management center, in a reasoned report, the progression or regression of degree and, exceptionally, the transfer to another penitentiary center. The transfer may also be reasonably proposed when there are treatment reasons that advise it". (The underlining is from this Authority)*

**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.

In advance, it must be made clear that the object of the rights protection procedure only covers the complaint of the person interested in the response provided by the Department of Justice in relation to access to the report of denial of the progression to third degree penitentiary. And this, because the request for the report of the denial of the exit permit corresponding to the month of August 2021, was already the subject of a previous claim made by the claimant that gave rise to guardianship procedure no. . 10/2022 and which was already resolved by this Authority on 04/20/2022.

Having said that, as a starting point, it should be taken into account that article 22 of LO 7/2021 configures the right of access as the right of the affected person to obtain confirmation from the person in charge as to whether he is treating his personal data and, in such case, to access said data and the information detailed in article 22.1 of LO 7/2021.

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 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 or limitation.

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. The reasons for denying the right of access are regulated in article 24 of LO 7/2021.

In accordance with the provisions of articles 63 and 65.2 of the Penitentiary Law in relation to articles 105 and 106 of the Penitentiary Regulations, the report drawn up by the technical team is prior and necessary for the review of the classification and degree progression. Therefore, in accordance with these precepts, the report requested by the claimant should form part of his administrative file prepared as a result of his request for progression to the third degree.

From the information provided by the claimant, it appears that on 10/10/2021, he requested the exercise of his right of access to the technical maintenance report of the second level penitentiary; that is to say, he requested access to the report by which he was denied progression to the third level of penitentiary that had been drawn up by the multidisciplinary team of the penitentiary center where this person was incarcerated.

Well, as can be seen from the documentation provided by the claimant and the Department of Justice, it is proven that, on 11/10/2021, the Treatment Board of the penitentiary center responded to the request access presented on 10/10/2021, in the sense that *"the report will be provided to you as soon as it is made and sent to the Directing Center"*, but that this response will not be notified to the person here claiming until the 16/ 10/2021. Prior to said notification, the claimant had already reiterated his request on 14/10/2021, since, as already said, despite having been resolved, he had not yet been notified.

It should be noted that the specific reason for the claimant's complaint is not that the Department of Justice did not resolve his request, but rather that he had not been provided with the requested technical report.

In similar terms, in its letter of allegations of 03/09/2022 in the framework of the present rights protection procedure, the Department of Justice alleged that the claimant was already informed that he would be given a copy of the report prepared when it was available. And he added that when the progression of the penitentiary grade is denied, technical reports are not drawn up and that they are only drawn up in an exceptional way when so required by the Penitentiary Surveillance Court or the administrative bodies of criminal execution of the Department of Justice. The Department also explained that the person making the claim was aware of the reasons for denying the requested degree progression, given that they are contained in the resolution notified to him on 07/10/2021.

Well, regardless of whether the reasons for denial of progression to the third level of penitentiary could be known to the person concerned, he or she has the right to be provided with the requested reports in accordance with article 22.1 of LO 7/ 2021. At this point, it should be noted that although the Department of Justice asserted in its statement of allegations dated 09/03/2022, that said reports had not been drawn up, the decision of the Treatment Board in that the maintenance in the second degree was agreed upon is 09/07/2021, so when the person claiming here exercised the right of access (10/10/2021), the reports to base that decision already had to exist. Based on this consideration, the Authority, on 04/19/2022, required the Department of Justice to certify that it had given the claimant a copy of the report of the multidisciplinary team that would justify the denial of progression to the third prison degree.

On 05/11/2022, the Department of Justice has certified that on 04/27/2022, well past the legal deadline for that purpose, it has provided the person here claiming the report to which he requested access .

For all this, I resolve:

1. Declare that the Department of Justice has extemporaneously attended to the right of access to data exercised by Mr. (...), without entering into other considerations regarding the substance, given that the Department of Justice has provided the technical report subject to the access requests made on 10/10/2021 and 10/14/2021 .
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](http://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.

The director,