

File identification

Resolution of the rights protection procedure no. PT 103/2022, urged against the Department of Justice (Mas d'Enric Penitentiary Center).

Background

1. On 11/24/2022, the Catalan Data Protection Authority received a letter from Mr. (...) (hereinafter, the person claiming), for which he formulated a claim for the alleged neglect of the right of access to his personal data, which he had previously exercised before the Department of Justice (Centre Penitenciari Mas d' Enric).

The claimant provided various documentation relating to the exercise of this right, including a copy of the request dated 12/10/2022, in which he requested a *"literal copy of all my medical reports and all my medical records doctor "*.

2. On 11/30/2022, the claim was transferred to the Department of Justice so that within 15 days it could formulate the allegations it deemed relevant.

3. On 19/12/2022 the Department of Justice formulated allegations by means of a letter dated (...), in which it set out, in summary, the following:

- That on the day (...) *he was given the entire clinical course from April 2012 to the date referred to. Even so, on (...) and (...) requests are again received from Mr. (...) asking again for the documentation"* .
- That on date (...) *"all the requested documentation was prepared again (copies of the medical reports, communicated to the Court, tests - analytical and ergometry - current treatment sheet and clinical course), making it available to the Mr. (...), who has refused to receive the envelope with all the documentation and has also refused to sign the receipt of said documentation"* .
- That *" all the requested documents have been delivered by the Administration and it was Mr. (...) who refused to receive said documentation. The center gives a copy of everything the inmates request and it is possible and legal to satisfy them"*.

The Department of Justice attached the following documentation:

- 1) Copy of the document "Communication of facts to the Head of Services", dated (...), drawn up by the interior official with numerical code (...), in which the following is indicated: *"Por indicación de la medical director I require the presence of the intern (...) for the delivery of a clinical documentation that he has requested . When the intern shows up in the nursing building , he refuses to receive said documentation and therefore does not sign the receipt document that we attach to this statement of facts . everything this is signed by the interior official (...), present at the moment "*. Said document was signed by two officials identified with the numerical codes (...) and (...).
- 2) Copy of the "Document confirming receipt of health services", dated (...), to which reference is made in the "Communication of facts to the Head of Services". In this

document, the person claiming here is identified as the eventual recipient of the copy *"of the medical reports, communicated to the Court, tests (analytics and ergometry), current treatment sheet and clinical course"*, but there is no signature of the person claiming to certify receipt of the documentation.

4. On 11/01/2023, the Authority requested the Department of Justice so that within 5 working days from the day following the receipt of its letter, on the one hand, *the entire clinical course* " was made to the person making the claim, he was referring to the medical reports and medical file that were the subject of the request; and on the other hand, provide a copy of the supporting documentation that, on that date, had been given to the person claiming said documentation.

5. On 01/18/2022, the Department of Justice responded to the Authority's request of 01/11/2023 stating, among others, the following:

- That on date (...) the person claiming here was given *"all the clinical documentation since April 2012 and, despite everything, he returned it"*.
- That days later the person making the claim again asked for all the documentation *"and then refused to receive it, as stated in the statement of facts to the Head of Services dated (...) where there are two officials as witnesses and which was already provided by means of a letter of the same date . Additionally, these facts are collected through the attached document consisting of the clinical report issued by the medical director of the data center (...)"*
- That the Department of Justice considers that the person making the claim *" is making repeated use of the right of access, to the point that it can be considered repetitive for the purposes of article 12.5 of Regulation (EU) 2016/679"*.
- That the claimant's right of access has been taken care of despite considering that *"he is making abusive use of his petition rights "*.

The Department of Justice provides, among other documentation, the "Clinical report" document issued by the Medical Directorate, dated (...), in which the following is set out:

- That *" on date (...) the referring doctor of the module gave him - a reference that must be understood as made to the person making the claim - the entire clinical course from April 2012 to the date referred to ."*
- That *" on (...) and (...) I receive your request asking for the documentation again. Together with the request of the day (...) he returns to us, stapled to the request itself, an envelope containing exactly what had been given to him on the day (...)"*.
- That *" on (...), at the request of the Judicial Technical Secretary, I prepared again all the required documentation (clinical course, ergometry, blood analysis, medication plan, ...)"*.
- That on (...) the interested person was summoned to collect the documentation, but he did not attend.
- That on the day (...) the interested person is called again *" The intern shows up, but rejects the envelope with all the health documentation. He also refuses to sign the waiver at the reception. It is signed by the two officials who are present so that there is a record of the delivery attempt."*

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 Catalan Data Protection Authority.

2. Article 22 of LO 7/2021, in relation to the right of access, provides for 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. 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 the derived of articles 14, 22 to 26 and 39. In addition, the controller must adopt the necessary measures to guarantee the interested party the exercise of his rights to those 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 their 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."

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 accordance with article 20.4 of LO 7/2021, the claimed entity had to resolve and notify the access request within a maximum period of one month from the date of receipt of the request.

In the present case, from the information provided by the claimant, it is certified that on 12/10/2022 he exercised his right of access to the "*literal copy of todos mis informes médicos y todo mi expediente médico*", before the claimed entity.

For its part, the Department of Justice states in its statement of allegations that the entity responded to the claimant's request on (...). In this regard, it should be noted that although there is no documentary proof of the receipt of said answer, it is considered that this end has been accredited through the statements of the medical director, which are included in the clinical report of date (...), in which it ratifies the Department's statements, expressly indicating that on date (...) a response was given to the claimant's request by "handing over the entire clinical *course*". Regarding this, it should be noted, however, that there is no evidence that the documentation provided was all that the applicant had requested, a matter that will be analyzed later, when the subject of the merits of the claim is addressed.

Therefore, the Department of Justice responded to the person requesting the right of access, within the period of one month provided for the purpose.

4. With respect to the substance of the present claim, it is necessary to analyze whether the Department of Justice made effective the right of access exercised by the person making the claim.

In this regard, it should be borne in mind 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 processing 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 faculties that integrate the fundamental right to the protection of personal data. As already advanced, through the right of access, the owner of the data can know which data about his person are the object of treatment. In addition, this right could be the basis of the exercise other rights, such as 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.

Having established the above, as indicated, it is certified that on date (...) the Department of Justice responded to the request for access to the data made by the person making the claim. However, there is no evidence that in the response provided to the person making the claim, all the information requested was provided to him, given that the Department of Justice in its statement of allegations dated (...) limited itself to to indicate that he had "*delivered the entire clinical course from April 2012 to the date referred to*", but it did not seem to be inferred from this statement that the claimant had been given all the medical documentation that applied on 12/10/2022. On this issue, the entity was required to clarify whether "*the entire clinical course*" referred to the medical reports and medical file that were the subject of the request, without the entity giving a clear answer in this regard. In this regard, it should be noted that in the medical director's report dated (...), the same terms "*the entire clinical course*" are used again when referring to the documentation that was delivered on the day (...). So it doesn't clarify that end either.

It is worth saying, however, that the medical director in the clinical report of (...), also states that on (...) - following the reiteration of the claimant's request for access on dates (...) and (...) - he prepared the requested documentation, and in this case, he does detail in the report that the documentation he is preparing to be delivered is the "*clinical course, ergometry, blood analysis, medication plan, ...*", a description that is left open with ellipsis, and from which it is inferred that it is the documentation that would comprise the object of the request dated 12/10/2022 (reiterated in the dates (...) and (...)). In this regard, the same report states that, on (...), the person making the claim was summoned to collect said documentation, but that it was not presented; and that on (...) she was summoned again, but the person refused to collect the documentation and sign the waiver to receive the documentation.

In this same sense, the Department of Justice provided the "*document of proof of receipt of health services*", dated (...), which certifies that on that date the requested documentation had been prepared to be delivered, despite the fact that the person claiming ultimately did not appear. In said supporting document it was indicated that "*In response to your request, we are handing you copies of the medical reports, communicated to the Court, tests (analytics and ergometry), current treatment sheet and clinical course*". The entity also provides the "*Communication of facts to the Head of Services*", dated (...), through which it is recorded that, on this occasion, the claimant had presented himself, but had refused to receive the requested documentation, which is why he had not signed the proof of receipt of the documentation either.

From the above, it can be inferred that although there is no record that the Department delivered to the applicant, on (...), all the requested documentation or only an extract from it, what what can be said is that he tried to give him more documentation in response to his request, on (...) and (...), and that the applicant refused to receive it. In this way, it can be considered that the Department complied with its obligation to respond to the right of access exercised by the applicant before the presentation of the present claim to the Authority, without it being considered that the renunciation of the person requesting access to the documentation provided to him entails a breach of the right.

Therefore, and in accordance with everything stated above, the present claim must be dismissed.

For all this, I resolve:

1. Dismiss the guardianship claim for neglect of the right of access formulated by Mr. (...) against the Department of Justice, in accordance with what is stated in the legal basis 4th.
2. Notify this resolution to the Department of Justice, and to the person making the claim.
3. Order the publication of the resolution on the Authority's website (<https://apdcat.gencat.cat/ca/inici>), 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,