

File identification

Resolution of the rights protection procedure no. PT 42/2023, urged against the Department of Justice, Rights and Memory (Puig de les Basses- Figueres penitentiary center) .

Background

1. On 03/31/2023, the Catalan Data Protection Authority received a letter from Mr. (...) (henceforth, the claimant), for which he made a claim for the alleged disregard of the right of access to his personal data, which he had previously exercised before the Department of Justice, Rights and Memory - Penitentiary center Puig de les Basses-Figueres- (Department of Justice).

The claimant provided a copy of a generic request that he submitted on 02/21/2023, addressed to the Office of Penitentiary Management, through which he requested an extract from the document "Intern summary sheet". In this instance, it contained what appeared to be the penitentiary's negative response ("this document is a working tool of the center and is not given to inmates").

2. By order dated 08/05/2023, the claim was transferred to the Department of Justice, so that within 15 days it could formulate the allegations it deemed relevant.
3. On 05/22/2023, the Department of Justice presented a letter of allegations stating that " the Puig de les Basses Penitentiary Center has proceeded to hand over the documentation that it has tendered the intern (...)."

The Department of Justice provided the following documents:

- The claimant's access request, in which, unlike the request submitted by the claimant, there was an estimated response ("authorization") issued on 05/14/2023. The Department pointed out that it also contained the complainant's signature of conformity, although it was not legible.
- Proof of receipt of this response, signed by the person making the claim on 05/19/2023.

Fundamentals of law

1. The director of the Catalan Data Protection Authority is competent to solve 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 (Law 32/2010).
2. The processing of personal data to which the claim refers is hereby dismissed within the scope of application of Organic Law 7/2021, of 26 May, on the protection of personal data processed for the purposes of prevention, detection, investigation and prosecution of criminal offenses and the execution of criminal sanctions (LO 7 /2021).

3. In relation to the right of access, article 22 of LO 7/2021 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.
 - f) 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.
- (...)"

Likewise, it should be borne in mind that, in the event of restrictions on the rights of information, access, rectification and 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 that:

" 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 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 that their request to exercise the rights recognized in articles 21, 22 and 23 has not been met, they will have the right to submit a claim to the data protection authority (...)."

In line with the above, article 16.1 of Law 32/2010 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."

4. Once the applicable regulatory framework has been set out, it is then necessary to analyze whether it is appropriate to estimate the claim.

Regarding this, in the letter of complaint the person making the claim stated that the penitentiary center had denied him the request for access to the document "Inmate's summary sheet". And, in order to prove it, he provided the instance dated 02/21/2023 that contained his request for access, along with which the response from the penitentiary center should also appear.

With regard to the answer of the penitentiary center, in the dispositive part or *decision* of the instance there is the phrase "this document is a working tool of the center and is not given to the inmates", from which it is certainly inferred the denial of your request.

However, this response is not signed nor does it contain other relevant information, such as the date and meaning of the resolution ("authorized", "not authorized", "data missing", etc.). Therefore, there is no certainty of this denial.

On the other hand, the file states that on 05/14/2023 the Department of Justice issued an estimated resolution on the access request made by this person. This makes it unnecessary to make a pronouncement on whether to recognize the right of access exercised by the person making the claim. Likewise, there is proof of receipt and compliance by this person, which is positively valued, while making it unnecessary to require it from the Department.

This does not preclude the conclusion that the Department of Justice neglected the right of access of the person making the claim. This conclusion is reached whether the Department of Justice initially denied the request - because the subsequent estimate would have shown the incorrectness of the denial - or if it did not respond until 05/14/2023 - because in that date the legally established deadline for responding to the request of the affected person had been exceeded. Therefore, the claim must be upheld.

resolution

For all this, I resolve:

1. Appreciate the claim, given that the Department of Justice, Rights and Memory did not respond in time to the request of Mr. (...). There is no need to issue a statement on the merits, given that the Department of Justice has estimated the request for access through the resolution dated 05/14/2023.
2. Notify this resolution to the Department of Justice, Rights and Memory and to the person making the claim.
3. Order that the resolution be published on the Authority's website (<https://apdcat.gencat.cat/ca/inici>), in accordance with article 17 of Law 32/2010.

Against this resolution, which in accordance with articles 26.2 of Law 32/2010 and 14.3 of Decree 48/2003, of 20 February, which approves the Statute of the Catalan Data Protection Agency, puts end of the administrative process, the interested parties may file an appeal before the director of the Catalan Data Protection Authority, within one month from the day after their notification, in accordance with the provisions of article 123 et seq. of the LPAC. You can also directly file an administrative contentious appeal before the administrative contentious courts of Barcelona, within two months from the day after your notification, in accordance with Law 29/1998, of July 13, regulator of the administrative contentious jurisdiction.

Likewise, the interested parties may file any other appeal they deem appropriate to defend their interests.

The director