Resolution:

The resolution is presented as a whole as both the request for access and the petition for advice related to the same issues.

First, it should be reminded that under the Code for the Relations between the Public and the Administration all documents issued by a public administration as part of its missions of public service are considered to be administrative documents communicable to whomever requests access to it. However, there are some exceptions to this right that are provided for by Articles L. 311-5 and L. 311-6 of the said code. Those exceptions include, notably, the right to privacy, security concerns and situations that would jeopardize the prevention and search for infractions (L. 311-5, 2°, g)).

In the two discussed cases, the CADA found that communicating the algorithm of the datamining tool used to calculate the fraud risk score would reveal the variables taken into account and the associated coefficients and would therefore disclose the criteria used to target inspections. As a result, there is reasonable ground to believe that this would increase the risk of individual fraud as well as of more organized high-profile fraud, which would breach Article L. 311-5, 2°, g) of the
Code of Relations Between the Public and the Administration, which limits the communication of documents that could jeopardize the search and prevention of offences.

However, the CADA distinguished between the variables and coefficients of the current datamining algorithm, on the one hand, and those of previous versions of the algorithm, on the other. It considered that while the communication of the former could jeopardize the fight against benefits fraud, it wouldn’t be the case for the latter.

As a result, the CADA found that, under the exception provided by Article L. 311-5, 2°, g) of the Code of Relations Between the Public and the Administration, all the variables and coefficients of the current algorithm must be redacted, including all elements that could reveal the nature or method of construction of those variables and it issued a negative opinion to the communication of the current algorithm’s variables and coefficients. Previous versions of the algorithm can, however, be communicated without redaction and a favorable opinion was issued.

Second, the CADA answered the questions related to the communication of records of processing activities and data protection impact assessments, including, more broadly, the communications with the French Data Protection Agency (CNIL).

It reminded that all documents submitted to the CNIL by processing officers and decisions taken on this basis were, according to the Law of January 6, 1978 creating the CNIL, excluded from the scope of the provisions on the access to administrative documents. However, any other documents issued by the CNIL outside this scope falls under the general provisions on access to administrative documents laid in the Code of Relations Between the Public and the Administration.

The CADA proceeded to recap that, under Article 30 of the GDPR, each processing officer must hold a record of processing activities. It inferred from these provisions that the record of processing activities is a document used to document the processing of personal data by one organization and concluded that such a record, held by a public administration, would be considered an administrative document communicable to anyone who requests it after, however, the redaction of all information that could violate a secret protected under the law (private and family life, security, etc.)

The CADA found that the same reasoning could be applied to data protection impact assessments provided for by Article 35 of the GDPR.
In conclusion, it found that records of processing activities and data protection impact assessments can, under the provisions of the Code of Relations Between the Public and the Administration, be communicated but that, under the provisions of Articles L. 311-5 and L. 311-6 of that code, all information that may breach the right to privacy or the security of information systems or that could jeopardize the search and prevention of infractions should be redacted prior to any communication. The CADA issued a favorable opinion, subject to these reservations.